

2. Concepts of Representation: From the Origins to Modern Representation

The history of different concepts of representation is a history of struggles over, and the quest for, appropriate distribution of power in order to establish legitimate rule and achieve political and social integration. Over time, the concepts of representation have been changed due to altered political circumstances and have played a crucial role in defining different political regimes. The concept's openness and capacity to be adapted to unprecedented political settings makes it most useful for the analysis of the European Union. To this end, however, we need to have the different meanings of representation and its concepts at our disposal. Representation is an abstract term. With the exception of Finnish, it exists in all European languages. It has been used intensely over centuries and has gained political significance since the Middle Ages. Hence, it is a cumbersome task to summarise the wide range of its etymological meanings and historical concepts. Yet this exercise is rewarding because we need to have a clear and precise understanding of just what representation, in fact, might be. The more detailed our concepts of representation the broader the possibilities for framing today's European Union.

This chapter will describe the etymological evolution of the term representation starting with its use in classical Latin (2.1.). It will then proceed to the historical development of the concept, from the most ancient concept of symbolical representation (2.2.) up to absolutist and modern national representation (2.4. and 2.5.). Moreover, the intervening period of the Middle Ages will be discussed at some length (2.3.). Medieval corporate representation not only constitutes the background against which the foundations of modern representation have been developed, it also laid the foundations for some central notions of representation.

2.1. Etymological Origin

Although the ancient Greeks had institutions and practices which would today be labelled ‘representative’, the etymological origins of the family of words ‘representation’ are to be found in classical Latin. The various meanings of *repraesentare* and *repraesentatio*, however, had very little to do with their subsequent development as a legal concept. Roman law did not provide for the possibility of somebody acting as an agent for someone else. Characteristically, *repraesentare* and *repraesentatio* were used in different contexts. In general, in classical Latin the word means ‘to make present’. The prefix ‘-re’ signifies either ‘to make present immediately’ or is used in order to intensify the meaning. Thus, from an etymological point of view, it does not necessarily refer to the making present of somebody or something which has been absent previously. *Repraesentare* is related to the act as well as the product of making something or somebody present. It can be translated in three different ways. First, as, ‘to literally making oneself present’, most commonly used to appear in court in answer to a summons. Second, as, ‘making present of an abstraction through or in an object’, for example to picture a virtue (as expressed by *effingere et repraesentare virtutes alicuius*). Third, as, ‘bringing into present an event’ and ‘to perform immediately’, for example if someone wants to be paid in cash (Hofmann 1974: 38ff. and 148; Pitkin 1989: 133, Rausch 1977: 78, Podlech 1984: 509).

2.2. Symbolical Representation

It remains unclear why and how ‘representation’ first came to be used in a political sense and, subsequently, as a key term in political theory (Rausch 1977: 81ff). There is, however, some evidence that the term’s meaning became widened during one of the most intense and important debates of the Middle Ages, namely that on the Christian Eucharist (Hofmann 1974: 65ff., Pitkin 1989: 133ff.). The central question here was whether and how Christ was (mystically) embodied, or represented in the Holy Communion. This ‘mittelalterliche Bildproblem aller Bildprobleme’ (Hofmann 1974: 82) posed an enormous puzzle to medieval theologians and, subsequently, became one

of the central dividing issues among Christian churches. The crucial point of the Eucharist debate was the idea of representation through embodiment, a kind of *symbolical representation*. This was one of the earliest imageries of representation, and the starting point to its subsequent development in Europe. It worked on the assumption that a past and invisible event – in our case: the ‘immolation’ of Christ – would find expression in something visible which had no pictorial similarity with what it was supposed to stand for. Thus the representing object – here: the Communion wafer - does not look like Christ’s body or its immolation. Yet it is regarded as the embodiment of Christ on the basis of a commonly agreed *convention* (*ibid.* 80).

More generally, symbolical representation takes place when it becomes commonly accepted that a person or an object represents through embodiment a real or abstract object or person. This is what takes place when a flag is said to represent a nation, or a head of state is held to embody it. A convention, however, depends on the belief in it, on a continued agreement. Hence, if the underlying convention loses support, the scheme of symbolical representation becomes weakened. It may even cease altogether, depending on the extent of the support’s erosion. A flag only represents a nation as long as it is commonly regarded as such.

An important dimension of symbolical representation is the concept of representing status by way of role-play. It derives from the Medieval expression *personam alicuius repraesentare* (to make present somebody). Originally, the Latin word *persona* was also used for the masks as well as the roles of theatre actors. In the Middle Ages, it was common to use *repraesentare* in order to say ‘to produce a play’ and to refer to the ‘staging’ of the Christian liturgy (Hofmann 1974: 156ff., Pitkin 1989: 135). In some languages, such as Spanish, this use still exists (*representare una obra de teatro*). Once the expression *personam alicuius repraesentare* was applied to legal contexts it described a person in a particular role or situation. It meant ‘to act as deputy for someone’. Thus developed from the notion of *personam alicuius repraesentare* a close connection between representation of status and the notion of role-play.

This phenomenon can be well illustrated with the definition of a king's representative in the early periods of international law. At this time, the king's body was conceived of in two different ways, that is the real and the public body (Kantorowicz 1957). In contrast to the mortal body of the king, the *persona publica* stood for the identity and legal continuity of the reign. It embodied and symbolised the unity of the subjects. According to this conception, the highest ranks of ambassadors were not merely regarded as delegates. Rather, they were seen as veritable representatives of the king's natural body. Consequently, their mission ended with the king's death when his real body ceased to exist. Their main function was to represent the kings' magnificence whereas it was of less importance to adroitly advance the king's matters. Not without an ironic undertone of enlightened criticism, Walch's 18th century philosophical encyclopaedia explains:

Allein wenn wichtige und Staats-Dinge sollen abgehandelt werden, so gehört ein Mann, und kein Götzen-Bild dazu, es sey denn, daß man einer hohen Stands-Person, die an sich selbst wenig Geschicklichkeit hat, einen in diesem Stück geschickten Mann zugesellen wollte, welcher die Staats-Geschäfte tractire, dahingegen die unerfahrene Stands-Person eine ansehnliche Figur mache [...]. (quoted from Hofmann 1974: 187)

The idea of using role-play to express status strongly features in contemporary ideas about representation. Members of Parliaments and governments are usually expected to behave in a dignified manner in order to fulfil their role as representatives. For example, this becomes visible in the careful 'staging' of a statesman's public appearance who has to act 'theatrically' in order to represent the dignity of his function. Conversely, if the process of representation is lacking a metaphysical or morally high-standing dimension then the representative has no role-play at his disposal. In this case the scheme of representation becomes harder to imagine. Some scholars even claim that this type of representation is not valid. In particular, with regard to interest groups, they hold that an interest group member cannot act as 'true' representative but, rather, only as a delegate (see 3.2.5.).

