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Sieyès versus Bicameralism

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Abstract: Bicameralism is traditionally considered necessary to the principle of the limitation of power and, as such, a key feature of the liberal constitutional state. Yet the history of the French Revolution reveals that this has not always been the case and that bicameralism's relationship to liberal constitutionalism is more complex than is traditionally assumed. This article will discuss how the Abbé Sieyès, one of the founding fathers of modern constitutionalism, rejected bicameralism not only because it was contrary to the revolutionary principle of equality, but also because it did not actually succeed at limiting power. Even worse, bicameralism would threaten the constitutional system by forcing the legislative power into procedural impasses that would eventually open the way to despotism. Putting Sieyès's claims in historical perspective, the paper aims to offer some historical nuance and insights into bicameralism's relationship to liberal constitutionalism.

One of the key tenets of liberal constitutionalism is the idea that power should be limited. Among the different institutional structures meant to realize this principle, persistent preference has been given to bicameral legislative systems. These come in different forms but are all designed to offer solid guarantees against the concentration of power in the hands of the representatives. Second chambers, the argument goes, not only introduce a further layer of separation of power within the legislative but also act as a check against abuses of power by the representatives in the lower house. As such, bicameralism came to be associated not only with the principle of limitation of power but also with liberal constitutionalism more generally. This is evident in both the history of political thought and the work of contemporary scholars. From the American Founding Fathers in the eighteen century to Jeremy Waldron today, bicameralism has been defended as a fundamental feature of the liberal constitutional state.

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Yet the history of the latter's relationship to bicameralism is slightly more nuanced, as this paper seeks to illustrate. Certainly, most arguments against bicameralism come from forces external to the liberal constitutional tradition, but these do not concern me here. Rather, I discuss the work of an author who, besides being one of the main figures of the French Revolution, is unmistakably recognized as one of the fathers of liberal constitutionalism, especially in its French iterations.[1] This person is the Abbé Sieyès, who consistently opposed the institution of a second chamber in France throughout the Revolution. Parts of Sieyès's argument against bicameralism are interesting for historical reasons. There exist only a handful of studies about French debates on bicameralism,[2] and very rarely has Sieyès's role in them received the attention it deserves. This is because his critique of bicameralism has often been taken to be the same as that offered by Condorcet and other *américanistes*. This is certainly true for some parts of his argument, but it is not the case for them all. And it is precisely where Sieyès departed from his colleagues that one can find further reasons for interest in Sieyès's opposition to bicameralism. Not only did he criticize second chambers in the name of equality and popular power; he also developed a principled argument to prove that second chambers fail to limit power and, worse, threaten the constitutional system by forcing the legislative into procedural impasses that open the door to despotism. Sieyès thus maintained that bicameralism was fundamentally at odds with the tenets of the liberal constitutional state. This is an argument that, if taken seriously, could challenge the treatment of bicameralism as a fundamental element of the liberal canon.

The paper is divided into three sections. The first will outline the historical and intellectual context in which Sieyès was writing. The debates that led to the drafting of the 1791 constitution extensively touched upon the question of bicameralism, especially in relation to the royal veto, and saw the moderate Anglophile faction defend it against both the *américanistes* and the radical side of the assembly that, relying on a Rousseauvian argument, feared the fragmentation of the people's sovereignty. Section II discusses how Sieyès distanced himself from fellow moderate deputies on the question of bicameralism, without however embracing the radical critique. It also explains how Sieyès's opposition to bicameralism, although akin to that of the *américansites*, was distinct from the latter in several regards. Section III will suggest that although Sieyès rejected bicameralism, he did nonetheless

[1]P. Pasquino, *Sieyès et l'invention de la Constitution en France* (Paris: Odile Jacob, 1998); R. Tuck, *The Sleeping Sovereign* (Cambridge: Cambridge University Press, 2016).

[2]J. Appleby, "America as a Model for the Radical French Reformers of 1789," *William and Mary Quarterly* 28, no. 2 (1971): 267–86; A. Craiutu, *A Virtue for Courageous Minds: Moderation in French Political Thought, 1748–1830* (Princeton: Princeton University Press, 2012); J. Israel, *Revolutionary Ideas* (Princeton: Princeton University Press, 2014); M. Troper and L. Jaume, eds., *1789 et l'invention de la Constitution* (Paris: LGDJ, 1994).

argue in favor of the principle of limitation of power. This, however, was realized through the vertical separation between the constituent will and the constituted order, and required abandoning the idea of sovereignty as a way of making sense of political authority.

I conclude by suggesting that Sieyès was one of the few voices in the history of political thought who offered an extensive political and institutional critique of bicameralism from within the liberal tradition. By doing so, I hope to add nuance to traditional views of bicameralism's relationship to the history of liberal constitutionalism and to suggest that some of Sieyès's arguments might be worth taking note of today.

I

Soon after the transformation of the Reunion of the Estates General into a National Constituent Assembly, the deputies started debating the form, content, and structure of France's new constitution. Most constituents defended the idea that, to secure political liberty and limit power, it was necessary to create a system of separation of powers. This principle made its way to the sixteenth article of the *Déclarations des droits de l'homme et du citoyen* in July 1789. Yet the clarity and declaratory power of the principle did not entail an equally clear view of how this separation could be guaranteed institutionally. Although all deputies agreed that the legislative function needed to be separated from the executive and judiciary, they disagreed about how it would interact with these other powers and whether the assembly itself had to be subdivided into separate bodies.[3] The issue was made even more prominent by the fact that the exercise of sovereignty was considered at the time to coincide with the lawmaking power.[4] Hence, the separation of the legislative also raised questions about the acceptability of dividing the newly acquired sovereign power. The discussion of this issue took place between July 14 and September 12, 1789, at first inside the Constitutional Committee, a subsection of the National Constituent Assembly appointed to draft the constitution, and then within the assembly in plenary meetings.

Arguably, support for bicameralism mainly came from moderate monarchist deputies, the *anglomanes*. Among those, the most authoritative were Trophime-Gérard de Lally-Tollendal, elected by the nobility at the Estates General; Jean-Jacques Mounier, who was elected by the Third Estate of Dauphiné; and the Baron Malouet, a diplomat in Santo Domingo who was

[3]The executive power was at that point in the hands of the king, but debate existed on its scope and extension.

[4]The idea that the exercise of sovereignty coincided with legislation did not originate with the French Revolution. Revolutionaries often attributed it to Rousseau who, as Robespierre repeatedly remarked, argued that the legislative power had to be exercised by all citizens as it coincided with the essence of sovereignty.

elected deputy to the Estates General by the constituency of Riom. As their epithet suggests, their support for a second chamber was mainly inspired by the English system of checks and balances. The virtues of the latter had been described by Montesquieu and successively praised by Jean-Louis Delolme, a Swiss-born jurist who, in 1771, published *Constitution de l'Angleterre*, a book defending the virtues of the English constitution. In Delolme's book, Anglophile deputies found arguments to embrace the need for radical reforms of the political system while guaranteeing the permanence of social customs and, especially, of the social status of those who, like them, were part of the privileged few.[5] In addition, John Adams's *Defence of the American Constitutions* was known at the time, although it had not yet been translated into French.[6] In praising the constitutions of the United States, Adams borrowed heavily from Delolme's arguments, especially to defend the institution of the Senate in America. In so doing, he offered a narrative whereby the American constitution, far from being alternative to the English, was in line with it and, even more, followed in the footsteps of its model of checks and balances.[7]

Building on the insights offered by Delolme, the *anglomanes* worried that an excessively strict enforcement of the principle of separation of power would have endowed the legislative chamber with an almost unlimited power.[8] If all powers had to be strictly separated, the legislative assembly would have had the entirety of the lawmaking power for itself. This created the risk of the assembly degenerating into tyranny, as its power could be captured by factional interests, by the susceptibility of majority rule to popular agitations or by a single man, without any other power being able to intervene and stop these abuses. All types of assemblies incurred those risks, but an unchecked single chamber would have made their occurrence more likely and their implications more pernicious. As one of the leaders of the *anglomane* group, Mounier, explained,

> To entrust an assembly with legislation may favor the creation of an aristocracy of representatives, as it provides them with the union of all powers, or it may favor the institution of a democratic tyranny, by exalting

[5]Appleby, "America as a Model."

