

# Political Will and Public Opinion: On Hegel's Theory of Representation<sup>1</sup>

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**Abstract:** The article accepts Ritter's dictum that Hegel is a philosopher of the French Revolution. Admittedly, Hegel considers the French Revolution to be the political birth of the modern era, nevertheless he also sees this historical event as the warning example of democracy based on the general will of the people which results in a terror. The article seeks to explain the argument that Hegel's mature theory of representation makes both against Rousseau's conception of the general will and against the modern tradition of liberal contractualism. Of key importance in this respect are the concepts "political will" and "public opinion", which play, as Urbinati has argued, a key role in the theory of representation. The starting point of the argument is Schmitt's distinction between representation and identity as two principles of political form, which is to some extent shared also by Hegel in his polemic with Rousseau as a theorist of democratic revolution. Hegel understands the State as the unification of civil society in political will, which is mediated by a number of institutions. This mediation of will is seen as a process of political representation, in which the fundamental role is played by the estates (*Stände*). Hegel's theory of representation also sets it against the tradition of liberal contractualism, as shown in a polemic with Kant's conception of the public. But Hegel's conception of public opinion betrays his considerable mistrust of the subversive potential of democracy. Nevertheless, his theory of representation offers us a fundamental way to think about the concepts of political will and public opinion, thus creating an alternative tradition of modern political theory and providing us with a theoretical instrument for contemplating the contemporary crisis of representative democracy.

**Keywords:** democracy, representation, political will, public opinion, contractualism

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1 Translated from the Czech by Derek and Marzia Paton.

## 1. Representation and the political unity of society (Schmitt and Hegel)

The outstanding, albeit controversial, twentieth-century theorist Carl Schmitt argues that representation is a concept that is fundamentally political in the sense that it can occur only in the public sphere, where invisible political unity is made visible in a way that is paradoxical, existential, and cannot be subsumed under any normative scheme, particularly under the liberal idea of the contract,<sup>2</sup> so that representation means a political process by which “the enhanced type of being”<sup>3</sup> is capable of acquiring existence and rising into public being.

According to Schmitt, there are two distinctive ways that political unity can exist. First of all, it can be immediately given as a present group of many people identified politically and capable of collective action. Or, second, it can be mediated through the decisions and acts of several people thereby representing the whole society. Schmitt calls the first way the “principle of identity” and the second “the principle of representation”, arguing that in their combination these are principles of political form.<sup>4</sup>

Both of these principles are quite different. Nevertheless, as Schmitt points out, they work together, because political community mostly has its representatives, who act in its name, but at the same time a certain number of people must actually exist who can act together. Pure representation without an actually present people would perhaps appear only in an absolute monarchy, where the monarch can claim “L’état, c’est moi – I am the State”. Pure identity would, on the other hand, be a principle of direct democracy, where only the actually present people would act politically directly in an assembly.<sup>5</sup> Schmitt sets the principle of identity and the principle of representation against each other, yet claims that they are complementary and that all political regimes can ultimately be understood as some combination of them.<sup>6</sup>

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2 Schmitt, C., *Verfassungslehre*. Munich and Leipzig, Duncker & Humblot 1928, § 16, pp. 208–209.

3 Political unity is described here in somewhat mythopoeic terms. But conceptually, Schmitt understands the development of political unity as a matter of *Freund vs Feind* – “the most extreme point, that of the friend-enemy grouping” (der äußerste Intensitätsgrad einer Verbindung oder Trennung, einer Assoziation oder Dissoziation) –, thereby claiming that the concept of the State presupposes this conflictual concept of the political. Schmitt, C., *Der Begriff des Politischen*. Munich and Leipzig, Duncker und Humblot 1932, p. 14.

4 Schmitt, C., *Verfassungslehre*, op. cit., § 16, pp. 204–205.

5 That is why Schmitt looked at democracy mainly using the model of Athenian direct democracy. Mostly, he referred to Rousseau.

6 Schmitt characterizes liberal democracy as a contradictory and unsustainable mix of liberal representation and democratic identity, which is made clear in the conditions of a mass democracy born in the early twentieth century. See *ibid.*, p. 201 ff.

The principles of identity and representation explain how the political form of a society takes shape, comprising many different individuals who otherwise pursue their own aims to their common political unity. Putting it in more legal terms, we can say that both principles explain how a society comprised of many individuals with different interests can create a collective person able to act politically and be the source of the rights and obligations of its members.

As we are also focusing on Hegel's critique of liberalism in thinking about representation, it is useful to recall the theory of the social contract, particularly Hobbes's, which has fundamentally influenced modern political thought.

In the well-known picture from the frontispiece of Hobbes's *Leviathan*,<sup>7</sup> a figure of a man, comprised of a great number of individuals, rises up above a landscape in the background, holding in his hands the joint symbols of secular and ecclesiastical power. That, Hobbes says, is Leviathan, an artificial person, alias the State, who emerged by mean of the association of a great number of individuals in a political commonwealth on the basis of a contract of all with all.<sup>8</sup> Actually, we also see in the picture the sovereign, whom the members of society have entrusted with the power to act in their names. In Hobbes, this is the individual who acts as the representative of every member. A concrete individual and the representative figure, identity and representation, both of Schmitt's principles of political form are at play here, but are connected in a way that is typical of autocratic regimes in which the representative acts in the name of the represented without their consent, so that society has no say in political action.

Amongst theorists of representation, Hobbes holds a quite extreme position on these ideas. Quentin Skinner, an important contemporary historian of ideas, by contrast, emphasizes that in the republican tradition, society plays an active role in political action and decision-making. Skinner suggests conceiving of the State as an abstract unity of society that is different both from the governing and the governed, and is the source of their commitments.<sup>9</sup> Following on somewhat from Hobbes, he then argues that the State is thus an artificial person, indeed, even a fictitious person. But in Skinner's republican theory the sovereign is not a single ruling representative person; it is instead civil society divided into the ruling and the ruled, though in

7 Frontispiece of Thomas Hobbes's *Leviathan*, by Abraham Bosse, with creative input from Thomas Hobbes, 1651.

8 Hobbes, T., *Leviathan*. With selected variants from the Latin edition of 1668. Ed. E. Curley. Indianapolis and Cambridge, Hackett 1994, ch. XVII, p. 106 ff.

9 Skinner, Q., "The State", in: Ball, T. – Farr, J. – Hanson, R. L. (eds.), *Political Innovation and Conceptual Change*. Cambridge, Cambridge University Press 1989, p. 90 ff.

democracy it holds that the ruled have the power to defend themselves against arbitrary rule by their rulers. The concrete action of the State and the political will of society therefore emerge from the competition between the ruling and the ruled. This can fruitfully be understood as a conflictual way of creating the political unity of society and its political representation.

Hegel understands the relationship between society and the State differently at than. In his mature Berlin period, set out in the *Grundlinien der Philosophie des Rechts*, he was the first to conceptually differentiate between civil society and the State. He conceived of civil society as a sphere of difference, which emerged between the family and the State.<sup>10</sup> The State stands above civil society. Yet, it comes into being in an intermediary way in the processes of the political representation of civil society. The process of mediation begins in the sphere of the private efforts of individuals to earn a living, that is, in the economy, which Hegel, however, calls civil society. At this level, the coordination of individual efforts continues by means of the estates and corporations, until they are transferred to the sphere of public and political institutions, consisting in the public, parliament, the bureaucracy, and, ultimately, the ruler. In them, an awareness of the political unity among members of society eventually emerges. In no case, therefore, can one understand the State as an abstract unity of society, let alone as some artificial person such as we see in Hobbes and Skinner. On the contrary, Hegel sees the State as an organic whole of society, which is the concrete political unity of the universal, the particular, and the individual. Interestingly enough, the conflictual civil society holds its place incorporated in political-representation processes. This becomes the main question in our further considerations.