2.3. Corporate Representation

During the Middle Ages and the early modern period, Europe experienced a protracted struggle over the distribution of power. Who should govern? Those exposed at the top of the hierarchy, like the pope, the Roman emperor, and the crown? Or the many who formed the multitude at the (relative) ‘bottom’, like the magistrates, the nobles, the estates, and the members of the church council? Who should be bestowed with what kind of powers? The church with secular power? The princes with omnipotence? Should assemblies and councils participate in governmental affairs? If so, how and to what extent? Finally, how should society be defined? Was it a society of corporations the unity of which would be established by representative action? Or was society composed of a multitude of individual subjects the unity of which could only be created by the representation of an absolute ruler? These questions went to the very heart of the organisation of European states and societies. Different concepts of representation provided different answers.

From a modern perspective, it is rather difficult to understand the arguments surrounding these controversies without referring back to the metaphors they were built on. Since the time of classical antiquity, metaphors were frequently used in debates on legitimacy, and on social and political organisation. The metaphor which enables an understanding of medieval and the origins of modern, representation is that of *corpus*. Based on the idea that the world is made like a creature, the notion of *corpus rei publicae* was used for the Roman republic in order to stress its unity and inner peace. As the republic grew through extension until it reached the stage of the Roman empire the term *corpus imperii* was more commonly used. Its emphasis lay on legitimising the newly established regime. *Corpus* did not, however, become a legal category. Rather it served to mitigate the empire’s lack of a clearly structured political order. Hence, the metaphor was mainly used in order to create and maintain the coherence and concord among those who were subjected to the Roman empire’s rule (Dohrn-van Rossum 1978: 526ff.).

Christians adapted the notion of *corpus* to their religious beliefs, chiefly in the sense that the unity of all Christians was mirrored in the unity of Christ's body. The late Roman empire was even depicted as *unitas corporis Christi*. Over time, the church developed into a highly complex organisation. Its institutional structure was built, once again, on the imagery of *corpus*. Drawing on the legacy of Roman law and combining it with Christian ideas, the canonists (the church lawyers) used the concept of *corpus* to construe legal forms which would unite a multitude of real persons (Dohrn-van Rossum 1978: 541; Hofmann 1974: 126ff.). From the 12th century on, the Eucharist was conceived of as being the *corpus verum Christi*, or his *corpus naturale* (the real or natural body of Christ). In the same vein, the church constituted Christ's organisational counterpart which was expressed by the notion of a *corpus mysticum* (mystical body), an expression which was also widely used outside church affairs (Dohrn-van Rossum 1978: 548). The term *mysticum* soon lost its theological meaning (Hofmann 1974: 128) so that the emphasis remained on the idea that the church was imagined as a body. Gradually, a legal body was constructed which was based on the fiction that the church's organisation functioned analogously to that of a living creature: The church was modelled as a corporation.

Due to the important impact that the medieval church had on the development of legal theories, corporations came to be the most eminent organisational feature of social and political communities in Europe at that time. The Holy Roman Empire, states, towns, local communities, functional groups such as the estates and guilds, were all framed as corporations. Although many other terms were used synonymously – a corporation could also be named *collegium*, *universitas*, *societas*, *communitas*, *congregatio*, *consortium* – canonists still preferred *corpus* as legal expression because it emphasised the unity of the corporation (Dohrn-van Rossum 1978: 539ff.). In addition, corporations were enabled to act on their own account with the help of a second fiction, namely that of *persona repraesentata*. It was applied in order to make corporations function like a personification of collective life. The underlying legal concept was

construed by drawing analogies to the natural human legal subject. Some of his attributes were transferred to *persona repraesentata*, others not. It is important to note that corporate representation was not yet seen as being a means to *transcend* the sum of the represented. Its emphasis lay on the *formation* of a community as corporation. Hence, originally, 'to represent a corporation' meant to create the *universitas* as such. Only then was the acting of a natural person in a corporation's name finally accorded a legal dimension (Podlech 1984: 511-2, Hofmann 1974: 145). However, the fiction theory of the corporation never developed into an elaborate legal doctrine that would have prescribed the *exact* relation of the corporate personality to its members and vice versa. The metaphorical dimension, therefore, always remained.

In contrast to a well-defined legal doctrine, a metaphor is open to interpretation. Thus, the orders which were based on the notion of *corpus* were discussed mostly by referring back to its original metaphorical origin and connoted imagery. In particular, the scheme of *corpus-caput* which pointed to the relation of a body's members to its head informed frequent controversies on the distribution of power and the way it was exercised as well as the relation between the representative and the represented. Moreover, the underlying belief which led to the use of these metaphors was that in a well-organised and godly given order which had to be interpreted in the right way. According to this view, everyone had a predetermined place in the world. Each member of the *body politic* – an expression which is directly derived from the notion of *corpus* (Weber 1960: 164) - had a place functionally defined, imagined like a body's limbs which serve the organism. Hence the struggles over the best interpretation of worldly order simultaneously dealt with the question about the suitable functional differentiation among the members of a corporation. Moreover, they always emphasised the importance of unity, concord, solidarity, and loyalty (Dohrn-van Rossum 1978: 539ff.) because it was believed that the body politic could only remain living as long as all its components acted in accord and fulfilled their function.

