Nation and Representation: E.J. Siéyès and the Theory of the State of the French Revolution

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"La nation est tout ce qu'elle peut être par cela seul qu'elle est"

"Au-delà du système représentatif il n'y a qu'usurpation, superstition et folie"

The official "Jacobin" reading of the French Revolution, that is the paradigm which, from Michelet to Soboul, by way of Jaurés, to Vovelle himself, has given privilege to the "social" aspect of the revolution, has shown at the same time an unusual lack of interest in the problems of its political theory, and more specifically the theory of the State. Both spheres, however, would, in view of revolutionary events, undergo a development of the utmost interest. Therefore, the importance given to the Robespierrean discourse, which can easily be found in any bibliography in use on the Revolution, has been turned into the silencing, if not the distortion of E.J. Sieyes' exceptional contribution.

In fact, the severe neglect and disregard afforded to the thinking and system of the one who at the time opened up the French Revolution by directing the change of the general States into a National Assembly. Of the one who, after following a long career, would similarly contribute to its closure, firstly in Thermidor, then in Brumario, and lastly with Napoleon Bonaparte. All this contrasts with the importance of his political position, now actively, now "derrière le rideau", and above all with the unique clarity and depth of his thoughts on the revolutionary State.

An eloquent proof of this margination is given by the fact that Sieyes' work, apart from the Essay on Privileges and What is the Third State? has never been published again in France. With the odd exception to date (i.e. the Thermidor speeches, by Bastid), and only very recently, of Dorigny's edition currently being prepared, has such an unjustifiable omission begun to be rectified.

But not only has the abbot been forgotten. In fact, if we compare his discourse to that of the 1791 Constituents, his specific position has also been distorted, identifying it "tout court" with that constitutional text, without regard for the final heterogeneity and irreducibility of both political models. In this respect, the canonical reading which the classical French school of Public Law: Esmein, Duguit, Hauriou ... and in particular Carre de Malberg, has passed on to us, and which has come to be the main source of the legacy of public law resulting from the revolution, has undoubtedly contributed to increasing these mistakes.

Fortunately, and not only as a result of the innovative impulse that the Furet school gave to the analysis of political affairs, the vacuum surrounding Sieyes has slowly begun to be filled at the same time that the studies on revolutionary political thought, Public Law and the theory of the State have been enriched. In this respect, the studies of E. Schmitt, P. Pasquino, M. Forsyth, B. Manin and in particular C.

Clavreul meant decisive advances in understanding and analyzing the abbot's work. These research studies have, in fact, brought to light the presence of a complex model, a different paradigm in the political-ideological debate of the Revolution that shows Sieyes as the most profound thinker of the Revolution. In this respect, Clavreul's contribution has particular importance, inasmuch as, while providing the most systematic analysis so far of Sieyes' system, he undertook the entire transcription and study of the abbot's unpublished writings, notes and passages that, now recovered, are currently deposited in the National Archives in Paris. Unpublished writings that modulate and clarify many of the uncertainties of the thought and evolution of the abbot's points of view.

The objective of this paper, far from any attempt to replace neglect by an acritical mythification, is none other than to advance some of the results of a research study in progress on the Theory of the State of the French Revolution. Specifically, by restricting ourselves exclusively to the first stage of the Revolution, we will discuss the articulation and development of two key concepts in Sieyes' thought: Nation and Representation. Thus, we will attempt to show the specific nature of his theoretical formulation in relation to the dominant discourse in the 1791 Constituent. Hence, we will show how the interpretation of his proposals in European Public Law are incorrect.

Both concepts, chosen as the backbone of our analysis, provide in their abstraction very effective theoretical effects on the whole of the abbot's extremely harmonized and coherent system. But also, his interest, we understand, goes beyond the mere sphere of a necessary critical and updated "Dogmengeschichte”, to reach the contemporary debate itself on democracy and representation, a debate which is sometimes too hastily believed to be solved.

In this context, it is absolutely essential to clarify the scope the term "concept" has in Sieyes' work. Above all, the science that the abbot postulates, the "Art Social", has two closely related aspects. On the one hand it must analyze the specific society of its time, describe the world of facts. But in addition to this its "analyse en raison" has a regulatory aspect which affects the building and design of new political institutions, the new “public law”. The social mechanism that the abbot proposes is characterized precisely by this close, indissoluble formulation of fact and law, of what is and what should be: "La physique ne peut être que la connaissance de ce qui est. L'art social se propose de plier et d'accommoder les faits à nos besoins et à nos jouissances; il demande ce qui doit être pour l'utilité des hommes" (Vues sur les moyens d'execution).

It is a regulatory decantation involving a reformulation of the Theory of the State in terms of Public Law and, most particularly, as we will see later, as principles,

as bases of Constitutional Law, "Allgemeinestaatslehre" of the State -this "Être de raison"- which enlightens the Revolution.

Such an epistemological statement has, in turn, a double effect. First of all, the "analyse en raison" openly presents itself in rupture with history, and gives privilege to will and reason over tradition: "Quel doit être la véritable science, celle des faits ou celle des principes?" Thus, he postulates the creation of the new positive artificial political order, as a decision free from bonds with the past. This is contrary to the historical idea that, from Burke to Hegel, by way of Rehberg, would in one way or another defend "constitutional" evolutionism against the break brought about by the Revolution. Secondly, within a pre-critical rationalism (which should not be overlooked), the abbot's social mechanisms serve the institutional efficacy of the concepts to a greater extent than their abstract theoretical design. Therefore, his system owes less to the ideal perfectionism of Begriff than to the empirical contrasting of the various mechanisms of the "établissement politique", in his adaptation to -and at the same time correction of (that excessive "natural inequality"), the society of his time.

I

Let us examine, then, the first of the above-mentioned concepts: Nation. The canonical version that Carré provides on the subject is well known, that of the revolutionary idea of Nation in his Contribution à la Théorie Générale de l'État. That is, an exclusively legal/abstract concept of nation as a center for attributing sovereignty; it cannot be extended to the set of individuals who form the French community, and is clearly different from the "people". The Nation, then, is solely considered as the other face of the State: "L'État n'est que la nation même juridiquement organisée". We shall not pursue this, because it is so well known.

However, in what follows we will attempt briefly to show that in a very different way in Sieyes: 1. There is a double, bipolar concept of nation; 2. That in the articulation of both parts of it there lies the specific nature of his theory on this subject; and lastly 3. That from such an essential synthesis decisive theoretical effects result for the whole of his entire system.