It is this organic conception of the political unity of society which is expressed by Hegel's basic definitions of the State. Firstly, he defines it as the "actuality of the ethical Idea".<sup>11</sup> This is not easy to understand, because we are coming to the metaphysical heights of Hegel's philosophy. The Idea for Hegel was not a mere idea in the mind; nor did he understand it in Platonic terms as the true reality separated from existent things. Rather, he understood it pantheistically, as the unity of concept and reality. The State thus names the real State that has a true effect on the lives of people, and the sentence holds that no State exists which is not a real State. Consequently, the State has various historical forms, so that the theory of the State is concerned with

10 "Die bürgerliche Gesellschaft ist die Differenz, welche zwischen die Familie und den Staat tritt." Hegel, G. W. F., *Grundlinien der Philosophie des Rechts. Werke*, Bd. 7, Frankfurt am Main, Suhrkamp 1986, Zusatz § 182, p. 339; further shortened as *Philosophie des Rechts*. To avoid misunderstanding, I prefer not to translate Hegel's quotations.

11 "Der Staat ist die Wirklichkeit der sittlichen Idee", *ibid.*, § 257, p. 398.

what is common and essential in various historically existing States. Hegel thought that the Idea of the State had been made a reality in the long history of the European West, from classical antiquity to the modern era, when what was essential about the State gradually achieved its fulfilment. At the end of history, the State in its rational essence thus became a reality.<sup>12</sup> One should mention two other definitions of the State, which we will also be concerned with in this essay. On the one hand, the “state in and by itself is the ethical whole, the actualisation of freedom”.<sup>13</sup> This definition refers to the fact that the modern State is the realization of freedom not of the one, or the few, but of the multitude of people, that is, the freedom of the one is to be merged with the freedom of the others,<sup>14</sup> which is precisely what differentiates the modern era from the classical. And, on the other hand, it is the “actuality of the substantial will”.<sup>15</sup> This definition refers to the fact that the modern State is not determined from outside, either in religious terms or by Nature. Rather, it is built from within as the united will of society. In that regard, Hegel’s theory of representation can serve as a good example of foundationalism in thinking about political will.<sup>16</sup>

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12 “Was vernünftig ist, das ist wirklich; und was wirklich ist, das ist vernünftig.” This renowned claim appears in the preface to *Philosophie des Rechts* (op. cit., p. 24). In this work, Hegel repeatedly refers to his *Wissenschaft der Logik*, in which he systematically interprets how the structure of reality is (becomes) rational. Moreover, the rationality takes its structure from logical judgement, which ultimately links what is universal, particular, and individual. Consequently, the modern State (the political unity of society) is to be thought of not only as the realization of the rational unity of the universal, the particular, and the individual in people’s lives and their social existence, but also as the fulfilment of human history with its metaphysical design. In the rest of my article, however, I leave aside this hinted-at metaphysical dimension of Hegel’s political theory.

13 Hegel, G. W. F., *Philosophie des Rechts*, op. cit., § 258, p. 399.

14 Hegel repeats this Kantian formulation both in the *Phänomenologie des Geistes* and in *Philosophie des Rechts*, though he gives it a quite different meaning, which is the topic of my article.

15 Hegel, G. W. F., *Philosophie des Rechts*, op. cit., § 258, p. 399.

16 In the period between the two world wars, there emerged in German scholarship an important school of legal theory, which came out of Hegel’s theory of representation. It understood politics as the formation of the unified will of society, and then saw representation as the integration of the individual in society. The founder of the school was Rudolf Smend, an important legal theorist of the Weimar Republic, who polemicized even with Carl Schmitt. Both men rejected the legal positivism of Hans Kelsen, but were divided on their defence of the Weimar Republic. Schmitt understood the creation of political unity as a conflict, as the political unification of the members of society along a friend–enemy axis, and thus sought the defence of the Weimar Republic in the political decision-making of the President of the Republic, who, face to face with the enemy, assumes his role as the political representative of society. Smend, by contrast, emphasized the wider integrational role of the public and political institutions in a divided civil society, which enable the emergence of *Willensvereinheitlichung* in the State. Both believed that in the conditions of mass democracy liberal constitutionalism, that is, elections, the responsibility of political leaders, parliamentary approval of the state budget, and other constitutional procedures, would not suffice to save the republic. But Smend emphasized the need for deeper integration and the further education of the citizenry, which would be based on

## 2. The common will and its intermediation (Hegel and Rousseau)

As we have seen, the State is for Hegel “the realization of ethical life”, “the concrete freedom”, and “the substantial will”, so that we might expect that defining the State as the general will, as Rousseau did, would be endorsed by Hegel. He himself says emphatically that the being of the State consists in the conscious activity of individuals “raised to universality” and that the aim of the individual is “to live a universal life”.<sup>17</sup> But it is actually a more ambiguous approach. Criticism of Rousseau’s conception of the general will is a *leitmotif* of Hegel’s political theory almost ever since Hegel’s early years. But it was always criticism linked with admiration. Thus, in the *Philosophy of Right* Hegel praises Rousseau for his having conceived the principle of the State as being a will, a will conceived by the people, that is, a conscious will, not merely a will given by Nature as a social urge and so forth. In that regard, Rousseau is the leading political thinker of modern times. But Hegel immediately afterwards emphasizes Rousseau’s mistake. He points out that when people brought to life the general will in a Rousseauian way, it led to revolution, “which ended in frightfulness and terror”.<sup>18</sup> Nevertheless, Hegel’s attitude to the French Revolution is fundamental for his political theory, and the concept of political representation is the key to understanding his approach.<sup>19</sup>

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common and shared value positions. For the polemics between Schmitt and Smend, see Kelly, E., Introduction, in: Schmitt, C., *The Crisis of Parliamentary Democracy*. Cambridge, Mass., MIT Press 1988.

- 17 “Der Staat ist als die Wirklichkeit des substantiellen Willens, die er in dem zu seiner *Allgemeinheit* erhobenen besonderen Selbstbewusstsein hat, das an und für sich Vernünftige. [...] Die Vereinigung als solche ist selbst der wahrhafte Inhalt und Zweck, und die Bestimmung der Individuen ist, *ein allgemeines Leben* zu führen.” Ibid., § 258, p. 399. Italics added.
- 18 “In Ansehung des Aufsuchens dieses Begriffes hat Rousseau das Verdienst gehabt, ein Prinzip, das nicht nur seiner Form nach (wie etwa der Sozialitätstrieb, die göttliche Autorität), sondern dem Inhalte nach Gedanke ist, und zwar das Denken selbst ist, nämlich den Willen als Prinzip des Staates aufgestellt zu haben. Allein indem er den Willen nur in bestimmter Form als einzelnen Willens und den allgemeinen Willen nicht als das an und für sich Vernünftige des Willens, sondern nur als das Gemeinschaftliche, das aus diesem einzelnen Willen als bewusstem hervorgehe, fasste, so wird die Vereinigung der Einzelnen im Staat zu einem Vertrag, der somit ihre Willkür, Meinung und beliebige, ausdrückliche Einwilligung zur Grundlage hat, und es folgen die weiteren bloss verständigen, das an und für sich seiende Göttliche und dessen absolute Autorität und Majestät zerstörenden Konsequenzen. Zur Gewalt gediehen, haben diese Abstraktionen deswegen wohl einerseits das, seit wir vom Menschengeschlechte wissen, erste ungeheure Schauspiel hervorgebracht, die Verfassung eines grossen wirklichen Staates mit Umsturz alles Bestehenden und Gegebenen nun ganz von vorne und vom Gedanken anzufangen und ihr bloss das vermeinte Vernünftige zur Basis geben zu wollen; andererseits, weil es nur ideenlose Abstraktionen sind, haben sie den Versuch zur fürchterlichsten und grellsten Begebenheit gemacht.” Ibid., § 258, pp. 400–401.
- 19 Here, I embrace the position that Joachim Ritter explores in his *Hegel und die Französische Revolution* (Frankfurt am Main, Suhrkamp 1965). In this publication, he convincingly demonstrates

What, then, did Rousseau's mistake consist in? Let's look first at the mentioned passage in the *Philosophy of Right*. Here, Hegel points out that Rousseau understood the general will as a contract and that that was a mistake, because in this way the behavior of a State is explained in terms adopted from civil society. But it was not only Rousseau who made this mistake; rather, it was modern liberalism in general.<sup>20</sup> This objection is fundamental. Here, Hegel takes a critical position on the whole tradition of modern natural law, Rousseau included.

