

Judging a Declaration: Condorcet, Rights and the General Will in 1789

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Abstract: This article argues that a study of unpublished notes for a treatise on the *Déclaration des droits*, written by the marquis de Condorcet in 1789, offers an insight into a problem that has defined scholarship on the philosophe for decades: the tension between the competing ‘democratic’ and ‘elitist’ discourses in Condorcet’s political thought. In this manuscript we see a novel integration of the discourse of ‘general’ or ‘common’ will into Condorcet’s rights-thinking. Due to his fear that the debates in the National Assembly over the proposed Declaration of Rights during the summer of 1789 were undermining the ‘self-evident’ nature of Natural Rights and more specific rights that derived from them, I suggest that Condorcet was here experimenting with the legitimating languages of ‘volonté générale’ and ‘sens commun’. Although these notes remained unpublished, hints of Condorcet’s shift in thinking can nevertheless be seen in his published work of the same period.

When Nicolas de Caritat (1743-1794), the former marquis de Condorcet, entered Louis Crépinet’s inn in the village of Clamart just outside Paris on 27 March 1794, it was, we are told, the inconsistencies in his appearance that drew the attention of the French Revolutionary Committee of Surveillance. Despite claiming to be an unemployed *valet de chambre* named Pierre Simon tramping the countryside looking for work, Condorcet had no papers to prove it. On the other hand, he was in possession of a sword-stick, a silver watch, and a Latin book of Horace.¹ This suspicious mixture of apparently impoverished *homme du peuple* and wealthy member of the elite led to Condorcet’s arrest and, eventually, his death in mysterious circumstances two days later in prison.²

The apparent contradiction—between the guise of a man of the people and the veneer of elitism—which defined Condorcet’s death has also characterised much of the scholarship on the *philosophe* of the past decades. As Keith Baker concluded in his 1975 *magnum opus*, a

‘tension’ between ‘elitism’ and more ‘democratic’ tendencies ‘lay at the heart of Condorcet’s conception of social science’. Condorcet’s ‘attempts to resolve this tension,’ Baker continued, ‘constitute [his] most characteristic contribution to the political and social thought of the Enlightenment.’³ It has more recently been argued that Condorcet increasingly tacked into the ‘democratic’ winds as the French Revolution wore on, with Nadia Urbinati suggesting that Condorcet’s 1793 Constitutional Plan, as an example of his ‘mature political ideas,’ represents ‘an institutional order that is one of the most democratically advanced and imaginative Europe has produced in the last two centuries.’⁴ Nevertheless, even Urbinati warns against believing Condorcet a pure democrat, rather seeing Condorcet’s project as a ‘third way’ between Sieyès’s ‘elitist view’ and ‘Robespierre’s ultra-democratic project’.⁵

A study of Condorcet’s rights-thinking of 1789 offers a window onto the larger question about the role Condorcet believed ‘the people’ should play in politics. Specifically, I will argue that 1789 marked an important year in the evolution of his thinking about how the populace could constructively contribute to judging transcendental truths that seemed nevertheless to be contested, thus laying the groundwork for some of his later, more ‘democratically’-leaning Revolutionary thought. Baker, drawing on Alfred Cobban, has identified a key shift in French political discourse in 1789: away from the ‘Enlightenment’ desire to ‘limit the exercise of sovereignty’ towards an impulse ‘to seize it in the name of the popular will.’⁶ Condorcet’s thought in 1789 also shifted towards a consideration of the ‘general will’, but Condorcet, I suggest, was less concerned with its sovereignty than its ability to discern truth.

A study of a collection of unpublished notes for a *Déclaration des droits*, likely composed by Condorcet in the summer of 1789, and now lying in the archives of the Bibliothèque de l’Institut in Paris, reveals that Condorcet’s engagement with the urgent need to produce a set of rights on which to base the writing of a new Constitution for France led him to rethink some of his fundamental assumptions on which he had based his earlier rights-

thinking.⁷ These assumptions concerned, on the one hand, the relationship between transcendental *droit naturel*, and, on the other, the more specific rights which men (and women) ought to enjoy in society and which derive from *droit naturel*. In particular, over the course of 1789, Condorcet distanced himself from the physiocratic idea that the more specific, derivative rights were the obvious consequences of Natural Law, and could be easily deduced by the reason of enlightened men. Instead, he developed an idea of a ‘general will’ as an alternative mechanism to discern these derivative rights.

Condorcet’s new appeal to a ‘general will’ to establish derivative rights was sparked by the volatile political context of 1789. The debates in the new National Assembly of August 1789 over the content of the proposed Declaration of Rights had shown that, despite many assertions to the contrary, the truths to be contained therein were far from ‘self-evident’. As Andrew Dicus has recently pointed out in his analysis of Maximilien Robespierre’s (1758-1794) revolutionary rhetoric, an ‘obsessive’ focus on the self-evidence of the concepts one is proposing ‘undermines the very epistemological stability—and authority—on which they are premised’.⁸ This is even more true when there is acrimonious disagreement, as was the case in the National Assembly of this period, over truths which are declared by each side to be self-evidently and obviously true. I will suggest that Condorcet feared that this epistemological instability would have real-world consequences, and that the more the waters of *droit naturel* were muddied, thereby delaying the promulgation of a Declaration of Rights, the more likely the looming threat of mob violence in France would become a reality.

Condorcet’s response was to search for a way to restore consensus to the debate, and demonstrate that the rights derived from *droit naturel* were indeed universally and transcendently true, even if they were not in fact so instantly self-evident that they could easily be declared and immediately accepted without argument. In the set of notes under consideration here, Condorcet attempted to forge a form of legitimation for derivative rights

that harnessed two discourses that had a long pre-history in French political thought: the language of *volonté générale* and the discourse of *sens commun*. It should be emphasised that what we find in this scrawled sheaf of manuscript pages was not a completed theory, but rather a tentative first attempt on Condorcet's part. Nevertheless, I suggest that it marks a new, and more democratic departure for the *philosophe*.

The article proceeds thus. Section I will outline in general terms Condorcet's pre-1789 stance on rights. Section II discusses the changes that can be identified in his 1789 notes for a *Déclaration des droits*. Section III will explore what sources Condorcet might have been drawing on, and the political context that spurred him to do so. Section IV argues that although this draft remained in manuscript form, traces of a shift can nevertheless be found in Condorcet's published texts of the period. I suggest in the conclusion that Condorcet's attempt to develop a more democratic basis for the enumeration of derivative rights has significance not only for our understanding of the development of Condorcet's political philosophy, but also for our contemporary theories about the proper source of truth in politics.

I

On questions of rights, Condorcet is generally placed in the physiocratic camp. As Dan Edelstein has explained, these mid-eighteenth-century French thinkers believed that men formed society in order to protect their natural rights, which were universal and transcendental.⁹ Once in society, the full consequences of these natural rights would be deduced through the use of reason, thus becoming what I will call here 'derivative' rights. The term 'derivative rights', to describe the full consequences of the most primary natural rights is my own and was not used by either the physiocrats or Condorcet.