2.3.1. Identity Representation

Identity representation, or *repraesentatio identitatis*, was one of the central pre-modern concepts of representation. It was mainly advocated by those who were situated at the ‘bottom’ of medieval communities, or to put it in terms of the *corpus* metaphor, who constituted the ‘limbs’ of the body politic.

Building on the fiction theory of corporate representation the medieval author Marsilius from Padua developed the idea of identity representation (for the next paragraphs Hofmann 1974: 191 ff.). In his time, Northern and Middle Italian cities were constantly threatened by open conflict, sometimes leading to civil war. The pope held a claim to secular power over Italian cities as well as local nobles whose tyrannical reign regularly produced instability. With the intention of creating a lasting and stable order Marsilius published the *Defensor pacis* (Defender of Peace) in 1324. He assumed that local government should exclusively serve the community. Consequently, the community should have supreme power over its own affairs and be governed by its citizens - neither by the nobles, nor the pope. It would be misleading to imagine the medieval community as being constituted by individual citizens. Rather the community was conceived of as a larger corporation of corporations, similar to an umbrella organisation. Therefore, Marsilius did not imagine that the citizens ruled themselves directly but he proposed to let them be represented by their *pars valencior* (the ‘more valuable’ part). According to Marsilius, *repraesentatio identitatis* means that a multitude is made present through the action of its outstanding part. Representation is more than the acting on behalf of the community because, at the same time, the *pars valencior* embodies and, thus, unites the multitude. This conception implies that the representing part equals the whole. Yet it is not any part which can represent, only the chosen one.

The importance of *procedure* for representative bodies originates from identity representation. In fact, canonists would have accepted many ways of choosing representatives as long as their nomination was based on due procedure according to

fixed, commonly agreed terms laid down in a constitution (Podlech 1984: 513). In particular, they emphasised the importance of due summoning of the constituent assembly and the necessity of the presence of at least two third of its members,¹⁴ rules that should remain valid until today. The same is true for the idea of *majority voting* (Hofmann 1974: 221 ff.). A corporation's decision-making body was seen as a smaller body representing the larger one. It was held to form and unite the corporation by representative action. Like the natural body, the representing body could not be divided into its single parts but acted according to its majority. This scheme may be best illustrated with the help of the college of Electors which, since the end of the 13th century, was bestowed with the exclusive competence to elect the emperor of the Holy Roman Empire (Hintze 1962: 127). The princes who formed the college were not supposed to vote on the basis of their individual consideration. The majority rule was applicable to their decision in order to demonstrate that they acted as an outstanding part, *vice et auctoritate universitatis*, on behalf of the emperor's subjects.

[...] [D]ie kollegiale Gleichheit einer privilegierten Gruppe und das Verfahren der Mehrheitsentscheidung begründen und tragen den korporativen Anspruch der Identitätsrepräsentation. (Hofmann 1974: 225).

The conciliarist movement further shaped the idea of identity representation. In the 13th and 14th centuries, the See of Rome developed an increasing ambition for both secular and internal power. The popes' claims were based on the assumption that they were 'the embodiment and image of Christ' (Pitkin 1989: 133ff.). As such they had the right to absolute supremacy in secular and religious matters. After being largely successful,¹⁵ the popes' attempts triggered widespread resistance, *inter alia*, from Italian cities (see Marsilius from Padua) and from inside the church itself from where a

¹⁴ Since the election of the Pope in 1179 these requirements were institutionalised (Hofmann 1974: 222).

¹⁵ In 1245, the pope declared that he had the power to depose his secular counterpart, the emperor of the Holy Roman Empire. After the latter died five years later, the pope refused to crown a successor until 1312.

powerful reform movement emerged. Hence, the idea of a general church council was born. Internal struggles would come to help the popes' opponents.¹⁶ In Constance (1414-8) and Basle (1431-7) the general council came to reject the idea that the church's common good was exclusively defined by the head of the church, that is the pope (for the following paragraph: Hofmann 1974: 248-85, Podlech 1984: 513ff.). Instead, the general council maintained that church rule had to be based on harmonious action of the entire body, that is the pope *and* the general council. The pope was declared to be no longer the head of the church in the sense of standing *above* the community but, rather, only as an important and outstanding part *within* the *corpus*. Being a part of the same body the council should partake in church government. The pope was 'downgraded' to represent the church as guardian whereas the general council would embody the church, or *be* it, by way of *repraesentatio identitatis*. Since the general council represented the church in a more elevated sense, it eventually followed that it was superior to the pope.

Consensus was an important component of the general council's idea of identity representation. Nicholas de Cusa elaborated this idea in *De concordantia catholica* which was published during the council in Basle (1433).¹⁷ According to Cusa, consensus constituted the common basis on which the different representational schemes – the pope as the church's guardian and the general council as the church's embodiment – would work together. Like Marsilius, Cusa did not think that individual believers become represented. Rather, the church's unity should be established through representation. In this way the church was supposed to transcend the sum of its members and to be formed as a body independent from them.

¹⁶ From 1305-77 the See of Rome had to be exiled to Avignon. Shortly after the return of the pope to Rome, the election of his successor resulted in chaos at the end of which two popes would claim the title. It was only in 1417 the great schism of the universal church ended with the election of a new pope. By that time, however, the pope's position had been weakened considerably.

¹⁷ Cusa distinguished three types of representation: representation through a guardian (like a monarch, or the pope), collective identity representation, and intermediary or functional representation. Intermediary representation was premised on a college of cardinals which would mediate between the church members and its head in order to stabilise church government. In contrast to the general council, the college of cardinals did not form something new by way of representation but represented *vis-à-vis* the pope the many opinions of his great flock.