In particular, in Sieyes' discourse we can clearly find both a legal-political concept of Nation, centered around the problem of the title of sovereignty, and a socio-political concept of nation, understood as a specific community of citizens, as a social whole. Let us look at each of them individually and in their relationship to each other.

First of all, the concept of nation as a social whole. There can be no doubt at all that, as well as the legal-political concept of Nation, there is a substantial social

significance attached to the meaning of nation as a community of citizens. "Une chose vivante" in Sieyes' writings: "Où prendre la nation? Où elle est: dans les quarante mille paroisses qui embrassent tout le territoire, tous les habitants et tributaires de la chose publique: c'est là sans doute la nation" (Qu'est-ce que le Tiers état). This is also the last meaning of the famous principle: "Le Tiers état est une nation complette".

Thus, as a sociopolitical concept, nation applies to the community of the French (we shall see later on who they are and how they form it), situated in the State of nature and therefore prior to the State (l'État social): "La nation existe avant tout, elle est l'origine de tout. Avant elle et au-dessus d'elle il n'y a que le droit naturel... Une nation ne sort jamais de l'état de nature" (Qu'est-ce que ...).

Now, with regard to the "ordre naturel" that forms the nation, whereas the classical natural law, and Rousseau himself, abstract the principles governing the political order from an abstract and a-historical human nature, Sieyes approaches men as subjects determined in time and space by the socioeconomic structure of the society of their age, namely 18th century France. This "state of nature" is understood, then, from a clearly economic viewpoint, following the lines of thought of the economists of the age that Sieyes, as shown by his unpublished writings and notes before the Revolution, had studied extensively and profoundly. This is our author's analytical point of departure: the economic structure of France in that era becomes the basis, to which the newly created public establishment has to adapt, while correcting its excesses. Since the economic system is seen to be particularly dynamic, the State has to evolve at the same time, and adjust the material nature of its institutions to the changes brought about by unceasing social and economic progress.

A fundamental feature of Sieyes' system is outlined here: political and regulatory order rationally adapted to a society seen as a sum of property and liberty, a market society founded on trade between free independent workers. Thus, this is a clear approach by Sieyes to Locke's ideas and at the same time a move away from Rousseau's ideas. A move towards Locke and away from Rousseau, which will not cease to become more profound as the abbot develops his discourse.

Now, pointing out the generic debt that Sieyes owes to the economists is only an initial step towards understanding the kind of "state of nature" of that principle, which requires further clarification. In fact, Sieyes does not agree at all with the physiocrats that Land is the sole basis of value and the only source of wealth. On the contrary, he ascribes to the theory of value-labor, the basic outlines of which can be found in his unpublished writings: "C'est le travail qui forme la richesse. Parmi les jouissances il faut distinguer celles que tout le monde se procure ou peut se procurer sans les acheter, de celles qu'on est obligé d'acquérir par un travail ou par le titre qui

le représente. Nous donnons le nom de richesses a toutes les collections de biens acquis par les travaux" (Lettres aux économistes).

His proximity to Smith in his criticism of the physiocrats, for having constructed a political economy on circulation and not on production, is also continued in the theory of the division of labor, which as we shall see is of the utmost importance for Sieyes' political thought.

Now, if "le travail général est donc le fondement de la société, et l'ordre social n'est que le meilleur ordre possible des travaux" (Lettres...), the criticism of physiocratic thinking is shown to be central, both for the purposes of determining the French nation in its state of nature, and for the purposes of considering the politics of modernity: "Les peuples Européens modernes ressemblent bien peu aux peuples anciens. Il ne s'agit parmi nous que de Commerce, d'Agriculture, de fabriques. Le désir de richesses semble ne faire de tous les États de l'Europe que de vastes ateliers. Aussi les systèmes politiques, aujourd'hui, sont exclusivement fondés sur le travail" (Dire sur le veto royal).

For the rest, Sieyes, in agreement with the above, distinguishes three very different social classes from those of Quesnay: the wealth-producing class, the ("communicatrice") class, which circulates wealth, and lastly the political class, which maintains political order and guarantees the functioning of production and the market. As a corollary to all this, the nation is understood to be the community of producers of value, in the wide sense of "travaux particuliers et fonctions publiques". This has at least three decisive political consequences, which are:

1.- First of all, not all the French people form the French nation. The nation is a group of producers, which should include traders and industrialists, as well as politicians and civil servants, and even the "most menial domestic services". In short, the nation is the Third State and "the Third state is a complete Nation”. Similarly and at the same time, because of their "faineantisse”, Nobility is definitely excluded from the Nation.

If the nation, as "engagement”, is formed spontaneously by virtue of the necessity men have to attend to their needs ("besoins") and the advantages that the group has to carry out their productive activities, the exclusion of those sectors which are indebted to Privilege is imposed precisely because of that radical and original removal from the national "common interest" that derives from the consubstantial parasitism of anyone who "vit de ses ancêtres" (Essai sur les Privilèges).

2.- The nation, as a social whole that has its limits marked by its productivity, also provides, according to the division of labor that Sieyes develops even before the appearance in 1776 of "The Wealth of Nations", and in a wider sense than Smith, a

key criteria in the structuring of the State. In fact, the "travail en représentation" has its continuity in the political structure as this separates those who govern from those who are governed, a separation based on technical specialization. Thus, representation is born, as a completely central and essential framework for the whole construction of the "social state", but it also appears as a "representative government" of experts.

Against the myth of the "Agora", that is freedom understood as compulsory and absorbing parliamentary participation by all citizens in the affairs of the State, the abbot considers freedom, as a basis of social order. It is a product that allows to delegate the affairs of government to the most capable through subtle and complex mechanisms of representation and control, so that the majority of citizens can carry out the activities of production and trade which belong to the civil society of their time: "à l'abri de la sécurité commune, je me livrerai tranquillement à mes projets personnels, je suivrai ma félicité comme je l'entendrai, assuré de ne rencontrer des bonnes légales à mes désirs que celles que la société me prescrira pour l'intérêt commun, auquel je part et avec lequel mon intérêt particulier a fait une alliance si utile" (Qu'est-ce que...). This "in nuce" is the problem of Constant's "Liberté des modernes", "political freedom" as a guarantee for exercising true "civil freedom". Representation which in no way, as we will see later, means alienation of the citizen's political will, nor the elimination of all instance of participation.

However, on the basis of the distinction of three types of interests -individual, corporate and common, of which only the last can be represented, Sieyes clearly separates public from private. Thus, "la chose commune n'est pas le tout", and therefore the citizens only have to entrust a very small part of their sphere of activities to the State. The claim that the State invades the citizens' individual and private sphere results in the change from the "re-publique" into what Sieyes very expressively defines as "re-totale". This absolute authority that "pénètre jusqu'à l'intérieur de l'homme", this Rousseaunian community spirit, in his opinion inevitably results in the denial of individual rights, and in fact, in a "monacale" type of organization.

