Carl Schmitt’s Political Theory of Representation

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I. Political Representation

"Representation means the making present of something that is nevertheless not literally present."¹ This definition, provided by Hanna Pitkin in her celebrated book on the subject, contrasts strongly with most modern discussions of political representation which regularly delimit their focus to technical questions of election and accountability.² Even theorists who see in representative government the classical virtues of a necessarily "chastened" (public) authority rely on impoverished notions of political representation in the sense of the definition outlined above.³ As Pitkin herself suggested, political representation explores the way in which "the people (or a constituency) are present in governmental action, even though they do not literally act for themselves."⁴ This paper examines Carl Schmitt’s "solution" to this quandary of political representation, which suggests that representation can bring about the political unity of the state, but only if the state itself is properly "represented" by the figure or person of the sovereign.⁵

¹ Hanna Pitkin, The Concept of Representation (Berkeley, 1967), 144.
⁴ Pitkin, Concept of Representation, 221f; cf. Edmund Burke, "Speech to the Electors of Bristol" (1774), On Empire, Liberty and Reform, ed. David Bromwich (New Haven, 2000), 54f.
In assessing and explaining the centrality of representation to Schmitt's political thought—an area often excluded from discussion—I focus upon his attempted reconciliation of a starkly "personalist" and then Hobbesian account of representation that would justify support for the Reichspräsident under the Weimar Republic, with insights drawn from the constitutional republicanism of the Abbé Sieyes that placed the constituent power of the people at the basis of representative democracy. The argument develops and modifies Böckenförde's hypothesis, that Schmitt's well-known concept of the political—first presented in a lecture of 1927—provides the "key" to understanding his more substantial constitutional theory, Verfassungslehre, published the following year. Instead, Schmitt's concept of representation provides the key with which to understand his densely structured constitutional argumentation. Therefore, after outlining the early theological and personalist roots of Schmitt's account of representation in order to show his long-standing concern with the issue, the central arguments of Sieyes and Hobbes concerning representation are next outlined, and their impact on Schmitt's political and constitutional theory discussed. Such a structure places in sharp relief the political implications of his ideological appropriation of the language of modern representative democracy in order to justify support for the presidential leader.

II. Capitalism, Rationality, and Representation: The Figure of the Representative

In his 1923 essay "Roman Catholicism and Political Form," Schmitt claimed that the technical-economic rationality of modern capitalism and its dominant political expression, liberalism, stood at odds with the truly political power of

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the Catholic Church.\textsuperscript{10} Schmitt was concerned to illuminate the particularly "representative" character of the Catholic Church as a \textit{complexio oppositorum}, in contradistinction to its typical appearance as the unworldly "other" to an ascetic and industrious Protestantism, so as to counter the "anti-Roman temper that has nourished the struggle against popery, Jesuitism and clericalism with a host of religious and political forces, that has impelled European history for centuries.’’\textsuperscript{11}

Even the "parliamentary and democratic nineteenth century” was an era where Catholicism was defined as "nothing more than a limitless opportunism.” It was Schmitt’s contention, however, that this missed the fundamental point of such a complex of opposites, which was that the “formal character of Roman Catholicism is based on the strict realisation of the principle of representation. In its particularity this becomes most clear in its antithesis to the economic-technical thinking dominant today.”\textsuperscript{12} Schmitt contended that something peculiar to Catholic representation allowed it to "make present” the true essence of something by “representing” it. Moreover, because “the idea of representation is so completely governed by conceptions of personal authority that the representative as well as the person represented must maintain a personal dignity—it is not a materialist concept. To represent in an eminent sense can only be done by a person ... an authoritative person or an idea which, if represented, also becomes personified.”\textsuperscript{13}

Thus, although the Catholic Church had cordial relationships with a wide range of particular administrations, and though it is even superficially attractive to “irrationalist” thought, it possesses its own "logic.” It “is based on a particular mode of thinking whose method of proof is a specific juridical logic and whose focus of interest is the normative guidance of human social life.”\textsuperscript{14} The Catholic Church has its own rationality, one at odds not with particular regimes, but rather with the overwhelming economic rationality of modern capitalism.\textsuperscript{15} Indeed, “in sharp contrast to this absolute economic materiality, Catholicism is eminently political.”\textsuperscript{16} In an argument that bore heavily on his wider thinking about the nature of the law and the limits to contemporary legal formalism, Schmitt even suggested that the Church was the “true heir of Roman jurispru-


\textsuperscript{11} Schmitt, \textit{Roman Catholicism}, 3.

\textsuperscript{12} Ibid., 4, 8.

\textsuperscript{13} Ibid., 21, 17.

\textsuperscript{14} Schmitt, \textit{Roman Catholicism}, 12.

\textsuperscript{15} Ibid., 24; cf. Schmitt, \textit{Concept of the Political}, 41-42, n.17.