Like the physiocrats, Condorcet was ontologically committed to the existence of a set of pre-social, inherent, and inalienable natural rights that inhere in each human. Condorcet

argued that it was the need to protect these rights that led humans to enter into society. In *De l'influence de la Révolution d'Amérique sur l'Europe* (1786), Condorcet identified four core natural rights from which all other rights should emanate: the right to personal security; the right of property; the right to an impartial system of laws based on equality and universality; and the right to participate in the framing and enacting of laws.¹⁰ In his *Vie de Monsieur Turgot*, also published in 1786, Condorcet was explicit that the right of property should be seen as the most fundamental of these.¹¹ These primary natural rights should be understood as a set of meta-principles. From these meta-principles, the next level of generality down was 'derivative rights': more specific rights which inhered in humans and which could guide day-to-day action in society. One example, which we shall explore further, was the specific derivative right to make loans, derived from the primary right of property. Deriving specific rights from natural rights did not fundamentally change the rights in any way—they were still 'natural'—but simply confirmed their full extent.¹²

The full extent of each human's derivative rights ought, according to Condorcet, to be set down in an extensive Declaration of Rights. They would then be enshrined into law in a constitution. '[A] constitution,' Condorcet argued in *Lettres d'un bourgeois de New Haven* in 1788, should be 'based solely on the rights which exist in nature, prior to social institutions.' Thus, he argued, one of the primary and most urgent tasks of a new polity is 'a simple declaration of the clear rights of the citizens,' which should serve as the basis of the constitution.¹³ However, it was not the act of declaring derivative rights, or erecting them into law which made them rights. There existed a set of transcendently true rights which ought *first* to be discovered, and *then* serve as the basis of law.

Crucially, the physiocrats believed that, at least to enlightened men, both the transcendental natural rights themselves, and their more specific consequences, would be obvious and would not require popular legitimation. Writing in 1769, in the first issue of

Éphémérides du citoyen, the journal that would become a key periodical for the group, Pierre Samuel du Pont de Nemours declared that ‘the *essential* order of any society is an *obvious* [*évident*] order.’¹⁴ Condorcet’s pre-Revolutionary writings about rights similarly reveal a high degree of certainty about the ability of humans to easily access the truth of *droit naturel* through reason, and from there to deduce specific rights.¹⁵ Condorcet argued, in *Vie de Turgot*, that reason should be used to deduce the specific rights that flow from these general principles. In describing Anne Robert Jacques Turgot’s report on loans in Angoulême in 1770, for example, Condorcet stated that ‘the freedom of conditions in making loans is a natural consequence of property in money.’ Turgot decided that man had a right in society to be able to freely make loans as a specific consequence of the general principle of the natural right of property. Condorcet was explicit that it was through ‘reason’ alone, not by following the ‘prejudices of politics’—and certainly not by paying any attention to ‘Theology’—that Turgot reached this conclusion.¹⁶

Indeed, the *Vie de Turgot* is, for the most part, a paean to the extraordinary rational abilities of Condorcet’s former political and intellectual mentor, and it is thus not surprising that Condorcet suggested here that the ‘rewriting of legislation ... ought to be the work of a single man.’ Although Condorcet believed that derivative rights were the ‘*clear* consequences of the most general and most certain principles of Natural Law’ and thus *theoretically* could be evident to all, in practice the work of deducing specific rights in society should fall to the reason of a small number of enlightened men. ‘Too few men,’ he declared, had had their eyes opened to ‘truth’.¹⁷

This approach left little room for the people’s perspective in discerning what they believed to be their rights, and the legislation that ought to stem from them. Condorcet, describing Turgot’s view with approval, wrote that Turgot had believed that laws should be ‘the simple consequences of the general principles of Natural Law.’ Turgot, according to

Condorcet, had been equally explicit that it is ‘of little consequence’ to the happiness of those who live under them ‘whether these laws received their sanction under a public form or by tacit consent.’ Indeed, he was suspicious of any form of government that sought to set up ‘the arbitrary caprice of the majority’ in opposition to ‘truths deduced by reason from principles of *Droit naturel*.’¹⁸ If there was any tension between the two, Condorcet was definite that the reason of an enlightened individual, such as Turgot himself, must triumph.¹⁹

Condorcet was more explicit about who should—and should not—be drafting a declaration of rights in a postscript to his *Essai sur la constitution et les fonctions des Assemblées Provinciales*, written on 8 August 1788, just after the announcement of the convocation of the Estates General for 1789. While he repeated that ‘a declaration of the rights of man and the citizen,’ which codified ‘rights ... received from nature’ was the essential first step for the proposed assembly, he was crystal clear that this declaration must be ‘drawn up by enlightened men’. The people as a whole were simply not yet qualified to perform such a task: for ‘reason alone can teach us in what justice consists ... [b]ut reason can only have a general influence if it is perfectly free.’ The French nation was not yet ‘truly enlightened’: how could it be, Condorcet asked, ‘on matters which the absence of freedom of the press has prevented it from discussing?’²⁰ In August 1788, therefore, Condorcet still seemed convinced that the only way to set France on the right political path was for a declaration of derivative rights to be produced on behalf of the nation by the reason of enlightened men.

II

Condorcet repeated his call, found in the *Essai sur les Assemblées Provinciales*, for the immediate composition of a Declaration of Rights in the noble *cahier de doléance* for Mantes, which he helped draft over the winter of 1788-9.²¹ Given his dedication to the project—as well as his close friendship during this period with the marquis de Lafayette, who was writing

Declarations of Rights from January 1789, and who presented one of the first draft Declarations to the National Assembly on 11 July, it is unsurprising that Condorcet himself also produced (at least) three *Déclarations des droits* over the course of the year.²² Two of Condorcet's were published in 1789, whilst the third remained in manuscript form.²³

Frustratingly, it is almost impossible to pin down when precisely these texts were drafted and published. It is thus difficult to fully contextualise them in the fast-moving events of 1789, in particular the debates of the National Assembly over the proposed Declaration, which took place between 11 July and 26 August, when the final *Déclaration des droits de l'homme et du citoyen* was adopted.²⁴ Probably the best known of Condorcet's declarations, and the only one to be reproduced in either of the *Oeuvres de Condorcet*, was published anonymously, supposedly in London, as *Déclaration des droits, traduite de l'anglois, avec l'original à côté*.²⁵ However, its true authorship was relatively widely recognised by contemporaries. Thomas Jefferson in Paris at the time, noted on the fly-leaf of his copy that it was written by Condorcet, and was then translated into English by Richard Gem, a doctor and a mutual friend of both men.²⁶

Condorcet also published another declaration in Versailles, under his own name, entitled *Déclaration des droits par M. le M^{rs} de Condorcet*, although this work does not appear in his *Oeuvres*.²⁷ There is some debate over which text was written first. Stéphane Rials claims that the '*Déclaration*' released under Condorcet's name was published in February 1789, and thus before the supposedly 'translated' work.²⁸ Yannick Bosc, on the other hand, reverses the order, although with no explanation as to why.²⁹ Given that the signed version describes itself as an 'extract of a more extensive work,' it is plausible that it was written earlier, as a prospectus for a longer work still in progress, and thus the dating of February 1789 seems most convincing.³⁰ For ease of understanding, therefore, I shall refer to the earlier, signed declaration as 'the February Declaration'; and the later, anonymous one as the 'Anglo-Declaration'.

The ‘more extensive work’ promised by the February Declaration could refer to the Anglo-Declaration. Yet a study of Condorcet’s manuscripts reveals a more convincing candidate. Condorcet had in fact begun work another text on the rights of man, including reflections on the establishment and role of the legislative power, that he left unpublished. Léon Cahen agrees that this collection of notes—including a set of endnotes and some almost fully drafted chapters, as well as much rougher scribbles—were most likely written over the course of 1789.³¹ This work will be referred to as the ‘Manuscript Declaration’. We therefore have a tentative chronology of the February Declaration (written at the beginning of 1789), the Anglo-Declaration (written later that year), and the Manuscript Declaration (perhaps begun as early as February 1789, but, as will be discussed, with significant portions likely composed in the summer of that year).

