Three Questions on Political Representation

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What is political representation?
It is the gist of democratic state theory. A democratic state is premised on the concept of the people, yet this 'people' must be an abstract one to make theoretical sense and can only exist in reality through political representation. Meanwhile, the existence of the people's representative can only be ascertained by its calling of procuring public order by making and suspending law.

Who is a representative?
The parliament, the monarch or 'the concrete crowd' may each proclaim to be (the representative of) the people and procure public order in their own ways. In normal times of liberal democracies, the struggle for representation is merely latent and the parliament is the closest to the representative, while the concrete crowd is withheld by the institution of liberal democracy.

How should the representative act?
This is the classic debate: whether the representative should act according to either the represented's expressed wishes or its own understanding of the best action to pursue. The dichotomy's essence is one of the law as authority and as verity. Yet the conclusion drawn from either pole is that the representative should act publicly: it should not consider the wishes or interests of fractions lesser than the people. This notion is applicable not only to the parliament but also to the monarch in its office and the concrete crowd as citizens, otherwise they lose their representative quality. The critical subtext of this essay is a polemic against the vulgar notion that the supreme legitimacy in democracies belongs to the concrete crowd; the concrete crowd is at most a representative, which enjoys no primacy and it wrongly claims directness.

Nowadays almost all countries proclaim to have representatives, for almost all countries proclaim to be democratic. Political representation links the people with the state and legitimises the latter's coerciveness and the state's legitimacy is embodied and concretised by the representative's acts of producing the law. The concept of representation itself infers legitimisation and thus by inspecting the normative constraints on the representative's acts, it is to ascertain when and whether this legitimation is present. But I must primarily address a question before considering the representative's acts: *what is representation?* One may begin from its literal meaning: to re-present, or to make present again of something absent (Pitkin 1967, 3, 8-9). Yet this barely helps. The term 'representation' has been used so commonly in various contexts, it is too easy either to employ an oversimplified behavioural formula of 'A represents B if A does x and B does y'[1] or to deem some other concepts (e.g. trusteeship, agency or commission) as representation. While the former's problem is to treat the concept of political representation too superficially and thinly,[2] the latter suffers the danger of talking past each other. It is difficult to reach a true consensus if one talks about trusteeship, while another commission.

In this essay, I aim to address the primary question of *what is representation* by pointing out that political representation cannot be fully understood without recognising its role within the concept of a democratic state. Its status as an inevitable part of democratic state theory is my starting point for answering the second question: *who is a representative?* Then, I turn to the final question: *how should the representative act?* These are the three questions on political representation.

Yet, besides scholarly interest, what is the significance of the three questions? That is, in what particular light should this essay be read? While I propose a general theory of political

1 For example, Pettit (2010, 426) defined representation as such: A represents B iff A, with B's authorisation, purports to speak or act for B.

2 Where the concept of political representative is defined by a formula of representative's behaviour, scenarios beyond the context of public affairs and the state may be problematically included, and the concept's uniqueness may be overlooked. For example, Pettit (2010, 427) regarded proxies in committees as an illustration of representation.

representation, this is at the same time a polemic against the vulgar (in the original sense of the word) notion that the supreme legitimacy in a democracy belongs to, as termed in this essay, 'the concrete crowd', i.e. the multitude that materially exists in either an election, a plebiscite or simply the streets. This crowd often looks too much like the people itself, and the people does theoretically and literally have the supreme legitimacy under the doctrine of democracy. Thus, if one chooses not to defer to the crowd, he may more easily condemn the crowd's demands as being ludicrous or vile; yet the issue of legitimacy would ostensibly fidget him. However, the flaw in this fallacy is precisely that, while the concrete crowd resembles the people, it is not the people itself. Instead, as I argue, the concrete crowd at most represents the people, just as its parliamentarian opponent proclaims to do. Therefore, not only does the crowd not enjoy a superior legitimacy derived from its wrongly assumed primacy or directness, it faces the same normative constraints on its acts due to its representative quality. The purpose here is to theoretically withhold the concrete crowd and defuse the latent danger it incurs in democracies.

In Part I, I argue that representation is an inevitable part of a democratic state theory: a democratic state is premised on the concept of the people and this people must be an abstract one. This abstract people requires representation to exist in reality, while the existence of the abstract people's representative can only be ascertained by its calling of procuring public order by making and suspending law. In Part II, I argue that there are three common candidates for the representative: the parliament, the monarch and, often mistaken for the people itself, 'the concrete crowd'. In normal times of a liberal democracy, the parliament is still the closest to the representative. In Part III, I argue that the essence of the classic debate concerning how the representative should act is, as the representative's calling infers, the dichotomy of the law as authority and as verity. While fundamentally the notion of the law as authority subsumes the law as verity, both poles of the dichotomy indicate that the representative should act publicly: it should not consider the wishes or interests of individuals or fractions that are lesser than the people. In Part IV, I conclude.

