Habermas's Decentered View of Society and the Problem of Democratic Legitimacy

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ABSTRACT: One of the most interesting features of Jürgen Habermas's latest work on democracy is his attempt to acknowledge the problem of social complexity while remaining faithful to the core idea of the Rousseauian conception of democratic legitimacy: the idea that legitimacy is grounded on citizens' participation in processes of opinion- and will-formation which ensure the reasonableness of collective decisions. The challenge for Habermas is to show how it is possible to conciliate the consequences of social complexity with this understanding of legitimacy and popular sovereignty. Does Habermas's attempt succeed? This is the question examined in the present article.

RÉSUMÉ: L'un des aspects les plus intéressants du dernier ouvrage de Jürgen Habermas est sa tentative de reconnaître le problème de la complexité sociale tout en demeurant fidèle à l'idée centrale de la conception rousseauiste de légitimité démocratique. Cette dernière est fondée sur la participation du citoyen aux processus de formation de l'opinion publique et de la volonté populaire, qui seule peut assurer le caractère raisonnable des décisions collectives. Le défi que doit relever Habermas consiste à démontrer la possibilité de concilier les conséquences de la complexité sociale avec cette compréhension de la légitimité et de la souveraineté populaire. Peut-on considérer la tentative de Habermas comme un succès? Voilà la question qui sera abordée dans le présent article.

The specific challenge of democratic legitimacy is the following: citizens of a democratic polity have to see themselves both as equal members of the sovereign, and as its subjects. This, at least, is roughly how Rousseau put the problem and its difficulty can be made even more explicit if we formulate it as the following question: Under which conditions should citizens consider that their experience as subjects does not simply refute their self-conception as co-sovereigns? Rousseau's answer is that the laws that I must obey as a

subject are legitimate in so far as I, as a citizen, can see myself as their co-legislator. This must be shown to hold even if I am opposed to those laws and must be coerced into submission. To explain how this could be possible, how coercion could be legitimate, is to spell out the conditions of democratic legitimacy and this, of course, was the purpose of the *Contrat social*. More specifically, Rousseau's theory of the general will grounds the legitimacy of collective decisions on a process of will-formation which encompasses all citizens and ensures that decisions express the common good and not the simple aggregation of private preferences.

This view of legitimacy was rejected by those who developed, at the end of the 18th century both in France and America, the institutions of representative government. They generally justified their rejection of direct democracy by referring to problems of complexity. Consider, for instance, the argument made by Sieyès at the beginning of the French revolution: democracy could not be right for France because of the size of its territory, the number of its citizens and also because of the complexity of the new commercial society. The division of labour was the key to its prosperity, thought Sieyès, and this principle should also be applied at the political level. Thus the need for an indirect, representative form of government.[1] After the revolution, liberals such as Benjamin Constant and Guizot generally tried to defuse the whole issue of popular sovereignty by basing legitimacy on the constitution and the division of powers' doctrine.

Today, social complexity is much greater than it was at the time of the French revolution and yet normative democratic theorists still think of democratic legitimacy in essentially Rousseauian terms. This is the case of deliberative theorists such as Seyla Benhabib[2], Joshua Cohen[3] and, to a certain extent, Jürgen Habermas. What makes Habermas's work particularly interesting is the fact that he explicitly acknowledges the problem of social complexity and yet attempts to remain faithful to what he sees as the core idea of Rousseau's conception: the idea that legitimacy is grounded on citizens' participation in processes of opinion- and will-formation which ensure the rational acceptability of collective decisions. The challenge for Habermas is to show how it is possible to conciliate the consequences of social complexity with this understanding of legitimacy and popular sovereignty. Does Habermas's attempt succeed? This is the question I wish to examine in the present paper.

In the first section, I briefly explain his understanding of social complexity and his reformulation of the principle of popular sovereignty. I show how this reformulation leads to what he calls a two-track conception of democracy. In the second section, I examine some of the consequences of this two-track view. I consider whether Habermas succeeds in securing the connection between citizenry, deliberation and decision which is essential to a

Rousseauian view. I also criticize his treatment of legislative assemblies as the weak link in his conception of democracy, especially given his strict view of deliberation. Finally, drawing on the recent work of James Bohman, Joshua Cohen and Joel Rogers, I briefly indicate two avenues that may help us confront some of the difficulties raised by Habermas's theory, though in the end they cannot be thought to alleviate its main shortcomings.