3.- Lastly, the flawless solidarity of the Third State is the consequence of the exclusion of Nobility and the harmony of interests of the producers. The latter is the result of an economic analysis that concedes equality in front of the law, the equality of workers and equal value of their work in the market. This social uniformity, conveyed by the absence of categories of productive/unproductive labor, a surplus value and unequal exchange, acts as support to the conviction that the expulsion of the Nobility from the national sphere would resolve the only emerging social contradiction in a world where different private interests would, under the mantle of common interests, live in peaceful coexistence. This social uniformity, after cleansing the social body of its aristocratic excrescence, establishes the bases that allow, but in

no way guarantee, nor mean for Sieyes its automatic existence, the emergence of a national will.

As a subsequent result, political parties and political groups are not only considered by our author to be unnecessary but also actually harmful, when corporate and group interests are placed outside public/state and private/individual affairs: "La grande difficulté vient donc de l'intérêt par lequel un citoyen s'accorde avec quelques autres seulement. Celui-ci permet de se concerter, de se liguer; par lui se combinent les projets dangereux pour la communauté". Nothing, then, should intervene between public and private affairs, between the State and the citizens.

In fact, the abbot does not consider the people as "the material that comprises the edifice of the State" (Hobbes), nor the only "personal sphere of operation of the legal code" (Kelsen). The people tend to be the set of producers, the Third State. And, while economically active, they become, broadly speaking, the nation itself: "le peuple ou la Nation ne peut avoir qu'une voix, celle de la législature nationale" (Dire sur le veto). Thus, the social aspect of the nation, placed in the "state of nature", takes in Sieyes the outlines granted by civil society, from which the state Leviathan emerges, monopolizing the political power previously dispersed in civil society.

But, as we said, the concept of nation in Sieyes presents another aspect: the nation as a legal-political subject: "Un corps d'associés vivant sous une loi commune et représentés par la même législature". It is a very well known fact that the classical theory of the 1791 Constitution Committee gave this subject-nation the title of national sovereignty: "le principe de toute souveraineté réside essentiellement dans la nation". This theory was developed by the French classics of Public Law and fixed in canonical terms by Carré de Malberg.

Now, it is an extremely notable fact that Sieyes in no way uses the concept of "national sovereignty" in any of his writings, but on the contrary, on several occasions he proceeds to a detailed and radical deconstruction of it, most of the time implicitly, but at others openly and explicitly.

The key to such a significant elision must be found in the specific formulation that Sieyes makes of the central distinction between title and exercise of public power. In fact, instead of merging both sides, putting the people in the place of the nation and preaching the inalienability of a previously constituted will, i.e. Rousseau's theory of popular sovereignty, our author gives the nation the title of constituent power, which he radically differentiates from constituted powers.

Thus the nation emerges from the field of civil society and from social subject becomes a legal-public subject. In fact, in the second era of the formation of a political society, the nation puts into effect a common will, by exercising its natural

rights "la volonté nationale n'a besoin que de sa réalité pour être toujours légale, elle est l'origine de toute légalité ... N'existant que dans l'ordre naturel, leur volonté, pour sortir tout son effet, n'a besoin que de les caractères naturels d'une volonté" (Qu'est-ce que le Tiers).

Now, such a theory of the nation as the holder of constituent power and the resulting derived and non original character of constituted powers, enables Sieyes to move the people from the immediacy of exercising power, replacing them by their representatives elected for this purpose: "Les associés sont trop nombreux et répandus sur une surface trop étendue, pour exercer facilement eux-mêmes leur volonté commune. Que font-ils? Ils en détachent tout ce qui est nécessaire, pour veiller et pourvoir aux soins publics; et cette portion de volonté nationale et par conséquent de pouvoir, ils en confient l'exercice a quelques-uns d'entre eux".

Now, the community is not stripped of its will, inasmuch as it is inalienable, nor does it entrust more than the bare "portion qui est nécessaire pour maintenir le bon ordre". Thus, unlike the absolute way Rousseau surrenders, that "mettre en commun ses biens, sa personne, sa vie et toute sa puissance sous la suprême direction de la volonté générale" (Du Contrat Social), Sieyes secularizes the legitimacy of the State, establishing its control and limitation as the task of social art and an effect of the systematic mistrust in the uncurbed general will. For this reason, popular sovereignty, in his opinion, is an imitation of absolute power and a theoretical principle of the "re-totale”. He therefore proceeds to a decisive deconstruction of the stated concept: "la souveraineté, même populaire, est une conception royaliste et monacale, une conception destructrice de la liberté... ce mot ne s'est présenté si colossal devant l'imagination des français, encore pleins de superstitions royales, que parce qu'ils se sont fait un devoir de le doter de l'héritage pompeux et des attributs du pouvoir absolu" (Discours 2 Thermidor).

Sovereignty, unlimited power by definition, and therefore "un monstre en politique" is substituted by the theory of constituent power/constituted powers. By means of this, as far as the exercise of power is concerned, Sieyes does not replace the nation for the people, but for the representatives (ordinary or extraordinary), in its bare immediacy. Its constituent authority having been exercised, the nation becomes a latent state, keeping a power in reserve. Because, in fact, as we will see, we cannot easily accept, following Schmitt's metaphor in the now classic passages of his "Verfassungslehre", that in Sieyes, the people only occupy the place that was reserved for God in the theory of the divine origin of royal power. This is so because, while the nation does not alienate its power, that is, it is not dissolved for ever after the exercise of constituent power, nothing prevents it from exceptionally reappearing in order to "resaisir" the latter and alter the bases of the whole legal order.

The replacement of the problems of national sovereignty by those of constituent power/constituted powers in Sieyes, although devaluated by the French classics of public law, would in due course be magnificently underlined by some German scholars. In fact, attention was very soon paid to Sieyes at the end of the 18th century in Germany, and this resulted in Ebel's anthology of his Politische Schriften (Leipzig, 1796), or the books of K.E. Oelsner: Bruchstücke aus den Papieren eines Augenzeugen un unparteiischen Beobachters der französischen Revolution (Leipzig, 1794) and Des opinions politiques du citoyen Sieyes (Paris, 1799). But also at the beginning of the century, in studies that have become classics, reputable German public law experts tackled the theory of the state of the revolution, with special attention to Sieyes. Thus: Egon Zweig Die Lehre vom Pouvoir Constituant (Tübingen, 1909); R. Redslob Die Staatstheorien der französischen national-versammlung von 1789 (Leipzig, 1912) and K. Löwenstein Volk und Parlament nach der Staatstheorie der französische- nationalversammlung von 1789 (München,1922).