[6]Adams' *Defence* was first planned to be translated in French in 1787, just weeks after the publication of its first volume in London. Yet it is interesting to note that the French translation did not see the light until 1792. On the reasons for this delay and the role some *américanistes* might have played in it see J. Appleby, "The Jefferson-Adams Rupture and the First French Translation of John Adams' Defence," *American Historical Review* 73, no. 4 (1968): 1084–91. What is known, however, is that the book arrived in Paris in February 1787 and was likely to be available to constituents in its English version.

[7]Appleby, "The Jefferson-Adams Rupture."

[8]Pasquino, *Sieyès et l'invention de la Constitution*, chap. 1; Craiutu, *Virtue for Courageous Minds*, chap. 3.

> the ideas of the multitude; lastly, this form of government may even favor the despotism of a single man. Eventually, it will always be dangerous to the liberty of the nation. (AP, VIII, 417)[9]

According to the *anglomanes*, whoever held the legislative power in its totality and exercised it in complete autonomy would necessarily become a threat to the nation and its newly acquired liberty. The exercise of sovereignty, and with it the lawmaking power, had to be balanced and checked. Yet, in order to do so, it was necessary to allow for different constitutional bodies to interfere with each other, check their respective actions, and enforce constitutional limits. To this end, the *anglomanes* took the English model of balance of power as a valuable example and designed a complex institutional project to present to the Constitutional Committee. In this venue, on August 31 Lally-Tollendal argued that the legislative power had to be limited through two institutional measures, one acting from outside the lawmaking assembly and the other from the inside.

The first involved the executive branch, as it consisted in attributing a veto power to the king, who could use it to either suspend or abolish the decisions of the legislative any time it approved a law that he deemed inappropriate, unsuitable, or unconstitutional. By authorizing the king to negatively interfere in the lawmaking process, this measure allowed for some levels of interaction between legislative and executive powers. This interaction, however, translated into higher checks upon the actions of the legislative, whose excesses could thus be counterbalanced. Yet at no point did the *anglomanes* think that the royal veto would jeopardize the separation of power. On the contrary, since the king had no power to positively make the law—neither by interfering in the working of the assembly nor by influencing its agenda—the executive branch retained its separation from the legislative chamber. In Lally-Tollendal's words, this was desirable because "the royal sanction is thus useful to the nation's safety, needed by the king to direct the public body and important for the security of the members of the legislative itself" (AP, VIII, 536).

The second measure entailed applying the principle of separation of powers also within the legislative assembly. By creating two separate chambers, the *anglomanes* planned to introduce mechanisms of checks and balances within the lawmaking body. The first chamber would represent the unity of the nation, be elected by all citizens, and retain the actual power of introducing and drafting laws. Yet before being sent to the king for approval, its

[9]Parts of this paragraph, especially some of the quotes and archival material, appeared in a previous article of mine. Citation here and throughout is by volume and page to J. Madival and E. Laurent, *Archives Parlementaires de 1789 à 1860: Recueil complet des débats législatifs & politiques des Chambres françaises* (Paris: Librairie administrative de Paul Dupont, 1862). All translations from French into English are mine.

decisions had to be examined by the second chamber. Anglophile deputies disagreed on the composition of the latter, but they all believed that it had to represent different interests from those embodied in the lower chamber, as per Delolme's book. To make sure this happened, the second chamber had to have longer mandates and be elected according to different procedures and at different moments in time. Moreover, the relation between the two chambers would not be one of perfect bicameralism, where the two assemblies have the same powers. Rather, the competences of the upper chamber were more restricted than those of the General Assembly as they were limited to discussing the proposals made by the latter.

Designed in such a way, the second chamber would be advantageous for several reasons. First, it guaranteed more time for reflection before passing laws. In Mounier's terms: "Two chambers deliberating separately assure the quality of their respective decisions and restore the slow and majestic pace at which the legislative power should work" (AP, VIII, 555). Second, by being smaller and populated by elites who were in office for longer terms than the lower assembly, the second chamber would be less susceptible to popular pressures and demagoguery than the first. Third, its mere presence would be an obstacle to the reunion of all powers in the hands of the representatives in the lower chamber; it would not only act as a check on the quality of their lawmaking but also make sure they respected the constitution and the limits it imposed on them. In addition, the second chamber would eventually function as a buffer between the executive power and the representative assembly, as it was meant to keep both within their limits while constructively checking on each other. In Tollendal's words, a "single power will necessarily end up annihilating all powers. Two will fight until one has destroyed the other. But three will keep themselves in perfect balance" (AP, VIII, 515). And it was precisely the second chamber that guaranteed the perfect balance, as it "would act to protect the constitution, prevent the representatives from destroying or usurping royal authority, and stop the king from encroaching on the rights of the representatives" (AP, VIII, 416).

To the *anglomanes*' mind, the second chamber and the royal veto were thus necessary institutional instruments to constrain the potentially unlimited sovereignty of the assembly through a series of intersecting vetoes. This could be achieved by separating the lawmaking power internally and submitting it to checks and balances from both the inside, via the second chamber, and the outside, through the royal veto. However, when the time came for the assembly to vote on the proposal put forward by the Constitutional Committee, the deputies could not agree on the details of the suggested measures. On the one hand, there was no consensus on whether the royal veto had to be temporary or absolute, that is, on whether the king could veto a law on his own or was only entitled to suspend it and refer the ultimate decision either to the people via referendum or to the assembly at a later moment in time. On the other

hand, supporters of bicameralism disagreed on the composition and mode of election of the second chamber.[10]

Moreover, the bicameral project did not win the support of the rest of the assembly, which disapproved of the proposed constitutional draft. Among its more active opponents, most of whom would later be Girondins and Jacobins, two groups can be distinguished. The most radical were Jean-Baptiste Salle, a physician elected in the ranks of the Third Estate who took active part in the Girondins' club and was eventually guillotined in 1794; Jérome Pétion de Villeneuve, a lawyer elected by the Third Estate of Chartres who served as president of the Constituent Assembly; and Maximilien de Robespierre. They not only accepted the royal veto in its temporary form and on the condition that the decision had to be made by the citizens via referendum, but also inflexibly opposed the institution of a second chamber. The absolute veto, they argued, would have given back sovereignty—as the power to make the law—to the monarch. This was contrary to the principle of popular sovereignty and to the third article of the Declaration of the Rights of Man and the Citizen. Furthermore, the absolute veto risked restoring the ancien regime and its principle of royal authority, by making the monarch the key player in the legislative process.