I. What Is Representation?

An important notion of political representation is that it concerns public affairs and the state, which is the source and apparatus of legitimate coercion (Weber 1946, 3-4). It is hence distinguished from some private 'representations'—if they can be termed so—that concern individuals in their private capacities (e.g. 'legal representation' or 'business representation'). However, the connection between representation and the state is often simply explained by seeing the former as an instrument of expediency; while the state expands and the population increases, having a congregation of all citizens to decide on every public affair is impractical. Thus, 'a substitute for the meeting of the citizens in person' is needed (Hamilton, Madison and Jay 2003, no 52). In order to gather the citizens' opinions, representation is ostensibly required as a necessary measure—a lesser form of democracy. This perspective of indirect democracy implies that representation is somehow inferior in legitimacy, as a wide gap lies between the citizens, who are primary, authoritative and 'majestic',[3] and the representative, who is secondary, instrumental and ready to be overpowered and disposed of if the citizens intend so.

Yet this is not genuinely representation but only something lesser, as representation plays a more important role in state theory, a theory answering Rousseau's (1973, Book I) fundamental enquiry: man is born free and everywhere he is in chains. What can make it legitimate? A democratic state theory is an answer to this inquiry by invoking the dictum that the people should rule itself, i.e. popular sovereignty; the legitimisation of the state's coerciveness towards the people on the basis of the people's own authority. While Laclau (2005, 169) rightly noted that the concept of the people is the *sine qua non* of democracy, the very notion of 'the people' must first be ascertained. It cannot simply be the mere collective of the majority voters or the current citizens, as they are but multitudes of individuals and fail to achieve the wholeness required by the concept of 'the people'. These arbitrary multitudes of individuals provide no justification as to why other individuals, who are just as free and

3 For example, Cicero (2004, para 105) noted that 'majesty...is identical with the greatness of the Roman people', that is, 'majestas Populi Romani'.

equal, should defer to them. Instead, 'the people' must be understood as one person formed by all members of all time, so that it can form a single will that is superior to its members' wishes (Hobbes 2014, XVI). That is, 'the people' must be an abstract person, but not a concrete crowd. For instance, 'We the People' in the United States Constitution makes no normative sense if it is understood as the concrete voters in 1789; it must be understood as the abstract *Volk* of the United States, which has existed since then until now. Only until the multitudes abandon their natural separateness within and become a unity can the coercion be legitimised as a member deferring to his union's will. There is no clash of wills between the union and the member, only the union's general will correcting the member's mistaken opinion of that will.

The abstract notion of the people brings out the necessity of political representation: the abstract people's will must be concretised to be known and political representation serves exactly this purpose, i.e. to bring the abstract people physically present by a concrete entity. Thus, representation is indeed literal, that is, to *re-present*: the relationship between the represented, i.e. the abstract people, and the representative is not trusteeship (which is proprietary), agency (which is contractual), or commission (which is managerial)- it is existential (Schmitt 2008, 243), i.e. the representative exists as the abstract people. Representation is thereby more than mere authorisation, for deriving authority is only incidental to representation. A representative is hence not an instrument for procedural purposes; it is to exist as something that cannot be physically present by nature, namely the abstract people. The people as the represented is not simply the collective of citizens in one election; it consists of both voters and non-voters, both persons with and without suffrage. It consists of the present generation and the past and future ones, as it is the constant personality of the state. The people is quite the opposite of absent; it is omnipresent, yet exactly because of its wholeness it can never be physically present by itself. It hence exists only through representation and a claim of one being 'the people', 'the nation' or 'the state' is, whether realised by the claimer or not, a shorthand for being *the representative of* the people, the nation, or the state. It follows that representation is public: the represented is the people as a unity, not fractions and their interests, nor anyone's secret wishes. It is the one general will in unity, whose expression becomes the coercive law, which requires representation and this will belongs to the people and hence the state in order to legitimise the latter's coerciveness.

Representation is also juristic: it is the representative's calling to procure public order, which is achieved by making law and, exceptionally, suspending law. This inherent connection between representation, the people and the law was concisely summarised by Sieyès (2003, I): a 'nation' is a body of associates 'made one by virtue of common laws and common representation'.[4] Instinctively, the 'public order' procured by the making and suspension of the law refers to the state's protective function regarding its people's safety to prevent a war of each against all: *salus populi* (Hobbes 2014, XXX). Yet more fundamentally, it is to be understood as the concept of *ordre public*, which is, as succinctly summarised in the Siracusa Principles (UNCHR, 1984), 'the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded', i.e. a society's posited normality. Only by determining or adjudicating these principles can the representative constitute a legal system, as norms can only be applied in normality, that is, a 'homogeneous medium' (Schmitt 2005, 13) provided by *ordre public*. The *ordre public* sense covers the *salus populi* sense. This calling is not a duty arising from contractual, proprietary or managerial relationships. Rather, it is required for ascertaining the representative's existence. The existence of not the law itself but the public order proves that the representative exists. The representative exists by expressing thus through its acts and these expressions are either to make law within the public order or to suspend law to save the public order. There can be no expression and no system of legal norms without the public order, while the public order must be procured by that legal system and, exceptionally, its necessary suspension. This existential calling thus demonstrates a mutual dependency between public order and law: the law requires the public order to be made, while the public order requires law making and suspending to be maintained and it is only through this reciprocal interaction of public order and law one can ascertain the breathes and expressions of the representative.