These are works that have highlighted how Sieyes' theory of constituent power finally draws away from Hobbes' statements in which the State is seen as absolute representation. The "pactum representationis" created -from the previous social dispersion, the unity of the people more than the State. But yhe same happens in relation to Rousseau, where pure democracy turns into the unlimited power of the legislator, who becomes omnipotent, and therefore detached from any positive limit in the exercise of his legislative will: "il n'y a ni peu y avoir d'autre loi fondamentale proprement dite que le seul pacte Sociale" (L'Emile). If against the first Sieyes defined the nation as a social body linked by mutual interest, against the second, he would proceed to clearly distinguish civil society and State. That is, between the social contract that originates the community subject of the nation of a natural order: "Ce n'est point la Nation que l'on constitue, c'est son établissement politique" (Préliminaire de la Constitution)... and the positive-legal form, the Constitution, by means of which it guarantees individual rights,, and organizes the bodies of the State. Hence, the criticism, definitive from the Theory of the State, that Sieyes directs at Rousseau for having "confondu lui-même les principes de l'art social avec les commencements de la société humaine" (Notice sur la vie de Sieyes).

Several theoretical effects result from this distinction between, in Zweig's terms, "Staatsvolk" and "Staatsverfassung", which should be taken as a whole:

1.- The Constitution, the work of the "extraordinary representation" of Constituent power, is presented as a rupture with the past, as an expression of reason impelled by the will and against tradition. A free, non-regulated decision, attending only to the principles of social art: "Une nation est indépendante de toute forme; et de quelque manière qu'elle veuille, il suffit que sa volonté paroisse, pour

que tout droit positif cesse devant elle comme devant la source et le maître suprême de tout droit positif" (Qu'est-ce...)

The problem raised here is not so much the autonomy of constituent power in relation to the "historical constitution", certainly resolved, as its relationship with natural law. In fact, the question in this sphere becomes more complex, since the work of the "Constituent" of 91 and that of Sieyes himself, are placed, as far as individual rights are concerned, in the process of transition from natural law to positivist law. In this positivist direction, which does not reach the radical level that Payne manifested in relation to the American constitution -"a plain positive declaration", Sieyes' position differs for being more positivist than that of the constitutional committee. And that, first of all, because he postulates a "promulgation positive et solemnelle", of the list of the Rights of Man and the citizen, that leaves no doubt as to its legal-constitutional nature: "Les représentants de la Nation, exerçant les fonctions du Pouvoir Constituant, considèrent d'abord, que toute union sociale, et par conséquent toute constitution politique, ne peut avoir pour objet que de garantir, de servir, et d'étendre les Droits de l'Homme vivant en Société; ils jugent donc qu'il faut commencer par reconnaître ces droits. Ils pensent qu'il est bon de les exposer et les proclamer, pour ainsi dire, à la tête de la Constitution" (Préliminaire de la Constitution). And thus it was in fact understood by his contemporaries, because in words of Oelsner, "according to Sieyes' thinking, clearly and with no doubt at all, a declaration of rights is the list of the imperative duties that the members of the constituted legislative body cannot infringe, without violating the established constitution" (Des opinions politiques, cit. Paris, 1799). But also, effective constitutionalization, inasmuch as it establishes, for the first time in constitutional history, a specific legal protection, the "Jury Constitutionnaire" which, although defined, for the purposes of guaranteeing rights, as a "supplément de jurisdiction d'équité naturelle aux vides de la jurisdiction positive" (Opinion du 18 Thermidor-), radically broke with Act 16 of August 1790 (that curtailed judicial control of the laws). At the same time, as Eschassériaux was to point out in the subsequent debate, "ce juge suprême mettrait tous les autres sous sa dépendance".

2.- Secondly, the presence of the Constitution as "norma normarum" radically excludes the omnipotence of constituted powers. And that is particularly evident not only in relation to the King, but also, and above all, in relation to legislative power in the strict sense, that in the end becomes as derivative and limited as the former: "Le Gouvernement n'exerce un pouvoir réel qu'autant qu'il est constitutionnel et... les représentants ordinaires d'un peuple sont chargés d'exercer dans. les formes constitutionnelles toute cette portion de la volonté commune".

3.- If possession of constituent power belongs to the Nation, the exercise of it, however, belongs to the extraordinary representatives especially elected for that purpose: "Puisqu'une grande nation ne peut s'assembler elle-même ... Un corps de

représentants extraordinaires supplée à l'assemblée de cette nation". Therefore, Sieyes brings in a new distinction between commitment power and constituent power: "Le peuple doit se borner à exercer par lui-même le seul Pouvoir commettant" (Quelques idées de Constitution applicables à la Ville de Paris), that is to be limited to electing and delegating to their representatives the exercise of constituent power, the right to set up a public establishment.

Sieyes rigorously follows the specific and extraordinary nature of constituent representation, clearly different from the constituted representation we will see later. This is so up to the point of postulating in 1789 that, taking into account that representation of the national Assembly did not adjust to the principles, among other things, because it performed more functions than the Constituent itself, the Constitution would not be final until it expressly elected Members of Parliament "regulièrement delegués pour exercer le seul Pouvoir Constituent", and proceeded to reform or approve it.

4.- As we have seen, the Nation is for Sieyes totally above the Constitution, alien to any form or positivism, possessing constituent power, and at the same time unique and original in character. On the other hand, the "puissance legislative", so-called by Montesquieu, is only for Sieyes the "legislative body", a part of the "public establishment", a derivative body, in short, that performs a specific, constitutionally regulated function.

Now the Nation, in principle, comes to an end in the shaping of the sociopolitical subject, the social body of the nation, the third state, and above all, in the representatively mediated exercise of constituent power. When this occurs, the nation disappears from its brief presence, on the political scene, and then, in Sieyes' terms, really becomes a "lieu vide", a "lieu magique". But still, since it does not alienate its constituent will, it may reappear politically, emerging from its lethargy in the state of nature.