Similarly, the creation of a second chamber would have divided the sovereign power of the people into two branches, thereby undermining its popular, inalienable, and unlimited character. Since the first meetings of the National Assembly, radical deputies disapproved of representation, as it interposed an intermediary body between the will of the people and the actual decisions made in its name. This, to their mind, risked transferring sovereignty to an elite group of representatives who, instead of acting according to the will of the people, freely interpreted their mandate as authorization to act at their own discretion. To avoid this, at around the same time of the debate on bicameralism, radicals proposed to introduce the imperative mandate. By forcing the representatives to follow the instructions received from their constituents, the imperative mandate would have guaranteed the perfect correspondence between the will of the people and the decisions of the assembly. Yet the introduction of a second chamber would have emptied the imperative mandate of its meaning and explicitly contradicted the account of popular sovereignty from which it was derived. According to the *anglomanes*' plan, the second chamber was tasked with reworking and potentially rejecting the decisions of the assembly. But if the will of the assembly corresponded to the will of the people—as would have been the case with the imperative mandate—

[10]For a reconstruction of this debate, see Craiutu, *Virtue for Courageous Minds*; Pasquino, *Sieyès et l'invention de la Constitution*; R. Griffiths, *Le centre perdu: Malouet et les "monarchiens" dans la Révoution française* (Grenoble: Presses Universitaires de Grenoble, 1988).

then the second chamber would have opposed the will of the popular sovereign. This, on the radical benches of the assembly, appeared unacceptable.[11]

Even later, when the imperative mandate was outvoted by the assembly, radical deputies continued to oppose the introduction of a second chamber. This was because in a bicameral system the popular will was not immediately recognized in electoral results, but had to be created via complex processes of expert deliberation, the outcome of which needed to be checked for correctness through intersecting vetoes. This, from the radicals' point of view, amounted to an expropriation of sovereignty, as legislative decisions did not coincide with the direct expression of the popular will. Both the absolute royal veto and the introduction of a second chamber thus contradicted the idea that sovereignty belonged to the people, whose exercise of it should have been as direct, unitary, and unlimited as possible. Consequently, radical deputies voted against the proposal drafted by the Constitutional Committee and advocated for the introduction of mechanisms aimed at protecting and increasing popular participation in the exercise of sovereignty, among which were the use of referenda to validate the king's suspensive veto, the recourse to practices of direct democracy in local districts, and the direct appeal to the people via regular referenda.

Yet, beyond radical deputies, another forceful strand of opposition existed. This was voiced both inside and outside the assembly by the so called *américanistes*, a group of moderate reformists that included the Marquis de Condorcet, who even though not a deputy at the time took part in the debates, the duc de La Rochefoucauld, and Pierre Samuel du Pont, both deputies in the assembly. They got their epithet from the fact that they systematically tried to oppose the *anglomanes*' plan by presenting the American constitutional experience as a better guide for France than the English constitution.[12] As Appleby has clearly explained, the *américanistes* engaged in a political and editorial battle against the *anglomanes*.[13] Aware that many arguments in support of the English constitution came from Delolme's influential book, they tried to steer the debate away from it by offering the American case as counterexample. To do so Condorcet and du Pont translated and disseminated the *Examen*, a pamphlet originally titled *Observations on government including some animadversions on Mr Adams' Defence and Mr De Lolme's constitution of England* and attributed to New Jersey farmer Livingston, but actually written by the governor of New Jersey, William Stevens. The author of the

[11]For further analyses of how the radicals opposed the moderate side of the assembly see L. Jaume, *Le discours Jacobin et la démocratie* (Paris: Fayard, 1989) and I. Hont, "The Permanent Crisis of a Divided Mankind: Nation State and Nationalism in Historical Perspective," *Political Studies* 42 (2004): 166–231.

[12]On the reception of the American constitution and its bicameral system in France see B. Kurland and R. Lerner, *The Founders' Constitution* (Chicago: University of Chicago Press, 1987), esp. sec. 12.

[13]J. Appleby, "The Jefferson-Adams Rupture" and "America as a Model."

pamphlet critically engaged with Delolme's book as well as with Adams's *Defence* to argue that the English model of checks and balances was inferior to the American constitution.[14]

Even though, in its survey of the American constitution, the pamphlet did not disavow bicameralism per se, it argued that the institution of a second chamber amounted to a way of legitimizing social divisions and protecting the interests of the few against those of the many. This offered the *américanistes* arguments against the *anglomanes*' project. In particular, they relied on the *Examen* to say that the institution of a second chamber in England derived from necessary historical compromises that were contingent upon the social and historical circumstances of the country. Being a completely different country and rejecting social divisions, France had no need to emulate the English model.[15] In addition, like Stevens, they maintained that stability needed neither aristocrats nor kings in order to be to be maintained. By contrast, the introduction of a second chamber would have divided society into orders and reproduced aristocratic biases, thus opposing the reforms and the political innovations that the country desperately needed.[16] Finally, the *américanistes* argued that the introduction of a second chamber would have divided the nation by introducing conflicting interests: while those of the aristocracy were necessarily sectarian, those of the people were the only interests capable of enshrining the will of the nation in its generality.[17]

To sum up, the *américanistes'* argument against bicameralism was mainly based on a critique of the aristocratic bias it entailed, as exposed by the author of the *Examen* in his critique of Delolme and Adams' books. In addition, most *américanistes* followed the radicals in arguing in favour of a suspensive veto for the king. This would have allowed for additional levels of popular participation via local assemblies and referenda, thus enforcing the principles of equality and popular sovereignty.

During the debates in the assembly, the *anglomanes* criticized the *américanistes* by noting that, since the American constitution was bicameral, its use as an argument against the English system did not make much sense. Yet they did not succeed at imposing their view.[18] The project of

[14]For an extensive discussion of the *Examen* and of the battle of pamphlets on the American and English constitution see Appleby, "America as a Model."

[15]M. Condorcet, "Lettres d'un bourgeois de New Haven à un citoyen de Virginie," in *Oeuvres de Condorcet*, ed. A. Condorcet O'Connor and M. F. Arago (Paris: Firmit Didot Frères, 1847), letter 4.

[16]For a reconstruction of this argument see Appleby, "America as a Model."

[17]See, for example, Rabaud Saint Etienne on September 4, 1789 (AP, VIII, 567).

[18]For instance, Lally Tollendal claimed on August 31, 1789, that even "the Americans, who are in such a small number … could not retain this simple government and this unity of powers that they had wanted to establish… . Even the unjust and inconsequential censor of Mr. Adams, Mr. Livingston, has agreed with him,

instituting a second chamber in France failed with a vote of 849 to 89. The *américanistes*' and radicals' arguments in favor of equality won the support of the assembly. As we will see, Sieyès relied on some of these arguments, but completed them with a critique of bicameralism and of the English constitution that is fundamentally at odds with that offered by the radicals and relevantly different from that of the *américanistes*.

II

Born in 1748 in Frejus, a small town in the south of France, Joseph Emmanuel Sieyès initially pursued a religious career. Yet his public profile changed drastically in 1788, when he published a series of political pamphlets. The first, titled "Essay on Privileges," presented a violent attack on the aristocracy and prepared the ground for "What Is the Third Estate?,", an inflammatory pamphlet in which he argued for dismantling the division of society into orders and for the attribution of political authority to the Third Estate. The notoriety that this publication brought to Sieyès became evident when he got elected, among the ranks of the Third Estate, to the Reunion of the Estates General. In this position, he played a prominent role in demanding the transformation of the Estates General into a National Constituent Assembly and actively participated in drafting France's first constitution. After its entry into force, Sieyès was re-elected to the National Convention but was soon forced to flee Paris to avoid execution during the Jacobin Terror. He came back to the political scene after the fall of Robespierre, when he participated in drafting the Constitution of the Year III and became a member of the directory. In this position, he probably concurred in the organization of Napoleon Bonaparte's coup of 18 Brumaire. Yet soon after the latter's ascent to power, Sieyès was sent into exile in Brussels, where he remained until just before his death in June 1836 in Paris.[19]

Before we discuss Sieyès's argument against the *anglomanes*' model of bicameralism, a premise is needed. Contrary to his *anglomane* colleagues

even Mr. Livingston has written that wherever the legislative body is concentrated in a single assembly, it will necessarily end up absorbing all powers" (AP, VIII, 518). As Appleby explains, the response of most *américanistes* was to say that, in America, bicameralism has been introduced only because it was "a lesser evil." This was to say that most American Founding Fathers recognized it as a biased institution, but had to accede to it for contingent reasons. See Appleby, "America as a Model," 276.