1. Social Complexity and Popular Sovereignty

Habermas's conception of social complexity is basically twofold. Firstly, the development of extensive state action in a multiplicity of distinct fields has made the process of political decision-making more complex. This has led to the growth of administrative power and bureaucracies which rarely opens up to any significant public scrutiny. Still, one must recognize the necessity of such agencies and accept that a radical attempt to democratize the exercise of administrative power would be achieved at the cost of efficiency.

Secondly, modern societies are 'polycentric'; they are constituted by a plurality of action systems, none of which can claim to be the 'apex', 'center', or 'structural core of society'. In this context, the political system appears as "just *one* action system among others"[4] and cannot pretend to control directly other subsystems such as the market. Therefore, Habermas calls on us to adopt a 'decentered view' of society. This understanding of social complexity is largely drawn from the works of systemic sociologists such as Niklas Luhmann and Gunther Teubner. But, in contrast to these authors, Habermas does not want to say that subsystems, like monads, are essentially closed and independent from one another, for this would make it very difficult to even consider the issue of societal integration and deal with problems that concern society as a whole. Habermas thinks that the political system is the level at which such issues can be expressed, discussed and dealt with. His argument is twofold. Firstly, the political and legal systems cannot be considered as closed unless one reduces the political system to its administrative component, steered by the medium of power. According to Habermas, the political system is also made up of what he calls "spheres of communicative power" (*e.g.*, parliamentary bodies), through which it remains open to concerns that emerge from the lifeworld. Secondly, the political system is internally connected to law, which functions as a language which can translate ordinary communication from the public and private spheres into a form which can be received by the specialized codes of subsystems, and vice versa.[5] This internal connection with the law habilitates the political system to deal with issues of societal integration.

Habermas's conception of the political system highlights, what he calls, its asymmetrical character. On the one hand, it is an action system among

others, specialized in the production of collectively binding decisions. On the other hand, and because of its internal connection to the law, "politics is responsible for problems that concern society as a whole"[6]. Through the exercise of legitimate lawmaking, the political system produces the norms that can regulate, to a certain extent, other subsystems and take up problems of coordination. But it cannot intervene at will in these subsystems, and remains dependent upon the adequate performance of their specialized functions.

Habermas's view of social complexity leads him to substantially modify the principle of popular sovereignty as understood in the republican tradition. He cannot accept the republican view of popular sovereignty as embodied in the people, understood as a kind of unified macro-subject. Neither can he accept the idea that the citizenry, as a collective actor, constitutes the whole of society as a political society, without the distinctions between private and public spheres, between state and society, as well as between the various subsystems that make up a complex society. So the first consequence of Habermas's understanding of social complexity is that it compels him, against the republican view, to reformulate procedurally the principle of popular sovereignty. This means that on his view "the 'self' of the self-organizing legal community disappears in the subjectless forms of communication that regulate the flow of discursive opinion- and will-formation in such a way that their fallible results enjoy the presumption of being reasonable."[7] In other words, popular sovereignty is not embodied in a particular assembly or institution or conception of the people, but rather situated in democratic procedures. It makes itself felt, adds Habermas, as "communicatively generated power" which "springs from the interactions among legally institutionalized will-formation and culturally mobilized publics".[8]

Yet Habermas does not wish to abandon the core idea of republicanism which grounds democratic legitimacy on processes of political opinion- and will-formation between citizens. In order to remain true to this core idea, he needs to do two things. Firstly, he has to maintain a clear connection between the discussions that citizens have in their homes and workplaces; and ultimately, the decisions finally made at the level of formal political institutions, or, to use his vocabulary, between the processes of opinion-formation that take place informally in the general public sphere and processes of opinion- and will-formation leading to binding decisions. If the connection appeared too tenuous, it would be difficult to speak of popular sovereignty in the Rousseauian sense of the word. Of course, theories of representative government argue that popular sovereignty expresses itself essentially through elections, but this cannot be enough for Habermas. He has to show that the power of citizens goes beyond the simple act of selecting leaders. The core idea coming from the Republican tradition that Habermas wants to keep is that legitimacy depends, at least in part, on the effective

participation of citizens in the process of opinion- and will-formation.