Let us look for the reasons for this in Hegel's conception of civil society. He understands civil society liberally as a sphere of human collaboration based on individual rights and freedoms, in other words, as a market society. But no unity of society, which could be directly represented in the will of the State, emerges in such a civil society. Civil society is divided into classes, and various interests, possibly antithetical, emerge in it. These private, group, and class interests are mediated by a great number of manifold contracts. Thus, a system of cooperation and collaboration emerges, linking individuals together, but as Hegel argues, it is only a system of the mutual dependence of these individuals, which does not allow a unified will to emerge; it is at most an indirect universality of such a society. As long as the aim of the State is considered to be only that the system of individual needs is to operate without disruption on the basis of contracts, as liberalism understands the State, then in Hegel's perspective it is only a matter of the external State and the State based on need,<sup>21</sup> whose political unity will be represented by some private or arbitrary group will. From Hegel's standpoint, it will be an arbitrary representation of political unity. If, moreover, some group begins to present itself as the general will, as it was in the French Revolution, that, according to Hegel will lead to the destruction of the whole society.

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the fundamental significance of the French Revolution for Hegel's political theory. I try to clear up the apparent ambiguity by interpreting Hegel's concept of political representation.

- 20 "Wenn der Staat mit der bürgerlichen Gesellschaft verwechselt und seine Bestimmung in die Sicherheit und den Schutz des Eigentums und der persönlichen Freiheit gesetzt wird, so ist das Interesse der Einzelnen als solcher der letzte Zweck, zu welchem sie vereinigt sind [...]" Hegel, G. W. F., *Philosophie des Rechts*, op. cit., § 258, p. 399.
- 21 "Der selbstsüchtige Zweck in seiner Verwirklichung, so durch die Allgemeinheit bedingt, begründet ein System allseitiger Abhängigkeit das Recht, dass die Subsistenz und das Wohl des Einzelnen und sein rechtliches Dasein in die Subsistenz, das Wohl und Recht aller verflochten, darauf gegründet und nur in diesem Zusammenhange wirklich und gesichert ist. – Man kann dies System zunächst als den äusseren Staat, – Not- und Verstandesstaat ansehen." Ibid., § 183, p. 340. We can differentiate three concepts of the state: i) as "die Wirklichkeit der sittlichen Idee", ii) "der Not-Staat", iii) "der politische Staat". Cf. Westphal, K., *The Basic Context and Structure of Hegel's Philosophy of Right*. In: Beiser F. C. (ed.), *The Cambridge Companion to Hegel*. Cambridge, Cambridge University Press 1993, p. 234–269.

Hegel asserts that Rousseau, by conceiving of political unity as the general will and the general will as a contract, thus situated the creation of political unity directly into civil society with its contradictory particular interests arbitrarily claiming their general significance.<sup>22</sup> Hegel subsequently demonstrates that such a general will politically realized disrupts rather than unifies political society. He sees the reasons for this in the fact that concepts taken from civil society, like contract, civil liberty, and civil rights, become instruments of political power for a particular group arbitrarily claiming its representative universality. Apparently, these notions are taken out of their particular social context, which is why Hegel calls them abstractions.<sup>23</sup> But the concrete dependencies linked with these definite interests remain concealed behind these abstractions. The masking of these interests, however, can conceal in themselves civil conflicts or even violence.

A slightly different interpretation of the Terror during the French Revolution appears in Hegel's *Phänomenologie des Geistes* from his earlier, Jena period. Here, the interpretation is focused on the concept of the general will, without discussing the topic of liberalism and its contractualist conception of society. In a passage entitled "Absolute Freedom and Terror", the general will appears as the cultural form of the spirit in the history of the West, which follows the Enlightenment. Hegel claims that in the French Revolution this general will "puts itself on the throne of the world, without any power being able to offer effectual resistance".<sup>24</sup> The general will is not understood here in liberal terms, as contract among individuals, but rather as a political claim for the real identity of all individuals in society, not merely some tacit consent with government, as it is in Locke's contractual theory; nor is it assent through a representative of others, as in the clear allusion to Rousseau's rejection of the representation of the general will.<sup>25</sup> The general will is the nonmediated actual identity of all members in the collective activity.<sup>26</sup>

22 For a similar approach to the critique of Rousseau's general will, see Arendt, H., *On Revolution*. New York, Viking 1963. She, however, emphasizes mainly the contamination of the general will by social antagonism and class hatred. Hegel and Arendt thus reveal their republican approach.

23 See the quotation in note 18.

24 Hegel, G. W. F., *Phänomenologie des Geistes*. Werke. Bd. 3. Frankfurt am Main, Suhrkamp 1989, p. 433.

25 "Dieses [Das Selbstbewusstsein] läßt sich dabei nicht durch die Vorstellung des Gehorsams unter selbstgegebenen Gesetzen, die ihm einen Teil zuwies, noch durch seine Repräsentation beim Gesetzgeben und allgemeinen Tun um die Wirklichkeit betrügen, – nicht um die Wirklichkeit, selbst das Gesetz zu geben und nicht ein einzelnes Werk, sondern das Allgemeine selbst zu vollbringen; denn wobei das Selbst nur repräsentiert und vorgestellt ist, da ist es nicht wirklich; wo es vertreten ist, ist es nicht." *Ibid.*, p. 435.

26 "[Das Selbstbewusstsein] ist [sich] seiner reinen Persönlichkeit und darin aller geistigen Realität bewußt, und alle Realität ist nur Geistiges; die Welt ist ihm schlechthin sein Wille, und dieser ist allgemeiner Wille. Und zwar ist er nicht der leere Gedanke des Willens, der in stillschweigen-



The French Revolution is therefore seen as the historical bringing to life of freedom in the form of the general will. But Hegel points out that no action can only be general. We know that according to Hegel every action bears in itself the connection of the universal, the particular, and the individual, which here means that action, in order to become real, must be mediated by concrete relations with other people.<sup>27</sup> Hegel regards with suspicion the idea of the collective action of a great number of individuals in their immediate identity, which we perceive in the foundations of Rousseau's idea of democracy based on the general will, and from which Schmitt also starts when he sets democratic identity and mediating representation against each other. Joint action, in Hegel, is always socially mediated concrete human cooperation. The immediate doings of all can only be an abstract claim masking particular interests, or even arbitrary domination of concrete individuals. That is what, according to Hegel, also stands behind the "tragic fate" of the Revolution.

We shall now focus further on Rousseau's theory of representation, which plays its decisive role in Hegel's understanding of the revolutionary events. One of Rousseau's basic ideas is the claim that the general will cannot be represented. Rousseau thus rejects the liberal conception of representation, according to which representation is an agreement that leaves the representative an opportunity to act at his or her own discretion. For Rousseau, it is unacceptable, because he believes that no political unity would emerge in this way.<sup>28</sup>

The point of this argument is made in the claim that "there is no mediation". Either an identical general will of the sovereign people actually exists, which it can then exercise collectively, that is, the people can deputize

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de oder repräsentierte Einwilligung gesetzt wird, sondern reell allgemeiner Wille, Wille aller Einzelnen als solcher. [...] so daß jeder immer ungeteilt alles tut und [daß,] was als Tun des Ganzen auftritt, das unmittelbare und bewußte Tun eines Jeden ist." Ibid., pp. 432–433.

27 It is Hegel's fundamental position that "Being is real" only as historically and socially mediated being. In *Phänomenologie des Geistes* we read more about that, for example, in Hegel's analysis of physiognomy. "Der sprechende Mund, die arbeitende Hand, wenn man will auch noch die Beine dazu, sind die verwirklichenden und vollbringenden Organe, welche das Tun als Tun oder das Innere als solches an ihnen haben; die Äußerlichkeit aber, welche es durch sie gewinnt, ist die Tat als eine von dem Individuum abgetrennte Wirklichkeit. Sprache und Arbeit sind Äußerungen, worin das Individuum nicht mehr an ihm selbst sich behält und besitzt, sondern das Innere ganz außer sich kommen läßt und dasselbe Anderem preisgibt." Ibid., p. 235.