This of course is an unique explanation of Locke's theory of "trust", in which the French classics of Public Law (Smein, Carré, etc) wanted to see the irregular structural introduction of a moment of "subversion" into Sieyes' system: an element of fact in the world of law. Such a judgment, which radically minimizes constituent power, clearly owes much, however, to the postulation by these authors of an unlimited legislative power. In the absence of the regulatory superiority of the Constitution, maintained by Sieyes, there would be a kind of two-headedness: legislative power and constituent power, both of which are considered to be an expression of national will. Thus, an unmistakable background of "parliamentary sovereignty" (Duguit) or of an autonomous legislative power "dont on ne trouve plus trace dans la Constitution" (Carré), eliminates the principle of hierarchy of the legal order which, on the other hand, becomes important in Sieyes' thinking. For him, in

fact, not only "les décrets primitifs de la volonté nationale" (the Constitution) "sont antérieurs à toute volonté sociale représentante" (the laws), but also the Constitution rises as a true higher norm, a criterion of validity of the whole legal order. Thus, for the abbot, the Constitution, at the same time it gives real practical life to the social body of the nation, giving legal form to that collective subject of the state of nature, it also limits the action of constituted powers, not allowing them any arbitrary action and submitting them in a regulatory manner to what is laid down in the text of the constitution.

Combined in Sieyes we therefore find rational decision, positivism, regulatory hierarchy, and formal superiority of the Constitution in relation to Law. Also, superiority of rank acquires in him a very special efficacy inasmuch as it is postulated as one of the basic capacities of the afore-mentioned "Jury Constitutionnaire". In fact, if in 1789 the abbot believed in a spontaneous widespread control of the constitutionality of laws by the "Opinion Publique", very soon, as his unpublished writings show, he began to consider a specific jurisdictional process for this purpose. Thus, already in Year III he postulates a "Jury Constitutionnaire", "qui veille avec fidelité à la garde du dépôt constitutionnel", as the most suitable process for this control, and to which both civil servants and private citizens might appeal. Such a "tribunal de cassation dans l'ordre constitutionnel", specifically designed to invalidate the "excedence, l'éxtravasion de pouvoirs" with regard to what is laid down in the text of the Constitution, is specifically designed, in the "Thermidor Discourses", to control the constitutionality of government acts and legislative power. Any hasty comparison, however, between the jury and a purely jurisdictional constitutional tribunal should be avoided, since the former had an undeniable political character in that its members were chosen from among the members of the legislative body.

In fact, the doctrine of constituent power and the rational-regulatory concept of Constitution in Sieyes is clearly far removed from the classic French doctrine of "la loi, expression de la volonté nationale", from the assumptions of which it traditionally read the debates of 1789-1791 and silenced or weakened Sieyes' specific contribution.

Now, a final problem arises with this constituent power, and that is: How can a real national will exist prior to representative legal order, through whose mediation precisely all will is constructed? it is clear, then, once again, that institutional mediation is not restricted to expressing, but that it also produces political volition. In fact, "il a fallu de circonstances très difficiles à réunir, des combinaisons, des efforts et dangers tant pour endormir et contenir le despotisme que pour faire vouloir le peuple" (Notes sur la Constitution de l'an VIII).

Precisely, the puzzle begins to be solved thanks to the mediate nature of constituent power, since the nation delegates it to special representatives, and it is

resolved by establishing the difference between original constituent power and instituted constituent power. In fact, after approval of the Constitution, there is a double movement: on one side, the nation returns to the state of nature from which it will only very occasionally emerge; and on the other, the Constitution will be modified according to the procedure regulated and stipulated in the constitutional regulations themselves. Against the "torrent révolutionnaire à l'état brut" mentioned by Carré de Malberg, instituted constituent power, for Sieyes, replaces the "projet effrayant" of a permanent constituent power.

And this will precisely be the third of the functions incumbent on the. "Jury Constitutionnaire": "jury de proposition, pour recueillir les vues qui peuvent tendre à l'amélioration progressive de l'acte constitutionnel... et donner à notre acte Constitutionnel, un principe de perfectionnement illimité qui puisse le plier, l'accommoder aux nécessités de chaque époque, plutôt qu'une faculté de reproduction ou destruction totale, abandonné au hasard des événements" (Opinion du 18 Thermidor). In this way, without confusing the "jury constitutionnaire" with constituent power, by limiting it to the simple proposition of reform, Sieyes gives flexibility to the constitutional review procedure, which in 1789 (Vues sur les moyens) led him to propose a National Convention designed for that very purpose. It would automatically meet every thirty-three years, in order to avoid the "permanent insurrection" of originating constituent power.

II

Let us now proceed to analyze the concept of representation in Sieyes with a full background of legal-political consequences implied by the above concept of nation -as a bond between Civil Society and State.

We have already stressed above that, against the democratic model, understood as direct government of the people, Sieyes, using his own re-interpretation of the principle of labor division, proposes the exercise of politics as a task for the most capable citizens, as well as a civic liberty consisting of "choisir les experts et en changer souvent". In this respect, if the nation existed as a social group prior to legal order and the State, its specific will could only crystallize through the "mise en forme" of the Constitution and of representation, now constituent, now constituted, as a central mechanism for constructing a will, in no way given in advance. Thus, "comme si la nation pouvait parler autrement que par ses représentants".

From this, we can conclude consequences of varying importance:

1.- Above all, Sieyes openly rejects that social uniformity -which his analysis of the nation as producer of value (Third State) showed-, is automatically and

immediately transformed in the political field as a common and definite national political will -unlike, for example what Marx would propose with regard to the proletariat, whose condition "an sich" would guarantee, in the last instance, its future presence "for sich”. For the abbot, in fact, political will is not metaphysically given in advance, but must be built up through "social mechanisms”, the internal "combination" of the public establishment, that is to say, representative institutional mediation. For him, the problem is not at all adapting a political will to an assumed and original social will, given the abstract and even primitive -because it is natural-character of the latter. Rather the institutional production of the will, under the rule of majorities and respect for minorities: "Il faut absolument se résoudre à reconnaître tous les caractères de la volonté commune dans une pluralité convenue”.

The Assembly, then, should not be limited to -expressing a pre-existing "desideratum”, but on the contrary "former en commun une volonté commune" and therefore should freely deliberate in order to reduce the initial plurality to a majority agreement. This problem of politically bringing multiplicity to relative unity -openly breaking with the paradigm of Rousseaunian immediacy and sociopolitical transparency- is, in its modernity, the opening up of a thought that will continue not only the doctrinaire liberalism of Constant or Guizot, but basically the "weimarian" thought of Heller (Politische demokratie), Kaufmann (Zur problematik des Volkswillens), Smend, etc.

2.- All this also leads to the appearance of a supreme criterion of political legitimacy. In fact, if representation means that citizens "sans aliéner leurs droits, en commettant l'exercice" (Dire sur le veto), from this arises both the necessary free and general election of political representatives, and the exclusion of the King also in a "representative" position. The differences between Sieyes' paradigm and the majority position of the Constitution committee are undoubtedly difficult to ignore: "La Constitution française est représentative: les représentants sont le Corps législatif et le Roi" (art. 2).