Secondly, it would not be enough for Habermas to call for a responsive government, which is a familiar theme of classical parliamentary and liberal political theory. Again following Rousseau, he wants to give a normative value to the processes of opinion- and will-formation. In other words, it would not be enough to show that the debates that go on in civil society somehow influence the decision-making of formal political institutions. He makes the further claim that these processes contribute to the production of decisions that have a presumption of rational acceptability. This is what ultimately grounds the legitimacy of collective decisions and the obligation citizens have to obey the law.

To better appreciate the distinctiveness of Habermas's view, we can compare it very schematically to Rousseau's. Rousseau's conception of legitimacy had basically two components: first, all citizens are to participate directly in the formation of the common will; second, the process of will-formation is structured in such a way as to form a general will that expresses the common good and is not equivalent to the aggregation of particular wills. As we have seen, Habermas's acknowledgement of social complexity leads him to radically reformulate and weaken the first condition. What he wants to keep is the core idea of the second condition. That is, processes of opinion- and will-formation have to be such that they secure the rational acceptability of collective decisions.

This leads Habermas to a two-track view of democracy. Because of social complexity, it is not possible to imagine that deliberative politics can be "inflated into a structure shaping the totality of society... for the simple reason that democratic procedure must be embedded in contexts it cannot itself regulate"[9]. Hence, Habermas criticizes Joshua Cohen for considering the ideal deliberative procedure as a model for all social institutions. For his part, Habermas wants to restrict deliberative politics proper to particular institutions, notably to the legislature (which has the function of adopting laws) and also to the courts.

Indeed, he distinguishes between "decision-oriented deliberations, which are regulated by *democratic procedures*, and the informal processes of opinion-formation in the public sphere"[10]. The parliamentary bodies are structured predominantly as a context of justification. They rely "not only on the administration's preparatory work and further processing but also on the *context of discovery* provided by a procedurally unregulated public sphere that is borne by the general public of citizens"[11]. Thus, the informal public sphere is considered as a source of reasons, as more likely than formal political institutions to be the arena where genuine criticisms of social reality are formulated, new needs identified and potentially emancipatory projects developed.

In order to give some content to the idea of popular sovereignty, Habermas asserts that, at least in circumstances where an important and controversial issue takes center stage, the flow of communication ought not to move from the center to the periphery (*i.e.*, from formal political institutions to the informal public spheres) but, on the contrary, from the periphery to the center: "binding decisions, to be legitimate, must be steered by communication flows that start at the periphery and pass through the sluices of democratic and constitutional procedures situated at the entrance to the parliamentary complex or the courts"[12].

This presupposes that the periphery, the informal public spheres, have a specific set of capabilities since Habermas wants to say that any result of the democratic process will have a presumption of reasonableness. As he recognizes himself, this "places a good part of the normative expectations connected with deliberative politics on the peripheral networks of opinion-formation"[13]. So although his view appears to be more modest than that of other theorists such as Seyla Benhabib or Joshua Cohen, Habermas still needs to make a strong normative presupposition. This is problematic since, as he admits himself, the general public sphere remains "vulnerable to the repressive and exclusionary effects of unequally distributed social power, structural violence, and systematically distorted communication"[14]. In fact, it is easy to imagine how the supposedly spontaneous or autonomous informal processes of opinion-formation might be manipulated by powerful interests. Yet, it is central to his argument to be able to defend, as non utopian, the normative conception of an autonomous public sphere. This explains his account of civil society, which he describes as independent from both the state and the market. It also explains his attempt to differentiate between interest groups which represent an already established social power and actors who 'spontaneously' emerge from the public[15].