28 "La souveraineté ne peut être représentée, par la même raison qu'elle ne peut être aliénée; elle consiste essentiellement dans la volonté générale, & la volonté ne se représente point: elle est la même, ou elle est autre; il n'y a point de milieu. Les députés du peuple ne sont donc ni ne peuvent être ses représentants, ils ne sont que ses commissaires; ils ne peuvent rien conclure définitivement. Toute loi que le peuple en personne n'a pas ratifiée est nulle; ce n'est point une loi." Rousseau, J.-J., *Du contrat social*. Paris, Union Générale d'Éditions 1963 [1762], ch. 3.15, p. 80.

someone to carry it out, or such an identical general will does not exist, which is the case when some individual or group comes forward with the claim that they, in their doings, represent the general will. No third possibility exists, Rousseau says; *tertium non datur*.

As we have seen, Hegel fundamentally rejects Rousseau's democratic idea about the direct identity of a multitude of individuals acting in common according to their general will. Instead, he believes that the general will must accept otherness, and he therefore proposes precisely the third possibility, which Rousseau denies, that is, "mediation" between the identity of the general will and representation of pluralistic society.

This is a view we should consider in greater detail, because Hegel starts from here when elaborating his own theory of representation, in which the general will is not presented as the identity of the people acting directly, but as being mediated by social and political institutions, in which the representatives come forth in public, but remain rooted in a concrete social milieu. In *Phänomenologie des Geistes*, Hegel does not yet have such a theory of representation; consequently, his attitude to Rousseau's theory of the general will tends to be ambiguous. On the one hand, Hegel fundamentally rejects Rousseau's conception of the general will (*volonté générale*); on the other, he embraces Rousseau's belief that the general will cannot be represented. At the same time, Hegel, like Rousseau, rejects the liberal conception of representation, in which one person stands in for another on the basis of a contract. When, in *Phänomenologie des Geistes*, he explains the emergence of destructive political conflicts during the Revolution, he is thus recalling Rousseau's tenet that where a person is represented, that person is not truly present.<sup>29</sup> Hegel here accepts this argument, but deduces from it the irreconcilability and uprootedness of the Rousseauian citizen, who wants directly to act politically as a *citoyen* and does not want to let himself or herself be deprived of his or her identity with the general will. But, subsequently, he or she comes into conflict with the wills of others who also come forth with their claims to the universality of the will. Yet the Rousseauian

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29 In his analysis of Hegel's theory of representation, R. K. Hočevár (see the following note) concludes that this conception of representation is the reason why representation is paid little attention in *Phänomenologie des Geistes* and why this concept "temporarily vanishes from Hegel's thinking." Hočevár, R. K., *Stände und Repräsentation beim jungen Hegel: Ein Beitrag zu seiner Staats- und Gesellschaftslehre sowie zur Theorie der Repräsentation*. Munich, C. H. Beck 1968, p. 38. In fact, in *Phänomenologie des Geistes* we do not find a political theory of the modern State. The next chapter in *Phänomenologie des Geistes* is on the internalization of the experience of the Revolution and the birth of Kantian morality. The internalization of morality and the birth of the morally responsible individual are something Hegel always considered to be the factors without which a modern State founded on freedom and law, which will be the realization of ethical life, cannot exist.

citoyen does not want at any cost to be deceived, and is therefore willing to fight to the death if necessary.

When Hegel, in *Phänomenologie des Geistes*, criticizes the Rousseauian conception of the general will, he is thus emphasizing that this conception both negates the social anchoring of the individual and disintegrates the economic, social, and political institutions into which the individuals have been set to live. He had in mind not only the corrosion of the social structure of the *ancien régime*, which the Revolution had brought down, but mainly the inability of the Revolution to give the lives of the individuals who had become free citizens some other social anchoring in the division of labor and in political institutions. Nevertheless, one would be profoundly wrong to see in Hegel's theory of the representation of social interests an attempt to return to the pre-Revolutionary society of the *ancien régime*. It still holds that Hegel shares the standpoint of the French Revolution and considers it the historical beginning of the modern era. Similarly, he does not understand the social structure of civil society at all in the old way. Instead, he thinks about it as a modern market society on the English model of political economy, albeit he also criticizes liberalism for its abstract individualism in which the individual appears only as an abstract person, a holder of rights to private ownership.

These ideas are also strikingly applied in his mature theory of representation. Consequently, we should bear in mind that in Hegel's interpretation the social structure in which the interests of the individual are formed and then represented in politics will fundamentally differ from that of feudal estates-based society, but nor will it be possible to understand it only as the division of labor in modern industrial society.

The basis of his theory of representation, as we shall see in the next part of this article, is Hegel's conception of civil society, where the concept of the estates and corporations is also elaborated. In the theory of representation, he then talks about the representation of the *Stände* (the estates).<sup>30</sup> Corpora-

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30 I will use the terms "Stand" and "Stände representation", since the term "estate" is unsuitable, referring as it does to the *ancien régime*. Similarly, the term "class", which Knox, for example, uses in his English translation of *Philosophie des Rechts*, refers to later theories of capitalism. In his thoughts on the representation of *Stände*, Hegel is somewhere between these two extremes. Almost the only thorough analysis of Hegel's conception of representation is conveyed in Hočevar, R. K., *Stände und Repräsentation beim jungen Hegel* (op. cit.). Hočevar follows on from Smend's writings about representation as integration. But he interprets Hegel's theory of representation too conservatively, diminishing the significance of the French Revolution (and English political economy) and accentuating the role of German tradition. There is a lot of scholarship dealing with the Hegels theory of the civil society and the state, which is not mentioned here, as we are focused on his theory of representation. But some contributions are quite substantial, esp. Thom Brooks. *Hegel's Political Philosophy: A Systematic Reading of the Philosophy of Right*. Edinburgh, Edinburgh University Press 2007.

tions, in his view, can be industrial associations, business groups, but, in the old way, so can the guilds, and he ranks even the communities among them. They are special institutions, which somehow regulate the operation of the market and its social impact on the life of the individual. The estates in the feudal interpretation were rejected by Hegel since his youth. He considered them a source of bondage and political despotism in the State.<sup>31</sup> Nor did he hesitate to use the term “contract” to describe the relationship between the representation of the feudal estates and the monarch. By this term he meant an agreement about privileges, which he considered to be a cause of arbitrariness in the behavior of feudal estates that could lead them all the way to breaking apart the political unity of the State, as, by the way, he claims in his Frankfurt and Jena writings about the Constitution of the Reich. “Germany is no longer a State,” claims the famous first sentence.<sup>32</sup> Yet in his *Philosophie des Rechts*, written in Berlin, he claims that the city estates under feudalism were States within the State, which disintegrated the political unity of the State. Nevertheless, this corporative element could, according to him, also be the source of the State’s strength, as had sometimes been the case in the past. Without that, there is a danger only of an abstract unity of society in the State, which he considers to be a danger of the modern era. Hegel blames this legacy on the French Revolution, or on the Napoleonic reforms of the state administration, for forcing the French State, probably to its detriment, to make do without these corporations, because it substituted a purely bureaucratic administration for them.<sup>33</sup>

### 3. “Stände” representation and the public sphere (Hegel and Kant)

The concept of *Stände* representation becomes a key argument in Hegel’s theory of the constitutional State. This theory, however, developed gradually, and it appears in several versions. The decisive version was from his Jena period, in which Hegel gradually elaborated three drafts of his philosoph-

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31 The young Hegel was of a more revolutionary spirit. He set out on the path of philosophy as a follower of revolutionary Kantianism, which he reinterprets in a republican way when he introduces the concept of Volksreligion (popular religion). See Lukács, G., *Der junge Hegel: Über die Beziehungen von Dialektik und Ökonomie*. Zurich and Vienna, Europe Verlag 1948. Hočevár concludes, somewhat imprecisely, that Hegel was at that time a proponent of Kantian liberal constitutionalism. It is reasonable to object to that, since he rejected the feudal estates as a republican, not as a liberal, and as an advocate of the contractual theory of the State. Nevertheless, it is true that from 1802 onward Hegel no longer mentions the representation of the people, only the representation of *Stände*. See Hočevár, R. K., *Stände und Repräsentation*, op. cit., pp. 66 and 80.