It is to the Manuscript Declaration that we must turn to find the clearest contrast with Condorcet’s pre-1789 writings on rights. Like Emmanuel Sieyès’ ‘Reconnaissance et exposition raisonnée des droits de l’homme et du citoyen,’ delivered to the National Assembly on 21 July and published the next day, and unlike the *Déclaration* that was finally promulgated by the National Assembly in August, Condorcet’s treatise was far from a simple list of rights to be enjoyed by citizens.³² Rather, it contained a long exposition of the origins of political society.

Humans join in a society, Condorcet stated, uniquely ‘to assure ... the peaceful enjoyment of their natural rights.’ Thus, ‘the first step to take is for men to *know* these rights well, not only in their general principles, but in all their consequences.’ ‘[I]n a word,’ he continued, ‘what are the rights of men, and how is it necessary to fix them in a manner which is not arbitrary?’ It is on this point, that of determining ‘all the consequences’ of natural rights, that we begin to see a change in Condorcet’s approach. It is vital to grasp the fact that Condorcet’s view of the ‘general principles’ of natural law remained consistent. Recall the

centrality, for example, of the fundamental right of property in his *Vie de Turgot*. In his Manuscript Declaration, Condorcet continued to declare steadfastly that ‘[t]he right of property derives from nature.’³³ The shift was that he began to question how to arrive at the specific consequences, or derivative rights, derived from this fundamental natural right. In the *Vie de Turgot*, one example of such was the right to freely make loans. It was, Condorcet there stated, one of the ‘*clear* consequences of the most general ... principles of Natural Right.’³⁴ In the Manuscript Declaration, on the other hand, Condorcet hedged: ‘in societies numerous and narrow, the consequences that it is necessary to deduce from this Natural Right to whom such and such a thing belongs *are not really evident*.’³⁵

Condorcet was not arguing here that objectively just derivative rights, deduced from natural rights did not exist. Indeed, he was explicit that derivative rights could not simply be ‘arbitrarily’ created by society, as objective ‘limits to rights fixed by reason and by nature exist.’ However, he did worry that ‘all individuals do not place [these limits] at precisely the same points,’ even if everyone agreed upon the fundamental principles of natural law.³⁶ Although this language of ‘limits’ is somewhat confusing, it seems clear that Condorcet was here talking about the difficulty of discerning the full extent of rights, deduced from natural law, that people should enjoy in society: in other words, their derivative rights.

This is an epistemological, rather than an ontological problem. Condorcet thought an objective system of derivative rights existed. However, he was beginning to display doubts over how the extent of it could be discerned. Although he had been happy to agree with Turgot about the principle of the right to make loans in 1786, once it came down to pinning down all the nitty-gritty details of this right in 1789, he became far less certain. In other words, he was moving away from the physiocratic position of the ‘evident’ nature of the social order. This shift has hitherto gone unnoticed, even by those, like Jean-Claude Perrot, who have done

excellent work in detailing Condorcet's other 'déplacement théoriques' away from the physiocrats from 1790 onwards.³⁷

There was, however, a seemingly easy way out of this conundrum for Condorcet. He had, in the *Vie de Turgot*, set out what to do in a situation where 'too few men,' had had their eyes opened to the 'truth' of *droit naturel*: entrust the job to enlightened men.³⁸ Recall his postscript to his *Essai sur les Assemblées Provinciales*, in which he states that the populace was not sufficiently enlightened to recognise its true rights. The disagreement over which precise derivative rights ought to be in a Declaration could thus simply be seen as the result of this lack of education. In his pamphlet *Réflexions sur ce qui a été fait, et sur ce qui reste à faire*, composed between 4 August and 26 August, Condorcet continued to focus on the fact that although the 'people' had 'grasped the first truths [*vérités premières*]' of its rights, it had 'gone astray in the consequences'.³⁹ The task of rationally deducing these rights and drafting a Declaration should thus—all the more—be left to the most enlightened in society.

Yet, strangely, Condorcet did not take this route in his Manuscript Declaration. Instead, he charted a new path in the direction of a 'general' or 'common' will. 'Rights have limits,' Condorcet stated, 'that all members of society do not place at the same point. It is [therefore] necessary,' he continued, 'to have a general will [*volonté générale*] that fixes these limits'.⁴⁰ Condorcet envisaged that this general will would be formed by the majority, although not the unanimity, of society. Although he insisted that *all* members of the proposed society must originally agree to join it, after that a plurality would be enough to institute 'general rules', and in particular, 'a declaration of the rights of man.' Condorcet's usage of '*pluralité*', '*généralité*' and '*majorité*' is somewhat confusing. He does not seem to draw the same distinctions as in the current English use between majority (meaning more than half) and plurality (meaning the largest single quantity, but fewer than half); nor is his use of these terms always consistent.

Nevertheless, in applying the term here Condorcet intended to mean, at the very least, a significant proportion of the society in question, as opposed to a small segment of it.

This group, moreover, would not only be giving their consent to a declaration that had already been drafted by more enlightened individuals. The plurality must not only decide *if* there is to be a declaration, but *which particular rights* that declaration should contain: '[t]he plurality must therefore exercise the social power, and it must immediately decide what are the rights of man [*quels sont les droits des hommes*].' According to Condorcet's Manuscript Declaration, therefore '[a] declaration of rights,' far from being a document composed by enlightened men and handed down to the populace, 'is an act by which the citizens declare the rights which they should enjoy in society.'⁴¹

III

But what precisely was Condorcet's '*volonté générale*'? One possibility is that he was drawing directly on Jean-Jacques Rousseau's famous concept of the general will as the sovereign power of a state, constituted by the joining together of all the desires of the citizens in a singular 'will'.⁴² Many of the 1789 debates in the new National Assembly drew explicitly on the ideas contained in Rousseau's *Du Contrat social* (1762), and indeed used by deputies to the novel political body to justify its very existence. The draft Declaration produced by Honoré Gabriel Riqueti, the comte de Mirabeau's committee, for example, stated that: 'Every political body receives its existence from a social contract, express or tacit, by which each individual places his person and his faculties in common under the supreme direction of the general will'.⁴³ On 1 August, Jean-Baptiste Crenière, a deputy from Vendôme, explicitly invoked Rousseau's *Du Contrat social* during the debates on the Declaration.⁴⁴ Moreover, Bernard Grofman and Scott L. Feld have argued that Condorcet himself engaged seriously with 'the fundamental ideas which are at the basis of Rousseau's notion of the general will' over the course of the 1780s,

in particular in his 1785 *Essai sur l'application de l'analyse à la probabilité des décisions rendues à la pluralité des voix*.⁴⁵

However, we should be wary of immediately accepting too close an association between the Manuscript Declaration's '*volonté générale*' and Rousseau. Firstly, as scholars such as Patrick Riley have shown, the concept had a long history in French moral and political prior to *Du Contrat social*. The 'general will', as applied by philosophers such as Pierre Bayle (1647-1706) and Nicolas Malebranche (1638-1715) was 'the chief characteristic of a nature ruled by simple, constant, uniform general laws regularly producing all *effets particuliers*'.⁴⁶ What is more, Stephanie Frank has recently argued that Revolutionary thinkers such as Sieyès were just as likely to be drawing on this older, often religiously-oriented tradition, as on the writings of Rousseau.⁴⁷ Moreover, Condorcet's '*volonté générale*' simply does not sound, at many points, terribly Rousseauian. Although, as Céline Spector has shown, Rousseau did occasionally appeal to a concept of *droit naturel*, he was highly sceptical of the idea that humans could derive any useful ideas of justice or rights from this source.⁴⁸ Instead, as he wrote in *Du Contrat social*, 'the social order is a sacred right, which provides the basis of all others. Yet this right does not come from nature; it is therefore founded on conventions. The problem is to know what these conventions are'.⁴⁹ To agree upon these conventions, whence rights to be enjoyed in society would be derived, Rousseau developed the concept of the general will.