2. Consequences and Problems

In order to assess Habermas's attempt at reconciling a project of radical democracy, a project faithful to both Rousseau's conception of democratic legitimacy and the problem of social complexity, we should first look at the connection between citizens, deliberation and decision. Since the legitimacy of collective decisions is to be grounded on the preceding processes of opinion-and will- formation, it is essential to show a close connection between citizens' deliberation and decision. In Rousseau's thought, the connection is obvious, since the collective decision is produced by the process of will-formation which the assembled citizens undertake. In the case of a theory of representative government such as Sieyès's, deliberation and decision are also closely tied, since it is the representatives elected by citizens

who deliberate together in the *Assemblée nationale* and produce decisions as a result of their discussions. But, of course, in the case of Sieyès's theory, the role of citizens is limited to the election of representatives; as he points out: the nation has no other voice than that of its representatives.[16] What Sieyès gives us is much more a theory of parliamentary rather than popular sovereignty.

The problem with Habermas's theory is that he wants to keep hold of the principle of popular sovereignty in a Rousseauian sense while recognizing the necessity of representation. This leads him to an awkward position: on the one hand, he has to maintain a convincing connection between citizens, deliberation and decision; yet, on the other hand, he argues for a two-track conception of democracy which can only weaken the connection. In fact, the language which Habermas uses to describe this relation is extremely vague and metaphorical. He says that formal political institutions must remain 'porous' to the concerns, needs, demands, reasons which are expressed in the general public sphere. He talks about 'communication flows' that come from the periphery and pass through the 'sluices' of democratic and constitutional procedures of parliamentary bodies and the courts, etc. But, nothing more precise comes out of his analysis.

What seems to be lacking is a theory of representation which would clarify the nature of the link between citizens and their representatives. If the concern is to secure a tighter connection between them, perhaps one could consider options such as recognizing citizens' rights to both give and recall instructions to their representatives. But this would not do since Habermas wants parliamentary bodies to be themselves deliberative, and this, of course, implies that representatives, once elected, must be independent from their constituents. The only dimension of representation with which Habermas can play is its composition. Many theorists today make the point that an assembly in which minorities and historically marginalized groups had a significant presence would be more open to the concerns of their respective constituency and more likely to take up the issues that affect them.[17] This is intuitively plausible, although hypothetical, and Habermas does express sympathy for this kind of position, although he limits himself to this vague statement: "the selection of members of parliament should provide for the broadest spectrum of interpretive perspectives, including the views and voices of marginal groups"[18].

To conclude these remarks on the connection between citizens, deliberation and decision, let me make the following points: Habermas's two-track view of democracy leads him to differentiate between the informal processes of opinion-formation that go on in the general public sphere (which he describes as unrestricted but not geared towards decision-making) and the regulated deliberation taking place inside formal deliberative assemblies and

leading to binding decisions. Because of this distinction, the relation between citizens and their representatives can only be that of pressure or influence. It must remain indirect in order to preserve the deliberative nature of formal assemblies. Thus, his account does not seem to go much further than classical parliamentary theory. Obviously, Rousseau would not be too happy with this and it is difficult to see how Habermas can claim that his theory goes beyond liberalism. Rather than succeeding in conciliating a radical democratic project and social complexity, he seems to get caught in the following dilemma: either one gives substantial meaning to Rousseau's conception of democratic legitimacy and one's picture of what a democratic regime should look like will more closely resemble the republic of councils defended by Hannah Arendt[19] (or Marx in his writings on the Paris Commune), but then one cannot claim to accept the reality of social complexity; or one does accept it and is forced to weaken the meaning of Rousseau's conception to such a degree as to make it undistinguishable from a liberal view.[20]

Habermas's dilemma stems from his attempt to show what his conception of democratic legitimacy would amount to in practice, but one can suspect that it is also implicitly present in the works of all those writers who defend a deliberative model of democracy based on a Rousseauian conception of legitimacy. The question that should be raised is whether the problem does not ultimately rest with this conception of democratic legitimacy. Should we not stop thinking of legitimacy in Rousseauian terms and attempt to formulate a convincing theory of representative government?