\textsuperscript{16} Schmitt, \textit{Roman Catholicism}, 16.
dence," concerned with a higher purpose than simply the maintenance of legality.17

The historical development of liberalism, thought Schmitt, showed an unawareness of the personalist character of political representation.18 Schmitt’s early conception of representation therefore suggested that the specific rationality of the Catholic Church, as a complexio oppositorum, “rests on the absolute realisation of authority” buttressed by a “power to assume this or any other form only because it has the power of representation.”19 Additionally, this power of representation finds its locus in a particular form of personal authority, an authority that implies connotations of dignity and value. His account clearly links back to earlier theories of representation and the “two bodies” of the sovereign,20 which underpinned his argument that “all significant concepts of the modern theory of the state are secularized theological concepts.”21

Correlatively, Schmitt suggested that such substantive or “eminent” representation “can only proceed in the public sphere,” the sphere where the locus of sovereignty lies.22 The suggestion also built on his belief that the current predominance of technical-economic capitalist thinking was premised upon a “privatization” of individual action. The first instance of this privatization concerned individual religious belief. For Schmitt, the interdependence of liberalism and the modern state—born out of the Reformation and disputes over religious toleration—corresponds with the rise of something approaching the theory of “possessive individualism” later made famous by MacPherson.23 Schmitt countered that “the juridical foundation of the Catholic Church in the public sphere, contrasted with liberalism’s foundation on the private sphere.”24 Furthermore, this was elaborated on in his suggestion that it was Protestantism and early variants of Calvinist resistance theory, which had in fact brought about such developments, robbing politics of its properly representative character:

17 Schmitt, Roman Catholicism, 18. See also Carl Schmitt, Legalität und Legitimität (1932), repr. in his Verfassungsrechtliche Aufsätze aus den Jahren 1924-1954 (Berlin, 19583), 263-350.
18 Ibid. See also Carl Schmitt, “The Age of Neutralizations and Depoliticizations” [1929], trans. J. P. McCormick and M. Konzett, Telos, 96 (1993), 131: “The anti-religion of technicity has been put into practice on Russian soil.” See also 131-35, for a précis of his general theory of history.
19 See Schmitt, Roman Catholicism, 18-19; Verfassungslehre, 208-12. See also Kennedy, “Hostis not Inimicus,” passim.
22 Schmitt, Verfassungslehre, 208.
24 Schmitt, Roman Catholicism, 29.
The Church commands recognition as the Bride of Christ [the pope was its Vicar]; it represents Christ reigning, ruling and conquering. Its claim to prestige and honor rests on the eminent idea of representation.

As such, McCormick observes, Weber’s argument “foreshadows the Schmittian thesis,” where “Catholicism has to the present day looked upon Calvinism as its real opponent.” But the connection is perhaps even closer. For although both Weber and Schmitt could be said to agree that the rise of a particular “type” of Berufsmensch was the result, in part, of the so-called Protestant “ethic,” both diagnosed the largely negative “unintended consequences” of its promotion. Schmitt, however, actually traced the contemporary depoliticized period to the influence of Protestantism. When applied to the “distortions” of contemporary representative government, he suggested that:

The simple meaning of the principle of representation is that the members of Parliament are representatives of the whole people and thus have an independent authority vis-à-vis the voters. Instead of deriving their authority from the individual voter, they continue to derive it from the people. “The member of Parliament is not bound by instructions and commands and is answerable to his conscience alone”. This means that the personification of the people and the unity of Parliament as their representative at least implies the idea of a complexio oppositorum, that is, the unity of the plurality of interests and parties. It is conceived in representative rather than economic terms.

Contemporary parliamentarism, based on delegate representation by party candidates, illustrated—at least on Schmitt’s presentation—a movement away from properly political representation. It did so by negating its necessarily personal or eminent character, and Schmitt claimed that the transformation of the modern state into a “Leviathan” meant that it had actually come to symbolize a body that “disappears from the world of representations.” This is because the theatrical Hobbesian Leviathan, which held the population in awe, had been transformed

25 Schmitt, Roman Catholicism, 14.
26 Schmitt, Roman Catholicism, 31, 32.
29 Schmitt, Roman Catholicism, 26.
by liberalism and capitalism into a simple machine.\textsuperscript{31} As he suggested in the \textit{Verfassungslehre}:

To represent means to make visible and present an invisible entity through an entity which is publicly present ... This is not possible with any arbitrary entity, since a particular kind of being \textit{[Sein]} is assumed.\textsuperscript{32}

Liberalism sought “to eliminate this remnant [the idea of parliamentary representation as a \textit{complexio oppositorum}] of an age devoid of economic thinking.” Instead, parliamentarism simply “emphasises that parliamentary delegates are only emissaries and agents.” Here, the “‘whole’ of the people is only an idea; the whole of the economic process, a material reality.”\textsuperscript{33} For Schmitt, this was entirely the wrong way of looking at things, and these claims were further explored in his vastly more famous work on the historical-intellectual plight of parliamentarism.\textsuperscript{34} There, Schmitt’s argument suggested that this downgrading of the central role of popular will stood at odds with the general principles of popular sovereignty, and that technical-economic capitalist rationality had radically distored the proper focus of representative government. Indeed, he argued that contemporary representation would actually have to be representation against Parliament.\textsuperscript{35} To understand how such a position could be theoretically justified, though, in order to support a sovereign representative figure, an account of how the people could be properly represented under a modern democratic state based on popular will was required. And Schmitt developed such a justification through an interpretation of the writings of the Abbé Sieyes.\textsuperscript{36}

III. Representation, \textit{pouvoir constituant} and the Positive Constitution:

The Abbé Sieyes

At the beginning of his extraordinary work on the subject of constituent power (\textit{pouvoir constituant, Verfassunggebende Gewalt}) and the French Revolution, Egon Zweig suggested that the debate over the origins of the concept


\textsuperscript{32} Schmitt, \textit{Verfassungslehre}, 209.