[19]For classic studies of Sieyès's life and oeuvre see P. Bastid, *Sieyès et sa pensée* (Paris: Hachette, 1970); M. Forsyth, *Reason and Revolution: The Political Thought of the Abbé Sieyès* (New York: Leicester University Press, 1987); J. Bredin, *Sieyès: La clé de la Révolution française* (Paris: Edition de Fallois, 1988); and, more recently, Pasquino, *Sieyès et l'invention de la Constitution*.

and similarly to the *américanistes*, Sieyès had no fascination for the English political system. Although he was aware of both Montesquieu's seminal exposition of its qualities and Delolme's and Adams's books, he repeatedly discouraged fellow deputies from imitating the constitutional structure of the English state. To the contrary, he stubbornly argued that rather than seek to imitate existing constitutions, France should autonomously reflect on the type of constitution it wanted and, once decided, write it from scratch, leaving aside any misleading examples.[20] Very much like Condorcet, he maintained that the English constitution only made sense within the context of English history and, even there, it did not seem to solve many problems.

Sieyès discussed at length the problems inherent to the English system of balance of power, whose longevity he took neither as a proof of stability nor as a demonstration of the effectiveness of the political system it underpinned.[21] Rather, he was astonished by the fact that the English political system survived as long as it had despite its horribly unstable, archaic, and confused constitution. This is because, Sieyès argued, reversing Montesquieu's argument, the balance of power was not a rational system designed to promote simplicity and order and to limit power. Rather, it resulted from a series of uncoordinated attempts to respond to England's history of corruption and conflicts among social orders. As a result, instead of being the model of virtue and order it was acclaimed to be, the English constitutional structure was built as a chaotic mix of precautions against disorder.[22] This was the reality of the much-praised balance of power. In Sieyès's words, any "system of counterweights inspired by the English system was nothing, at its core, but a system of corruption, an equilibrium of cupidity and serfdom."[23] As will become clear in what follows, many of Sieyès's considerations against the English model of balance of power are at the root of his critique of the royal veto and bicameralism, as well as of his alternative project for France.

Yet it is important to underline that although he shared the *américanistes*' skepticism of the English constitution, he did not share their enthusiasm for the American constitution and never presented it as a model for France. Indeed, his argument about the importance of creating the French constitution from scratch without copying other constitutions applied to America, too.[24] Throughout the debates of August and September in the assembly,

[20]E. Sieyès, *Qu'est-ce que le Tiers Etat?*, in *Oeuvres de Sieyès*, ed. M. Dorigny (Paris: EDHIS, 1989), 116.

[21]As Bastid notes, even the longevity argument was relative for Sieyès, as he dated the origins of the English constitution to 1688 (*Sieyès et sa pensée*, 418).

[22]Sieyès, *Qu'est-ce que le Tiers Etat?*, 16.

[23]Ibid., 6. See also E. Sieyès, "Déclaration volontaire proposée aux patriotes des 83 départements," in *Oeuvres de Sieyès*.

[24]As mentioned above, most eminent *américanistes* saw the American constitutions (and especially the constitution of Pennsylvania that, at the time, was unicameral) as

Sieyès mentioned the United States only once and in negative terms, on September 7, 1789. On that occasion, he argued that by contrast with the American states, France could not be divided into a multitude of small nations—in other words, it could not become a federation—because it had to remain a "tout unique" (AP, VIII, 593). More interestingly, he also did not seem to rely on Livingston's text as a source of inspiration for the future of France. He only mentioned the *Examen* once, in a footnote to *Qu'est-ce que le Tiers Etat?*, and just to say that the author of the book convincingly explains why the English constitution is not suitable for France.[25] He remained completely silent as to the main features of the American constitution and their appropriateness for the French context. This difference with the *américanistes* is then reflected in the arguments structuring Sieyès's critique of the *anglomanes*' project. While he shared the former's dislike of the aristocratic biases of the bicameral project, he expanded his critique of the English model to include a structural and institutional critique of bicameralism's working and a complete rejection of the royal veto. It is to the latter that I now turn.

In contrast to most *américanistes* as well as radicals in the assembly, he rejected the proposal of attributing any veto power—absolute and suspensive alike—to the king. He argued that the royal sanction gave unequal power to the will of a single citizen, contradicting the principle of equality. Questioning whether the vote of an individual citizen, albeit the monarch's, could be allowed to weigh more than that of any other citizen, he maintained that "the king, considered as the first citizen, … has the right to vote … but nowhere can his vote be worth two votes" (AP, VIII, 593). Sieyès also opposed the king's veto because it would constitute an utterly arbitrary power. In his words, "the king will force deputies to support, and parties to uphold, all the laws he would like to see passed. If they pass, all will be done at his pleasure. If they are rejected, he will reject all contrary decisions" (AP, VIII, 593). The recognition of the royal sanction—in both absolute and suspensive form—would therefore be a means to attribute to an unelected citizen the power to block the representative assembly, bypassing the authority of the nation. It was, in Sieyès's terms, a "*lettre de cachet* sent against the will of the nation" (AP, VIII, 593). In his rejection of all forms of royal veto, Sieyès departed from the radicals as well as from most *américanistes*.

Following the assembly's decision not to empower the king with the right to veto legislative decisions, Sieyès focused on opposing the second half of the *anglomanes*' project: bicameralism. He first explained his positions in 1788,

models to be copied in France. John Adams explicitly complained about this. See Appleby, "America as a Model," 276.

[25]And he emphasizes that the *Examen* only came out in France after he published the first edition of *Qu'est-ce que le Tiers Etat?*, thus suggesting that the book's arguments against England, although correctly reflecting his own thoughts, were not the basis for his critique of the model of balance of power.

when describing the conditions that the Third Estate should have posed to the Reunion of the Estates General. Successively, he delivered a lengthy and nuanced critique of bicameralism during the parliamentary debates that took place in autumn 1789 and eventually discussed bicameralism again in 1795. Interestingly, Sieyès's opposition to bicameralism remained consistent over time. This points to the remarkable fact that, even after having lived through the Terror, Sieyès did not change his mind as to the dangers and risks of dividing the legislature into two or more chambers.[26] Analyzing the reasons behind Sieyès's opposition to bicameralism, we can identify two different sets of arguments. One relies on historical reflections relevant to the context in which he was writing and similar to those offered by both the *américanistes* and the radicals; the other is theoretical in nature, original to Sieyès's system of thought and more relevant to contemporary debates on the value of bicameralism in the context of representative politics.