4 The 'nation' here, as a synonym of the people, is distinguished from its common reference to a shared culture or ethnicity. The gist is the nation's own consciousness of its unity (Schmitt 2008, 261-262).

Therefore political representation is existential, public and juristic. It is not agency, trusteeship or commission. It may be, and apparently has been treated as, analogous to these relationships for descriptive purposes, yet metaphors are no more than metaphors. It is not an implantation of private or procedural relationships to the represented and the representative, but something *sui generis*: representation is the gist of democratic state theory and it is the foundation, rather than the result, of the law.

II. Who Is a Representative?

By asking *who is a representative*, the most pressing question is not *who is the most representative representative* (which is a question that must be answered with reference to each state's constitution and actual situation) but first and foremost *who can possibly be a representative*. Starting from the concept of political representation as the gist of democratic state theory and its juristic nature, when identifying *who is a representative* it is necessary to inspect bodies who make or suspend law, as by that act they are proclaiming themselves as the representative who declares or determines the people's expression. Several bodies can thus be considered as a representative, subject to each state's constitutional structure. Nonetheless, echoing Aristotle's (1999, Book III) classification of constitutions, three possibilities are considered here, namely the parliament, the monarch and 'the concrete crowd'.[5]

First, the parliament is the obvious candidate, considering its legislative power. One should note that while it must be the unitary people that is represented, it must also be the parliament as a whole that can be considered as the representative. Members or committees of the parliament, regardless of how they are elected, are not representatives individually. For the parliament, what is truly expedient is not representation but electoral designs such as geographic constituencies or parties.[6] They bear no significance in state theory, and these designs are not entitled to an independent will that constitutes law—unless they proclaim to be not merely a design but (the representative of) the people itself, which is exactly the case in some states where the party is itself the people's representative and hence its will matters. This is to be distinguished from liberal democracies, where parties are purely electoral designs. And if they are mere designs, as a representative of A District or B Party, the elected himself is no representative but merely a member of it and neither the District nor the Party is visible in the representation between the parliament and the people.

Secondly, the monarch may be a representative. This category is not one of chief executives; rather, it enshrines a historical line of self-proclaimed representatives by the heads of state: the monarch, or the Hobbesian-style sovereign, who is a single person, represents the state's unitary personality. Further, from acknowledging that the United States President's 'authority would be nominally the same with that of the king of Great Britain' (Hamilton, Madison and Jay 2003, no 69) to deeming the Weimar *Reichspräsident* the substitute emperor, the *Ersatzkaiser*, there is no difficulty to observe the heredity of such an office from monarchs to presidents, who both symbolise national unity. The president, on whom the national votes are concentrated, may sometimes be deemed as more representative than the parliament, as observed by Marx (1963, II) in his comparison of the French President and the National Assembly. The monarch's candidacy can be seen in two aspects: on the one hand, he often participates in law making, either by promulgation or veto power (Grant 2006, 326). On the other hand, although often restrained by the parliament, he has the prerogative 'to act according to discretion, for the public good, without the prescription of the law, and sometimes even against it' (Locke 1982, 159-160) or even has the discretion to suspend law and declare a state of exception (Agamben 2005, 11-14). These highly symbolistic powers illustrate the authority, in its authentic sense of 'prestige', derived from the people by representation: the authority is vested only because the monarch represents the people.

Thirdly, which is often neglected, 'the concrete crowd' may be a representative. It refers to a materially existing crowd participating in a national election, plebiscite, or any movement in the name of 'the people' or 'the nation', acting within or without a given institution. The concrete crowd should not be mistaken as the abstract people itself since it can only be a representative of the abstract people. Like the monarch, the concrete crowd becomes

5 This is by no means exhaustive but merely demonstrating the most common candidates. A less usual but not unheard of candidate would be a constituent assembly, which may in reality be either closer to a parliament or to a concrete crowd. However, one may reasonably doubt as to whether any potential candidate, regardless of its name, would find itself utterly different from either of the three common candidates or a mixture of them.