\textsuperscript{33} Schmitt, \textit{Roman Catholicism}, 26-27, emphasis added.


\textsuperscript{35} Schmitt, \textit{Verfassungslehre}, 314f.

need not be confined to the age of the American and French Revolutions. Its beginnings could be traced back to the works of Plato and Aristotle and for one very specific reason; *pouvoir constituant* presupposes a distinction between an original and foundational conception of “law” (*Grundgesetz*), and everyday legal ordinances and rules (*Gesetz*). This foundational conception of law or a legal order is to be understood as a constitution (*Verfassung*). Clearly, the particular body or subject that possesses “constituent power” is of considerable importance to his analysis, and Zweig was especially interested in the impact of a conception of “reason” wrought from Enlightenment principles in general, and the French Revolution in particular, on modern discussions of constituent power. Carl Schmitt, too, was considerably exercised by the impact of the French Revolution, but it is this formulation of a split between a positive “constitution” on the one hand, and constitutional law on the other, that best represents the fundamental basis of his constitutional thought. It is a distinction that has considerable implications for his account of representation because:

... the distinction between the “written and unwritten constitution” is in truth the opposition of the constitution (in its positive sense) and the constitutional law which is based on it.38

The distinction suggested here mirrors almost exactly the discussion of the Abbé Sieyes, who wrote that the “constitution is not the work of the constituted power, but of the constituent power,” which for Sieyes was the nation.39 Sieyes’s formulations of the interrelationship between the nation and constituent power had a profound impact on Schmitt’s discussion in his *Verfassungslehre*, providing a detailed theoretical ancestry to those practical arguments about the nature of the Weimar state. However, most historical and political discussions of constituent power have tended to examine the split between putative notions of an “ancestral” or “ancient” constitution on the one hand, and a “real” or written document on the other. Relevant examples of such thinking can be found in the political thought of the post-Solonian Greeks, during the great upheavals in seventeenth-century England, and in the acerbic and quasi-Sieyesian comments of Thomas Paine in *The Rights of Man*, to note three exemplary constitutional moments.40 For Schmitt, the dichotomy was more fundamental than this.41

37 Egon Zweig, *Die Lehre vom Pouvoir Constituant* (Tübingen, 1904), 9.
38 Schmitt, *Verfassungslehre*, 386.
The "positive" constitution is pure constituent power, and Schmitt defined "constituent power" simply as "political will." In practice, he continued, the power or authority to take the "concrete and complete decision [Gesamtscheidung]" concerning the "type and form [Art und Form]" of political existence is an expression of such "political will." "Political will" therefore determines the nature and form of the constitution understood in its "positive" sense. Moreover, "political will" or constituent power cannot be justified by recourse to abstract or normative arguments. Rather, properly understood it signifies the essentially "existential" ground on which the validity of any constitution necessarily rests.42

Schmitt's compressed discussions of the French Revolution focused on its impact on both positive-law thinking about the constitution, and on the idea of a convergence—in fact of a congruence—between the people and the nation, the result of which was a "national democracy."43 According to Schmitt, the modern mixed constitution, with its liberal and democratic elements was born with the French Revolution. So too was the idea that the people are the "bearers" of constituent power, who can "act" with a self-conscious political unity through the medium of the nation-state. By the concept of the "nation," wrote Schmitt, is understood an "individual people characterised by its specific political consciousness."44 The modern nation gives form to the people, and hence their constituent power, for the Volk are otherwise understood in democratic theory as an unorganized "mass" or Hobbesian multitude, capable of making only "yes or no" acclamatory political decisions.45 Directly related to the earlier discussion of the necessity of the public sphere for an adequate account of representation, Schmitt claimed that "the people is a concept that only exists in the public sphere." In fact, "the people appears only in a public, indeed, it first produces the public. The people and a public are established together."46 And developing these ideas even further, every (Jede) constitution, wrote Schmitt, necessarily presupposes the unity and indivisibility of the constituent power that forms it, and after 1789 this unity has typically been presented as stemming from a people unified within a nation-state.47 The equation continues to form the basis of most contemporary assumptions about popular sovereignty, nationalism, and the constituent power of the people.48 Schmitt's assessment was that under a modern democratic constitution or state, there were three possible ways of conceiving the relationship between the people and the constitution. First, the people could exist "prior to"

42 Schmitt, Verfassungslehre, 75f.
43 Ibid., 231.
44 Ibid., emphasis added.
47 Schmitt, Verfassungslehre, 49ff.
Carl Schmitt

and “above” the constitution as pure constituent power. Second, they could exist “within” the constitution as members of an electorate, or third, the people could occupy a space “beside” the constitution as bearers of constituent power acting out “intermediary moments of spontaneous forms of popular mobilization” within the normal political order.49