Starting with the first, Sieyès criticized bicameralism for the implications that such an institution would have had for the newly established political system. Even before the Revolution, Sieyès clearly and repeatedly stated that France had to abolish the division of society into orders. When the delegates of the First and Second Estates joined the assembly of the Third in Versailles, the division of society into nobles, clergy, and labor lost any formal political value. On the night of August 10, 1789, when the assembly voted to abolish the nobility, it also lost all legal validity. The introduction of a second chamber, Sieyès claimed, threatened this achievement and reinserted the division of society into orders. If the deputies wanted to follow the example of their British counterpart, as it seemed to be the case at the time, they would have had to justify the presence of the second chamber by endowing it with a different identity vis à vis the first chamber. This would have necessarily entailed the reproduction of social divisions based on birth and wealth and, consequently, the people would have expressed their will not as part of a single body of equal citizens but as members of a specific order or group.[27] This, in Sieyès's mind, ran counter to the revolutionary

[26]It is remarkable also because many *américanistes* capitulated on the question of the two chambers after 1791.

[27]As Guennifey explains, not all *anglomane* deputies wanted a second chamber representing the clergy and noblemen. Despite Brierre and Malouet's support for the latter, leaders such as Mounier and Lally-Tollendal seemed to reject the idea. They did argue in favor of the second chamber representing separate interests, but these did not have to overlap with those of the aristocracy. However, the opponents of bicameralism strategically cornered the *anglomanes* by claiming that their only aim was to reintroduce the privileges of the aristocracy. See P. Guennifey, "Constitution et intérêts sociaux: Le débat sur les deux chambres," in *1789 et l'invention de la Constitution*, ed. M. Troper and L. Jaume (Paris: LGDJ, 1994), 77–88. On the specific opinions of other members of the assembly see F. Furet and R. Halévi, *Orateurs de la Révolution* (Paris: Gallimard, 1989).

principle of the people's right to participate on a level footing in the creation of the law: "The institution of an aristocratic chamber or of a theocratic-royal chamber has something superstitious and shameful for the whole of humanity."[28] And France, Sieyès maintained, should not emulate England on that score, as "we cannot but see the latter as a monument of gothic superstition."[29]

This line of criticism was then picked up by several *américanistes* to respond to the *anglomanes* who claimed that since America had to be the example, and America too had two chambers, France should have the same. As a response, Barnave and others suggested that although the American constitution was generally sound, its reliance on two chambers made sense only in a fundamentally equal society. Hence, the arguments used in America could not be easily adopted in France, where distinctions of birth "are already well established," and a second chamber "would rely on them, would contribute to give them new strength and perpetuate them."[30] Bicameralism in France was thus an especially pernicious project. As the English case demonstrated, it threatened the principle of political equality and discredited the idea of a unitary nation by bringing back a feudal-like system, where socioeconomic characteristics would have defined one's status and political power.

The second set of arguments that Sieyès mobilized against bicameralism are different from those invoked by the radicals and substantially more developed than those offered by the *américanistes*. Going beyond the threat of reintroducing the division of society into orders invoked by the *américanistes*, Sieyès denied that bicameralism could successfully serve the purpose of limiting power. Against the radicals, he meant his critique to help create a constitution based on the principle of representation and limitation of power. And it is in this sense that he claimed that those who believed that a second chamber could limit power misunderstood the extent to which bicameralism was in fact a threat to it. The mistake sprung from the *anglophiles*' incapacity to distinguish "between the constituent and the petitionary wills as well as the execution of the legislative will," a mistake they inherited from the English constitution.[31] This confusion effectively led them to attribute all powers to the representatives. This appeared excessive and potentially dangerous to the *anglophiles*, who tried to tame the power of the

[28]E. Sieyès, "Opinion de Sieyès sur plusieurs articles des titres IV et V du projet de constitution," in *Oeuvres de Sieyès*, 8.

[29]Sieyès, *Qu'est-ce que le Tiers Etat?*, 115.

[30]A. Barnave, *De la révolution et de la constitution* (Grenoble: Presses Universitaires de Grenoble, 1988). Interestingly, Barnave was among those who changed their mind on bicameralism in 1791. He argued that the times had changed and equality was now unanimously recognized as a foundational principle for France. Hence, the country was ready for the institution of a second chamber. See Gueniffey, "Constitution et intérêts sociaux," 86–87.

[31]Sieyès, "Opinion de Sieyès sur plusieurs articles," 8.

representatives by recurring to the English model of balance of power—a move that Sieyès ridiculed with the following words:

> Terrified by the immensity of the power they just accorded to the representatives, what do they do? Instead of separating all these tasks and leaving between them only the smallest connection necessary to make them cooperate to the same end, they leave them united; but they imagine giving a second representative body the same amount of power; better still, they give to the two chambers the right to veto each other. They are then proud of having avoided the problem of the *action unique*, which would be the purest of despotisms. This is the system of balance of powers.[32]

As stated in this passage, the main features of the balance of power adopted by the *anglophiles* were the doubling of all instances of power and their structural competition and mutual checking. This, the argument goes, would have prevented the usurpation of power and the degeneration into tyranny. Yet Sieyès believed the balance of power to be a fundamentally unsound model of institutional design. In his view, the division of the lawmaking power into two chambers led to despotism. The introduction of a second chamber entrusted with similar powers to those of the first, he claimed, entailed first a legislative paralysis, which he called *contre-action*, and then an *action unique*, a single person imposing his will on both chambers.

Starting with the former, Sieyès maintained that two chambers that are equally powerful and independent of each other would jeopardize any certainty in the political sphere. One chamber would pass a law, and the second would block it, leaving the country in a legislative limbo where no law could be effective because no law could pass the double scrutiny of two equally powerful but opposed legislative bodies. In Sieyès's terms: "If the two legislative bodies, entrusted with the same power, remain independent, there will be no certainty in public affairs: the two chambers are in opposition [*contre-action*]."[33] Trying to make his point clearer, Sieyès illustrated with a metaphor the threat engendered by the presence of two chambers with equal powers to limit and oppose each other: *contre-action*. This, he claimed, amounted to entrusting two different building companies with the task of building the same house one after the other. Those who defended this choice, "finding that they might have given too much power and responsibility to the first building company … suggest to the landlord that, once the first company has finished its job, he should hire a second building company which, being equally qualified, will restart the construction of the house from scratch."[34]

[32]Ibid.
[33]Ibid., 9.
[34]Ibid.

However, Sieyès also warned his fellow deputies of the dangers coming from two chambers actually being able to pass laws. This, he claimed, was not a proof of the system having found a "chimerical equilibrium." Rather, it indicated the collapse of a system based on *contre-action* and its degeneration into a despotic regime ruled by a single instance of decision and action (*action unique*). In Sieyès's words, when the two chambers eventually vote together it is because "the checks and balances and the system of equilibrium are no longer in place and this unitary action [*action unique*], against which you believed you had protected yourself through legislative vetoes, has eventually succeeded at establishing itself."[35] Also in this case, Sieyès resorted to a metaphor to illustrate how the legislative blockage created by *contre-action*—two chambers opposing each other and not passing laws—results in the establishment of *action unique*—a single person taking control of the lawmaking process. He compared the two chambers to "two horses harnessed to the same carriage, which we would like to go in opposite directions, and so remain where they are, regardless of promptings to the yoke and the stamping of hooves, unless a royal coach is mounted at the front to give them direction; but we do not want a royal coach."[36]

Hence, Sieyès made it clear that two chambers would, in the best of cases, completely paralyse the political system, which, almost necessarily, would soon degenerate into the despotism of a single man—be it the king or any other despot—taking control of the two chambers and prompting them to act according to his preferences and interests. Instead of limiting power and guaranteeing good lawmaking, bicameralism was a direct threat to both. It thus follows that France should not have adopted the English model of balance of power.