Das bedeutet, daß die Repräsentanten aller Grade zusammen und gemeinsam, indem sie den *consensus omnium* in der umfassendsten Weise und höchsten Form organisieren, die *universitas* selbst bilden und verkörpern. (Hofmann 1974: 312, emphasis original)

Some authors depict the ideas of Marsilius from Padua and Nicholas de Cusa as seeds of democracy. However, with regard to Northern Italian cities this would have presupposed an understanding of citizens as equal individuals rather than the predominant corporate structuring of communal societies (*ibid.* 202). Medieval and early modern *universitates* were no free associations. On the contrary, they were hierarchically organised, mutually-exclusive organisations, mostly encompassing all important aspects of their members' life. With regard to the church council, a democratic interpretation would only be justified had its participants acted as popular representatives. Certainly, the council was open to all sorts of delegates which led to an opening of the strict church hierarchy. The openness was deliberately reinforced by the decision-making procedure. The council imitated the internal organisation of medieval universities insofar each 'nation' – the French, the German, the English, the Spanish... - voted in turn. The representatives, however, did not conceive of themselves as being a systematic portrayal of the entire church. On the contrary, their claim to be representative was rather dogmatic (*ibid.* 275). Medieval representation was meant to express the identity of the representatives with the body politic. It was imagined that they constituted the substance of the community. The proponents of identity representation did not make a case for democracy, rather, they argued that good government should emanate from the *entire* body politic. Therefore the *corpus'* head should not govern the entire political community. Government should not be organised along the lines of a top-down hierarchy. Instead, the scheme of identity representation proposed a way in which the different components of the body politic should act in accord: government should function along the lines of a bottom-up approach (Podlech 1984: 511).

2.3.2. Functional Representation

The idea of functional representation is densely interwoven with European history. It originates from corporate organisation which has been, as mentioned above, the predominant pattern in public and private life over a long period of time. Due to the great variety of forms which corporations adopted over time and in different political regimes there is no coherent theory of corporate representation. Therefore, it seems more fitting to think of a 'corporate idea' (Kaiser 1978: 55). It is principled on the idea that organisations give expression to the functional structure of a social or political community. Hence, functional representation constitutes the counterpart to territorial representation. Yet, whereas a territorial representative represents the individuals of a given territory, the representational pattern of functional representation works in two directions. Corporations represent a function *of* a social or political community, and, at the same time, they represent the same function *vis-à-vis* a social or political community. This makes them *intermediaries* 'par excellence' (*ibid.* 63) because they represent both towards their members and towards the greater political and social entity.

As is the case for identity representation, the essence of functional representation was originally based on the imagery of *corpus*. Hence, it was not merely a way of political organisation, but a means to structure political and social life. In this context, the pre-modern notion of *order* defines to a large extent the way functional representation initially worked. In general, the notion of order is the expression of a naturally evolved community which has its fixed place in a greater organic order (Oexle 1990: 156). It brings together a host of different aspects of life, such as religious, ethical, emotive, economic, and political aspects (Kaiser 1978: 55-6). An order can result from different social functions. Men and women, for instance, were seen as natural orders, or a distinction was made at birth, such as the one between slaves and free men. Relevant to the concept of functional representation are the orders defined by profession and the political estates. Professional orders could be, for example, guilds of artisans, judges, doctors, or peasants. In Germany, in particular, the craft-guilds

flourished and had their important share in shaping social life and partaking in the administration of common concern. From the 13th century on, the convening of estates, or representative assemblies gradually became established and grew to be an important feature of European states until the 15th century (Oexle 1990: 196-9).

Typical was the distinction between the three estates which together formed the Estates-General: the clergy, the nobility, and the third estate. The French *Etats généraux*, in particular, evolved into an important element of politics until the end of the 15th century. Yet there was a much broader variety of other compositions, such as provincial estates (*Etats provinciaux*), estates of the *Reich*, or the corporations of territorial estates, such as the *Landstände*. The latter were constituted by estates which all had some sort of territorial, or personal dominion over a given territory. They fused into a larger corporation in order to jointly exercise their power. Gradually, the *Landstände* transformed themselves from a union bringing together individual rights into what they perceived as a genuine ‘unity, representing the *Land* itself. They characterised themselves as the *Land*, as the *common estates of the territory*’ (Gierke 1990: 85, emphasis original). Their relationship to the lord of the *Land* was one of cooperation and mutual interdependence. Both lord and estates served the *Land* which was the overarching and uniting category (*ibid.* 86). Often, joint councils were convened where the estates and the lord shared the government over the realm. Throughout Europe the most important right of the territorial and general estates was that of approving taxes.

A particular case is that of the English Parliament. It was initially instituted by the crown to help to administer the state more efficiently. At its inception the representatives had a *duty* to function as intermediary between the king and his subjects. In classical corporate manner, the 14th century rules of procedure, the *Modus Tenendi Parliamentum*, describe the role of members of Parliament as delegates of the different corporations, organised according to their belonging to counties and towns, and representing the English community *vis-à-vis* the king. Its functioning and

understanding becomes clear in Thomas Smith's treaty, published in the 1660s when he was English ambassador to France:

The parliament of Englande, which representeth and hath power of the whole realme, both the head and the bodie. For everie Englishman is entended to bee there present, either in person or by procuration and attornies, of what preheminance, state, dignitie, or qualitie soever he be, from the Prince (be he King or Queene) to the lowest person of Englande. And the consent of the Parliament is taken to be everie mans consent. (Thomas Smith, *De republica Anglorum* 2,1, quoted from Podlech 1984: 518)

Here we find the entire repertoire of corporate imagery and functional representation. The people assembled are organised in corporations and represented by delegates *vis-à-vis* the prince. Hence what is 'taken to be everie mans consent' is not based on individuals but on the corporate structure of society and state. The corporations are represented. At the same time, they *form* the community through representation. Finally, the Crown embodies the community, the King *is* England, or to put it differently, he is 'King in Parliament' (Hofmann 1974: 338ff.). Consequently, it would be misleading to think of the establishment and subsequent assertion of Parliament *vis-à-vis* the king as emancipation of the citizenry. Originally, English Parliament was not a deliberative assembly of individual, free and equal citizens. Yet in contrast to the subsequent development in continental Europe, England is indeed a special case. For, as a consequence of the two revolutions of the 17th century, the *right* to participation in governmental affairs was derived from what was first a *duty* to serve as intermediary.