6 Federalism is theoretically too much of a complication to be discussed here, save that it can be roughly understood as a union of multiple centralised states. Here, 'geographic constituencies' refer only to those in a centralised state.

representative through not elections but voluntary actions: self-proclaiming, participating, and acting. The concrete crowd makes and suspends law in a less obvious yet far more fundamental and often radical way. The aforementioned view of indirect democracy, i.e. representation as expediency, is exactly the view of the concrete crowd. For the concrete crowd, in an election of legislators there is only a delegation of legislative power—instead of any genuine representation—between itself and the elected. The ones elected are merely instrumental delegates, while the genuine representation lies between the concrete crowd itself and the abstract people: the concrete crowd calls itself 'the people' or 'the nation', although often not realising this, effectively claiming to be the one true representative of the people. For the concrete crowd who implicitly proclaims to be the genuine representative, the real capacity and the supreme legitimacy of law making and suspending remains within its hands. Within the institution, it exercises this power by acting as electorates to indirectly select committees of delegates or directly interfere through legislative plebiscites;[7] without the institution, it exercises this power by participating in movements to interfere with the law and the law is sometimes suspended in an absolute sense, when the previous legal system is totally abolished.

This important distinction between the abstract people and the concrete crowd is necessary in order to truly grasp the dispute between Burke and Rousseau, i.e. the dispute between parliamentarianism and participatory democracy. Both theories can be understood under the same framework of political representation, under which a concrete entity represents the represented, i.e. the abstract people; the only issue in dispute is exactly *who is the representative*. On the one hand, a genuine theory of parliamentarianism, i.e. the parliament and the parliament alone represents the abstract people, rightly points out that the concrete crowd is not necessarily involved in political representation. Burke (1999, 11-12) rightly noted that, *if* the parliament is the representative of the one nation, then the concrete crowd, i.e. the constituents, is out of the picture of political representation. He thus distinguished a member of parliament from a member of Bristol and rightly rejected the notion of the latter. On the other hand, a theory of participatory democracy, i.e. the concrete crowd, brings the abstract people present by being the true representative of the people. This indicates that genuine political representation is between the abstract people and the concrete crowd, while the parliament is out of the picture. As noted above, it follows that the relationship between the concrete crowd and the parliament is then something other than representation, namely mere delegation. This is exactly how Rousseau's (1973, Book III) critique of 'representation' should be understood. He argued that 'the people', which he actually meant the concrete 'populace', could not be represented by the parliament. This is correct, as both entities are concrete and need no political representation. The gist is where he noted that 'the people's deputies, therefore, cannot be its representatives: they are merely agents'. This aptly points out where genuine political representation does *not* lie and is also the true antithesis of participatory democracy on the issue of political representation: the parliament's representativeness, rather than the concept of political representation itself.

Thus, it can be seen that under the same structure of political representation the critical difference between Burke and Rousseau is who represents the abstract people and who is out of the picture. Parliamentarianism contends the parliament in the former and the concrete crowd in the latter, while participatory democracy contends the opposite. Such a dispute reveals the essence of the relationship between candidates of the representative: it is not one of competition (where the issue is who is the *better* one) but of struggle (where the issue is who is the *legitimate* one) This is an important distinction rightly identified by Schumpeter (2003, 271-272) despite his unwise dismissal of the latter.[8] Regardless of how the concrete crowd, or any other candidate, insists on itself as the one true representative—or rather exactly because of the insistence—the struggle for representation among them is constantly potential. Instances include clashes between parliaments and kings, or congresses and presidents, on the issue of who stands for the state and whenever a crowd becomes impatient with the institution and decides to interfere. The thread of these incidents is every belligerent's attempt to claim that *l'état c'est moi*, that it is (the representative of) the state and to accuse the others of imposture. The ultimate test of the representative, as Schmitt (2005, 5) contended on the

7 Thus, the understanding of legislative plebiscites being an instrument of 'direct democracy' is problematic, as the concept of 'direct democracy' itself requires reconsideration: the voters in these plebiscites are themselves representative and no more 'direct' than the parliament. 'Direct democracy' is no more than a battlecry of the concrete crowd in the struggle for representation against the parliament, as 'direct democracy' in its true sense—the people is present and rules itself—is mythical not only practically but also theoretically in modern states.

8 Runciman (2007, 107-108) was close when he characterised 'objections to the actions of representatives' as 'a plausibly competing claim to speak in the name of the person' (emphasis mine). The problem of this is that, despite his endeavour to distinguish such an account from the Schumpeterian dismissal of representation, he still failed to notice the political, ie struggling, nature of representation. Regular competitions that are common in elections are not struggles for representation, for no true issue of legitimacy is at stake.

issue of sovereign, is who decides on the state of exception. It would suffice here to simply say that, in normal times, such struggles are latent in liberal democracies. In such times, the monarch's role in making law is overpowered by the parliament, while its power to suspend law is too exceptional. The concrete crowd, acting as electorates, only appear briefly once every several years. Hence, the parliament is the most apt candidate for representative in a liberal democracy.