Condorcet, by contrast, was explicit that a universally true system of natural derivative rights that inhered in all individuals existed, whether or not others consented to them.⁵⁰ Rather than asking the people as a whole to *invent* rights, Condorcet was asking them to accurately *judge* what rights men and women *already* had, and how they could best be enjoyed in society. This is made clear when we note that the Condorcet of the Manuscript Declaration was not always entirely committed to the term '*volonté générale*'. At times, he replaced it with '*volonté commune*', or instead used the term '*raison commune*'.⁵¹ Moreover, at points he explicitly

described this entity as *judging* rather than *willing*. One of the ‘powers’ which resides in the ‘common will’ was to ‘determine the general rules, equal for all, according to which the society ought to be governed.’ In doing so, ‘it decides that such a general rule conforms to justice [and] is necessary to the maintenance of the natural rights of the citizens.’ This was not ‘properly speaking, a power,’ as it was thus performing an ‘act of reason and not of the will.’ Condorcet’s ‘common’ will was here adjudicating what was objectively right rather than performing an act of sovereignty. It is only when it took on the role of ‘execut[ing] ... these determinations,’ Condorcet stated, that the general will was truly acting as a will, because only in this case ‘does [it] ... want, ... ordain.’⁵² This is then, a highly modified concept of a ‘general will’ – one that tried to *combine* reason and will.

So how should we interpret Condorcet’s use of ‘*volonté générale*’ or ‘*commune*’? I suggest that, while attempting to harness the popularity and legitimating function of Rousseauian language in the political culture of France of this period, he was also drawing on an entirely distinct language, which, although widely used in revolutionary discourse in both France and the new United States, has never hitherto been associated with the marquis. This discourse would allow him to both restore legitimacy to natural right and their derivative rights, which were being undermined by the rancorous debates in the National Assembly; and bypass the deadlock over the proposed Declaration that had apparently stymied the deputies at Versailles. This discourse was the language of common sense.

The discourse of ‘*bon sens*’ or ‘*sens commun*’, as Sophia Rosenfeld has shown, was laced with epistemological instability throughout the eighteenth century, particularly in the Francophone world. These two terms were used more or less interchangeably in France by the end of the seventeenth century. They were broadly seen as a positive subset of the larger category of ‘reason’: common sense was a type of intuition that depended solely on the experiences and observations common to all people and everyday life.⁵³ Every human—even

women—possessed it. Similarly to the contemporary Scottish Common Sense philosophers James Beattie and Thomas Reid, '*le bon sens*' was seen by many mid-eighteenth-century French philosophers as the basic foundation for shared knowledge, and the key to living successfully with others.⁵⁴

Yet there was an ambiguity at the heart of this idea of common sense, which can be identified as far back as the writings of Descartes. In his 1637 *Discourse on Method*, Descartes defined the concept of '*bons sens*' to the 'power of judging rightly' which was common to all humans, cultivated or not. However, he simultaneously declared that even those beliefs and social practices which meet with universal consent often turned out to be little more than 'prejudices'.⁵⁵ Even those things which the majority of humans judged to be correct could be shown to be mistaken. The reliability of '*le bon sens*' as a method of creating a generally accepted and secure realm of truth was thus called into question. Seventeenth-century sceptics such as François de la Mothe le Vayer seized on this ambiguity in an attempt to destroy the idea that any consensual knowledge could ever be found.⁵⁶ Gradually a parallel, alternative, and radical conception of common sense emerged: a polemical way of challenging authority and legitimising dissent from widely-accepted truths.⁵⁷ Claude Helvétius, for example, in his 1773 *Of Man*, argued that while clerics depended on a false appeal to good sense to prop up religion, true '*bon sens*' must always be antagonistic to organised religion.⁵⁸ The use of common sense as an anti-establishment tool reached its high-water mark in the 1770s, with publications from the Baron d'Holbach, Voltaire and Helvétius advocating for the notion that what was in fact 'common sense' depended entirely on one's perspective. As Rosenfeld has demonstrated, the fact that d'Holbach's antagonists also called upon the language of common sense in an attempt to dispute his controversial writings 'permanently destabilised, on the eve of the Age of Revolutions, any set notion of what good sense meant or who possessed it.'⁵⁹

The idea that declaredly ‘obvious’ things could, in reality, be the subject of dispute was thus well-established by the 1780s, and the arguments that splintered the National Assembly in August 1789 over the Declaration of Rights advertised this fact to the whole of France. The preamble to the Declaration of Rights that was eventually adopted by the National Assembly on 26 August 1789, drafted by Mirabeau recalled the physiocratic belief that there was a clear and obvious natural order that underpinned society. It famously stated that the document was a ‘solemn declaration [of] the natural, inalienable, and sacred rights of man’, and was based on ‘*simple and indisputable principles*.’⁶⁰ Yet the debates that had occupied National Assembly over this document through August belied this complacent statement. There had been, in fact, several dozen draft Declarations in circulation. Moreover, each Declaration contained substantially different sets of rights. To take just one example among many. The draft presented by the Sixth Bureau on 22 August originally contained three articles (16-18) concerning religion, and expressed a conservative perspective. These articles sparked a great degree of disagreement, primarily over whether the *manifestation* of any religious belief should be protected, not just the belief itself. Acrimony existed even within families. The comte de Mirabeau argued that the manifestation of religious belief should be protected, to prevent a single cult being established, while his younger brother, the conservative André Boniface Louis, vicomte de Mirabeau, maintained that it should not. The vicomte feared that in so doing, too many opposing cults would be established. In the end, the religious language of the Sixth Bureau draft was almost entirely pared away, and manifestation of religion was only protected if it did not disturb public order.⁶¹ Even amongst highly enlightened men, it seemed, the inalienable rights of men were far from ‘indisputable’.

Given that, at least according to the physiocrats, part of the legitimacy of *droit naturel* rested on the fact that it *was* so obvious, such debates risked undermining its authority, and the validity of the derivative rights with which the Assembly hoped to fill a declaration. Indeed,

we see Condorcet coming face to face with this issue in his Manuscript Declaration. '[T]he most evident of these [derivative] rights were unknown in the greatest part of the globe', he wrote. Yet how could an *evident* right—indeed, the *most* evident—be unknown? He attempts to insist that 'the general forgetfulness of one of the rights of humanity does not make it any less real', but the assertion rings slightly hollow.⁶² Doesn't the fact that it *should* be evident, but had been forgotten, undermine the authority and legitimacy provided by its supposed self-evidence? He had, it will be recalled, dismissed any such concern in the *Vie de Turgot* with reassurances that enlightened men, at least, would always recognise the 'truth' of rights.⁶³ The deputies' behaviour seemed to give the lie to this statement. As a contemporary newspaper commenting on the August debates in the National Assembly reported disapprovingly, 'the most marked disorder dominated ... the cry of nature, the voice of reason, the rights of man were scorned', leading to the motion in question being 'amended, sub-amended, divided, convoluted, twisted in a hundred different ways.'⁶⁴