32 Hegel, G. W. F., *Die Verfassung Deutschlands*. Werke. Bd. 1. Frankfurt am Main, Suhrkamp 1986, p. 461.

33 Hegel, G. W. F., *Philosophie des Rechts*, op. cit., Zusatz § 290, p. 460.

ical system, including the philosophy of spirit (or mind), a discussion of the “actual mind” and “ethical life”, which was in fact Hegel’s social and political philosophy. Already as a young man, Hegel had, in his thinking about society, accepted the standpoint of English political economy. Nevertheless, in his theory of representation he tended to stick to Plato’s and Aristotle’s ideas about the classes in the political community.<sup>34</sup> But he sought to reinterpret their ideas so that they fit into his own thinking about the modern constitutional State. The strong influence of the modern republican tradition, particularly Montesquieu’s, should not also be underestimated. Nevertheless, the final version of his political theory was not elaborated until his lectures at Heidelberg in 1817/18.<sup>35</sup> His theory of representation does not appear in its mature form as part of a systematic political theory until *Philosophie des Rechts* from his Berlin period, which we are focused on here.<sup>36</sup>

In *Philosophie des Rechts*, the parts of civil society in which the “masses of labor”<sup>37</sup> are organized in are called estates, and are thus part of the economy.<sup>38</sup> Hegel sees the economy on the model of English political economy, yet holistically, and thus points out that the production of goods and their

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34 Still in the Jena lectures from 1805 to 1806, he distinguishes in the State (on the classical model of talking about the constitution) only *Stände* and government, further dividing *Stände* into (a) the lower *Stände*, in which he ranks the peasants as the *Stand* of immediate confidence and their substantiality, then (b) the bourgeoisie – the trades and the merchants and the active *Stand* of abstract (property) law, and (c) the *Stand* of commonality (*Stand der Allgemeinheit*), which includes the police (from the Greek *politeia*, government), justice, administration, and the military *Stand*, but scholars too are included. This *Stand* works for the State and it forms the public. According to Hegel, society gains its consciousness in the thinking of its *Stände*. Above *Stände* there stands the government as the political unity of the *Stände*-based society. Hegel sometimes uses the words “Stand” and “class” alternately, but it would be erroneous to see in that the germ of a class conception of civil society. See Hegel, G. W. F., *Jenaer Realphilosophie*. Ed. J. Hoffmeister. Berlin, Akademie-Verlag 1969, pp. 253–262.

35 Hegel, G. W. F., *Vorlesungen über Naturrecht und Staatswissenschaft*. Transcribed by P. Wannenmann. Hamburg, Felix Meiner Verlag 1983.

36 The decisive change that Hegel made in his conception of civil society in relation to the State is understandable in the context both of the classical tradition of natural right, whose concepts he partly adopted, and of the modern theory of natural right, which he took issue with. See Riedel, M., *Between Tradition and Revolution: The Hegelian Transformation of Political Philosophy*. Trans. from the German by W. Wright. Cambridge and New York, Cambridge University Press 1984.

37 “Massen der Arbeit” is the term Hegel uses to describe the division of labour and the institutional structure of modern industrial society; the term is evidence of his commitment to English political economy.

38 “Die unendlich mannigfachen Mittel und deren ebenso unendlich sich verschränkende Bewegung in der gegenseitigen Hervorbringung und Austauschung sammelt durch die ihrem Inhalte inwohnende Allgemeinheit und unterscheidet sich in allgemeinen Massen, so dass der ganze Zusammenhang sich zu besonderen Systemen der Bedürfnisse, ihrer Mittel und Arbeiten, der Arten und Weisen der Befriedigung und der theoretischen und praktischen Bildung – Systemen, denen die Individuen zugeteilt sind –, zu einem Unterschiede der Stände ausbildet.” Hegel, G. W. F., *Philosophie des Rechts*, op. cit., § 201.

exchange link together the behavior of people in the system, which has its own universality (*Allgemeinheit*). He has in mind the universality produced on the market, which makes it an indirect, unconscious universality that works behind the backs of the producers and consumers. Nevertheless, Hegel does not share the liberal optimism as much as the economists do with regard to the market economy, and thus also reveals the contradictions in the market economy and points out its destructive tendencies. That is why he claims that in civil society corporations and *Stände*, which emerge as particular systems of the division and organization of labor, have an important place; they can regulate any possible negative impact that the market has on producers.

The political unity of the State, however, emerges only in public institutions located above civil society. From this perspective, the *Stände* are then institutions in which the members of civil society can come out in public and join in the creation of the political will of the State. It is therefore fair to say that the *Stände* publicly represent a divided society in its sense of belonging.<sup>39</sup> Hegel adopted from Plato and Aristotle the division into three classes. The class that worked directly for the community was always the decisive one, which in Plato consisted of the aristocratic guardians (rulers). For Hegel, the link with a hereditary aristocracy was, however, extremely doubtful, and he thus reinterprets this class in various ways, gradually moving from largely military notion to a more administrative one.<sup>40</sup> In his mature theory, Hegel distinguishes three *Stände*: first of all, “the *substantial* or immediate class”, which is the farmers; second, “the reflecting or *formal* class”, which comprises industry and commerce, and, thirdly, “the *general class*”, which comprises the civil servants.<sup>41</sup> Hegel calls this last *Stand* the general class,

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39 In this respect, Hegel calls the *Stände* the “mediating organ” that stands between the government and society, the latter of which is divided into “particular circles and individuals”. This position requires of individuals that they acquire “the sense and thinking of the State and government”, as well as the “interests of particular circles and individuals”. “Als vermittelndes Organ betrachtet, stehen *Stände* zwischen der Regierung überhaupt einerseits und dem in die besonderen Sphären und Individuen aufgelösten Volke andererseits. Ihre Bestimmung fordert an sie so sehr den Sinn und die Gesinnung des Staats und der Regierung als der Interessen der besonderen Kreise und der Einzelnen.” *Ibid.*, § 302.

40 Though he claims that Hegel, in “Die Verfassung Deutschlands in principle barely doubts the noble military and employee estate”, Hočevár too admits that “the nobility is faced with the competition of the bourgeoisie, which, in the later period, rose to greater importance.” Hočevár, R. K., *Stände und Repräsentation*, op.cit, p. 108. Consequently, this type of aristocracy tends to bring to mind Kant’s “*Amtsadel*”, which historically took the place of the hereditary nobility, as Kant writes in *Zum ewigen Frieden*. The hereditary nobility owes its positions to privilege, which Hegel also rejects. Kant, I., *Zum ewigen Frieden*. In: *Werkausgabe*. Bd. 11. Ed. W. Weischedel. Frankfurt am Main, Suhrkamp 1997, p. 205.

41 Hegel, G. W. F., *Philosophie des Rechts*, op. cit., § 202, p. 355.

which means that its aim is to work directly for the common affairs of the State.

The political role of the *Stände* is important, because the *Stände* also represent the members of civil society in the public creation of a unified political will. By means of the *Stände* and their representatives, society achieves self-consciousness, which Hegel understands as a process by which the social will (indirectly and unconsciously created within a contradictory civil society) becomes, by means of *Stände* representation, the public will, which is conscious and unified. But the role of the representation is to make private individuals into citizens, members of the State.<sup>42</sup> Thus, in the representation of *Stände*, a public is formed from the opinions and ideas of the multitude of individuals. Consequently, as Hegel claims, general affairs are not only substantially a matter of the members of society, but also become an currently relevant matter for them, because people have a share in them. Yet it is worth recalling that Hegel continues to refuse to understand representation as it is understood in the theory of the social contract in the liberal tradition, that is, as the representation of individuals and their interests on the basis of a contract amongst equals.