By a particularly illuminating comparison between political and theological theories, one may first note how Tertullian referred to the Son in the Trinity as *repraesentor* of the Father (Vieira and Runciman 2008, 8-9) and one may then see the affinity between the accusation of imposture during the struggle for representation and the concept of Antichrist:

> [T]he man of lawlessness … will oppose and will exalt himself over everything that is called God or is worshipped, so that he sets himself up in God's temple, proclaiming himself to be God (2 Thess, 2:3-4).

Similarly, the concrete crowd will oppose and exalt itself over everything that is called the people, so that it sets itself up in the people's temple, proclaiming itself to be the people. If this perspective of political theology is to be further developed, eventually the liberal way of democracy, including not only its instruments such as free and fair elections but also its underlying principles such as legal-rationality, finds its justification and value as being the *katechon*.

This biblical concept refers to the force which withholds the revelation of the Antichrist (2 Thess, 2:6-7). Meanwhile, liberal democracy restrains the concrete crowd by institutionalising them as nothing but another state organ among other branches. The legalised institution of 'the citizens' or 'the electors' is perceived, subsumed and temporarily tamed by the parliament-made law as merely another constitutional branch, functioning as an electorate or a special legislature. It follows that the absence of free and fair elections is detrimental not because it is undemocratic, but because it is to deny the concrete crowd's institutionalised approach of representation, i.e. acting as a contained electorate and it is at the same time to compel the crowd to resort to far more drastic and unpredictable means. In other words, liberal democracy withholds the concrete crowd from proclaiming to be the representative and denying the legitimacy of the parliament and it withholds the chaos incurred by the outbreak of struggles for representation.

Therefore, although the three common candidates—the parliament, the monarch, and the concrete crowd—may each be a representative under different circumstances, in a liberal democracy the parliament is still the closest to the representative in normal times where there is no apparent struggle, as it is the common body that makes law. Meanwhile, the concrete crowd, who blurs the very concept of representation by blurring the distinction between itself and the abstract people, is withheld by the liberal way of democracy from challenging the parliament.

III. How Should the Representative Act?

Concerning *how should the representative act,* a lasting debate, particularly on the representative's behaviour, consists of a dichotomy that goes by several names: delegates-trustees (Christiano 2018, 213), mandate-independence (Pitkin 1967, 144), imperative mandate-free mandate (Sobolewski 1968, 96) or commune-parliament (Marx 1966, III). These names describe the same dispute: the representative should act according to either the expressed wishes of the represented or the representative's own understanding of the best action to pursue for the represented (Dovi 2018). To illustrate this normative question, a scenario may be imagined: when the representative or its member has a yes-no question to answer, what should be considered in order to reach the conclusion? The dichotomy suggests that one either consider what the represented expressly wants or what is best for the represented according to oneself. Here, bearing the nature of political representation as the centrepiece of state theory in mind, it is hoped that the debate may be tackled more precisely and hence settled.

Before discussing the dichotomy, a preliminary step is to ascertain the subjects and objects. First, as contended, the representative should be unitary[9] and the legislators are only members of it. The representative and its members should share the same criteria for behaviour, as it is unsound to assert that the representative as a whole should pursue the general good while its members should pursue each one's local good. The unitary people is not just an accumulation of comprised portions, as the people's will or welfare cannot be derived from the sum of the portions' wishes or interests—an important distinction between *volonté générale* and *volonté de tous* rightly recognised by Rousseau (1973, Book II). A representative's member, because he is nothing else but a part of the representative, is of public quality, he represents the people as a whole and should act however the representative as a whole should act. Secondly, as stressed repeatedly, 'the represented' does not refer to anything less than the abstract people, be it voters, fractions, parties or constituencies, which are at most electoral designs out of expediency and bear no theoretical weight. Thus, while many might understand their own questions on representation as between the legislators and the constituencies that elect them[10]—which are contemplations valuable in their own right—they cannot be answered by the theoretical concept of representation, as constituencies are plainly invisible in the representation between the people and the representative. Thus, one should note that the represented is always the people.

I return to the dichotomy. As contended, neither delegation nor trusteeship should be mistaken for the nature of representation, as they are only metaphors for the representative's behaviour. If so, how should the dichotomy be characterised? On the face of it, it is a wish-interest demarcation, what one expressly wants may not always be rational in the sense that it may not necessarily be in his benefit and when this inconsistency occurs, the normative question arises. Yet this is to miss the forest for the trees. To grasp the essence of the dichotomy, one should be reminded that representation is juristic; it is the representative's calling to procure public order by making and suspending law. The importance of enquiring *how should the representative act* is that its acts become the law. The representative expresses through its acts— literally 'an *act* of parliament'—and these acts constitute the legal system . *How should the representative act* hence becomes the question of *what should the law reflect*. Should it reflect either the people's will or a reason that can be perceived and pursued by rational beings? Therefore, the dichotomy, is one of will and reason, of the law as authority (the law being legitimised by its source) and as verity (the law being legitimised by its content).