While these debates raged, and no Declaration could be agreed upon, Condorcet watched in horror as France grew increasingly unstable. David Williams has argued that Condorcet's 'deep fear of rapid upheaval, anarchy and mob violence' defined much of his revolutionary activity, and particularly his reaction to events following May 1789. Popular uprising seemed to threaten at every turn, from the storming of the Bastille on 14 July, the 'Peasant Revolution' of 20 July-4 August and the 'Municipal Revolution', which culminated in the 4 August decrees.⁶⁵ I suggest that it was likely during this period of intense upheaval and uncertainty that Condorcet was drafting at least significant elements of his Manuscript Declaration. An indication to his state of mind in this period can be found in his *Réflexions sur ce qui a été fait*, also written in early August. There, he declared that 'the Assembly has worked until now in the middle of anarchy, and it is necessary [...] to try to destroy this anarchy'. The

only means to do so, according to Condorcet in the *Réflexions*, was to promulgate a Declaration of Rights as quickly as possible.⁶⁶

But how to do so when the Assembly was apparently deadlocked, and self-evident principles were becoming less self-evident and thus more unconvincing by the day? It is here that the double-edged nature of ‘common sense’ comes into play. As Rosenfeld has shown, the very epistemological uncertainty that surrounded ‘common sense’ at the end of the eighteenth-century could turn it into a potent weapon. Famously, Thomas Paine, in his 1776 pamphlet of that name, used ‘common sense’ as both a description—‘a basic, instinctive, immediate, and irrefutable form of perception and judgement natural to all humans’—and a normative proposition – what in fact had been forgotten but *should* be known to everyone.⁶⁷

Paine had visited Paris in 1787, and had associated closely with friends of Condorcet such as Thomas Jefferson and Lafayette. It is unclear whether Condorcet and Paine encountered each other directly: Jean-Paul Lagrave claims that they did meet in 1787, although surviving correspondence does not confirm this fact.⁶⁸ Nevertheless, Condorcet moved in the same circles, was extremely interested in texts coming out of the new United States—as evidenced by his own works of this period purporting to be by a citizen of that country—and was almost certainly familiar with Paine’s writing if not with the man himself in this period.⁶⁹ Indeed, Lafayette, a close confidante of Condorcet until their break in 1791, affectionately referred to Paine in 1787 as ‘Common Sense’.⁷⁰ Although I am not attempting to draw a direct line of influence between Paine and Condorcet’s Manuscript Declaration, it seems likely that Condorcet would have at least been familiar with the discourse of ‘common sense’, and its potential polemical uses.

It is plausible to suggest, therefore, that, similarly to Paine, Condorcet was using the concept of a *volonté commune/générale* in a twofold manner. Firstly, as a means to by-pass the enlightened men in whom he had hitherto put his faith to enumerate derivative rights from

natural rights, but who had descended into bickering. Instead, he would appeal to the ‘common reason’ of the citizenry to judge what *should* be obvious to all, but that had become obscure. In an exercise in early-modern crowd-sourcing, he would ask the people to fill the Declaration the National Assembly seemed unable to complete. Secondly, in doing so, he would restore legitimacy to a set of truths—in this case, derivative rights—that *ought* to be commonly accepted but hitherto had not been. They had been forgotten, but these rights would be demonstrated nevertheless to be ‘common sense’. He would thus return to derivative rights their authority; and to France, peace and stability.

This may seem, initially, a shocking interpretation, given what has come before about Condorcet’s distrust of the enlightenment of the population, and indeed his expressed fear in his *Réflexions sur ce qui a été fait* of ‘the false conclusions’ that some of the populace had drawn about the rights due to them. But it is here that the importance of ‘common sense’ returns. To recognise a common sensical truth does not require any degree of enlightenment – indeed, François Fénelon had suggested in 1713 that it could be done by a four-year-old child.⁷¹ It was its *generality*, not its level of enlightenment, that gave ‘common sense’ its potency. Asking the people *as a whole* to access truths common to all humans would lead to a better result than simply asking a segment of the populace. The problem for Condorcet, as he continued in his *Réflexions*, was that in the summer of 1789 ‘each town’ wanted to ‘make laws for itself’.⁷² The populace had descended into particularity. If it could be recalled to generality it might indeed be able to access the truth of natural rights and their derivatives.

It must be stressed that Condorcet did not go into detail as to precisely how this mechanism would work in practice. He did not, for example, expand on the idea of the representation of the ‘general will’, despite the fact that he remarked that the ‘national will’ which produces ‘general rules’ would act through ‘a body of representatives.’⁷³ This question was, of course, central to the debates of the National Assembly of this period, as well as the

thought of Condorcet's interlocutors, notably Sieyès.⁷⁴ It is worth underlining again that the manuscript under consideration is an unfinished text, and thus cannot and should not be seen as revealing a fully thought-out programme. The reasons why it remained unfinished are unknown. One likely possibility is that the immediate spur for Condorcet's development of the concept of the 'general' or 'common' will—the National Assembly's inability to produce a Declaration of Rights—was removed after the promulgation of the *Déclaration des droits des hommes* on August 26.

However, it is also likely that Condorcet was unhappy with the implications of the theory in its fullest extent. As Rosenfeld has suggested, the ultimate result of Paine's appeal to common sense was to introduce 'a modern kind of populism into the debate about the future of the American colonies.'⁷⁵ This was certainly not Condorcet's aim. He remained sceptical of the state of public enlightenment, and, as we have seen, deeply concerned about mob rule. Indeed, this tension can be found in the Manuscript Declaration itself. There, while playing with the idea of a 'common will' to discern derivative rights, Condorcet explicitly dismissed the 'vaguer and more flexible principle' of 'public opinion' as a method by which to decide rights. 'Vulgar beliefs,' he argued, were determined 'almost everywhere' by 'chance,' which was not an adequate 'judge of truth and of right.'⁷⁶

Yet, although the Manuscript Declaration itself remained unfinished, and nowhere in his later published works does Condorcet refer to the need for a general will to discern the derivative rights of humans in society, these notes nevertheless reveal an important shift in Condorcet's thinking on this subject. It is to the traces of a new interest in the role of the people in judging rights in works that Condorcet *did* publish in 1789 that we will turn in the final section.

IV

The ‘general will’ outlined in Condorcet’s Manuscript Declaration seems to foreshadow that which Nadia Urbinati has argued plays a central role in his 1793 Constitutional Project, in which ‘Condorcet retained Rousseau’s identification of sovereignty with the law, but grounded the law in a “general will” that was in fact an “idea of reason” and the expression of judgements.’⁷⁷ Yannick Bosc has, moreover, noted the discomfort displayed in the 1793 Constitution with natural rights terminology in general: perhaps an indication of Condorcet’s continued private wrestling with the subject.⁷⁸ This suggests that Condorcet, although failing to complete his manuscript, did not discard all the ideas he developed therein. And indeed, traces of a shift towards a consideration of a ‘general will’ can be identified in Condorcet’s two published Declarations of 1789.

Condorcet’s February Declaration was largely consistent with his pre-1789 texts. He listed a relatively straight-forward set of fundamental rights: ‘[t]he rights of man can be reduced to: personal security; personal liberty; security of property; liberty of property; equality.’ From here, he went on to expound more detailed rights that can be deduced from the principle four. Moreover, he provided an uncompromising statement concerning the inalienability of these rights. ‘[N]o authority established in society and by society,’ he declared, ‘can legitimately, either by any act *or by a general law consented to by the plurality*, violate or restrain any of these rights, or any of their *evident* consequences.’⁷⁹ This resonates with the argument expressed in *Vie de Turgot*. Derivative rights to be enjoyed in society are the obvious consequences of fundamental natural rights. These are to be decided without any contribution by the opinion of the majority.