2.4. Absorptive Representation: Thomas Hobbes

Absolutist state theory fundamentally challenged the concepts of identity and functional representation. Its pre-condition was the concept of state personality (Hofmann 1974: 374ff.). The princes who had functioned as guardians when representing the state in external relations gradually claimed to entirely embody the

state's personality. The monarch *being* the body politic would also exclusively stand for the unity of the commonwealth. This, the argument went, would make him omnipotent.

Published in 1651 Hobbes' *Leviathan* constitutes the most brilliant and radical work of this epoch. Against the background of a highly unstable political situation at home, wracked by civil war and religious struggles, Hobbes held that only an absolutist ruler could restore and guarantee lasting peace. Assuming a theoretical state of nature which brings a war of everyone against everyone, this miserable situation, Hobbes argued, could only be resolved if everybody entered a social contract which, at the same time, entailed submission under an absolute ruler. Hobbes imagined the creation of these citizens-subjects as follows:

The only way to erect such a Common Power [...] is to conferre all their power and strength upon one Man, or upon one Assembly of men, that may reduce all their Wills, by plurality of voices, unto one Will: which is as much as to say, to appoint one Man, or Assembly of men, to beare their Person. This is more than Consent, or Concord; it is a reall Unitie of them all, in one and the same Person, made by Covenant of every man with every man [...]. This done, the Multitude so united in one Person, is called a COMMON-WEALTH, in latine CIVITAS. This is the Generation of the great LEVIATHAN [...]. (Hobbes 1991: 120, XVII)

Although Hobbes was still arguing on the terminological ground of medieval thinking, he already had an altered understanding of the nature of things and politics, and consequently reached radically different conclusions. The body politic – or ‘person’ in the above quote – ceased to be godly-created but was now man-made, an entirely artificial, no longer an organic, *corpus*. Correspondingly, the title engraving of the first print of *Leviathan* showed the mighty king holding sword and sceptre in his hands as he, risen like a god on the horizon, overlooks the counties and towns. His body is made up entirely of his subjects. The king *is* the body politic. He simultaneously represents and embodies it. Both notions, representation and embodiment, are different aspects of the above used expression ‘to bear a person’ (see Hofmann 1974: 387). The body was no longer depicted as a unity of a multitude. Instead, functional differentiation within

society and state was replaced by equality of the subject-citizens *vis-à-vis* the absolute ruler (Dohrn-van Rossum 1978: 555).

To Hobbes the notion of unity was pivotal. Only *one* single representative who would *absorb* the multitude of interests and wills would be able to build unity.

For it is the *Unity* of the Representer, not the *Unity* of the Represented, that maketh the person *One*. And it is the Representer that beareth the Person, and but one Person: And *Unity*, cannot otherwise be understood in Multitude. (Hobbes 1991: 114, XVI, emphasis original)

Hence absorptive representation is incompatible with identity and functional representation. Absolutist state theory entirely repudiated corporate representation, even as only concurring component of government. The community was no longer seen to be formed by assembly and representation of its members. In the absence of an absolute ruler there remained only a ‘multitude’ of natural persons. Consequently, Hobbes rejected any right to, or capacity for, corporate participation in government. In his earlier work *De Cive* he argued:

The *People* is somewhat that is *one*, having *one will*, and to whom one action may be attributed; none of these can properly be said of a Multitude. The *People* rules in all Governments, for even in *Monarchies* the *People* Commands; for the *People* wills by the will of *one man*; but the Multitude are Citizens, that is to say, Subjects. [...] And in a *Monarchy*, the Subjects are the *Multitude*, and (however it seeme a Paradox) the King is the *People*. (Hobbes 1983: 151, XII.8, emphasis original)

Where there is nothing but a multitude of subjects and a single sovereign there remains no place for intermediaries - neither estates, parliamentary assemblies, nor joint councils - to have a share in governmental affairs. Hobbes held that ‘where there is already erected a Sovereign Power, there can be no other Representative of the same

people' (Hobbes 1991: 130, XIX).¹⁸ This did not, however, imply that Hobbes was opposed to Parliament *per se*. He denied any representative power to any other instance than the sovereign. As long as the sovereign called an assembly to assist him in legislation, the latter was not representative of the people. Yet, if Parliament turned from an intermediary into the only sovereign instance it functioned as much as a Leviathan than a sovereign monarch would do (Tuck 1991: xix).

At the time of Leviathan's publication, the incompatibility of absolutist state theory with functional representation was paralleled in reality by the policies of the emerging territorial states in Europe towards corporate organisations. In general, state authorities aimed at asserting their superior position by gradually transforming independent estates and guilds into state-licensed, privileged corporate bodies. With it came, according to Gierke, the '[...] transformation of the old comradely virtues [...] into the corresponding vices' (Gierke 1990: 192):

The sense of community was transformed into a spirit of exclusivity; the aspiration to power, honour and high repute, into egotistical greed for profit; the old craftsman's pride into petty vanity; love of honour into blustering ambition (which often served only as a means of covering selfishness); reverence for custom into empty lust for ceremony; the exclusion of the unworthy into narrow-minded exclusiveness; the sense of brotherliness and equality into a fear of competition and professional jealousy; and a lively awareness of public life into the separatism of a corporation constantly harping on its monopoly ... (*ibid.* 192)

The French old regime went even further. As a first step, under the reign of Louis XIV, his Controller-General Colbert established royal trade companies and manufactories which enjoyed privileges unknown to the old corporations. Later, Louis

¹⁸ Any attempt to establish 'subordinate representatives' were regarded as dangerous to the inner stability: '[...] [a]nd every man to have his person represented by two Actors, that by opposing one another, must needs divide that Power, which (if men will live in Peace) is indivisible; and thereby reduce the Multitude into the condition of Warre, contrary to the end for which all Sovereignty is instituted [...]' (Hobbes 1991: 130, XIX).