The need for such a revision of our conception of democratic legitimacy becomes all the more obvious if we focus not only on the connection between citizens, deliberation and decision but also consider the problems raised by Habermas's attempt to maintain the idea that processes of opinion- and will-formation must be such as to ensure the reasonableness of collective decisions. To do so, the conception of deliberation which informs his view of these processes remains true to the rationalist tradition that goes from Rousseau and Sieyès to Guizot and, in a paradoxical way, to Carl Schmitt (as opposed to the more pragmatic Burkean view). Deliberation, for Habermas, must be defined as a public and rational discussion among equals. Now, this requirement of rationality, which implies the readiness of all parties to question the value of the interests they support and to discuss an issue on its merits, remains extremely problematic.

To illustrate, consider his analysis of the legislature, which plays an essential role in his conception of democracy. According to Habermas, the democratic process must be seen as centered on the production of legitimate laws through a deliberative process which ideally starts in the general public sphere and then is taken up by formal deliberative assemblies, regulated by democratic procedures. The work of these assemblies is to filter what comes

up from the periphery and, through appropriate deliberation, produce a binding decision which has a presumption of rational acceptability. For Habermas, the role of these assemblies is to transform the concerns and demands expressed in the informal public spheres of civil society in 'communicative power', which itself, once it is taken up by the administrative sphere and implemented, becomes administrative power. The role of deliberative assemblies is central, therefore, and yet they remain curiously underthematized in his account, as if he was still too wedded to Rousseau to want to give too much attention to representative assemblies.

But the issue is more serious than that. Habermas does not confront any of the difficult problems concerning the very possibility of deliberation inside representative assemblies, which have been raised since at least the beginning of our century, with the onset of what was called the crisis of parliamentary democracy. This crisis was thematized in very different ways in the works of, among others, James Bryce, Moisei Ostrogorski, Harold Laski, and, of course, Carl Schmitt whose writings left a clear mark on Habermas's earlier *Structural Transformation of the Public Sphere*.[21] In his work, Schmitt argued that the fundamental principles of parliamentary democracy which he derived from his reading of Guizot — rational and public discussion — were unrealizable given the changes which the political system had undergone. Parliamentary institutions thus remained an empty shell, devoid of any justification and credibility.[22] The main culprit for Schmitt was the development of organized and bureaucratic political parties which had radically changed the status of the individual representative, who had become the mere delegate of his party, subject to its discipline. This evolution had basically killed all possibility of real deliberation inside the assembly. Parliament had become a simple showcase without any power since real decision-making took place elsewhere in secret bargaining processes between party representatives. Not only was there no serious deliberation taking place in the legislature, but also no real decisions were ever made there. Since the beginning of the century, there have been no significant changes to the situation of parliamentary bodies. If anything, the situation described by Schmitt and others has only become worse. The shift of power between legislatures, on the one hand, and the executive and administrative powers, on the other, has increased while the level of parliamentary debates certainly has not increased.

A large part of Schmitt's radical criticism of parliamentary democracy rests clearly on his strict view of what parliamentary deliberation should be like. Thus it seems that there could be two ways in which to respond to his criticism if, as Habermas obviously does, one wishes to affirm the basic framework of liberal democracy. The first one was sketched by Hans Kelsen in a short essay written in 1929 where he attempts to defend the institutions

of parliamentary democracy while calling for some reforms.[23] In this essay, Kelsen tries to show that we need not, indeed should not, want to cling to the strict view of deliberation referred to by Schmitt. Instead, he proposes an alternative conception of democratic discussion as a process of compromise between different and often opposed interests. On this view, the interests that make up heterogeneous societies are not expected to question their own value, but to enter a process of negotiation in an institutional framework which imposes upon them certain constraints and ensures a degree of fairness. It is not necessary here to enter into a detailed discussion of the advantages and disadvantages of such a view. My only point is to show that the strict rational view of deliberation is neither self-evident nor without alternatives in our own tradition.