In fact, in opposition to the acknowledged participation of the King as "co-legislator" that the committee proposed, certainly close in this to the English model (and even to Burke's "virtual representation"), Sieyes denies the monarch, -as a non-elected head of the executive, any contribution at all in the substantial phases of the legislative process. Therefore, he would be energetically opposed in principle to the veto, no longer absolute but purely by way of suspension, as would be regulated in the 1791 Constitution, considering it "une lettre de cachet lancée contre la volonté nationale" and proposing a merely executive sanction. Thus, after rejecting Montesquieu's famous distinction between "droit d'empécher" and "droit d'estatuer" (De l'esprit des lois XI, 6), by virtue of the enormity of the power that was left in the hands of the King, he would clearly emphasize integral representation, symbolic of the Nation as "le Tout”, that the former should essentially perform. Colette Clavreul

has indicated that in Sieyes' unpublished writings there expressly appears the expression "pouvoir neutre" to designate this moderating function.

We could add to this the quality of "premier Citoyen", with royal participation in the legislative process being unable to exceed, on the one hand, exercise of the vote -although "nulle parte son suffrage ne peut en valoir deux"- and the subsequent sanction and proclamation (Dire sur le veto). According to all indications, Sieyes appears not to be thinking technically of a constitutional monarchy, but of a parliamentary one, where the sanction would be introduced as a due act, merely formal and outside the will of the legislative body, set in approval.

The specific difference of the abbot's position in this respect is even more noticeable if, when he proposed it in 1791, the term "donnée" was suppressed. A term that, with clear technical incorrectness, combined the times of approval, sanction and proclamation of the laws on the date of the royal sanction, because "semblerait vouloir nous apprendre que le véritable législateur est le roi, puisque la loi serait donnée par la sanction". As a result, the abbot would require a record to be made of the proclamation date, taking into account that "est la plus essentielle à connaître; car c'est de ce jour-là seulement que les citoyens sont obligés de s'y soumettre" (Moniteur, VIII, p. 286). Thus, the law is not conceived by Sieyes as a complex act according to the model of constitutional monarchy (Laband), in which "le monarque veut à la fois le contenu de la loi et sa force impérative" (Carré), a residue from the monarchic principle. Quite on the contrary, the law becomes the exclusive heritage (as regards establishment and legal validity) of the National Assembly and, at the same time, the royal sanction becomes a mere integrating requisite of its efficacy.

In a similar way to what occurred with the concept of nation, there is in Sieyes a concept of representation that would crystallize in the 1791 text and that is irreducible to the majority position of the Constitution Committee. An idea of representative government that, although it undergoes political-organizational changes as the years go by, it would from the point of view of its bases, remain however untouched.

In fact, in relation to the existence of two assumed, radically different phases in the abbot's thinking on representation -the first one governed by a Rousseaunian spirit, accepting the imperative mandate, while the second would accept the representative mandate in terms similar to those of the Constitution Committee-, a detailed analysis of the texts shows that, apart from some shifts, there is an essential continuity. Therefore, the break between a first and a second Sieyes, suggested by authors such as Zweig or Löwenstein (op. cit.), following Gierke in his classic work Althussius und die Entwicklung der naturrechtlichen Staatstheorien (1880), cannot be accepted. Quite on the contrary, in the abbot we find a specific idea of representation

as "délégation sans aliénation" and "edifice représentative de base démocratique", which is clearly different from the one that triumphed in the 1791 Constitution (to which Carré wrongly takes him) and continues with various organic-institutional crystallizations throughout all his writings. From such an idea of representation, we can synthesize the key moments, that is to say:

A.- First of all, and once again in opposition to Rousseau, Sieyes demands at all times a "vraie représentation;" namely, the representative acts on behalf of the represented party, there only being a prior generic content, but in no way a specific will to be transmitted. The political will is constructed throughout the process of representative mediation, excluding the mere transfer by the representative of a preliminary and originating content. As a result, representation must be free and not a Rousseaunian "pouvoir commis", incapable of reducing diverse multiplicity to the minimum indispensable political unity. Only in this way will the synthesis of the general will as the will of the majority be reached: "la méthode de détacher de simples porteurs de votes est essentiellement vicieuse: les Députés, obligés de s'en tenir scrupuleusement à l'avis de leurs commettants, ne pouvant point se concilier entr'eux, il devient souvent impossible de tirer de la totalité des votes une volonté commune; or c'est la volonté commune qu'il faut... la communauté se détermine donc à accorder plus de confiance à ses mandataires. Elle les fonde de procuration, à l'effet de se réunir, de délibérer, de se concilier, et de vouloir en commun: alors, au-lieu de simples porteurs de votes, elle a de vrais représentants" (Vues sur les moyens).

From this starting point, Sieyes constructs a very characteristic and original mandate of representation, the features of which are:

a.- Exclusion of the imperative mandate, characteristic of democracy, because it would make the common decision and agreements ("déliberations") impossible: "Le Peuple dans un pays qui n'est pas une démocratie (et la France ne saurait l'être)... ne peut parler, ne peut agir que par ses Représentants" (Dire sur le veto).

b.- But, and this is decisive, exclusion also of the "tout court" representative mandate, taking into account that the characteristic dynamics of the "trust", of the confidence that is placed in the base of its whole system, prevent alienation of the rights of the represented party and absolute autonomy of the representative from any control other than a purely electoral one. Therefore, unlike the 1791 text, Sieyes introduces the possibility of annulment: "Mais la mission donnée aux représentants ne peut jamais être une aliénation. Cette mission est essentiellement libre, constamment révocable, et limitée, au gré des commettants, pour le temps ainsi que pour la nature des affaires (pouvoir constituant ou fonction législative, R.M.)" (Vues).

Hence, then, the irreducible specificity of Sieyes' theory of representation, that crystallizes in a "gouvernement représentatif", formulated, according to his own words, as a "base démocratique et l'édifice représentative" (Bases de l'État social). This in turn is transformed into two different effects:

1.- First of all, the afore-mentioned democratic base of the representative edifice would be formed by the primary Assemblies. These, in Sieyes' model, are regulated not only for a merely electoral purpose, after which they would disappear, but as true bodies of control and participation by the citizens, a collective "oeil de la Révolution", basic bodies of democracy with the capacity for dismissal and exclusion (not of imperative mandate), designed to "raffraichir les représentants d'esprit démocratique" (Bases). This function would, however, be eliminated by the Constitution Committee.