XVI's Controller-General, the committed physiocrat Turgot (1774-6), attempted to liberalise the highly regulated French economy. The abolition of the guild structure was meant to lead France out of its desolate financial situation. At that time, however, he still failed even though his ideas were widely accepted by the country's elites (Schama 1989: 79ff.). Only few years later, the exceptional revolutionary circumstances rendered the radical extinction of all intermediary powers in France possible (see 3.1.). As for the Estates-General, the absolutist French kings annihilated them altogether, the last to convene them being Louis XIII in 1615.

2.5. Modern National Representation: Emmanuel Sieyès

Ironically, the French Revolution started with a sweeping victory for the corporate idea, that is the convening of the Estates-General. A victory which would rapidly lead to its total defeat. The self-authorisation of the Third Estate as a national assembly on June 17 1789 definitely marked the beginning of modern parliamentary representation, and, as a consequence, the obliteration of the orders.

In Sieyès' political writings we find the theoretical underpinnings for the then revolutionary concept of modern national representation on which our present-day understanding of democratic representative government is built. Sieyès' argument was still rooted in pre-modern thinking, inasmuch as he understood society to be structured along the lines of different functions. Yet, from there he reached radically different conclusions. In Sieyès' famous essay *Qu'est-ce que le Tiers Etat?*, published in early 1789, he argued that the Third Estate was 'everything' because almost the totality of societal functions – private and public – were being fulfilled by members of the Third Estate (Sieyès 1985a: 117-8). On this ground he claimed the Third Estate to be *identical* with the nation, a nation no longer composed of corporate bodies but made up of a community of individuals who constituted the citizenry. This was the radical breakthrough towards modern political thinking.

What would constitute a legitimate rule in a ‘modern’ nation? At this point we witness a fundamental change of the general concept of political order during the era of the French Revolution. Gradually, the hitherto central notion of *corpus* lost its metaphorical power. Instead, the central category of political thinking became that of *organisation*. This development went hand in hand with the enlightened vision of a self-determined, man-made constitution. In political terms, ‘organisation’ implied a dynamic process of creating the political community by way of constitution, which was deliberately established to serve an objective and, as a consequence, could also be adjusted to changing circumstances (Böckenförde 1978: 561ff.). Among others, Sieyès ushered in the end of the eternally fixed and static divine order by stating that the body politic had to be organised on the basis of a constitution which would be the explicit expression of the nation’s will:

Il est impossible de créer un corps pour une fin sans lui donner une organisation, des formes et des lois propres à lui faire remplir les fonctions auxquelles on a voulu le destiner. C’est ce qu’on appelle la *constitution* de ce corps. Il est évident qu’il ne peut pas exister sans elle. [...] Ainsi le corps des représentants, à qui est confié le pouvoir législatif ou l’exercice de la volonté commune, n’existe qu’avec la manière d’être que la nation a voulu lui donner. Il n’est rien sans ses formes constitutives; il n’agit, il ne se dirige, il ne commande que par elles. (Sieyès 1985a: 160, emphasis original)

Therefore, he argued, the body politic could not be created from *within* a given order - which, in 1789, entailed that a new French constitution could not be legitimately approved by the Estates-General. It had to be constituted by the ‘raw material’ of the political community, the nation in its as yet unorganised form. Only such a constituent power (the *pouvoir constituant*) would be entitled to vote for a constitution which had to lay down the objectives of the political community, to their end create the constituted powers (the *pouvoirs constitués*), and prescribe as well as limit their scope of authority (*ibid.* 160-4). Divine right should no longer legitimise political rule, instead the nation should rule itself. The constitution’s objective was to found ‘government for the people and by the people’. The individual should only have obligation to abide by a law if

he/she could be regarded as its author. Hence, if the citizens were the nation, nothing but the sum total of their individual wills could account for the will of the entire nation. Representation had become *national* representation.

Qu'est-ce que la volonté d'une nation? C'est le résultat des volontés individuelles, comme la nation est l'assemblage des individus. (*ibid.* 179)

It seemed evident to Sieyès that the constituted powers could not be run by all of the citizens directly. Consequently, the power of the sovereign had to be exercised by delegation. In his time, it was common to see representation as remedy for large-scale states where direct participation could not be managed. Sieyès, however, considered representative government as being superior to direct democracy. The division of labour within society, he held, was cause and effect of human progress. Therefore, when applied to the political, it was also the better suited form of organisation compared to direct democracy. Sieyès believed that only those who were particularly apt at serving the common interest would stand for elections (Sieyès 1985c: 262ff.). Even though the representatives were elected by their respective constituencies, Sieyès understood that, in a mediated way, they were equally representatives of the entire nation (Sieyès 1985b: 232-3). Hence, the national assembly would represent the nation and express its common will. Sovereignty, however, would always remain with the citizenry who only delegated its power to the assembly and to whom the latter would be accountable.

Sieyès imagined the parliament as an exact mirror of the society it represented. The assembly would act on account of the absent sovereign, but in their essence, parliament and citizenry were seen to be identical.

Le corps représentant est toujours, pour ce qu'il a à faire, à la place de la nation elle-même. Son influence doit conserver la même *nature*, les mêmes *proportions* et les mêmes *règles*. (Sieyès 1985a: 167, emphasis original)

As regards decision-making, Sieyès wanted the national assembly to be a place of common deliberation and mutual enlightenment. Because his thinking was firmly

anchored in the principle of common and equal representation, Sieyès would not, by any means, accept the possibility of a veto, be it by the monarch or one of the privileged orders. Partial, separated, and all other forms of unequal representation epitomised a ‘political monster’. Equality in general, and equality of influence in particular, was pivotal to Sieyès’ thinking. He held that with no possible exception was any individual will to be reduced to its numerical unity (Sieyès 1985b: 232). By definition, no one could have any more weight than another in the political realm. Existing inequalities within society - be they economic, of age, sex, or colour - would have no consequence for the individual’s quality as a citizen of the nation.