Representation thus means the public presentation of the particular and group interests that have emerged in the system of needs and mutual dependencies of individuals in civil society. The interests appear publicly in political institutions, and it is in the process of their representation that the members of civil society become aware of their group identity in relation to other people, unify their wills, and create political unity. Hegel therefore talks about delegating rather than representing. A representative of a *Stand* does not represent an individual and his or her interests; instead, he or she acts as a delegate or deputy (*Abgeordnete*) of a group and its interests.<sup>43</sup>

Hegel clearly does not understand representation in the liberal sense, that is, as a contractual relationship. Nor does he necessarily link delegation with elections. Though elections can play a useful role in the selection of delegates, Hegel generally considers them to be superfluous. In Hegel's conception, what is important in representation is, rather, the anchoring

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42 "Das ständische Element hat die Bestimmung, dass die allgemeine Angelegenheit nicht nur an sich, sondern auch für sich, d.i. dass das Moment der subjektiven formellen Freiheit, das öffentliche Bewusstsein als empirische Allgemeinheit der Ansichten und Gedanken der Vielen, darin zur Existenz komme." *Ibid.*, § 301, pp. 468–469.

43 "Wenn die Abgeordneten als Repräsentanten betrachtet werden, so hat dies einen organisch vernünftigen Sinn nur dann, dass sie nicht Repräsentanten als von Einzelnen, von einer Menge seien, sondern Repräsentanten einer der wesentlichen Sphären der Gesellschaft, Repräsentanten ihrer grossen Interessen." *Ibid.*, § 311, p. 480. It is necessary therefore to distinguish between Hegel's "Abgeordneter" and Rousseau's "commissaire", who is a commissioner of the people.

of the delegate in a certain social milieu, together with his or her familiarity with the group interests that he or she helps to make people aware of and form in public. The representative represents a particular group and its interests, which originally emerge in civil society. He even calls this the “objective element”, which the representative “belongs” to and because of which, as Hegel says, he or she is “here” as a representative.<sup>44</sup> The representative expresses these group interests in public, gives voice to them, and helps people to become aware of them. But he does not represent the individual or individual interests.

It is important to emphasize that the rejection of the liberal theory of representation as a contract must not be understood simply as the rejection of liberalism. Undoubtedly, *Stände* representation cannot properly be understood contractually, but it still holds that representation cannot take place without acknowledgement of the subjective rights of individuals. Political representation still comes out from the right to subjectivity. Hegel even calls the individual freedom “the principle of the modern World”<sup>45</sup> Without it, public opinion and political thinking could not emerge from the opinion of the multitude of individuals, and that is, as we have seen, the political task of *Stände* representation. In sum, then, the *Stände* represents civil society in the political sphere, where the individuals, taking advantage of their subjective rights, are aware of their belonging to others, and share in the creation of the State.

Hegel’s theory of representation, nevertheless, does not include only *Stände* and the public. The political unity of the State is ultimately represented by the monarch, who stands at the apex of the state institutions. He alone completes the process of creating the unified political will of society. But Hegel’s statements about the monarch have a wide range of meanings. On the one hand, he claims, in an almost Schmittian way, that “the absolutely decisive factor of the whole is not individuality in general, but a single individual, the monarch”.<sup>46</sup> On the other side, in the lecture notes, we read that “in a completely organised state, it is only a question of the culminating point of formal decision (and a natural bulwark against passion. It is wrong therefore to demand objective qualities in a monarch); he has only to say

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44 “Das Repräsentieren hat damit auch nicht mehr die Bedeutung, daß einer an der Stelle eines anderen sei, sondern das Interesse selbst ist in seinem Repräsentanten wirklich gegenwärtig, so wie der Repräsentant für sein eigenes objektives Element da ist.” Ibid.

45 “Das Prinzip der neueren Welt überhaupt ist Freiheit der Subjektivität, dass alle wesentlichen Seiten, die in der geistigen Totalität vorhanden sind, zu ihrem Rechte kommend sich entwickeln.” Ibid., Zusatz § 273, p. 439.

46 Ibid., § 279, p. 444.



‘yes’ and dot the ‘i’.<sup>47</sup> Moreover, who becomes the monarch is something both given by Nature and random. Considered as something physical, the monarch is only a random person at the end of a chain of representation. Being from Nature, the monarch is even named by Hegel an “ungrounded existence” (*grundlose Existenz*).<sup>48</sup>

Importantly enough, Hegel distinguishes the State from civil society, although their relationship runs both ways. Hegel claims that, on the one hand, for civil society the State is an external necessity and a higher power, to which civil society is subordinated, and that, on the other hand, the State is an *immanent aim* of civil society, an aim that draws its power from the link between the ultimate aim of the State and the special interests of all individuals who are its members. Consequently, Hegel can, in the liberal spirit, emphasize that individuals have a duty towards the State to the same extent that they have rights.<sup>49</sup> The fact that the State is an internal aim of civil society and, at the same time, also its external necessity can, however, be interpreted in various ways. Certain autocratic motifs in Hegel’s theory of representation will, however, never completely go away. They are particularly clear in his tenets that to be a member of a State is the supreme obligation of an individual and that the State has a sovereign right over him or her.<sup>50</sup>

Unsurprisingly, Hegel calls the constitutional monarchy a political regime of this type. It is fair to say that it is actually a representative monarchy. But it is clear that this differs considerably from Locke’s or Kant’s theory of the same subject. Especially in comparison with Kant’s conception of the public, some autocratic features of Hegel’s conception of public sphere clearly emerge.

Kant, in *Die Beantwortung der Frage: Was ist Aufklärung?*, distinguished between the *burgher* and the *scholar*, and does so even in some connection with Rousseau’s differentiation between *bourgeois* and *citoyen*. Nevertheless, he places the scholar and the scholar’s reading public (*Leserwelt*, *Publikum*) beyond politics, and thus the attitude of the public towards political authority becomes unclear. The burgher is, Kant remarks, an individual who uses his or her reason privately. It would seem that Kant sees this like Rousseau, who says that the bourgeois is someone who looks after his or her own private interests. But Kant calls the private use of reason that which one observes, for example, in the clerk who seeks to carry out the orders of his superior. It is therefore more like the instrumental use of reason, when

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47 Ibid., Zusatz § 280, p. 451.

48 Ibid., § 281, p. 451.

49 Ibid., § 261.

50 Ibid., § 258.

the individual thinks only about the means of acting, but lacks the freedom or courage<sup>51</sup> to judge the ends of his or her actions. Privately, then, it is when one is placed into the hierarchy of power and must obey it. By contrast, the public use of reason consists in free thinking about the aims and values of human action that takes place in open discourse amongst the members of the public in conditions of the equality and freedom of its members. Kant's terms in this regard are instructive. The private use of reason does not create any community, any sense of belonging, let alone unity, amongst people; at most it makes people functional cogs in the hierarchical machinery of power. By contrast, the public use of reason unites people and emancipates them. It even makes them, as Kant says, members of a cosmopolitan society. The creation of a public civil sense of belonging is seen by Kant in the purely liberal terms of free discussion amongst equal rational individuals. But he speaks with restraint only about a public, a reading public, and a cosmopolitan society.

But what is the attitude of this public society towards political authority? In this regard, Kant's ideas are vague. Political authority is doubtless a mainstay of the hierarchy of power and, in this sense, a source of obedience. The sphere of free public opinion thus opens up somewhere beyond the political order. Kant, undoubtedly, thinks that freedom of discussion is a necessary condition of human development, which is even the aim of the whole history. But how is one to develop one's human dignity within the State? Since Kant rejects revolution, the question arises how one is to formulate suitable political reformism. Nevertheless, in this essay Kant describes the attitude of the holder of political power towards the public only in allusions to the historic conditions then prevailing in Prussia. First of all, the monarch should, according to Kant, allow public opinion to be free, because he himself should also be enlightened and the monarch's majesty suffers when his government censors the writing. "This age is the age of the Enlightenment, the century of Frederick [the Great]," Kant remarks.<sup>52</sup> The second condition is even more odious, as he adds with clear reference to Frederick: "Only one who, himself enlightened, is not afraid of phantoms, but at the same time has a well-disciplined and numerous army ready to guarantee public peace, can say what a free state may not dare to say: Argue as much as you will and about what you will; only obey."<sup>53</sup> That is not particularly encouraging advice for an advocate of a liberal, democratic public.