2.- Secondly, and inasmuch as for our author "tout est représentation dans l'État social", representation would go beyond the mere sphere of legislative power, to reach the executive and judicial bodies: "tous sont représentants".

Thus, the identity of the constitutional legal statute of these powers (more precisely, of these bodies that perform different functions) excludes all possible hierarchical arrangement between them, since, as we have already said, they are not original and equally derive from the Constitution, even the legislative power.

Sieyes' idea of "representative government" is thus shown to be entirely different. First, as a corollary of the hierarchical superiority of the Constitution, resulting from the theory of the constituent power of the nation, it explodes the myth of legislative power as a privileged expression of the national will. Secondly, centered on the constructive nature of common will, developed by the various institutions of the public establishment, it pays equal attention to each and every one of the constitutional bodies in their functional specialization.

Taking all this as a whole, the model of representation put forward by Sieyes is clearly different from the representative mandate, as it would be established in the 1791 Constitution, from where it would pass to western constitutional Law, and which involves the absolute autonomy of the representative in relation to the represented parties. Very differently, his model of a democratic base and representative edifice shows completely original features, among which the following are worthy of note:

1.- Reduction in the mandate period (three years) and annual renewal by thirds, as well as no immediate re-eligibility until a period of three years has elapsed. The primary Assemblies would elect the first and second thirds to terminate, and so the members of parliament would be controlled, as they would avoid being

terminated first; in fact, "on s'efforcera de ne pas mériter ce choix" (Quelques idées de Constitution).

2.- Possibility of dismissal and exclusion of the members of parliament by the primary Assemblies, should confidence in the representative be lost. Annulment would, however, in order to guarantee controlled use of the institution, require a reinforced majority of three quarters of the elected Assembly. Thus, the primary Assemblies, as well as a purely electoral function, would provide that "fresh democratic air" of impetus and supervision of the whole representative edifice at its three levels: Municipal, Departmental and National.

3.- Complete reorganization of the French political territory, which Sieyes calls "Adunation politique", on the basis of departmental units and the establishment of a system of proportional representation by way of three different factors:

1.- Territory: Where the uniformity of surface area of the new departments would be transformed into a fixed number of members of parliament for each one of them.

2.- Population: A certain number of members of parliament would be distributed in proportion to the respective population of the departments.

3.- Contribution: A higher rate of tax payment -including both the volume of taxes and the amount of the voluntary tax that opens the doors to active citizens, as we shall see later-, would be transformed equally into a greater number of members of parliament.

"Adunation" comprises the last reason of a representative State which is configured as unitary and also centralized, openly excluding federalism: "La France ne doit point être un assemblage de petites Nations, qui se gouverneront séparément en Démocraties; elle n'est point une collection d'États; elle est un tout unique, composé de parties intégrantes; ces parties ne doivent point avoir séparément une existence complète parce que ne sont que des parties ne formant qu'un seul tout".

4.- Creation of a true Public Opinion through transparency in decision making, development of the press and circulation of books and pamphlets of political debate, as well as, and in particular, the establishment of a new and effective system of Public Instruction. Sieyes would develop all these items in very interesting new detailed legislative projects.

5.- Lastly, creation of a "citizens' moral sense" for active participation in politics, designed to involve the largest possible number of citizens in the democratic base of election and control (active citizenry) of the representative edifice, and save

the constitution from a new "political aristocracy”. In this respect, Sieyes would design both calendars of national holidays, honors and celebrations in praise of civic values.

As we can see, a representative system such as the one above, based on a confidence submitted to a control of the representatives as individuals (dismissal) and not on their acts (exclusion of the imperative mandate), as well as on a formulation of democracy of participation and representation, is clearly different from the 1791 model. As we already know, the latter excluded any control by the voter on the person elected, and reduced political participation to mere election.

B.- A central part of Sieyes, "representative government" is, then, the important role played by the primary Assemblies, which the author also calls "Comitia”. In each district, these primary Assemblies were made up of politically active citizens (according to the criteria that we shall examine later) in a number never higher than six or seven hundred, in which case they would be subdivided.

Far from being dissolved, once their electoral commitment had been made (as the Constitution Committee would establish), among the additional functions that Sieyes gives them, the most notable for our purposes here is the preparation of the eligibility lists from which candidates would be proposed. This function would also be eliminated by the Constitution Committee and would not appear in the 1791 text.

In fact, in the absence of political parties for the reasons stated above, the abbot assigned to the "comitia" the selection of candidates at an initial level. For the rest, another such would occur at the departmental and national levels. All active citizens who were worthy of such an "honor”, taking into account that to be eligible is not a right but a honorific recognition of a special merit of citizenship, would be entered on the list of those eligible.

Every year, the primary Assemblies would draw up these lists of eligible people by a majority vote, and nobody could assume any public position without having previously been on one of them for at least one year. The candidates that would appear on these lists would either be elected (in the case of the legislative body, in ascending order), or appointed by the higher level, that is, the local civil servants by the provincials, the latter by the nationals etc. (in the case of administrative-executive power, in descending order). Thus, the primary Assemblies would provide lists of those people eligible both for election to the national Assembly, at the first stage, and for appointment by the top civil servants of the Government. Even if those who are administered do not appoint them, civil servants should be trusted, strictly in agreement with the character that Sieyes gives them of representatives.

Here in fact is the ultimate meaning of the abbot's cryptic and usually misinterpreted expression: "La confiance vien d'en bas, le pouvoir vien d'en haut".

Now, the loss of confidence leads to the break up of the representative bond in two ways: dismissal (termination of a representative during his mandate period), or exclusion (non-inclusion in the annual eligibility list).

In this way, in the legislative order, representatives could be dismissed by their electors' assemblies, and excluded by the assembly that appointed them eligible (by a 3/4 majority). In turn, in the government, representatives could be dismissed by their hierarchical superiors and excluded by the respective primary Assemblies. In the judicial order, there was an annual elimination scrutiny, where a blank vote would mean support for the judge, and other alternative names could be proposed (Nouvelle organisation de la Police et la Justice).

After year 3, in face of the avant-garde instrumentation of the sections by the Jacobins, Sieyes was to devise an appeals system before the "Jury Constitutionnaire" to contest representatives. Control would become judicial and de-politicized, bearing in mind nonexistence of the imperative mandate that would take away from the primary Assemblies the task of dismissal, but not exclusion.

C.- Moreover, as far as the citizens' statute is concerned, there are substantial differences between Sieyes' idea and that of the constitutional report.