These interrelationships correspond with and further develop Schmitt’s argument that there are in fact only two “principles” of political form—identity, or representation—and that different state forms broadly correspond to one or other of them.50 Thus, identity presupposes the “unmediated” unity of a people. Representation, on the other hand, assumes that although every state form presupposes a structural “identity” between rulers and ruled, such identity can never be fully realized in practice. Similarly, because there could never be a “pure” system of representation, the state can only be understood as a political unity because it “originated [beruhen] from the interrelationship of these two opposing formal principles.”51 Elaborating on this thesis, Schmitt wrote that:

The state rests, as a political unity, on the combination of [these] two opposed transformative principles [Gestaltungsprinzipien]—the principle of identity (namely the presence of a people conscious of itself as a political unity, [a people] that has the ability, because of the power of its own political consciousness and national will, to distinguish between friend and foe)—and the principle of representation, the power of which is constituted as political unity by the government.52

Representation can “bring about political unity as a whole,” because the power of representation applies here only to the body which governs (wer regiert).53 This relationship between governing authority and the power of representation was based on Schmitt’s prior assumption that representation “belongs to the sphere of the political and is therefore something existential.”54 Thus, through a secularization of the principle of representation, Schmitt linked the necessarily substantive criteria of meaningful representation outlined in the previous section to the modern state and the sphere of the political. Correspondingly, he also suggested that there are, in fact, two principal “subjects” of constituent power; either a monarch (whose power stemmed, originally, from God) or the people

50 Schmitt, Verfassungslehre, 204-8.
51 Ibid., 214.
52 Ibid., parentheses mine.
53 Ibid., 205; cf. 212.
54 Ibid., 211.
(unified through the nation). This relates to two main principles of constitutional legitimacy, either dynastic or democratic. Thus, when a monarch is the subject of constituent power, the “constitution” emanates from his “fullness of power,” in the language of medieval political theology which Schmitt liked to employ. By contrast, if the people are the subject of constituent power, the decision over the nature and form of political existence is determined solely by their (free) political will. The central consequence of the French Revolution, therefore, was to enshrine democracy as the guiding political principle of the modern era within a system of nation states—national sovereignty. Thus, “it belongs to the essence of democracy that every and all decisions which are taken are only valid for those who themselves decide. That the outvoted minority must be ignored in this only causes theoretical and superficial difficulties.”

Schmitt cited Rousseau to support his interpretation of the binding character of the volonté générale, and it is crucial to his argumentation that democracy ultimately depends upon the “identity” of rulers and ruled, although “this homogeneity need not necessarily be racial or ethnic in origin. In fact, the “substance of [democratic] equality [Gleichheit] can in different democracies, and at different times, itself be different.” Nevertheless, understanding the nation as a politically conscious and unified people certainly provides the main “substance” of democratic homogeneity to be found in Schmitt’s writings. This more abstract concept of the nation in Schmitt’s thought built upon the work of the Abbé Sieyes.

Discussing Sieyes’s particular understanding of the relationship between the nation and constituent power, Pasquale Pasquino quotes from a fascinating archive text of a draft review, by Sieyes, of his own famous pamphlet, Qu’est-ce que le tiers état?, that he planned to send anonymously to the press. This is Sieyes’s summary of his position:

... what we must call a constitution is by no means an attribute of the nation, but belongs to its government alone. It is the government, not the nation which is constituted ... I see too that the constituted power and the constituent power cannot be confused. Consequently the body of the ordinary representatives of the people, that is to say those who are entrusted with ordinary legislation, cannot without contradiction and absurdity interfere with the constitution.58

55 Schmitt, Verfassungslehre, 77ff, 87-90, cf. 81ff.
56 Schmitt, Parliamentary Democracy, 25.
Based principally on his studies in political economy, Sieyes sharply distinguished modern, commercial society from the society of the ancients. Such a distinction provided the justification for his “politico-constitutional” assessment of representation. Sieyes stressed the elementary incomparability and historical discontinuity between the ancients and the moderns, outlining the vastly different “elements” (contenu) of modernity, such as the growth of commerce, agriculture and the rise of European states. He suggested that modern concerns with production and consumption, underpinned by the division of labor, were fundamentally at odds with the ancients’ conception of the “good life.” Yet, as Sewell asserts, there was a correspondence between Sieyes’s account of the division of labor in the spheres of both “civil society” and the state. In the former, the “establishment of representative labor” is the basis of “the natural increase of liberty in society.” In the strictly political sphere Sieyes pointed out that “for those who consult reason rather than books ... there can only be one form of legitimate government. It can manifest itself in two different forms,” and these different types strongly resemble what Schmitt called the twin principles of political form. The people can either govern themselves in a state approaching a démocratie brute, or, based on the common advantages provided by the division of labor, they can submit to a representative constitution, to professionalized and autonomous government. Moreover, given the natural progression (and benefits) of the division of labor, Sieyes thought that “even in the smallest state” pure democracy is “far less appropriate to the needs of society, far less conducive to the objects of political union.”