This authority-verity dichotomy echoes Hobbes's (2014, XXVI) famous contention: *auctoritas non veritas facit legem*. It illustrates the law's two facets: as *auctoritas* and as *veritas*, or as authority and as verity. That is, when one seeks legitimacy in the law, one can perceive either *voluntas* or *ratio*, or will or reason. On the one hand, the law is the decision made by the representative—a reflection of its will, which is concrete and particular On the other hand, the law consists of norms, which are impersonal as they entail a reason and the representative shall, according to its understanding of that reason, express the law that reflects the reason, which is abstract and general. This notion shows the true tension in the dichotomy of *how should the representative act*: to make law as authority. The representative is required to act like the people's mandate, it defers to the people's will, which is the source of all authority, to make law as verity. The representative is required to act independently, so that it may debate within itself, deliberate and eventually come up with a reason.

Hobbes's stance is undoubtedly clear: authority, that is the state's will, makes law, regardless of any reason there might be for the law. Yet one should be cautious about the implication of this line of argument: acting like the people's mandate means that the representative should defer to not a fraction's wishes but the people's will. Thus, it is incorrect to say that because the law is authority, a representative's member should defer to the wishes or interests of his constituency—representation exists only between the unitary people and the representative. Yet a difficulty seemingly emerges if the representative should defer to the people's will: if the abstract people exists only through representation, whatever is expressed by the representative would be the people's will. This notion is explicitly contended by Hobbes:

9 The legislative design of bicameralism should be understood as a derivation of federalism (see no 6); nonetheless, even if there exists multiple houses of legislature, this does not contradict the notion that the parliament as a whole, which consists of all houses and other parts, is unitary.

10 For example, Mansbridge (2009, 369) theorised 'representation' as a model of principal-agent relations, where the constituents are the principals and the elected 'representatives' are the agents.

> [T]he commonwealth is the legislator. But the commonwealth is no person, nor has capacity to do any thing, but by the representative, … and therefore [the representative] is the sole Legislator. (2014, XXVI)

Could this difficulty be circumvented by invoking the idea that there might be more than one representative, or at least more than one candidate for it, and a representative should defer to another's expression? For instance, if the concrete crowd in a movement claims that the people's will should be x, does it follow that the parliament, who originally claimed the people's will being y, should defer to the former? The fallacy in this attempt is to neglect that the representative's existence lies in its capacity to express its decision. A representative must insist that its own, but no other body's, expression reveals the people's true will. At the moment a representative defers to another's expression, it concedes its defeat in the struggle for representation—conceding it is no longer a representative. So, if the parliament still intends to proclaim itself as the representative its subsequent expressions, no matter how they in substance coincide with the concrete crowd's claim, must be attributed to itself as its own decision. Therefore, on the authority pole of the dichotomy, when one argues that the representative should defer to the people's will whilst it acts, it is not to say that some private or local wishes or interests should constrain it, but quite the opposite. It should not be limited by them because if it does, it loses its quality as the unitary people's representative. Besides this, little or no constraint can be actually imposed upon the representative because the people's will, even if it might not be conceptually identical to the representative's will, can only be expressed by the representative.

On the other end of the dichotomy, acting independently is for the representative to rationalise. Here, the law as a reflection of a reason—be it justice, equity, liberty, or simply *raison d'état*—is legitimate not by its source but by its content. This notion of law is considered as something intellectual and deliberative, a quality that is almost exclusive for parliament (Schmitt 2000, 45). It is not to say the monarch or the concrete crowd can never deliberate. Yet they are supposed to deliberate poorly because they are of an active nature. Contrarily, the essence of parliament is 'public deliberation of argument and counterargument' (Schmitt 2000, 34-35). The parliament room becomes a sanctum allowing reason to be conjured through its members' unrestricted public debate, guaranteed by a particular freedom of speech, namely the legislative immunity, which is not only a prevention of political persecution, but an assurance to the free exchange of expressions which the law as verity requires. This understanding of verity and its method of production is well demonstrated in an argument advanced by Mill (2008, II), showing the relationship between publicity, debate, and truth: public discussion assists the seeking of truths and prevents them from becoming dogmas. Therefore, following this line of argument, the representative should, rather than just have the right to act independently, as it must not allow external wishes or interests to hinder its rationalisation whilst it debates and deliberates. It is not for the representative and its members to contemplate and compromise their private portions of wishes or interests, as they must act as representing the unitary people. Nothing other than reason, be it fractions, parties, or constituencies that have elected the representative's member, has any say when the representative acts.