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51 The free use of reasons is, in Kant, linked with courage. See the beginning of his essay on the Enlightenment, *Beantwortung der Frage: Was ist Aufklärung?* In: *Werkausgabe*. Bd. 11. Ed. W. Weischedel. Frankfurt am Main, Suhrkamp 1977, p. 53.

52 *Ibid.*, p. 59.

53 *Ibid.*, p. 61.

Kant wrote his essay on the Enlightenment before the French Revolution, so the republic is mentioned here purely in theory. But he clearly has a preference for constitutional monarchy. Kant at that time had not yet elaborated a concept of a republican system or a concept of the rule of law, which later would serve him as a basis for his political and legal ideas. In the essay, as we have noted, political power is seen only as a hierarchical order, and Kant does not raise the topic of political representation at all; he discusses, rather, the question of obedience. Nevertheless, we are looking at a moral theory of liberal cosmopolitanism in a nascent form.

In this Kant essay, the public cannot properly be seen as the sphere of political representation, because here one does not act as a member of concrete society, but shares as a member of cosmopolitan society in the creation of knowledge of the universal human good. The individual here appears as a representative of common humanity. For Kant, however, this moral world of human equality, freedom, and rationality opens up beyond politics only as the world of education and culture. One should perhaps speak instead about cultural representation. Kant discusses political representation only in his later theory of a republican system, where, however, he restricts himself to the legal institutions of the rule of law, and the public sphere is barely mentioned.

I would argue that Hegel's conception of representation has many advantages over Kant's theory of liberal constitutionalism. Political representation takes place in the public sphere, which, rather than standing outside politics as it is according to Kant, is part of the creation of the political unity of society. In it, the individual does not appear as an abstract person, but as a member of a particular social group, so that this notion enables one to understand the creation of public opinion in the context of the social conflicts of civil society. Consequently, representation should not be seen as a contract, nor as a rational agreement in public deliberation; rather, it should be seen as a public action that serves the defense of the social interests of the members of society. This conception of representation, I believe, is fruitful, but in Hegel's grasp it lags at the end behind Kant's with regard to one essential argument. Hegel completely eliminates all possible democratic features.

#### 4. Democracy suspected

Hegel's theory of *Stände* representation explains the sense in which it may be said that representatives are acting in the interests of the citizens. Yet it is striking to what extent the citizens are only passive observers here. We are told that the representatives help the citizens to become aware of their

group interests, and that they put forward their interests publicly and make them a part of the shared political will. But, when we look at this process of the representation of interests from the perspective of the citizens, we learn that without representatives the citizens alone cannot defend their interests, and alone are unable even to understand how their interests are connected to those of others. Hegel rather harshly concludes: “If ‘people’ means a particular section of the members of the State, then it means precisely that section which does not know what it wills.”<sup>54</sup> As he argued, people become aware of their interests only when they hear the words and see the deeds of their representatives in public. *Stände* representation seems rather to be a theatre that presents “an educational play” to a civil audience.<sup>55</sup> Undoubtedly, *Stände* representation and public opinion cannot serve as a domain of criticism, control, and civil self-defense, but is rather the sphere of the subordination, disciplining, and obedience of the citizens.

What is the section of the citizenry which is here called “the people”? Definitely, they are not the people as the source of the State’s legitimacy. Hegel considers the sovereignty of the people to be a fiction. One recalls Kant saying something similar in the sense that the people giving itself a constitution is a legal fiction.<sup>56</sup> Hegel, however, does not talk about the legal fiction of the people being the source of the State’s legitimacy, but about the people as an empty abstraction, which is something quite different. For Hegel, the idea of the people’s sovereignty makes some sense only when talking about the nation’s sovereignty in regard to other nations, for example, when we think about history or about nations that have their own States. In discussions concerning the nation’s constitutional order, however, it is a “confused idea”.<sup>57</sup> Certainly, Hegel refuses the idea that the people can give themselves a constitution, because such a notion assumes that a real people exists prior to the

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54 “[Es] ist vielmehr der Fall, dass das Volk, insofern mit diesem Worte ein besonderer Teil der Mitglieder eines Staates bezeichnet ist, den Teil ausdrückt, der nicht weiss, was er will. Zu wissen, was man will, und noch mehr, was der an und für sich seiende Wille, die Vernunft, will, ist die Frucht tiefer Erkenntnis und Einsicht, welche eben nicht die Sache des Volkes ist.” Hegel, G. W. F., *Philosophie des Rechts*, op. cit., § 301, p. 469.

55 “Die Öffentlichkeit der Ständeversammlungen ist ein grosses, die Bürger vorzüglich bildendes Schauspiel, und das Volk lernt daran am meisten das Wahrhafte seiner Interessen kennen.” Ibid., Zusatz § 315, p. 482.

56 Kant, following on from Sieyès’s theory of institutional representation, reckons on the constituting of the State as a hypothetical act of the people, in order to rationally explain why the Rechtsstaat can legitimately come forward with the claim that it represents the will of the people. The Constitution = “der Akt des allgemeinen Willens, wodurch die Menge ein Volk wird”. See Kant, I., *Zum ewigen Frieden*, op. cit., pp. 206–207.

57 “In diesem Gegensatze [gegen die im Monarchen existierende Souveränität] gehört die Volkssouveränität zu den verworrenen Gedanken.” Hegel, G. W. F., *Philosophie des Rechts*, op. cit., § 279, pp. 446–447.

constitution, but such a people outside a constitution, according to Hegel, is merely “the formless masses”, or “an agglomeration of atomic individuals” which are incapable of any political activity, let alone framing a constitution.<sup>58</sup> Hegel’s fundamental argument is that to act politically, or to consent to and decide on something, can be done only by a people who are already politically formed, that is, a people living in a political order and governed by leaders who decide questions and inform the people about what to do and how to act.<sup>59</sup> As we know, to take part in the political unity of society, people must be represented by delegates, which is the core of Hegel’s idea of *Stände* representation.<sup>60</sup>

But, as we have seen, there are also real “people” viewed as a section of members of the State, who can be said to stand outside constitutional institutions. Yet it is this sort of people, Hegel argues, who make public opinion.

Public opinion contains a general factor that results mainly from the *Stände* representational activity in its role of acquiring common knowledge (*Mitwissen*), co-advising (*Mitberaten*), and participating in decision-making (*Mitbeschliessen*). In that respect, Hegel argues, the sphere of the political in civil society achieves “its widening” in the publicity of *Stände* sessions.<sup>61</sup> As we know, that is where subjective freedoms and individual rights are applied. Yet they are fulfilled precisely in making public opinion, with the result, however, that public opinion becomes remote from the true knowledge of what the political will of society should be. Nevertheless, there is a particular kind of unity of civil society which can be achieved by means of public discussion, but it is only an empirical, random, and unsubstantiated political unity.

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58 “Sie [Die Frage: wer die Verfassung machen soll] scheint deutlich, zeigt sich aber bei näherer Betrachtung sogleich sinnlos. Denn sie setzt voraus, dass keine Verfassung vorhanden, somit ein blosser atomistischer Haufen von Individuen beisammen sei.” *Ibid.*, § 273, p. 439.

59 “Das Volk, ohne seinen Monarchen und die eben damit notwendig und unmittelbar zusammenhängende Gliederung des Ganzen genommen, ist die formlose Masse, die kein Staat mehr ist und der keine der Bestimmungen, die nur in dem in sich geformten Ganzen vorhanden sind – Souveränität, Regierung, Gerichte, Obrigkeit, Stände und was es sei –, mehr zukommt.” *Ibid.*, § 279, p. 447.

60 “Insofern diese [Abgeordnete] von der bürgerlichen Gesellschaft abgeordnet werden, liegt es unmittelbar nahe, dass dies diese tut als das, was sie ist, – somit nicht als in die Einzelnen atomistisch aufgelöst und nur für einen einzelnen und temporären Akt sich auf einen Augenblick ohne weitere Haltung versammelnd [a clear allusion to voting in elections], sondern als in ihre ohnehin konstituierten Genossenschaften, Gemeinden und Korporationen gegliedert, welche auf diese Weise einen politischen Zusammenhang erhalten.” *Ibid.*, § 308, p. 476.