Sieyes presaged modern arguments about a “political class,” whilst building on Hobbes’s desire to construct a new and “rational” account of political science, able to explain the “artifice” of political rule. His idea of representative government as a mediating element between mass-democracy and political rule conserved the distance between governors and governed in a modern commercial society, whilst the avowed goal of the “social state” or état social was to promote individual liberty through a political division of labor. However, although he was clearly interested in the representation of the people, Sieyes’s

62 Ibid.
64 Emmanuel Sieyes, “Bases de l’Ordre Social” (1794/95), repr. in Pasquino, Sieyes et l’invention, esp. 185; Forsyth, Reason and Revolution, 60-63, 142f.
arguments developed—in specific contrast to Rousseau’s discussion of the “general will”—a focus on common interest.65 Dependent upon a specific conception of the nation and the “natural” effects of the division of labor, Sieyes’s arguments can be located within the context of a long-running debate about *noblesse commerçante* and the relationship between “civic virtue” and the nobility begun in pre-Revolutionary France.66

These debates continued after the Revolution with a transformation in the popular imagery of the Third Estate that illustrated its restorative mission and its opposition to a weak King and parasitic nobility.67 From its miserable position under the *ancien régime*, Sieyes sought to reconstitute a fragmented body politic through the constituent power of the nation. Utilizing both religious and technical imagery Sieyes effected a theoretical transferral of “the miracle of the body of the King,” to “the elective permanence of the body of the represented nation.”68 This was underpinned by his foundational discussion of *pouvoir constituant*.

Sieyes distinguished between *pouvoir constituant*, *pouvoir commettant*, and *pouvoir constituè*, the latter referring to the regular activities undertaken by the ordinary representatives of the people based on law. The function of *pouvoir constituè*, in particular its legislative and executive elements, involves the preparation (*confection*) of law. *Pouvoir commettant* and *pouvoir constituant* “put in place the ensemble of rules (the Constitution) which govern the political foundations [*l’établissement*] of the nation (its government, in the pre-Rousseauean sense of the term), and ... guarantee, by a mechanism of authorisation,” the legitimation of, and obligations to, the constituted power.69 *Pouvoir constituant* concerns the foundation and legitimacy of the law and constitution, while *pouvoir commettant* is the power possessed solely by the “people,” as an active citizen body, over their representatives at the level of the government. It is the authorizing power of the whole citizen body to select their representatives. Of the three forms of power, *constituè* and *commettant* typically refer to the ordinary, nor-

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mal legal order. Pouvoir constituant, however, only appears in the exceptional or extraordinary situation, either in the formation of the nation, or in the selection of “extraordinary” representatives to represent the nation in the Third Estate.

Through the (electoral) authorization of pouvoir commettant, the people limit their own power (se borner) by selecting those delegates who will execute real laws. This is the basis of legislative representation, the only form of legitimate representation according to Sieyes. The exceptional act of founding the nation, in terms of its position as “the underlying compacted unity of free individuals that established or constituted a public order” is, therefore, pouvoir constituant itself in its purest form. Furthermore, this formation of the nation is a result of “natural law,” in terms of its basis in the division of labor and freedom of (political) association that Sieyes perceived to be at the root of political life. Hence, the nation could not be subject to a “positive constitution,” for the nation is, in essence, the constitution itself, incapable of acting against itself because it would be logically contradictory to act against its own will. Private, individual liberty is the result of representative government because the “social state does not establish an unjust inequality of rights by the side of a natural inequality of means.” In fact, “on the contrary, it protects the equality of rights against the natural but harmful inequality of means.” Alongside the distinction between active and passive citizenship, such reasoning differentiated Sieyes’s focus on the nation from that of the Jacobins, and underscored his concern with “re-presentation” of the “re-publique,” as opposed to the “re-totale,” the re-totalization of society by any one particular regime. In common fashion, his republicanism feared the imposition of an “ancient” republican model onto a modern, post-revolutionary France, a position justified through his own science sociale.

Schmitt took these ideas up almost verbatim in terms of his discussion of the foundation of the Weimar Republic. The people, he wrote, had abrogated the

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70 See Forsyth, Reason and Revolution, esp. 74-77.
71 Ibid.
monarchical principle (whose classical illustration was the 1814 Preamble to the Restoration Bourbon Constitution) regnant prior to the German Revolution, so that the subject of pouvoir constituant had consequently changed. At root, the German “type” of constitutional monarchy—whether understood as organism or as a “juristic” person—stated that the power of the monarch within the state clearly stood opposed to the democratic principle.76 Indeed, Böckenförde writes that “at bottom the monarchical principle was simply a historical fact,” albeit one which, after 1918 no longer “stood up as a political formal principle carrying its own legitimacy within it.”77 The transformation of pouvoir constituant after the German Revolution for Schmitt, therefore, was to be understood in much the same way as Sieyes had theorized the transformation of the Third Estate from “nothing,” to its new position as “everything.” The Third Estate and its members in the constituent National Assembly exemplified what has (in a slightly different context) been referred to as the attempted “abolition of feudality” in revolutionary France. Feudality in this context referred to the political domination of king and nobility, whose hereditary power could never truly “represent” the will of the people.78