The other way to respond to Schmitt's criticism would be to show what kind of reform is needed to make significant deliberation possible again in our parliamentary institutions. For instance, one could discuss the advantages and disadvantages of weakening party discipline or reinforcing the role of parliamentary committees, etc. Failing that, we would expect a strong condemnation of our parliamentary system and a call for radical changes, which is how Habermas himself did conclude his reflections in *The Structural Transformation of the Public Sphere*.

What is surprising in his latest work is that there is very little in it to help us confront what I will call Schmitt's challenge, while the radical tone of his earlier book is nowhere to be heard. In many ways, *Between Facts and Norms*, and especially its account of the separation of powers, presents us with what looks very much like classical parliamentary theory in its French version, rewritten in a more obscure language. Habermas basically holds on both to the strict, rationalist conception of deliberation and the general framework of parliamentary democracy without showing how this conception could be realized in contemporary conditions. Habermas might answer by saying that these issues are practical rather than theoretical, and cannot be tackled appropriately in a philosophical reflection, since they are the stuff of political and constitutional engineering. Yet, problems that arise in practice can make a theory irrelevant if it remains incapable of showing how they could be tackled. Furthermore, if problems revealed in practice are important, they should lead us to revise the theory to enable it to cope with them.

In recent writings, deliberative theorists such as James Bohman, Joshua Cohen and Joel Rogers do try to propose institutional answers to some of the issues raised in this paper, notably concerning the connection between citizens, deliberation and decision, which I will examine briefly. In his recent book: *Public Deliberation. Pluralism, Complexity and Democracy*, Bohman criticizes Habermas for focusing too exclusively on the legislative process and suggests that deliberative theorists should turn their attention to "the problem

of making administrative and bureaucratic structures more deliberative and democratic"[24]. This would address the shift of power between legislatures and administrations, a shift which does not seem about to be reversed, since it was caused mainly by the sheer expansion of governmental activities and their increased complexity. Doing this need not threaten the ability of administrative agencies to deal effectively with the issues they are responsible for. What would be required is that administrative institutions develop their own kind of 'political public sphere', which could include "public hearings and local meetings with those affected by problem-solving strategies"[25]. As Bohman notes, the problem with such procedures, which already exists in some areas, is that, too often they become exercises in information rather than serious consultation. Here again, the problem is to ensure that they be truly effective. Still, it does seem to me that this constitutes a necessary avenue for all those interested in democratic reform.

In their work, Joshua Cohen and Joel Rogers[26] develop a different, though compatible, strategy. The focus of their interest is the increased role that secondary associations could play in democratic states. The idea here is to identify and possibly expand the areas in which secondary associations, such as unions, cooperative associations, corporations, could participate directly in administration. We already have such arrangements in institutions such as workers' compensation boards. The idea is to develop this approach to deal with issues like environmental regulations, etc. The challenge for Cohen and Rogers is to specify the conditions that could make secondary associations more deliberative so as to decrease the risk that they handle problems and differences only through bargaining.

The point here is to extend deliberative processes, in which there is an effective connection between deliberation and decision, to institutions of civil society; or, rather, to ensure that citizens, through their participation in such associations, have a direct input in deliberation and decision. This idea, which, on the face of it is very appealing, must confront two difficulties: first, how to make such associations truly representative of their members, and second, how to ensure that they function in a deliberative way. This second problem is not made easier by the fact that Cohen and Rogers defend a strict conception of deliberation, which seems hard to reconcile with the reality of sectional interests. Yet, I do think that the kind of associative view of democracy that Cohen and Rogers defend could constitute another possible way to give citizens the means to participate more directly in the process of policy-formation and implementation while retaining the general framework of representative government (though it should be clear that extending the power of groups does not mean necessarily extending the power of individual citizens).