III

Throughout his political career, Sieyès drafted an impressive number of constitutional projects. Some were extremely influential; some were adopted but failed and some did not even make it to the legislative floor. Nonetheless, they earned him the fame of having

> whole nests of pigeonholes full of constitutions ready-made, ticketed, sorted, and numbered; suited to every season and every fancy; some with the top of the pattern at the bottom, and some with the bottom at the top; some plain, some flowered; some distinguished for their simplicity, others for their complexity; some of blood colour; some of *boue de Paris*; some with directories, others without a direction; some with councils of elders, and councils of youngsters; some without any council at all. Some, where the electors choose the representatives; others, where the

[35]Ibid., 8.
[36]Ibid., 9.

> representatives choose the electors. Some in long coats, and some in short cloaks; some with pantaloons; some without breeches. Some with five-shilling qualifications; some totally unqualified.[37]

Leaving the polemical intent of this passage aside, Burke had a point when he stressed the variety of constitutional projects Sieyès had in mind. Yet it is remarkable that at least one element remained consistent in all his constitutional projects: the unicameral structure of the legislative. This he called *concours*, or system of organized unity, and opposed to the English model of balance of powers.[38]

Sieyès's enduring support for single legislative assemblies was motivated not only by his distrust of bicameralism but also by his belief that the nation should speak with a single voice. Since the former was a unitary political body, it had to express its political will in a unitary form ("la volonté générale doit être *une*"). For this to be possible, the law had itself to be unitary. Hence, Sieyès claimed, the body of representatives entrusted with the authority of making the law should also be unitary; it should be a single legislative body.[39] As he explained in the strongest rhetorical terms in front of the assembly: "Remember, Sirs, your decision of the 17 June [1789] … when you declared the National Assembly to be *one and indivisible*. What constitutes the unity and indivisibility of an Assembly is the *unity of decision*" (AP, VIII, 597). This unity of decision was guaranteed only by the unitary character of the legislative assembly.[40]

[37]E. Burke, *A Letter to a Noble Lord* (Cambridge, MA: Harvard Classics, 1914), 135.

[38]"Opinion de Sieyès sur plusieurs articles," 4. On this see also M. Goldoni, "At the Origins of the Constitutional Review: Sieyès' Constitutional Jury and the Taming of Constituent Power," *Oxford Journal of Legal Studies* 32, no. 2 (2012): 211–34, section 2.

[39]E. Sieyès, "Déclaration volontaire," 9. Among the few recent scholars to have engaged with Sieyès's critique of bicameralism is Aroney. However, his engagement is limited to refuting Sieyès's argument in favor of unitary representation of the nation. In doing so, Aroney raises interesting normative questions, but he also problematically collapses Sieyès's preference for unitary national representation with the Jacobin argument in favor of unitary popular sovereignty. See N. Aroney, "Four Reasons for an Upper House: Representative Democracy, Public Deliberation, Legislative Outputs and Executive Accountability," *Adelaide Law Review* 29 (2008): 205–46. Similarly, scholars have read in Sieyès's preference for unity in the legislative body Rousseauvian influences. The historiography about Sieyès's relation to Rousseau is also relevant in this regard (see B. Backzo, "Le contrat social des Français: Sieyès et Rousseau," in *The French Revolution and the Creation of Modern Political Culture*, ed. Colin Lucas [Oxford: Pergamon, 1989]), but I side with Pasquino here (*Sieyès et l'invention de la Constitution*) in thinking that Sieyès's preference for unity is of Hobbesian, rather than Rousseauvian, origins and kind. For an analysis of Sieyès's rejection of Rousseau see Bastid, *Sieyès et sa pensée*, 308–9.

[40]Sieyès's fear of fragmentation of national unity is different from the radicals'. Both were against the subdivision of society into orders—as were most deputies at that point—and both feared that a second chamber might have reintroduced it. Yet

In addition, Sieyès maintained that a single-chamber system could successfully guarantee the limitation of power and introduce checks and balances on the lawmaking authority. First, Sieyès accused his fellow deputies of confusing the *action unique*, which they unsuccessfully tried to prevent through bicameralism, with the unity of action (*unité d'action*). In his words, "The constitutionalists we fight here are those who confuse, in their use of the language, the *unité d'action* with the *action unique*. We want the first; they establish the second."[41] The mistake, Sieyès went on to say, is that they did not understand that, paradoxically, unity is extremely important in guaranteeing the limitation of powers in the political domain. Afraid of giving too much power to a single instance of decision, *anglomane* deputies tripled the instances of decision. This, in the long run, would have created the abovementioned need for *action unique* that, in turn, would eventually lead to the creation of a despotic regime.

Instead, the lawmaking tasks should be differentiated inside the assembly by exploiting the already present division of labor among its members and coordinating their tasks in such a way as to make the whole assembly benefit from the action of its constituent parts.[42] Sieyès explained his project in the following terms:

Sieyès saw no problem in accepting that the representatives would reelaborate the will of the nation. Proof of that is his projects of electoral laws based on the principle of graduated promotion, which were meant to filter the direct expression of the people's power through several rounds of electoral competition. In fact, Sieyès actively sponsored the idea that the representatives, being experts in politics, should create the will of the nation by freely interpreting multiple and complex electoral mandates. He simply did not want part of this process to be organized according to the division into orders, and he feared that that would be inevitable with a second chamber. By contrast, the radicals' main problem with bicameralism was that it would have asked the representatives to depart from their electoral mandates by forcing them to consider the will of another chamber. Hence, the radical problem was primarily that bicameralism distanced the will of the people from the actual lawmaking process. The fact that representation in the second chamber could have been aristocratic was certainly an annoying detail, but not key to their concerns.

[41]"Opinion de Sieyès sur plusieurs articles," 9.

[42]It is interesting to note that in his discourse of 2 Thermidor Sieyès introduces a new criterion for the composition of the assembly: its members should come, in equal numbers, from rural industry, the *industrie citadine*, and the liberal professions (see E. Sieyès, "Discours du 2 Thermidor an III," in *Oeuvres de Sieyès*). Many scholars have wondered about the origins of this proposal and Bastid has put forward what I think is a very interesting argument: the composition of the assembly according to professions derives from Sieyès's commitment to expertise and the division of labor. It is not meant to bring into the assembly the representation of different interests, but that of different types of expertise which, in Sieyès's mind, substantially contributed to the work of the assembly (see Bastid, *Sieyès et sa pensée* , 427).

> [This] system of separation [of powers] … does not assign to the same body two or three heads, so that one corrects the mistakes of the other; rather, it carefully separates, inside the same head, the different faculties which concur, together, to wisely determine the will of the whole… . It coordinates them according to their natural organization, which turns all the parts composing the legislative body into a single head.[43]

More concretely, this meant that the best way to secure pondered decisions was not the creation of a second chamber but the establishment of two or three sub-committees separately discussing different issues. These committees would also vote in physically separate spaces but at the same time, and the votes would be counted per head and added together in a single count, thus resulting in a single vote of the unitary legislative assembly.[44] This, Sieyès argued, would guarantee better discussions of the law, as it would leave more time to reflect upon it, it would assure the regular working of the lawmaking process, and it would avoid the risk of one chamber revoking what the other decided a few days before.[45]

Moreover, Sieyès also maintained that to avoid the dangers of bicameralism it was necessary to stop addressing political authority through the

[43]"Opinion de Sieyès sur plusieurs articles," 9. In this quote one can see the influence that Adam Smith and his theory of the division of labor had on Sieyès's political thought. Just as in the context of representation, so too inside the assembly what pays off is the specific expertise that single individuals have in performing the task they have been assigned. From Smith, Sieyès takes the idea that, in modern societies, all tasks—including parliamentary activities—have to be subjected to the division of labor.