Here was a clear precedent for Schmitt’s discussion of the foundation of the Weimar Republic in the National Assembly elections of January 1919, whose delegates he saw as representing the constituent power of the people. He did not fail to discuss the theoretical implications in his Verfassungslehre.79 Schmitt wrote—again echoing Sieyes—that “the constitution in its positive sense originates through an act of constituent power,” and it was such constituent power that lay behind the choice for a democratic, as opposed to monarchical, constitution made by the German people.80 With “three or perhaps four constitutions” in the period 9 November 1918 until August 1919, the confusions of the situation recalled the position of France in 1793 and Germany in 1848.81 The specific idea that the positive constitution reflected the democratic principle was illustrated for Schmitt in the Preamble to the Weimar Constitution, which stated that the German people had “given itself” the constitution, and that all state authority

77 Böckenförde, “German Type of Constitutional Monarchy,” 89, 93, 95, 103, 111.
80 Schmitt, Verfassungslehre, 21, though cf. 93, emphasis added.
81 Carl Schmitt, Die Diktatur (Berlin [1921, rev. 1928], 1978*), 205.
emanated from them. However, only the figure of the sovereign would be capable of representing the state as the “political unity of a people,” and accounting for the nature of that representative was to necessitate Schmitt’s return to the writings of Hobbes.

IV. Hobbes and the Person of the State

Murray Forsyth has argued that Hobbes’s account of the modern state was, like Sieyes’s, based on the “constituent power of the people” and underpinned by a concept of representation. If Sieyes built on Hobbes, though, Schmitt determined to combine the two writers, and to fully understand Schmitt’s account of the modern state, Hobbes’s account of representation must be clearly outlined. It is a particularly Hobbesian argument that Schmitt employs under Weimar to support the powers of the Reichspräsident as the bearer of state sovereignty, but one which appears to place constituent power with the body of the people. Here, his account of the sovereign is bound up with his conflation of the concept of the state with that of the political, illustrated in the tautology suggesting that “the state is an entity, and in fact the decisive entity,” because it “rests upon its political character.” As the state is premised on an account of the political, properly understood the two are coterminous, as the sphere of the political is where is delineated the precise authority that is able to take decisions about who or what constitutes a threat to the state, the political and public sphere. Hence: “the enemy is hostis, not inimicus in the broader sense.”

Schmitt’s concept of the political built on his discussions of romanticism and sovereignty. For it is to the moment of decision that his writings are attuned, and his argument is positioned at the intersection of constituent power and the normal legal order, because “only when the decision of a sovereign people has been expressed could one strive to regulate its formulation and execution.” As Schmitt’s formulation in Political Theology made clear, “sovereign

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82 Schmitt, Verfassungslehre, 58; see Elmar M. Hucko (ed.), The Democratic Tradition: Four German Constitutions (Leamington Spa, 1987), 149-90.
84 Schmitt, Concept of the Political, 44.
85 Schmitt, Concept of the Political, 33; Meier, Schmitt and Strauss, 23f.
86 Schmitt, Concept of the Political, 28f. and n. 9; cf. Simon Critchley, “The Other’s Decision in Me (What Are the Politics of Friendship?),” Ethics, Politics, Subjectivity (London, 1999), 254-86; Kennedy, “Hostis not Inimicus,” esp. 44-47.
88 Cristi, Authoritarian Liberalism, 121; Caldwell, Popular Sovereignty, 227 n. 109: “[Schmitt] could only imagine the alternatives of bourgeois Rechtsstaat and communist revolution.”
is he who decides upon the state of exception,” endowing the figure of the sovereign with the capacity of making the public decision between friends and enemies, of deciding upon the extra-constitutional moment. Yet, there is clearly an elision here, between the concept of the state and the person of the sovereign that seems remarkably similar to the way Hobbes’s sovereign is often discussed as being synonymous with the state. Furthermore, although Schmitt attached great importance to the fact that the state is the highest form of political association, and although he thought that the unity of the contemporary state was under threat, it is clear that the entity known as “the state” cannot “act” in any obvious sense. It is an artifice, an abstraction. Nevertheless, something called the state patently exists. And given his suggestion that all modern concepts of the state are secularized theological concepts, it should come as no surprise that he turned to Hobbes’s discussion of “that Mortall God” to which we owe our earthly allegiance for guidance.89

For Hobbes, properly accounting for the actions of the representative sovereign allows the character of the state be ascertained. The central question here is how the state—as mere artifice—can be authorized to act in the name of the people, a question raised in fact in the frontispiece to Leviathan.90 And on Hobbes’s most famous account, “A PERSON, is he, whose words or actions are considered, either as his own, or as representing the works or actions of an other man, or of any other thing to whom they are attributed, whether Truly or by Fiction.” Moreover, “when they are considered as his owne, then is he called a Naturall Person: And when they are considered as representing the words and actions of an other, then is he a Feigned or Artificiall person.”91 Some “Persons Artificiall,” Hobbes noted, “have their words and actions Owned by those whom they represent. And then the Person is the Actor; and he that owmeth his words and actions, is the AUTHOR: In which case the Actor acteth by Authority For that which in speaking of goods and possessions, is called an Owner.” Therefore, if an actor “owns” the actions performed, he has “authority,” by which “is always understood a Right of doing any act, so that if an Actor maketh a Covenant by authority, he bindeth thereby the Author, no lesse than if he had made it himself.”92 In other words, a person:

... is the same that an Actor is, both on the Stage and in common Conversation; and to Personate, is to Act, or Represent himselfe, or an other; and he that acteth another, is said to beare his Person, or act in his name.93

89 Schmitt, Political Theology, 37.
92 Ibid.
93 Ibid., 112.
If one makes a covenant with an actor or representer, the authority of the actor binds one as an author of the action, so that one can only be bound by a covenant when one is an author. Such authorization, which is necessarily representation, entails an obligation to fulfil the terms of the covenant in terms of the criteria of justice established by the civil law. This is because all covenants between men, as natural persons are artificial constructs, and binding in terms of “Civil Lawes” only when a “coercive power” exists, “and such power there is none before the erection of a Commonwealth.” Although civil laws entrench a general desire for peaceful and commodious living, only a sovereign power can oblige (through the authority of their own actions in establishing a commonwealth) men to obey them. Thus, the liberty that men “deny themselves” upon authorizing the actions of the person of the Commonwealth—a result of their covenant to escape the state of nature—is thereby transformed into an obligation to obey the sovereign power, for men themselves have authorized its actions. Even “covenants entered into by fear, in the condition of meer Nature, are obligatory.”

The principal conclusion of Hobbes's discussion of attributed action is that such action as is performed by a representative counts as the action of the author even if the author does not physically undertake a particular action. Indeed, the point is that an author is “under obligation to take responsibility for its occurrence,” because they “own the consequences of the action as if they had performed it themselves.” Here, there are two major areas of interest. First, when discussing artificial persons (of which the state is one), one of Hobbes's principal tasks was to show how such persons are capable of being represented. For, although able to “speak and act,” these artificial persons are “incapable of acting as authors in the distinctive manner of natural persons, and hence of authorising their own representatives.” They cannot covenant. Second, therefore, “it is possible for them [to speak and act] ... only if their words and actions can validly be attributed to them on the basis of their performance by some other person or collectivity licensed to act in their name.”

Although it is clear that Hobbes's account is so broad that almost any entity can be a person, his account of what constitutes a “natural” person is actually quite limited. Therefore, in his discussions of artificial persons—in David Copp's terms, those persons who perform “secondary actions”—the distinction be-

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94 Hobbes, Leviathan, 112.
95 Ibid., 100f.
96 Ibid., 185.
98 Hobbes, Leviathan, 10.
99 Ibid., 14.
tween the two main types of attributed action, “whether truly or by fiction,” is crucial. The theatrical allusions within Hobbes’s account of attribution by fiction have often been discussed. However, as Skinner argues, it is of paramount importance to Hobbes’s argument that the actions of the state, however, be truly attributed to it. On Hobbes’s account, artificial persons—such as bridges and hospitals—can be truly represented “by a Rector, Master or Overseer” (or in the case of the state, a sovereign), commissioned and given the authority to act on their behalf. This is a voluntary transfer of right, and “once you have covenanted, you must leave it to your representative, who is now in possession of your right of action, to exercise it at his discretion when acting your name.”

To use Copp’s helpful phrasing, this type of artificial person “is an agent that has actions attributed to it on the basis of acts of other agents. Collectives that act are artificial persons.” The state on this reading is a person that performs secondary actions. Yet there remains the problem of how such authorization takes place given the inanimate status of the artificial person in particular, and the fact that the state—rather unlike a bridge—does not even exist prior to the mutual covenants of the multitude. For Skinner, Hobbes’s proposed solution was the suggestion that the authorization required for actions to be truly (and not fictionally) attributed to artificial persons requires that “such acts of authorization must stand in some appropriate relationship of dominion or ownership with respect to the purely artificial person concerned.” And of all the illustrations Hobbes came up with in this regard—of “ownership” as possession of property, as the relationship of a governor to his charge, as maternal dominion over children, or as the dominion of the state—the latter is of paramount importance. For the essence of the commonwealth is embodied in the figure of the sovereign.

This is surely also what Schmitt meant when he suggested that through representation political unity could be achieved, because without such representational unity the natural existence of diverse human groups cannot have the specifically political quality of sovereignty, and without such unity the sphere of the political itself is threatened. As Hobbes had argued, in the formation of the state:


105 Skinner, “Artificial Person,” 17f, emphasis added.

106 In general, see Horst Bredekamp, Thomas Hobbes Visuelle Strategien (Berlin, 1999), esp. 18-26.

One Person, of whose Acts a great Multitude, by mutuall Covenants one with another, have made themselves every one the Author, to the end he may use the strength and means of them all, as he shall think expedient, for their Peace and Common Defence.