We can identify far greater similarities between the later Anglo-Declaration and the Manuscript Declaration, both in terms of structure and argument. Like the Manuscript Declaration, the Anglo-Declaration is a far longer exploration of rights. Crucially, unlike in the

February Declaration, there are hints that the will of the people would be allowed to play a role in discerning what they believed their derivative rights to be. Condorcet argued that there are circumstances in which a plurality of citizens could change the rights enjoyed by members of the society. Once every ten years, ‘a small committee, [would be] nominated by the generality of the citizens ... to review [...] the Declaration of Rights.’⁸⁰ Various scholars have commented on Condorcet’s insistence that the constitution should not be perpetual, but the logical implications of this for his view on the role of the people in deciding what they think their rights to be have not been fully teased out.⁸¹ Far from the certainty of the February Declaration, in the Anglo-Declaration Condorcet stated that ‘a plurality of twenty-nine out of thirty’ delegates to a General Convention, themselves ‘nominated by the generality of the citizens’ would be able to ‘limit or diminish the rights expressed,’ while ‘a simple plurality’ would be allowed to ‘add articles to the Declaration or to extend the rights outlined in it.’⁸²

In practice, the group of citizens who would thus be able to contribute rights to a Declaration was small. Not only did it leave the ultimate decision in the hands of only twenty-nine individuals, but these delegates would not even have been elected by the whole of society. For Condorcet in 1789, ‘citizens’ did not equal ‘all members of society.’ In the Anglo-Declaration he limits the right to vote to property-owners.⁸³ This is a far cry from the language of ‘general/common will’ found in the Manuscript Declaration. Moreover, there are suggestions found in other texts that Condorcet had returned, by the end of 1789, to envisaging the *initial* Declaration as being drafted through a process by which ‘enlightened men’ would produce ‘separate models’ which would first be ‘compared’ and only then submitted to a ‘great assembly.’⁸⁴ Nevertheless, Condorcet established a mechanism in the Anglo-Declaration by which a section of the people could vote, every ten years, to change the rights that were to be enjoyed by society in its entirety. This stands in contrast with the view he expressed in *Vie de*

Turgot, where it was enough for the people to give their ‘tacit’ agreement to the rights deduced on their behalf by an enlightened legislator.

This was, clearly, a subtle shift, and the first hints of it can be identified even before 1789. In ‘*Lettres d’un bourgeois*,’ Condorcet argued that a vote of over two thirds or three quarters of the citizens could allow the legislative authority to ‘violate’ rights, hinting at a small participatory role for the people in making judgements over what they thought their rights to be. Unlike in the Anglo-Declaration, however, Condorcet envisaged this as an extraordinary measure. He quickly clarified, furthermore, that such a mechanism would very rarely be needed, as ‘the most important restrictions ... would not have escaped the first declaration of rights.’⁸⁵ This original document would already have been composed without the collaboration of the populace.

Faint traces of Condorcet’s preoccupation with the use of a general will to deduce derivative rights from fundamental natural rights, on full display in his Manuscript Declaration, can thus be identified in his published Anglo-Declaration. Both differ from the earlier February Declaration. Given the uncertainties over dating, we do not know if the Anglo-Declaration marks a midpoint between the two, and demonstrates the development of Condorcet’s thought over 1789, or whether, published last, Condorcet rejected those more radical—and potentially dangerously populist—ideas from the Manuscript Declaration that he had considered in the heat and urgency of the summer debates.

Condorcet remained consistent in the belief that a Declaration of Rights was an essential first step in the construction of a new political society.⁸⁶ Moreover, he was committed to the idea that it should be filled with a system of derivative rights that was not arbitrary or conventional, but ‘true,’ in the sense that these rights were deduced from natural law and were universally just and applicable. However, for a period in 1789, leaving this task to the reason of small group of enlightened men, as he had proposed to do in the 1780s, seemed no longer

practical. Those in the National Assembly who had taken on the responsibility of drawing up a Declaration were, through their rancorous disagreements, undermining one of the sources of these rights' authority: their self-evidence. Instead, Condorcet turned to an adapted idea of 'common will': combining the legitimating discourses of 'general will' and 'common sense'. Although he discarded much of the conceptual framework in his published texts, we can nevertheless see a shift in the direction of increased popular involvement in the discerning of derivative rights.

V

This article has argued that, over the course of 1789, Condorcet began to drift away from the physiocratic position about the 'evident' nature of the derivative rights to be deduced from natural law, which he had held during the 1780s, and which was exemplified in 1789 by the preamble to the *Déclarations des droits de l'homme* that was eventually promulgated at the end of August. It was to a modified version of a general will that Condorcet turned. He did not invoke a Rousseauian sovereign people to will rights into existence, but he did envisage a crucial role for a 'general' or 'common will,' made up of the plurality of the nation, to judge, using their common sense, what it believed the consequences of fundamental natural rights were, and thus what rights should be enshrined in a Declaration of Rights.

This theory, in its fullest extent, represents something of a 'road not taken' for Condorcet's thought. He did not finish the treatise that contained it. It seems likely that he was unhappy with the result, and that as the immediate urgency of August 1789 receded, he moved on to the next pressing question. The idea of a general will filling a declaration of rights is not to be found elsewhere in his published works. But the Manuscript Declaration of 1789 nonetheless marks an important milestone in Condorcet's thought. Here, pushed by the real exigencies of politics, he began to create space in his thought for the judgement of the people,

and in so doing, prepare crucial ground for his future Revolutionary career. Recovering this strand of Condorcet's thought thus represents an important endeavour. It sheds light on the course of Condorcet's intellectual development, and suggests the timing of, and the reason for, his turn, identified by other scholars, in the direction of more 'democratic' thinking.⁸⁷

The glimmerings of a democratic theory that this article has identified emerging in 1789 was thus not born from a full-throated celebration of 'the people,' but rather the immediate demands of Condorcet's political context. Yet this is no reason to dismiss its analytic usefulness to us today. Rosenfeld has recently argued that one of the most precious inheritances from the eighteenth century for our modern political systems is that 'no individual, sector, or institution can hold a monopoly ... on determining what counts as truth in public life.'⁸⁸ It was the realisation that the most educated in society were not the only ones able, or even necessarily the best equipped to exercise their judgement, I have argued, that caused Condorcet to entertain a more expanded role for the populace in deliberating on fundamental political questions.

Yet there seems to be a recent trend running counter to this instinct: a desire to institute a so-called 'epistocracy', a 'rule by the people who know best'.⁸⁹ As David Runciman has explained the phenomenon, '[d]emocracies do seem to be doing some fairly stupid things at present ... In the age of Trump and Modi, climate change and nuclear weapons, epistocracy has teeth again.'⁹⁰ This tendency is perhaps best represented by Jason Brennan, and his 2016 book *Against Democracy*, in which he insists that many political questions are simply too complex for most voters to comprehend.⁹¹

Condorcet's thought provides us with an interesting counterpoint to this line of thinking, from a perhaps unexpected source. His version of democracy was far from populist or triumphalist: he was not claiming to have 'had enough of experts.'⁹² He was devoted to the discovery of objective Truth. And yet, his 1789 concept of the general will suggests that in

some political situations, truth is best—and perhaps only—grasped if the people as a whole are involved in the process.

¹ ‘Procès-Verbal d’arrestation de Pierre Simon [Condorcet] (27 March 1794)’, in J.-F. Robinet, *Condorcet: sa vie, son oeuvre (1743-1794)* (Paris, 1893), 358–60.