Les avantages par lesquels les citoyens diffèrent, sont au-delà du caractère de citoyen. [...] Elles ne dénaturent nullement l’égalité du civisme [...]. (Sieyès 1985a: 181, emphasis original)

Consequently, within the national community there remained no place for the privileged. Everybody who was not *fully* subjected to the common law or enjoyed *any* exclusive right simply could not be regarded as a citizen. The privileged were seen as the enemy of the common law (*ibid.* 182-3). What seems to be, from today’s perspective, a rather natural assertion actually implied a radical break with pre-modern law. Central to medieval law were particular rights that had been (deliberately) agreed upon by the members of a corporation. The common territorial law was only applied when no particular rights existed. It filled the gap when there was no privilege. Accordingly, privilege had no pejorative connotation like it has today. Rather, it was regarded as synonymous with the law itself. Contrary to this conception, Sieyès pointed out what should become the essence of modern law: The state is its sole source. It is equally applicable to each individual within its territorial sphere of validity. Any sort of legal agreement among individuals or groups have to be state-licensed in order to be legally binding (Weber 1960: 135ff.).

To be subjected to the common law was one pre-condition to be part of the national representation, the type of represented interest another. Sieyès distinguished

three types of human interests. The common interest shared by all individuals of a society; the group, or corporate interest; and the individual interest. Only the common interest could be represented in the national assembly whereas private and corporate interests could not be transformed into a single common will. Even though, per definition, private interest was not deemed to be a component of the common will, Sieyès did not see a structural problem in its existence. He held that private interests were isolated, and their diversity prevented them from having damaging effects on the articulation of the common will. Corporate interests, however, were to Sieyès adverse to, and incompatible with, the common will. They were the source of dangerous projects and public enemies. Those who represented corporate interests had to be strictly excluded from being national representatives. Only then would the representative system be legitimate.

Qu'on ne soit donc pas étonné si l'ordre social exige avec tant de rigueur de ne point laisser les simples citoyens se disposer en *corporations*, s'il exige même que les mandataires du pouvoir public, qui seuls par la nécessité des choses doivent former de véritables *corps*, renoncent tant que dure leur emploi à être élus pour la représentation législative. Ainsi et non autrement l'intérêt commun est assuré de dominer les intérêts particuliers.

A ces seules conditions nous pouvons nous rendre raison de la possibilité de fonder les associations humaines sur l'avantage général des associés et par conséquent nous expliquer la *légitimité* des sociétés politiques. (Sieyès 1985a: 180, emphasis original)

It is a keystone in Sieyès theory of representation that corporate interests were detrimental to the commonwealth, and therefore could not legitimately claim to play a role in national representation. He stated that it was the commonalities not the differences among citizens that bestowed upon them the right to be represented. Any individual, however, who was privileged – such as members of the orders, all types of corporations and of any other association – could not be represented within the nation because the privilege, Sieyès argued, had destroyed his 'quality as citizen'.

Le privilégié ne seroit *représentable* que par sa qualité de citoyen; mais en lui cette qualité est détruite, il est hors du civisme, il est ennemi des droits communs. Lui donner un droit à la représentation seroit une contradiction manifeste dans la loi [...]. Mais si, au lieu d'une simple distinction indifférente presque à la loi, il existe des privilégiés ennemis par état de l'ordre commun, ils doivent être positivement exclus. Ils ne peuvent être ni électeurs, ni éligibles tant que dureront leurs odieux privilèges. (*ibid.* 183-4)

Hence, citizenship presupposed a direct relationship between individual and state. This relationship was deemed to be distorted by any intermediary. Individual territorial representation entirely displaced functional representation which was regarded as irreconcilable with the new concept. Sovereignty, now exercised by the people, was defined as one and indivisible. No organised societal power should possibly be allowed to interfere in the free and equal formation of the common will. The French Constitution of 1791 first articulated the basic formula for the modern relation between citizenship, sovereignty, and representation:

La souveraineté est une, indivisible, inaliénable, et imprescriptible; elle appartient à la Nation; aucun section du peuple ni aucun individu ne peut s'en attribuer l'exercice.

La Nation, de qui seul émanent tous les pouvoirs, ne peut les exercer que par délégation. La Constitution française est représentative. (Title 3, Articles 1-2)

It seems that the harsh rhetoric of the revolution continues to have an impact on the interpretation of this historical epoch. Even radical viewpoints still exist that depict, for example, the Middle Ages as the 'dark age of European history', or, on the other extreme point of the scale, the French Revolution as the incarnation of evil. Against this background, it becomes more difficult to answer the question as to whether the concept of national parliamentary representation involved a radical break with the past (see e.g. Mansfield 1968), or whether it is firmly rooted in pre-modern institutional settings and ideas (see e.g. Studies Presented to the International Commission for the History of

Representative and Parliamentary Institutions, started in 1937). Certainly, the French national assembly of 1789 was not the first assembly where representatives of a nation came together to deliberate common action and to vote by plurality. Yet they differed in their central assumptions: functional assemblies never represented individuals, and if they were regarded as mirror of the body politic, this was understood as an organic *corpus* functioning along the lines of divine providence. If conciliarist thinking and identity representation stood for the representation of the many in opposition to the rule of the one, this did not imply democratic representation defined as being based on the individual bearing the *right* to be the author of rule, and as a consequence, to be represented. Pre-modern assemblies have certainly shaped the idea of the institution itself. There is, however, no historical continuity with regard to basic principles of modern parliaments. Individual human rights are as inconceivable within medieval thinking as are the notion of absolute (earthly) equality and self-determination. The successive enfranchising over the past two centuries of all nationals, regardless of their function within society, economic standing, sex, or race was only possible on the grounds of the ever more far-reaching implementation of enlightened thinking. This is indeed a radical break with the past.