[44]Condorcet ("Lettres d'un bourgeois") and La Rochefoucauld (AP, VIII, 548) proposed similar measures to separate deliberation within a unitary assembly.

[45]It has been argued that a unicameral legislative assembly divided into subcommittees amounts to a bicameral legislative system. I would resist this idea, at least in the context of Sieyès's writings. What mattered for him was that the law had to be submitted to just one voting and counting procedure. This could be achieved in his system because the various committees would factually vote together as parts of a single chamber, as their votes would all contribute to the same count. By contrast, bicameral systems always hold separate votes as well as separate counts. The communal or separate voting procedure is what, for Sieyès, distinguished unicameral from bicameral systems. Another concurring explanation is offered by Bastid, who notes that having committees discussing and voting in separate physical spaces was, for Sieyès, a way of limiting power within unicameral assemblies. This separation would have restrained the power of demagogy and would have allowed the best of each member to come out in the discussion, as the small size of the committees would have made debating easier. This, Bastid argues, is also confirmed by the fact that in his *Projet de déclaration volontaire*, Sieyès discusses the proviso for separate committees in an article titled "Sur l'unité du corps des représentants." See Sieyès, "Déclaration volontaire," and Bastid, *Sieyès et sa pensée*, 423.

concept of national sovereignty.[46] This portrayed political authority as a unitary, absolute, and undivided power in the hands of the assembly representing the nation. By contrast, the idea of constituent power was to be preferred as it allowed for the distinction between the original bearer of power, the people, and its representative assembly, thus necessarily presenting the second as a derived and limited power. Sieyès described the misleading character of the idea of national sovereignty as follows:

> And lastly, let's dare to say it: what is sovereignty? … Sovereignty understood as a supreme power which dominates/embraces everything does not exist. It cannot be found in the united mass of all public officers, and if the constitution separates the public powers, if each of them is limited to its special mission and cannot abandon it without usurpation and crime, where can this gigantic idea of sovereignty be placed?[47]

The very idea of sovereignty, especially as used by the deputies, implied that the nation's political authority was to be embodied by the undivided lawmaking power of the legislative assembly. This, to the *anglomane* deputies' minds, created an excessive concentration of power that, as discussed above, needed to be counterbalanced and limited. The solution proposed by the *anglomane* group was the institution of a system of triple vetoes: one attributed to each of the legislative chambers against each other and one given to the king against both chambers. As discussed above, this system of balance of power was, in Sieyès's opinion, doomed to fail. Hence, to avoid bicameralism, it was necessary to stop using the idea of national sovereignty, as the *anglomanes*' support for bicameralism directly derived from their concerns with the absolute power sovereignty entailed. By eliminating the language of sovereignty—so Sieyès's argument went—all the *anglomanes*' reasons in favor of bicameralism would lose value and cogency. To do so, however, Sieyès needed to propose an alternative conceptualization of the supreme political authority, and he found one in the idea of constituent power.

[46]Parts of this paragraph, especially some of the quotes and archival material, appeared in a previous article of mine. Equally, a complete analysis of the implications of Sieyès's preference for constituent power against sovereignty were the subject of a previous article (Rubinelli, "How to Think beyond Sovereignty: On Sieyès and Constituent Power," *European Journal of Political Theory*, April 2016, https://doi.org/10.1177%2F1474885116642170). As I show in this earlier article, this criticism also applied to the radicals' theory of popular sovereignty and is one of the elements of contradiction between Sieyès's critique of bicameralism and the radicals. I disagree with Bredin on the relevance of Sieyès's critique of sovereignty for his rejection of bicameralism. He differs from me in maintaining that bicameralism was rejected by Sieyès because it was contrary to national sovereignty (see Bredin, *Sieyès: La clé de la Révolution française*, 507).

[47]E. Sieyès, "Bases de l'ordre social," in *Sieyès et l'invention de la Constitution en France*, by P. Pasquino (Paris: Odile Jacob, 1998), 198.

Constituent power implied that the original political authority lies with the people, who have the power to create the state and its fundamental law, the constitution. In Sieyès's words, "Constituent power can do everything… . The nation that thus exercises the largest, the most important of its powers, must be, in the exercise of this function, free from all constraints and forms, other than those it freely chooses to adopt."[48] As shown in this quote, the idea of constituent power entails first and foremost the popular institution of the political order. Yet, given that constituent power is understood by Sieyès as a founding power, it is only exercised in extraordinary founding moments. Accordingly, for Sieyès, the people have neither the time nor the necessary knowledge and skills to get involved in politics on a daily basis. After authorizing the general norms of the political system—the constitution—they retreat into the private sphere and confer the ordinary working of politics onto ordinarily elected representatives who act within a legal and political framework that has already been authorized and constituted. Hence, this representative constituted order is the logical and necessary counterpart of the nation's constituent power. It works according to the constituent power's will—as outlined in the constitution—but is not its direct expression. Within it, the representatives have limited delegated powers and act only within the constitutional boundaries.

The distinction between the constituent power and the constituted order is moreover guaranteed by what we would call today the rigid character of the constitution. Being hierarchically superior to ordinary laws, it distinguishes between constituent and constituted politics and subjects ordinary representatives "to laws, to rules, and to forms that they are not authorized to change."[49] Consequently, the constituted order derives its authority from the constituent power of the nation, but can only exercise it within preestablished limits. Amendable only by the constituent power, the limitation of the constituted order and, within it, of the legislative assembly was guaranteed.

Moreover, in Year III, Sieyès claimed that the limiting function of the idea of constituent power could be strengthened by introducing a constitutional jury, an indirectly elected body independent of both the legislative and the executive, with, among other functions, that of checking the consistency of the acts of the assembly in relation to the people's constituent will as expressed in the constitution.[50] In his words, "I give a conservator,

[48]E. Sieyès, "Preliminaire de la constitution," in *Oeuvres de Sieyès*, 35.

[49]Ibid.

[50]Sieyès first introduced the idea of constitutional jury in his speech of 2 Thermidor, Year III (see "Discours du 2 Thermidor an III"). As Goldoni, in "At the Origins of the Constitutional Review," clearly explains, Sieyès's constitutional jury had the power to exercise a form of *ex ante* control: it could not revoke laws but could check the acts of the lawmaking bodies. This control would apply to the acts of the electoral assemblies, of primary assemblies, and of the Court of Cassation. However, Goldoni joins

a guardian, to the constitution through the creation of a constitutional jury."[51]

In contrast to the idea of sovereignty, which entailed an absolute and continued exercise of power by the assembly representing the nation, the notion of constituent power allowed Sieyès to think in terms of vertical limits to power. It was not the horizontal duplication of sovereignty into two legislative chambers that constrained the exercise of power. Rather, it was the hierarchical differentiation between the original and absolute constituent power of the nation, and the derived and bounded power of the constituted legislative order, that constrained the latter inside the limits decided by the former in the constitution. In other words, it was the idea of constituent power, and not the division of the legislative into two chambers, that was the real guarantee of the limitation of power. As Sieyès maintained before the assembly, the "gigantic idea of sovereignty," and with it the bicameral system and its mutual vetoes, should find no place in France because, unlike the English system of balance of power, which "has not yet distinguished the constituent from legislative power," a "sound and useful idea was invented in 1789: the separation of the constituent power from constituted powers. It will go down in history as a discovery that advances science, for which the French can be thanked."[52]

In conclusion, Sieyès's preference for a unicameral legislative system can be summarized as follows. First, he claimed that the establishment of a second chamber was contrary to the revolutionary principle of equality. This was

Pasquino, *Sieyès et l'invention de la Constitution*, and Bastid, *Sieyès et sa pensée*, in arguing that it is not completely clear what exact control function Sieyès wanted to attribute to the jury, as he seemed to contradict himself in several passages. In addition, the jury also had two other functions: improving the constitution and working as an institute of equity jurisdiction. For more, see E. Sieyès, "Opinion de Sieyès sur les attributions et l'organisation du jury constitutionnaire proposé le 2 Thermidor," in *Oeuvres de Sieyès*. Against both Goldoni and Pasquino, M. Troper, "Sieyès et le jury constiutionnaire," in *Mélanges en l'honneur de Pierre Avril: La République* (Paris: Montchretien, 2001) argues that the functions of the jury cannot be assimilated to those of contemporary constitutional courts.