In fact, after the apparent acceptance by the Constitution committee of the abbot's distinction between active citizens, who enjoyed political rights, and passive citizens, who only had the general advantages of protection and security of the public establishment, there were definitely underlying diverging perspectives. Agreement would center around an elitist and census focused concept of the passive electorate: they all accepted the need for the census requirement, income level, interest and responsibility for public affairs, intellectual capacity, and education. That is, government should belong to the "classes available". In order to be elected to the national Assembly, it would be necessary to pay the famous silver mark and to own an established property.

Both agreed, also, that active citizens performed military service in the National Guard (from which the Act of 15.06.1790 excluded passive citizens), took part in juries, and contributed financially in maintaining the State. Now, in order to become an active citizen, Sieyes proposed a very small civic tax ("la plus petite taxe possible") and voluntary in nature. This contribution would demonstrate the minimum interest in public affairs necessary for citizens to exercise political rights in the primary Assemblies in a responsible fashion, and in no way was it designed to exclude large sectors of the population from voting. In fact, for the abbot, and central

to his philosophy: "les droits politiques doivent être attachés non a la propreté mais a la personne" (Instructions à donner aux bailliages). Here we find an essential difference: while for Sieyes suffrage is a right, that only economic and political backwardness prevented from becoming immediately generalized, for the constituent committee, voting is a mere function that the Nation entrusts to a chosen part of its members. The universal nature of suffrage and the rights of the citizens, that our author claims, are a central part of his model of representative government: "vous ne pouvez pas refuser la qualité de Citoyens et les droits du civisme à cette multitude sans instruction, qu'un travail forcé absorbe en entier. Puisqu'ils doivent obéir à la Loi, tout comme vous, ils doivent aussi, tout comme vous, concourir à la faire. Ce concours doit être égal" (Dire sur le veto).

Thus, the constitution committee would establish a voting requirement in order to be allowed to vote that would "de facto" mean exclusion of the majority of the population (specifically: a proportion of 16 active citizens per every 100 inhabitants) and initiated the voting suffrage.

The differences with regard to the active electorate do not stop there, however. In fact, in this respect, as Pasquino has indicated, Sieyes is placed in a perspective tending towards universal suffrage. In fact:

1.- As far as the exclusion of women from the right to vote is concerned, the abbot states that, while in European countries women can be queens; "par une singulière contradiction", they are excluded from exercising the vote, and so: "D'après un préjugé qui ne se permet pas môme le doute à cette égard, nous sommes donc forcés de retrancher au moins la moitié de la population totale" (Observations sur le rapport du Comité de Constitution). This is a position that as in everything regarding representation, places the abbot close to Condorcet's position and clearly against both that of the Constitution Committee and the Jacobins.

2.-.Equally significant is the exclusion of beggars and vagrants for technical reasons from guarantee of census, or of domestic servants, because of their presumable captive vote: "ceux qu'une dépendance servile tient attachés aux volontés arbitraires d'un maître".

3.- Lastly, the number of passive citizens is considered by Sieyes in a dynamic perspective of progressive reduction. And it could not be otherwise, because his concept of representative Government takes in both the formal aspect of representation and, formulated as an open process, or to express it in Böckenförde's terms "inhaltliche Repräsentationsbegriff" (Demokratie und Repräsentation), namely recognition, involvement and real participation by the citizens in control of the public establishment, in short, substantial representation: "délégation sans aliénation".

Finally, and very briefly, it is perhaps interesting to mention the results that Sieyes' concepts of nation and representations have in his critical stance against the principle of separation of powers, according to the British model, which had great influence not only on Mounier but also on other members of the Constitution committee (Lally-Tollendal, Bergasse, Clermont-Tonnerre, etc.).

In fact, the abbot, in the light of everything mentioned above, could not but express his extreme reluctance to the introduction in France of the British representative model, and this, at least, was for two basic reasons:

1.- It granted special representation to the nobility as such, which reinforced privilege in relation to the citizens who were formally equal in the eyes of the law. In fact, the nobility was no longer a part of a nation reformulated as "le Tiers état".

2.- The conflict between classes and interests was also recorded as a principle of operation of the British institutions.

Now, Sieyes' model meant that, when the nobility had been eliminated, the very abolition of Privileges would establish an essential uniformity of social interests that through the "adunation politique" and a "gouvernement représentatif", would dispense with the need for a counterbalance of powers conceived as bearers of different social interests. We can well understand, then, Sieyes' extreme hostility to a political system such as the British one, whose parliament was comprised of three bodies: King, House of Lords and House of Commons, precisely opposed in a mutual "balance".

First of all, for Sieyes, King and Parliament were constituted bodies designed to exercise two different functions, executive and legislative. Therefore, it was neither possible for a sovereignty of parliament to be conceived as a supreme expression of the will of the people, since the law had to be adjusted to the Constitution; nor could the Monarch be accepted as co-legislator, collaborating only towards integration of the efficiency 'of the law through the formal requirement of sanction and proclamation.

Moreover, there was no reason, either, for a division of the legislative into an Upper House and a House of Commons, both because of the preliminary "anéantissement" of the Nobility and their lack of place in the new order of the Law, and the impossibility of a second federal House, excluded by the centralism of the "adunation".

However, Sieyes would accept an internal division of the legislative body, for technical reasons. In fact, in his opinion, in the legislative procedure, the decision should only be taken by a single body, but the proposal and discussion could very

well be distributed into committees or commissions. Thus, its characteristic division of powers went from "pas employer plusieurs corps de représentants à la construction du même ouvrage, mais confier a divers représentants des parties différentes de manière que le résultat produise l'ensemble".

In another way, the functional division of powers would also make hierarchy among the constituted bodies impossible, and hence lead to disregard for the centrality of the legislative, so "à la page" in the Revolution. From year III, equal attention to the whole of the constitutional system would lead Sieyes to differentiate between "executive power" and the "Government". The latter would have a mixed function between legislative and "executive", according to which the abbot would even come theoretically to consider an autonomous regulatory power, not resulting from previous law. This would be merely the beginning of his system becoming progressively complex, although always under similar basic principles, which deserve to be treated very substantially on another occasion.

So, on the basis of a nation understood at the same time as a social community of producers and holder of constituent power, of a criticism of national sovereignty that is replaced by the superiority of the Constitution over constituted powers, of a theory of representation that combines a democratic base, annulment and absence of imperative mandate, etc., the abbot of Fréjus shows us, in the unusual depth of the problems that he raises, that he really is far-removed from the present-day image that has made him a spokesman of the principal current of initial European constitutionalism.

"La Constitution c'est moi"; in the last ravings, of his long life, Sieyes succeeded in defining in this way the core of what was his basic obsession: a Theory of the State as the undeniable basis of modern continental Public Law.

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