² The official cause of death was ‘apoplexy of the blood’, but rumours of suicide circulated among contemporaries, and continue to be hinted at by historians. See ‘Procès-Verbal de la levée du corps’, in Robinet, *Condorcet*, 361; W. von Humboldt, *Gesammelte Schriften. Band 14 Band 1. 1788–1798*, ed. A. Leitzmann (Berlin and Boston, 2015), 529–30; E. Badinter and R. Badinter, *Condorcet: un intellectuel en politique (1743-1794)* (Paris, 2014), Kindle, loc. 13452.

³ K. M. Baker, *Condorcet, from Natural Philosophy to Social Mathematics* (Chicago, 1975), 386.

⁴ N. Urbinati, ‘Condorcet’s democratic theory of representative government’, *Euro J of Pol Theory*, 3 (2004), 56.

⁵ Ibid.

⁶ Baker, *Condorcet*, 384–85.

⁷ M.-J.- A.-N. Caritat de Condorcet, ‘Pièces relatives à un ouvrage sur la déclaration des droits’ (n.d.), Ms 859, 60-114, B[ibliothèque de l’]I[nstitut]. This is a somewhat heterogenous text consisting of a mixture of sparse notes and almost fully-completed chapters composed in Condorcet’s hand. As will be discussed, words, sentences and sometimes full paragraphs have been crossed through by Condorcet. It is clear that this version at least was intended as a rough draft, and not the finished product. Much of the collection of the Institut archives have recently been digitised, and this manuscript can be found online <https://minerva.bibliotheque-institutdefrance.fr/viewer/1387/?return=1&css-name=include&height_top=50&offset=2#page=52&viewer=picture&o=info&n=0&q=>.

⁸ A. Dicus, ‘Terror and self-evidence: Robespierre and the general will’, *Euro Romantic R*, 31, (2020): 202.

⁹ D. Edelstein, *On the Spirit of Rights* (Chicago, 2018), 82.

¹⁰ Condorcet, ‘De l’influence de la révolution d’Amérique sur l’Europe’, in *Oeuvres de Condorcet*, 12 vols, ed. A. Condorcet O’Connor and F. Arago, xiii (Paris, 1847), 5–6. All future references to OC will be to this edition. I am grateful to the anonymous reader of this article who pointed out the importance of distinguishing between the right ‘of’ property and the right ‘to’ property in Condorcet’s work. Condorcet generally refers to the former, meaning that once gained, owners could do what they wanted with their property (within limits). This is in contrast

to the French Revolutionary ‘agrarian law’ discourse, which placed an obligation on society or the state to ensure that individuals have enough land to meet their subsistence needs.

¹¹ Condorcet, *Vie de Monsieur Turgot* (London, 1786), 221.

¹² Edelstein, *On the Spirit of Rights*, 76.

¹³ Condorcet, ‘Lettres d’un bourgeois de New-Heaven à un citoyen de Virginie, sur l’inutilité de partager le pouvoir législatif entre plusieurs corps’, in *OC*, ix, 14; 28; 14; 57.

¹⁴ J.-C. Perrot, ‘Condorcet: de l’économie politique aux sciences de la société’, *Revue de Synthèse* IV, no. 1 (1988): 30. Emphasis mine.

¹⁵ Condorcet was rarely explicit about whether or not he differentiated ‘natural law’ from ‘natural rights’. It appears that he did not recognise the difference, explored by Richard Tuck, between natural *rights* as a subjective right (i.e. an individual holds a *right* to something), and natural law as objectively right (i.e. it is *right* that something should be the case). R. Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge, 1979). Rather, as Edelstein has pointed out, the two were not necessarily seen as inconsistent in the eighteenth century: thinkers could believe that someone has a subjective right to something because it is objectively right that they have that right. See Edelstein, *On the Spirit of Rights*, 11. It appears that this was the position held by Condorcet. ‘*Droit naturel*’ has therefore been translated interchangeably as ‘natural law’ or ‘natural right’ according to context.

¹⁶ Condorcet, *Vie de Turgot*, 52; 53.

¹⁷ Condorcet, *Vie de Turgot*, 145; 55; 280. Emphasis mine.

¹⁸ Condorcet, *Vie de Turgot*, 256; 226; 264.

¹⁹ Relying on human reason rather than utilitarianism or precedent set by previous laws to deduce derivative rights also allowed Condorcet to argue that women should be seen as possessing the same fundamental rights as men, even though ‘the rights of half of the human race [...] have been neglected by all legislators’. See Condorcet, ‘Lettres d’un bourgeois de New-Heaven’, 20; Condorcet developed this argument further in his 1790 essay Condorcet, ‘Sur l’admission des femmes au droit de cité’, in *OC*, x, 119–30.

²⁰ Condorcet, ‘Essai sur la constitution et les fonctions des assemblées provinciales, où l’on trouve un plan pour la constitution & l’administration de la France’, in *OC*, viii, 655; 659; 658; 656.

²¹ Condorcet, ‘Projet de cahier de la noblesse de Mantes, adopté avec modifications’ (n.d.), Ms. 858, F. 2-19, BI.

²² A. Guillois, *La marquise de Condorcet : sa famille, son salon, ses amis, 1764-1822* (Paris, 1897), 67; K. M. Baker, 'The idea of a Declaration of Rights', in *The French Idea of Freedom: The Old Regime and the Declaration of Rights of 1789*, ed. D. Van Kley (Stanford, 1994), 162;174.

²³ A fourth manuscript declaration exists. See Anon, 'Déclaration des droits (Brouillon)' (n.d.), Ms. 859, F. 44-59, BI. However, David Williams has pointed out that Anne-Marie Chouillet's *Inventaire* disputes the idea that Condorcet was the author, while the manuscript discussed here is certainly in the hand of both Condorcet and his secretary Etienne Cardot. See D. Williams, *Condorcet and Modernity* (Cambridge, 2004), 53, fn. 22.

²⁴ See Baker, 'The Idea of a Declaration of Rights', 174–89.

²⁵ Condorcet, 'Déclaration des droits, traduit de l'anglais, avec l'original a côté', in *OC*, ix, 175–211.

²⁶ I. McLean and F. Hewitt, 'Introduction', in *Condorcet: Foundations of Social Choice and Political Theory* (Cheltenham, 1994), 57.

²⁷ Condorcet, 'Déclaration des droits par M. le Mis de Condorcet', in *La Déclaration des droits de l'homme et du citoyen de 1789*, ed. S. Rials (Paris, 1989), 546–50.

²⁸ *Ibid.*, 546.

²⁹ Y. Bosc, 'Liberté et propriété. Sur l'économie politique et le républicanisme de Condorcet', *Annales Historiques de La Révolution Française* 366 (2011): 63, fn. 40.

³⁰ Condorcet, 'Déclaration des droits par M. le Mis de Condorcet', 547.

³¹ Condorcet, 'Ouvrage sur la Déclaration des droits'; L. Cahen, *Condorcet et La Révolution Française* (Paris, 1904), 179.

³² E. Sieyès, 'Mémoire préliminaire à la constitution, lu le 21 juillet 1789 : exposition des droits de l'homme et du citoyen par Sieyès', in *Archives Parlementaires de la Révolution Française*, vol. 8 (Paris, 1875), 256–61.

³³ Condorcet, 'Ouvrage sur la Déclaration des droits', 81; 82; 65.

³⁴ See above, note 17. Emphasis mine.

³⁵ Condorcet, 'Ouvrage sur la Déclaration des droits', 65. Emphasis mine.

³⁶ Condorcet, 'Ouvrage sur la Déclaration des droits', 84.