61 “Ihre [Stände] unterscheidende Bestimmung darin besteht, dass in ihrem Mitwissen, Mitberaten und Mitbeschliessen über die allgemeinen Angelegenheiten in Rücksicht der an der Regierung nicht teilhabenden Glieder der bürgerlichen Gesellschaft das Moment der formellen Freiheit sein Recht erlange, so erhält zunächst das Moment der allgemeinen Kenntnis durch die Öffentlichkeit der Ständeverhandlungen seine Ausdehnung.” *Ibid.*, § 314, p. 482.

According to Hegel, such political unity is in itself contradictory.<sup>62</sup> Public opinion can be praised as well as belittled.<sup>63</sup> That is why he approves such contradictory views about it as “Vox Populi, Vox Dei”, and, quoting from Ariosto’s *Orlando furioso*, “Che ’l volgare ignorante ognun riprenda/E parlì più di quel che meno intenda”.<sup>64</sup> Arguably, public opinion brings forward the same matters as the constitution of the political nation should convey, but that occurs at most in the form of common sense,<sup>65</sup> which Hegel finds quite unsuitable for the success and well-being of any political nation in a world history that aims to achieve freedom for the multitude of people.

As we have seen, public opinion is developed outside the institutional framework for making the unified political will of civil society. Significantly, Hegel speaks about the inorganic way that people can make known what they wish or mean.<sup>66</sup> As we know, the organic way, by contrast, consists in the institutional creation of the political unity of civil society, during which *Stände* representation plays the fundamental role.

It is obvious that Hegel’s distrust of democracy gets the upper hand here. Once again we are informed that the great political decisions are in the hands of great men, and are not a matter of the people. To recognize what the times require is only up to the “great Man of the time”. Public opinion is never fit for Greatness, argues Hegel.<sup>67</sup> In these thoughts, Hegel clearly stands far from the revolutionary enthusiasm of his youth.

## 5. Conclusion

Concerning a democratic constitution, Carl Schmitt mentions two roles the people can play in. Firstly, there is the people “anterior to” and “above” the constitution. Secondly, there is the people, who appear “within” the consti-

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62 “Die formelle, subjektive Freiheit [...] hat in dem Zusammen, welches öffentliche Meinung heisst, ihre Erscheinung. Das an und für sich Allgemeine, das Substantielle und Wahre, ist darin mit seinem Gegenteile, dem für sich Eigentümlichen und Besonderen des Meinens der Vielen, verknüpft; diese Existenz ist daher der vorhandene Widerspruch ihrer selbst, das Erkennen als Erscheinung; die Wesentlichkeit ebenso unmittelbar als die Unwesentlichkeit.” Ibid., § 316, p. 483.

63 “Die öffentliche Meinung verdient daher ebenso geachtet als verachtet zu werden.” Ibid., § 318, p. 485.

64 Ibid., § 317, p. 484.

65 Ibid., p. 483.

66 “Die öffentliche Meinung ist die unorganische Weise, wie sich das, was Volk will und meint, zu erkennen gibt.” Ibid., Zusatz § 316, p. 483.

67 “In der öffentlichen Meinung ist alles Falsche und Wahre, aber das Wahre in ihr zu finden, ist die Sache des grossen Mannes. Wer, was seine Zeit will und ausspricht, ihr sagt und vollbringt, ist der grosse Man der Zeit. Er tut, was das Innere und Wesen der Zeit ist, verwirklicht sie, – und wer die öffentliche Meinung, wie er sie hier und da hört, nicht zu verachten versteht, wird es nie zu Grosse bringen.” Ibid., Zusatz § 318, p. 486.

tution, the people who exercise constitutionally regulated powers, that is to say, by means of elections, referendums, and so forth.<sup>68</sup> The people in the former meaning are a subject of the constitution-making power in the sense that the constitution is premised as “resting on the concrete political decisions of the people capable of political action”.<sup>69</sup> Regarding these notions, one may rightly conclude that in Hegel’s understanding of the constitution there is little place for the people in either of these senses.

We have seen that Hegel defends the constitutional monarchy in which the people are represented by public institutions and ultimately by the monarch. He rejects attempts to build political representation by means of elections, let alone letting the people exercise power directly in a way that is regulated by the constitution. He considers such proposals to be the road to what he rather contemptuously calls “elective monarchy” (*Wahlreich*) and the “enfeblement of the power of the state”.<sup>70</sup>

Hegel is particularly suspicious of the people who allegedly stand “anterior to” or “above” the constitution. As we have seen, the people, according to him, cannot act directly as a collectivity. Perhaps only in a less developed society, as he says, would it be possible to realize a democracy. But, according to the mature Hegel, even in the ancient Greek democracy the people did not act directly; instead, their leaders took political decisions.<sup>71</sup> At that time, however, it was a political order with a religious background. That is because the political unity of society was not based internally on the mediation of the political will of modern civil society. But the political decisions of the leaders were often taken randomly and arbitrarily from the outside world, because in decisive cases it was a “*fatum*, determining affairs from without”.<sup>72</sup> According to Hegel, however, democracy in the modern era, understood as the identity of a people capable of direct political action, is even more dangerous, as was demonstrated by the events of the French Revolution.

In his mature political theory, Hegel sets democracy in opposition to representation, and leaves no place for such a political order in a modern pluralistic civil society. His efforts to see the State as the realization of the moral Idea, or concrete freedom, or substantial will, has as a consequence

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68 Schmitt, C., *Verfassungslehre*, op. cit., § 18, p. 238 ff.

69 Ibid. Schmitt, however, changes the meaning of the distinction between *pouvoir constituant* and *pouvoir constitué* which had been made by Sieyès. He continues to admit the original ability of a democratic people to act politically directly, as he leaves a place for them in the constitution – the political part of the constitution, which, however, only recalls that original political decision made by a democratic people.

70 Hegel, G. W. F., *Philosophie des Rechts*, op. cit., § 281, p. 452.

71 Ibid., § 279, p. 448.

72 Ibid., Zusatz § 279, p. 449.

that the State is understood institutionally as the organic totality of civil society, which can be represented only in its wholeness. The political will sets the order, and public opinion can do nothing to influence that. Consequently, people living in civil society have very limited public space to freely question, control, or counter the decisions made by their representatives. As an objection to these thoughts of Hegel, it is useful to recall Skinner's republican concept of the State, which was mentioned at the beginning of our considerations. Undoubtedly, it would provide a more democratic option for a theory of representation also using the concepts of political will and public opinion.

Hegel was highly suspicious of the people acting politically. But we would be wrong to deduce from this that the "fate" of States is decided only by their leaders. To be sure, States in Hegel's understanding do not stand outside the real struggles of people in history. Hegel assures us that the modern constitution is premised on the logos of History. For him there could be no political part of the constitution which would, as Schmitt thought, stand for some concrete political decision taken by the people in the course of historical events. Yet it is reasonable to say that the constitution theoretically assumes real history and political events in which nations act and states and constitutions change. Though in his political theory the people are not the creators of the constitution, Hegel does discuss the people as the creators of history. There is a discussion of the history-creating people at the end of his interpretation in *Philosophie des Rechts*, where the theory of the State and law moves into the philosophy of history. One learns here that states, or constitutions, are placed before the judgement of history. In history, the people also always appear as somehow politically formed, but one cannot say that the leaders, let alone individuals, act, for it is whole nations (peoples) that act.

Among Hegel's fundamental convictions is that without revolutions there would be no modern constitutions. The people as *pouvoir constituant* therefore somehow appear in the mask of the Spirit of History. But Hegel's constitutional theory does not assume that the people are the source of power, and *Philosophie des Rechts*, the book itself, starts from theoretical discussions of concepts of the will and is based on his *Wissenschaft der Logik*, which, definitely, does not provide the best foundations for a theory of democracy.