Yet, as long as we do not search for historical predecessors in medieval and early modern assemblies we might well find one important strand of continuity. The national assembly is seen as being identical with the nation, *absorbing* all individual interests which are deemed to be legitimately represented in it while, at the same time, all other forms of representation are categorically excluded. In fact, Sieyès built on the central idea of absorptive representation and developed the concept further, replacing the monarch by the people, ascribing extended functions to the concept of representation, and making the representative directly accountable. Against the backdrop of the arbitrariness of a system of particular rights, it becomes understandable why partial associations were seen as so dangerous and detrimental. Yet, instead of re-defining their relationship to the individual and the state, they were branded and

extinguished. As a consequence the state became more powerful than it had ever been before. During the ensuing phases of the French Revolution it would, indeed, turn into such a powerful Leviathan the like of which even Hobbes would probably have been frightened of.

2.6. Conclusion

Representation is a broad category of human thinking. In general, it not only serves as a sociological, legal, and political category but is also central to religious, and magical processes (e.g. the Eucharist or the imagining of God). The etymological origin of the Latin family of words *repraesentare* does not tell us much about the European concepts of representation, *inter alia*, because we have no evidence of how the term came to be used in a political sense in the Middle Ages. However, the etymological origin clearly points to the fact that the prefix ‘re-’ does not mean ‘to make something present *again*’.¹⁹ Rather, the prefix may express either the immediacy of an action (e.g. to pay in cash), or stress the meaning of ‘making present’. Representation thus means to stand or act for something which does not necessarily have to be absent nor invisible (Rausch 1977: 91). Broadly speaking, the term representation points to the imagining of a power which is *pictured* as being absent (‘Vergegenwärtigung einer Potenz, die als abwesend vorgestellt wird’, Kaiser 1961: 865).

The history of the idea of representation in Europe demonstrates that representation can express itself in manifold ways. The representing object or person may stand for or be regarded as being something (symbolical representation); the

¹⁹ A typically misleading definition of representation starting from the assumption that *repraesentare* means ‘to make present again’ is given by Pitkin: ‘[...] representation means, as the word’s etymological origins indicate, *re-presentation*, a making present again. [...] [R]epresentation, taken generally, means the making present *in some sense* of something which is nevertheless *not* present literally or in fact. [...] [W]e can simply say that in representation something not literally present is considered as present in a nonliteral sense’ (Pitkin 1972: 8-9, emphasis original).

representative object or person may be held to be identical with the represented; or representation may express embodiment. Furthermore, different types of representation coexist and can be combined within a political system. The ambassador represents the state in a different way to a flag, a nominated representative represents in a different way to an elected member of parliament, or the head of the executive. Yet all of them represent. In particular, the representation of unity (e.g. the monarch or parliament) can be complemented by the representation of diversity (e.g. the estates or private interest associations) (see also 3.3.).

Historical evolution has shaped our present thinking and practice of representation. From the earliest form of representation, that is symbolical representation, stems the idea that the representing object or person only represents on the basis of a common convention that allows the representing object or person to stand for what it is deemed to represent. Corporate representation has created the idea that a community is formed by way of representation. Our conception of society has changed fundamentally and, hence, most of the underlying assumptions on which corporate representation was built do no longer exist. Yet the imagery of *corpus* continues to be a component of our political thinking while it is no longer connected to the image of a corporate society. Today, there are some linguistic remainders of the *corpus* metaphor, such as the expressions ‘head of state’, ‘body politic’, ‘representative body’, or ‘to embody’. Most significantly, two notions that are derived from corporate representation continue to be pertinent to modern institutional representation. First, the work of the canonists still shapes our thinking, insofar modern institutional representation has to be established according to due procedure. Second, majority voting was developed from the thinking in terms of *corpus*. Though corporate society has vanished, we can still only imagine an institutionalised representative body if it acts by the majority of its members.

From the writings of Thomas Hobbes we can say that modern institutional representation only takes place if the represented accepts being represented. In other

words, no one can be forced to be represented. Therefore the process of representation stops if the represented no longer accepts the right of the representative to act as such, or if the representative ceases to act in a representative manner. Hence, the legitimisation of the representative hinges on his relationship to the represented. One has to distinguish here between the process of representation itself, which is grounded on a psychological relationship, and the legal aspect of its authorisation (e.g. general elections, nomination, mandate). Accordingly, in modern constitutional states the first is usually defined by a behaviour which is deemed to be appropriate for an office-holder, the latter is defined by the constitution (Rausch 1977: 90, 95).

There is an important connection between representation and democratic theory. Yet, while we cannot conceive of democratic government without the help of representation, this relation cannot be inverted because representation can take many other forms. Modern representative assemblies are but one, albeit very important, case of how we can imagine representation. However, the category of representation is neither democratic nor undemocratic.

In general, modern representation – institutionalised or factual (see chapter three) - does not constitute a single act, rather it has to be constantly established and actualised anew. The relationship between represented and representative is based on mutual acknowledgement. Within the process of representation both have an impact on each other. Contrary to some schools of representation theory (see 3.3.), the process of representation does not presuppose a certain moral condition of either the represented or the representative. Any person or object can be represented or function as representative as long as the above-described process of representation takes place (*ibid.* 94). Conversely, a person that participates in politics on the grounds of his/her expertise (e.g. in a committee or for consulting purposes) does not represent. The expert is never a representative (Pitkin 1972: 211).

On the whole, representation is crucial to a community's capacity for collective articulation. Its pre-condition is the creation of commonalities which are suited to being

represented. These in turn are strengthened through the process of representation. Overall, representation constitutes the central mechanism of both the articulation and integration of political societies (Rausch 1977: 90, 96-7). In the present European large scale states representation serves a (technical) function of dealing with the high degree of complexity of political issues. Moreover, the integrative force of representation, both democratic and non-democratic, is of particular importance to highly fragmented modern societies. Governance and integration would not be possible in European states without the help of many different forms of representation. Against this background it appears to be promising to use representation as lens of analysis for an ever more complex and changing environment as that which constitutes the European Union.