To what extent can these two strategies appear as a way to resolve Habermas's difficulties? Do they help us give a significant meaning to Rousseau's conception of democratic legitimacy while still acknowledging the reality of social complexity? Yes, in the limited sense that these suggestions show how we could increase possibilities for significant input on the part of citizens in deliberative and decision-making processes. But none of these strategies will in themselves significantly alter the fact that our formal political system must remain essentially representative. Most decisions are not made by citizens or their associations, but at best by officials whose authority comes from having been elected. In other words, the input of citizens remains mostly indirect. Recognizing this should lead us to focus more on the question of representation itself and on the opening up of administrative agencies to public scrutiny. But this means that if we recognize the reality of social complexity and accept Habermas's decentered view of society, then it is not possible at the same time to uphold a Rousseauian view of democratic legitimacy. What this means is that once we do acknowledge social complexity we are back into the waters of liberal theory and constitutionalism, and that we have abandoned Rousseau's radical democratic ideal.

Finally, these propositions do not help us confront the more fundamental problems raised by the strict conception of deliberation which they also presuppose. Yet, it is perhaps these very assumptions underlying this view that we need to question most urgently.

Notes

1 E.- J. Sieyès, "Observations par un député à l'Assemblée nationale" (2 octobre 1789), *Écrits politiques*, choix et présentation de R. Zapperi (Paris: Éditions des archives contemporaines, 1985), p. 262.
2 See Seyla Benhabib, "Toward a Deliberative Model of Democratic Legitimacy", *Democracy and Difference: Contesting the Boundaries of the Political*, ed. S. Benhabib (Princeton: Princeton University Press, 1996), pp. 67-95.
3 See Joshua Cohen, "Deliberation and Democratic Legitimacy", *The Good Polity*, A. Hamlin and P. Pettit (London: Blackwell, 1989), pp. 17-34.
4 Jürgen Habermas, *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy*, tr. William Rehg (Cambridge, Mass.: MIT Press, 1996), p. 302.
5 Ibid. p. 354.
6 Ibid. p. 385.
7 Ibid. p. 301.
8 Ibid. p. 301.
9 Ibid. p. 305.
10 Ibid. p. 307.
11 Ibid. p. 307.
12 Ibid. p. 356.
13 Ibid. p. 358.
14 Ibid. pp. 307f.
15 Ibid. pp. 355f.
16 E.-J. Sieyès, *Archives parlementaires*, 7 septembre 1789, p. 595: "Le peuple ou la nation ne peut avoir qu'une voix, celle de la législature nationale".
17 See, for instance: Anne Phillips, *The Politics of Presence* (Oxford: Oxford University Press), 1995; Melissa Williams, *Voice, Trust and Memory* (Princeton, Princeton University Press, forthcoming 1998)
18 Jürgen Habermas, *Between Facts and Norms*, p. 183.
19 Hannah Arendt, *On Revolution* (Viking Press, 1963)
20 For a criticism, from a radical democratic or republican perspective, of Habermas's acceptance of social complexity as defined by authors such as Niklas Luhman, see James Bohman, "Complexity, Pluralism and the Constitutional State: On Habermas's *Faktizität und Geltung*", *Law and Society Review*, vol. 28, no. 4, 1994, pp. 897-930.
21 Jürgen Habermas, *The Structural Transformation of the Public Sphere*, tr. T. Burger and F. Lawrence (Cambridge, Mass.: MIT Press, 1989)
22 Carl Schmitt, *The Crisis of Parliamentary Democracy*, tr. E. Kennedy (Cambridge, Mass.: MIT Press, 1985)

23 Hans Kelsen, *Wesen und Wert der Demokratie* (Tübingen: J.C.B. Mohr, 1929). French tr.: *La démocratie. Sa nature — sa valeur*, tr. Ch. Eisenmann (Paris: Éd. Économica, 1988)

24 James Bohman, *Public Deliberation. Pluralism, Complexity, and Democracy*, (Cambridge, Mass., London, England: MIT Press, 1996), p. 182. If Bohman is basically right in his reading of Habermas, it seems to me that Habermas does open the door to this kind of solution in his own account and would be far from opposing it. See Jürgen Habermas, *Between Facts and Norms*, p. 193.

25 James Bohman, *Public Deliberation*, p. 190.

26 Joshua Cohen and Joel Rogers, *Associations and Democracy*, ed. Erik Olin Wright, (London, New York: Verso, 1995)