³⁷ Perrot, 'Condorcet: de l'économie politique aux sciences de la société', 23.

³⁸ Condorcet, *Vie de Turgot*, 280.

³⁹ Condorcet, 'Réflexions sur ce qui a été fait et sur ce qui reste à faire : lues dans une société d'Amis de la Paix', in *OC*, ix, 446.

⁴⁰ Condorcet, 'Ouvrage sur la Déclaration des droits', 84.

⁴¹ Condorcet, 'Ouvrage sur la Déclaration des droits', 88–89; 92; 85.

⁴² There is, of course, a huge amount of scholarship on this concept. Recent works include C. Spector, *Rousseau* (Medford, MA, 2019); M. Sonenscher, *Jean-Jacques Rousseau: The Division of Labour, the Politics of the Imagination and the Concept of Federal Government* (Leiden, 2020); J. Cohen, *Rousseau: A Free Community of Equals*, Founders of Modern Political and Social Thought (Oxford, 2010).

⁴³ Baker, 'The Idea of a Declaration of Rights', 187.

⁴⁴ F. A. La Rochefoucauld duc de la et al., 'Discussion des préliminaires de la constitution, lors de la séance du 1er aout 1789', in *Archives Parlementaires de la Révolution Française*, vol. 8 (Paris, 1875), 318–19.

⁴⁵ B. Grofman and S. L. Feld, 'La volonté générale de Rousseau, une perspective Condorcétienne', in *Condorcet: mathématicien, économiste, philosophe, homme politique*, ed. P. Crépel and C. Gilain (Paris, 1989), 102–3; cf McLean and Hewitt, 'Introduction', 37–38.

⁴⁶ P. Riley, *The General Will before Rousseau* (Princeton, 1986), 257.

⁴⁷ S. Frank, 'The General Will beyond Rousseau: Sieyès' theological arguments for the sovereignty of the revolutionary National Assembly', *Hist Eur Ideas* 37, no. 3 (September 2011): 337–43.

⁴⁸ C. Spector, 'De Diderot à Rousseau: la double crise du droit naturel', in *Du Contrat Social, ou essai sur la forme de la république (Manuscrit de Genève)*, by J.-J. Rousseau, ed. B. Bachofen, B. Bernardi, and G. Olivo (Paris, 2012), 141–53.

⁴⁹ J.-J. Rousseau, 'Of the Social Contract', in *The Social Contract and Other Later Political Writings*, ed. and trans. V. Gourevitch (Cambridge, 1997), 41.

⁵⁰ Condorcet, 'Ouvrage sur la Déclaration des droits', 82.

⁵¹ Condorcet, 'Ouvrage sur la Déclaration des droits', 84–85.

⁵² Condorcet, 'Ouvrage sur la Déclaration des droits', 62.

⁵³ S. Rosenfeld, *Common Sense: A Political History* (Cambridge M.A., 2014), 91–92.

⁵⁴ *Ibid.*, 88, 93.

⁵⁵ *Ibid.*, 91; 100.

⁵⁶ *Ibid.*, 102.

⁵⁷ *Ibid.*, 13.

⁵⁸ *Ibid.*, 125.

⁵⁹ *Ibid.*, 125–27.

⁶⁰ ‘Déclaration des droits de l’homme et du citoyen de 1789’, accessed 2 September 2020, <<https://www.legifrance.gouv.fr/Droit-francais/Constitution/Declaration-des-Droits-de-l-Homme-et-du-Citoyen-de-1789>>.

⁶¹ K. M. Baker, ‘Writing rights in 1789’ (Voltaire Foundation Besterman Lecture, Oxford, UK, 15 November 2018).

⁶² Condorcet, ‘Ouvrage sur la Déclaration des droits’, 25.

⁶³ Condorcet, *Vie de Turgot*, 280.

⁶⁴ Quoted by Baker, ‘Writing Rights in 1789’.

⁶⁵ Williams, *Condorcet and Modernity*, 250–53.

⁶⁶ Condorcet, ‘Réflexions sur ce qui a été fait’, 447.

⁶⁷ S. Rosenfeld, ‘Tom Paine’s common sense and ours’, *William Mary Q* 65, no. 4 (2008): 641; 651.

⁶⁸ M. Philp, ‘Revolutionaries in Paris: Paine, Jefferson and democracy’, in *Paine and Jefferson in the Age of Revolutions*, ed. S. P. Newman and P. S. Onuf (Charlottesville, 2013), 137–60.

⁶⁹ See, for example, Condorcet, ‘Lettres d’un bourgeois de New-Heaven’.

⁷⁰ Quoted by Philp, ‘Revolutionaries in Paris’, 139.

⁷¹ F. Fénelon, *Traité de l’existence de Dieu [1713]*, ed. J.-L. Dumas (Paris, 1990), 114.

⁷² Condorcet, ‘Réflexions sur ce qui a été fait’, 447.

⁷³ Condorcet, ‘Ouvrage sur la Déclaration des droits’, 64.

⁷⁴ M. Sonenscher, *Before the Deluge: Public Debt, Inequality, and the Intellectual Origins of the French Revolution* (Princeton, 2007), 11–13.

⁷⁵ Rosenfeld, ‘Tom Paine’s common sense and ours’, 646.

⁷⁶ Condorcet, ‘Ouvrage sur la Déclaration des droits’, 103; 102.

⁷⁷ Urbinati, ‘Condorcet’s democratic theory of representative government’, 62.

⁷⁸ Bosc, ‘Liberté et propriété’, 74.

⁷⁹ Condorcet, ‘Déclaration des droits par M. le Mis de Condorcet’, 547; 548. Emphasis mine.

⁸⁰ Condorcet, ‘Déclaration des droits, traduit de l’anglais’, 210.

⁸¹ Philp, ‘Revolutionaries in Paris’, 144.

⁸² Condorcet, ‘Déclaration des droits, traduit de l’anglais’, 211.

⁸³ Condorcet, ‘Déclaration des droits, traduit de l’anglais’, 207.

⁸⁴ Condorcet, 'Idées sur la despotisme, à l'usage de ceux qui prononcent ce mot sans l'entendre', in *OC*, ix, 170-1. This text was written in December 1789.

⁸⁵ Condorcet, 'Lettres d'un bourgeois de New-Heaven', 28–29.

⁸⁶ See above, note 13.

⁸⁷ While noting that the 1793 Constitution was a work of 'mature political thought', Urbinati does not seek to explain how or why Condorcet's philosophy developed in this direction and does not fully consider the potential dissonance of Condorcet's invocation of a general will in 1793 with his earlier 'fundamental deflection of political action from the volitive to the cognitive domain, the shift from the assertion of will to the progressive implementation of reason', which Baker has identified Condorcet as enacting in his 1786 *Vie de Turgot*. Urbinati, 'Condorcet's democratic theory of representative government', 60; K. M. Baker, 'Science and politics at the end of the Old Regime', in *Inventing the French Revolution* (Cambridge, 1990), 164.

⁸⁸ S. Rosenfeld, *Democracy and Truth: A Short History* (Philadelphia, 2019), 26.

⁸⁹ D. Runciman, *How Democracy Ends*, online (London, 2018), Loc. 130.

⁹⁰ *Ibid.*, 130.

⁹¹ J. Brennan, *Against Democracy* (Princeton, 2016).

⁹² H. Mance, 'Britain has had enough of experts, says Gove', *Financial Times*, 3 June 2016, online edition, <<https://www.ft.com/content/3be49734-29cb-11e6-83e4-abc22d5d108c>>.