At this point, does the dichotomy still exist? Both notions of the law dismiss the false claim that the representative or its members should defer to anything lesser than the people itself—this is the unavoidable conclusion once a fundamental point insisted by both notions is recognised. Representation, which is the gist of democratic state theory, exists only between the representative and the unitary people. Meanwhile, the two poles are not irreconcilable to the extent that, whilst the representative is procuring public order, it is at the same time determining and adjudicating fundamental principles. That is, the content of reason, which that particular society is built upon, and all subsequent legal norms, although deriving authority from the people's will, can only be effective if that reason is decided in the first place. The victory of the state in acquiring supremacy within a territory does not only imply *cujus regio ejus religio*, but more fundamentally *cujus regio ejus ratio*. Hobbes's stance in the

authority-verity dichotomy is eventually correct, as it is the authority, namely the people's will, that ultimately prevails and subsumes the verity. Yet even in the most decisionist Hobbesian state, an underlying instrumental reason exists in the law—the rationality in the law is to fulfil the purposes of the state's will (Tuori 2011, 62); that is, reason exists in even the most authoritative law. This Hobbesian sort of reason is not necessary, for the content of reason may very much appropriately be justice, equity, or liberty. The point is that, these contents are chosen and determined by the people's will—they are introduced by authority and with that posited reason, the deliberative representative may then debate and deliberate upon it. Whether one perceives the law as authority or as verity, the answer to *how should the representative act* is effectively the same: the representative and its members should not allow private or local considerations to affect them when they are acting. Failing to do so would lead to loss of representative quality in that body who proclaims to be the representative.

While the question of *how should the representative act* has most commonly been directed to the parliament, there is no reason why it should be confined to it. It is true that the law made by active representatives, the monarch and the concrete crowd, is something much closer to authority than to verity and in that case, which is usually exceptional, they are not expected to debate and deliberate but to simply act. This difference is embodied in the law's two different facets, yet it does not affect the public quality of representation: all representatives, including the active ones, should not contemplate privately or locally. For the monarch, this is nothing novel: the concept of office has long existed in order to understand public power in contrast to something personal. For instance, the monarch has two bodies: one as king, which is private and one as crown, which is public (Loughlin 2006, 63-64). However, for the concrete crowd, it would be something worth reminding, as this notion and their representative, i.e. public, quality, is often neglected. They should acknowledge that they are not acting as private or local persons with their private or local wishes or interests, but as the representative's members, citizens whose civic duties are exactly the result of citizenship's representative quality (Loughlin 2003, 70). There should not be any private or local person in a national movement, plebiscite, or election, but only public citizens, who together act as a representative and the representative should not, and indeed does not, consider the wishes or interests of any individual or fraction that is lesser than the people. The representative should act publicly.[11]

IV. Conclusion

What is representation? Who is a representative? How should the representative act? These are the three questions on political representation I have attempted to answer in this essay.

What is representation?

Representation is the gist of democratic state theory. It is the key to legitimising the state's coerciveness, as the abstract people, which is the *sine qua non* of democracy, requires representation to be present in reality. Representation is existential: it is a particular form of the abstract people's existence, rather than mere authorisation. Representation is public, it is the relationship between the representative and the unitary people. Representation is juristic: it infers a calling of procuring public order by law making and suspending and only through this calling one can ascertain the representative's existence.

Who is a representative?

The parliament, the monarch, or the concrete crowd may each be a representative under different circumstances. The gist is that the three common candidates may each proclaim to be (the representative of) the people and hence make or suspend law in their own ways. The concrete crowd, whose representative quality is often neglected, makes or suspends law by acting as an electorate or in a movement. In other words, at those moments, it is, or proclaims to be, a representative. Struggles for representation are always potential among the candidates; yet in normal times of a liberal democracy, such a struggle is merely latent and the parliament is the closest to the representative, while the concrete crowd is withheld

11 One might, like Mill (1962, 206-207), spot how the design of a secret ballot may hinder the required publicity. Besides mere expectation, we are unable to scrutinise whether an attending person is acting publicly while voting secretly.

by the institutions of liberal democracy.

How should the representative act?

The representative should act publicly: it should not consider the wishes or interests of any individual or fraction that is lesser than the people. This is the conclusion drawn from either side of a classic debate: the representative should act according to either the expressed wishes of the represented or its own understanding of the best action to pursue for the represented. The essence of this dichotomy is one of the law as authority (the law being legitimised by its source) and as verity (the law being legitimised by its content). On the authority pole, the representative should defer to the people's will. Thus, the wishes or interests of anyone lesser should not constrain it. On the verity pole, the representative should debate and deliberate independently according to a reason. Thus, it should not consider anything other than that reason. Ultimately, the authority pole subsumes the verity pole, as the content of reason is posited by the people's will, yet reason exists in even the most authoritative law. The conclusion is inevitably that the representative should act publicly, and this is applicable not only to the parliament but to all representatives. Both the monarch in its office and the concrete crowd as citizens should act publicly, otherwise they lose their representative quality.