And he that carryeth this Person, is called SOVERAIGNE, and said to have Soveraigne Power; and every one besides, his SUBJECT.108

However, as Skinner points out, there is still a difficult point at issue here. For the “name of the person engendered by the transformation of the multitude into one person through their agreement to appoint a representative is not the sovereign but the state,” and the state is an artificial person. Therefore, Hobbes argued that the commonwealth is an artificial person, and “he that carryeth this Person, is called SOVERAIGNE, and said to have Soveraigne Power.”109 The sovereign in effect personates or represents the artificial person of the state. Because the state cannot authorize its own representative, a representative must be authorized by those who stand in an appropriate relationship of dominion, and who (as natural persons) possess the right to undertake the actions they authorize, to covenant. And it is clear that in the Hobbesian commonwealth by institution, only if the public acts of sovereigns (as representatives of the state) have been authorized by the mutual covenants of the multitude to form the commonwealth, can the actions of the sovereign be truly ascribed to the people. As Runciman notes, the case of state formation in Leviathan allows “ownership [of action] to reside in the thing to be represented,” in this case the state. Therefore, the mutual covenants of the multitude makes “possible the fiction that they can act as a unit, and commit themselves to the real actions that can maintain that fiction.”110 How though could the actions of the state to be truly attributable to the people who effectively own these actions, if the state is a person by fiction? Copp’s analysis makes clear this difficult point, suggesting that “some artificial persons perform actions of which they are not authors. That is, some may have actions attributed to them on the basis of actions of persons even though the former have not authorized the latter.”111 This captures precisely the position of the state or commonwealth in Hobbes’s schema. It relates directly to a common sense understanding that although the actions of the state are truly attributable to those who authorize its actions, the state is not the type of person, at least not according to Hobbes, that can authorize its own actions. Without a sovereign,

108 Hobbes, Leviathan, 121, 120.
110 Ibid., 273.
the state is incapable of acting, indeed it cannot “doe anything” because the sovereign is the “sole legislator.”

Schmitt had suggested that if Parliament “personifies” the nation before a “higher” representative, such as a monarch, then it would be substantively or politically representational. However, if parliamentary representation merely referred to the division of seats in a chamber on the basis of votes cast, if it is simply a competition between elites for numerical superiority, then such a type of representation is nothing “distinctive” — and distinctiveness is a defining feature of legitimate representation. Once again, the circularity of his argument is noticeable. Sovereignty stems from the personal authority embodied in a ruler; sovereignty is tied to the political; the sovereign represents the political unity of a people; personalist representation therefore brings about political unity. This type of argument, which conjoined a critique of the influence of technical-economic thinking on parliamentarism with a deep-seated belief in the nature of representation as a substantial and personal form of authority, enabled Schmitt to justify his support for the figure of a strong Reichspräsident on the basis of Article 48 of the Weimar Constitution. He justified these arguments theoretically, by adapting the writings of Hobbes and Sieyes to suggest that only the figure of the sovereign could properly represent the political unity of a people. Such unity was brought about through the idea of an interrelationship between the constituent power of the people and political representation properly conceived — a tense relationship whose implications are still much debated in contemporary political theory.

V. Carl Schmitt’s Political Theory of Representation

Theoretically, Schmitt suggested that Sieyes offered a “democratic” theory of the constituent power of the people, stemming from his opposition to absolute monarchy, which was simultaneously combined with an “anti-democratic” theory of representation and indirect sovereignty. The nub of what Schmitt took from Sieyes’s theory of representation was therefore quite general. I have suggested those points of reference that were particularly important for Schmitt’s interpretation and constitutional theory. And although Sieyes’s thought is not best understood in isolation from the debates in which it was conducted, Schmitt certainly abstracted from these debates to pull out the central points at issue for

112 Hobbes, Leviathan, 184.
113 Schmitt, Roman Catholicism, 25.
This involved a focus the representative character of a constitution or state based on the constituent power of the people qua nation. Equally, although Schmitt was certainly not an advocate of the direct popular rule, neither was Sieyes. As Sonenscher has argued, Sieyes pushed for a “seizure of power by the representatives of the Third Estate in the name of the sovereign union,” a case (neatly linked to discussions of the French fiscal deficit) of putting the state back in credit.\textsuperscript{117}

Moreover, when Sieyes himself developed Hobbes’s account of representation, he presented a powerful combination of arguments that continue to underpin many assumptions about the character of the modern nation-state. According to Wokler, Hobbes’s account of “the unity of the representer” in 	extit{Leviathan} paved the way for the understanding of the modern state outlined by Sieyes during the French Revolution, which “requires that the represented—that is, the people as a whole—be a moral person as well.”\textsuperscript{118} More concretely, Sonenscher calls Sieyes’s concept of the nation a “synonym for Hobbes’s ‘state’ and Rousseau’s ‘general will,’ that is to say, that the nation was “an abstraction represented by a body.”\textsuperscript{119} But Sieyes adamantly opposed Rousseauean criticisms of representation, and “it was of the essence of his plan that the nation in assembly spoke for all the people and must never be silenced by the people themselves.”\textsuperscript{120} Sieyes’s concepts of the state and the nation underpinned by popular constituent power informed Schmitt’s account of the modern state as the “political unity of a people.” For this reason the notion of representation plays an incredibly important part in Schmitt’s account of the state, and therefore in his wider political theory. Schmitt’s political argument was precisely that contemporary “liberalism is not the best realisation” of the principle of representation. “On the contrary, it is the very violation of it.”\textsuperscript{121} His subsequent defense of

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the representative figure of the political leader (the Reichspräsident) who could unify the body of the state against a weak and liberal “total state” was derived in large part from the work of Hobbes. He could only develop this argument, however, after he had cemented his ideas about political representation in the language of modern constitutionalism through his engagement with Sieyes.

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