[51]Sieyès, "Declaration volontaire," 17. Interestingly, in his Thermidorian speeches Sieyès maintains a single chamber but introduces a *Tribunat* with the sole task of proposing laws (see "Discours du 2 Thermidor an III"). This, Sieyès makes clear, does not amount to a legislative body and hence cannot be compared to a second chamber. This is because, as Bastid explains, the creation of a *Tribunat* is simply due to Sieyès's preference for clearly separating tasks. In this way, the *Tribunat* would be tasked with proposing laws, the executive with executing them, and the legislative would retain the most important role, which is that of deciding what, among the several proposals, is the will of the nation. This and only this is the legislative task and has to be performed by a unitary assembly. For a discussion of this point see Bastid, *Sieyès et sa pensée*, 424.

[52]"Opinion de Sieyès sur plusieurs articles," 11.

based upon the abolition of all distinctions between estates and the attribution of equal voting rights to citizens. A second chamber implied the reintegration of such distinctions, because it identified one part of the population as different from and superior to the rest of the nation. This, he claimed, was the characteristic feature of the English system and needed not to be imitated in France. This argument, as seen above, substantially overlapped with the critique of bicameralism offered by both the *américanistes* and radical deputies. However, Sieyès also advanced a second, original, argument: the creation of a second chamber did not secure the limitation of power. On the contrary, it endangered it because the very idea of limiting power through a further layer of separation and a system of balance and counterweight was misleading. This was both because there was a better way to limit power and because the bicameral system would eventually create the conditions for the rise of despotic regimes.

By contrast, Sieyès modestly argued that power could be limited by means of what he described as the greatest invention of the French Revolution: the distinction between constituent power and the constituted order. Its greatness lay in the fact that it allowed for the hierarchical distinction between constitutional norms and ordinary legislature and, in so doing, created a vertical limit to be imposed upon the exercise of power by legislative, executive, and judiciary. Accordingly, the legislative power found its insurmountable limit in the rigidity of the constitution, as controlled by the constitutional jury. Consequently, there was no need for balancing the power of the legislative assembly with a second, and competing, instance of legislative decision. This would shift the political axis from a vertical division to a horizontal separation and bring instability into the political system. It would create a second claim of legitimacy, inconsistent with the very fact that the national will needed to be unitary and unitarily represented. To allow two legislative chambers to compete against each other over which is the best interpreter of the will of the nation entailed, for Sieyès, the institutionalization of legislative paralyses. And if the legislative power becomes unable to take decisions, it necessarily ends up fostering the idea that, in moments of crisis, an all-powerful individual figure is better suited to overcome the legislative's blockage. Consequently, the vertical distinction between constituent power and constituted order successfully guaranteed the limitation of power, while the horizontal separation offered by the bicameral system threatened it.

IV

The political thought of the Abbé Sieyès is commonly considered an important phase in the elaboration of modern liberal constitutionalism. His interventions at the National Constituent Assembly, at the Convention and during the Directoire helped shape the institutions we now associate with the constitutional state. Not only did his formulation of the idea of constituent

power go down in history as a "French invention," but his theory of representation, the constitutional jury, and his electoral laws have had a long-lasting impact on modern constitutionalism. Yet his opposition to bicameralism has largely been ignored in historical narratives about the intellectual development of liberal constitutionalism. This is for two reasons.

First, much of the literature dealing with bicameralism discusses Sieyès as just another member of the group of the *américanistes*. As a consequence, it has often been assumed that his critique of bicameralism corresponds to that offered by other eminent members of the group. Yet while he was both personally and intellectually close to most of them, his arguments against the royal veto and the second chamber should be treated as distinctively his own. As I hope to have shown, like the *américanistes* and the radicals, Sieyès feared that bicameralism would threaten equality and re-establish the division of society into orders. However, in contrast to them both, he opposed the royal veto in all of its forms and offered an institutional critique of bicameralism that was at odds with the radicals' faith in popular sovereignty and distinct from the *américanistes*' focus on the aristocratic biases intrinsic to second chambers.

The second reason why Sieyès's critique has been overlooked is that historians of political thought tend to portray bicameralism as a key concept in the development of liberal theories of the separation and balance of power. Focusing on the debates of the American Revolution and on the theory of the balance of power, bicameralism's relationship to the history of constitutionalism is presented as relatively linear and uncontroversial.[53] In the exceptions, when the debates of the French Revolution are considered, the focus is on the critique that Sieyès shared with the *américanistes*. Their arguments about the entrenchment of aristocratic interests are taken to be an interesting piece of historical evidence, but one with little relevance for the development of the liberal constitutional state. After all, liberalism soon stopped worrying about the division of society into estates and, by contrast, endorsed bicameralism as a means of limiting power against the potentially illiberal implications of unicameral systems.[54]

The result is a story that is ironically oblivious to the contribution of one of the fathers of liberal constitutional thought. As I hope to have shown, Sieyès's reasons for preferring unicameral systems rely on arguments that are fully internal to and consistent with the intent of limiting power and defending liberty. The debates of the National Assembly suggest that while there are

[53]E.g., D. Shell, "The History of Bicameralism," *Journal of Legislative Studies* 7, no. 1 (2001): 5–18.

[54]Even though it is tempting, today, to see the influence of money in politics as reproducing similar logics. And certainly, the problem of class division and its disproportionate representation in parliament remained a long debated issue in European countries throughout the nineteenth and the early twentieth centuries and is still relevant today.

liberal arguments to defend bicameralism, these same arguments can also be used to justify unicameral legislative systems. As Sieyès's example demonstrates, the choice between bicameral and unicameral legislatures does not necessarily coincide with the choice between liberal and less liberal or illiberal political systems. Rather, what often lies behind this choice are two different but equally liberal ways of approaching the same problem: limiting power and defending liberty. This choice, however, is somehow forgotten by the history of liberal constitutionalism.

As a result of forgetting this choice, we also risk overlooking what Sieyès's critique of bicameralism has to offer in the way of our understanding of contemporary politics. Setting aside the contextual elements of his critique as well as the failure of some of his projects, Sieyès's argument about the potentially negative effects of bicameralism offers insights into what could go wrong with bicameralism when the second chamber systematically disagrees with the first and repeatedly delays or rejects its bills. Sieyès called this situation *contre-action*; contemporary political scientists call it gridlock. Sieyès warned that sustained *contre-action* might cause frustration among both the representatives and the people. The dissatisfaction caused by legislative blockages, he maintained, could grow to the point of making the action of a single man, *action unique*, look dangerously appealing. And this, Sieyès suggested, proves that adding further layers of checks and balances risks frustrating the limitation of powers rather than strengthening it. After all, history, as much as contemporary politics, suggests that popular frustration with legislative slowness might indeed lead to demands for strong and charismatic executive powers. And if one is to learn anything from Sieyès, it is that this should be as important a concern for liberals as is the strict enforcement of the balance of powers.