This theory of representation is a polemic against the vulgarity that permeates liberal democracies, the apocalyptic assertion that there is no higher supremacy than the concrete crowd. The theory proposed here is itself an attempt to subsume and contain such vulgarity into the structure of political representation and the vulgar into the office of political representative, so that the crowd, which cannot be eliminated and yet must be restrained, 'is neither excluded from voting, lest it should seem disdainful; nor is it made too effective, lest it should be dangerous' (Cicero 1829, Book II, XXII).

Agamben, Giorgio (2005) *State of Exception* (Chicago, Illinois: University of Chicago Press)
Aristotle (350 BC), Benjamin Jowett (trans) (1999) *Politics* (Kitchener: Batoche Books)
Burke, Edmund (1999) 'Speech to the Electors of Bristol' in Francis Canavan (ed) *Select Works of Edmund Burke: Miscellaneous Writings* (Indianapolis, Indiana: Liberty Fund), 3-13
Christiano, Thomas (2018) *Rule of the Many* (Oxford: Routledge)
Cicero, Marcus Tullius (46 BC) 'A Dialogue Concerning Oratorical Partitions' in Charles Duke Yonge (trans) (2004) *The Orations of Marcus Tullius Cicero, Volume 4* (Project Gutenberg)
Cicero, Marcus Tullius (54-51 BC), George W Featherstonhaugh (1829 trans) *The Republic* (New York: G. & C. Carvill)
Dovi, Suzanne (2018) 'Political Representation', in Edward N Zelta (ed) *Stanford Encyclopedia of Philosophy*. Available at https://plato.stanford.edu/archives/fall2018/entries/political-representation/
Grant, Claire (2006) 'Promulgation and the law', *International Journal of Law in Context*, 2:3, 321-331
Hamilton, Alexander, James Madison and John Jay (2003) *Federalist Papers* (New York: Signet Classics)
Hobbes, Thomas (2014) *Leviathan* (Hertfordshire, United Kingdom: Wordsworth)
Laclau, Ernesto (2005) *On Populist Reason* (London: Verso)
Locke, John (1982) *Second Treatise of Government* (Illinois: H. Davidson)
Loughlin, Martin (2003) *Idea of Public Law* (Oxford: Oxford University Press)
Loughlin, Martin (2006) 'Ten Tenets of Sovereignty', in Neil Walker (ed) *Sovereignty in Transition* (London: Bloomsbury), 55-66
Mansbridge, Jane (2009) 'A "Selection Model" of Political Representation', *Journal of Political Philosophy*, 17:4, 369-398
Marx, Karl (1852), Daniel De Leon (1963 trans) *Eighteenth Brumaire of Louis Bonaparte* (New York: International Publishers)
Marx, Karl (1871), (trans 1966) *Civil War in France* (Peking: Foreign Languages Press)
Mill, John S (1962) *Considerations of Representative Government* (Illinois: Regnery)
Mill, John S (2008) *On Liberty* (Massachusetts: Bedford)
New International Version Bible (1978) (Canada: Zondervan)
Pettit, Philip (2010) 'Representation, Responsive and Indicative', *Constellations*, 17:3, 426-434
Pitkin, Hanna (1967) *Concept of Representation* (Berkeley: University of California Press)
Rousseau, Jean-Jacques (1762), Cole, G D H Cole, J H Brumfitt and John C Hall (1973 trans) *Social Contract* (London: Dent)
Runciman, David (2007) 'The Paradox of Political Representation', *The Journal of Political Philosophy*, 15:1, 93-114.
Schmitt, Carl (1923) ; Ellen Kennedy (2000 trans) *Crisis of Parliamentary Democracy* (Massachusetts: MIT Press)
Schmitt, Carl (1922), George Schwab (2005 trans) *Political Theology* (Chicago: University of Chicago Press)
Schmitt, Carl (1928) Jeffrey Seitzer (2008 trans) *Constitutional Theory* (Durham: Duke University Press)
Schumpeter, Joseph (2003) *Capitalism, Socialism and Democracy* (Oxford: Routledge)
Sieyès, Emmanuel Joseph (1789) 'What Is the Third Estate?', in Michael Sonenscher (ed and trans) *Political Writings* (Indianapolis: Hackett), 92-162
Sobolewski, Marek (1968) 'Electors and Representatives: A Contribution to the Theory of Representation', in Pennock, J Roland and John W Chapman (eds) *Representation* (New York: Atherton Press)
Tuori, Kaarlo (2011) *Ratio and Voluntas* (Surrey: Ashgate)
United Nations Commission on Human Rights (28 September 1984) Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights
Vieira, Monica B and David Runciman (2008) *Representation* (Cambridge, United Kingdom: Polity Press)
Weber, Max (1919) 'Politics As a Vocation', in Gerth, Hans H and C Wright Mills (eds and trans) *Max Weber: Essays in Sociology* (New York: Oxford University Press)