

## Acting Through Others: Kant and the Exercise View of Representation

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**Abstract.** Democratic theorists are usually dismissive about the idea that citizens act “through” their representatives and often hold persons to exercise true political agency only at intervals in elections. Yet, if we want to understand representative government as a proper form of democracy and not just a periodical selection of elites, continuous popular agency must be a feature of representation. This article explores the Kantian attempt to justify that people can act “through” representatives. I call this the “exercise view” of representation and defend its superiority to the “opportunity view,” which I attribute to Locke. It is superior because it has a robust conception of rationality and collective action, allowing us to understand how representation can mediate public reason.

**Key words:** democracy, Kant, Locke, public reason, representation.

Liberal democrats diverge over how to conceive the relation between people and their representatives. Some disagreements have been over what equality requires for the political presence of women or members of minorities in representative assemblies (Mansbridge 1999). Other debates have been about the politics of representation, the extent to which representation can be used as a hegemonic operation imposing an identity on those represented (Laclau et. al. 2000). But there is also disagreement of a more philosophical nature, over the very nature of representation. Do democratic citizens act only at discrete moments through the opportunity to choose representatives in elections, or can they be said to exercise power continuously “through” representatives? If the former view is true, we may have to admit that representative democracy is a form of government where persons alienate their agency at every election. But if the latter view is true, then representative democracy is compatible with a significant form of political freedom. This is the view I will attempt to support in the following article.

The concept of representation has recently received a good deal of attention. According to a common view of representation, what matters is accountability in elections; a competing view emphasizes persuasion through reasoned discourse.<sup>1</sup> The first, and most influential view, is expressed by Manin, Przeworski, and Stokes, “The claim connecting democracy and representation is that under democracy governments are representative because they are elected” (Manin et. al. 1999, 29). On this view, there is no such thing as agency “through” representatives. Voters engage in a form of contract with representatives, allowing them to govern for the people whose only significant action is the discrete and regularly recurring moments of choice in elections. Between the moments of popular activity what goes on is not really continuous self-rule, but simple delegation on

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1] For an overview, see Elster 1997.

the model of a division of labor where the government is entrusted to run the ship for the individuals. Consider a particularly hard-nosed contemporary defense of this view:

Elected 'representatives' do not represent the citizenry in any literal sense – as if the citizenry were doing the ruling 'through them.' This is nonsense. They rule and we do not. But it is because those of us in modern democratic societies can easily deprive them of power – depose them, if you will – at certain regular intervals that they have (at least theoretically) the incentive to rule in a way responsive to our interests. (Hampton 1993, 391)

Jean Hampton evidently is so skeptical of the idea of mediation through representatives that she puts 'representatives' in inverted commas to alert the reader to this concession to metaphysical language. What goes on is not representation but a form of substitution. Democracy does not seem to be different in kind from unaccountable authoritarian government; it is merely authoritarian government plus electoral revolutions at constitutionally specified intervals. On this view, then, "the people" does not continually exercise sovereignty, representative government is characterized by the occasional opportunity for individuals to vote, and not by the constant exercise of popular sovereignty. This view often assumes that what matters is the freedom of individuals to vote in defense of their private interests; notions of collective freedom are implausible or false. The original formulation of this individualistic view centering on elections – dominant for much of the 20<sup>th</sup> century – is Schumpeter's view of democracy as elite competition, which he developed against the 18<sup>th</sup> century "classical doctrine of democracy" where representation was thought to be "voicing" the electorate's general will (Schumpeter 1947, 253, 269). Bernard Manin expresses a more nuanced but basically similar idea when he emphasizes that the quality of democratic representation hinges on the desire for representatives to be reelected, giving them an incentive to represent the interests of the voters (Manin 1997, 177-8).<sup>2</sup>

This view has been challenged by thinkers who are friendlier to the idea that what goes on in democratic representation is a form of continuous government by the whole people and "through" its legislators. Nadia Urbinati has recently made a strong case that we should understand representation as continuous, not dualistic; and sovereignty as including judgment, not only arbitrary will. In representation persons have "presence through voice," exercising political judgment in the public sphere (Urbinati 2006, 5). Other versions of this view, for example by Jürgen Habermas, have emphasized public reason: what is essential to political representation is that public reason can be mediated politically to influence or even determine legislation (Habermas 1996). Popular sovereignty consists only partly of the opportunity at election-time for actual political choice. Democratic government is intended to mediate public reason, and that can be done by other means than only by elections, which in any case are flashpoints for demagoguery and the exploitation of myopia, xenophobia, and selfishness. The people can plainly be deceived in its choices. The choice can be wrong, as opposed to merely affirming one preference among many

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2] Anticipating Manin's theory of retrospective judgment, Giovanni Sartori attributes it to Schumpeter; see 1987, 152.

equally valid preferences, because self-government has to do not simply with private interests or preferences but with realizing public reason, and public reason is arrived at through reasoned communication in a free public sphere; hardly through the frenzy of electoral campaigns. The ideal of public reason allows the drawing of a conceptual separation between rational deliberation and propaganda and the conclusion that people seduced by demagogues or powerful lobbies are not, strictly speaking, free.

On this view, then, representation aims to mediate public judgment and reasoning as it arises among persons engaging in horizontal dialogue within the electorate and vertical dialogue between the electorate and its representatives. Sought is a minimal consensus, an agreement that elections and referenda never yield. What is required is a method both for approaching consensus and for making representatives abide by this reasoned discourse during their term in office. When this is achieved, adherents of this view think the people is present and exercising self-government continuously *through* the representatives. John Stuart Mill defended this view:

The meaning of representative government is, that the whole people, or some numerous portion of them, exercise *through* deputies periodically elected by themselves, the ultimate controlling power, which, in every constitution, must reside somewhere. (1991, 269: emphasis added)

Citizens do not trust government to run the state as a form of division of labor to release them from participation; rather they participate in the public sphere among other things through continuous judgments communicated to decisive political institutions. As David Plotke writes:

I gain political representation when my authorized representative tries to achieve my political aims, subject to dialogue about those aims and to the use of mutually acceptable procedures for gaining them. [I]n a political sense I am forcefully present throughout the representative process. This conception underlines the *agency* of both participants in the relationship . . . . (1997, 31; emphasis added)

Here, the representation-relationship does not exclude the agency of the principals who act *through* the representative. Plotke, rather, looks at the exercise of political freedom as an ongoing communicative process, challenging Hampton's stance, quoted above, that the people is sovereign only in a potential way, because it only exercises its right of choice every four (or whatever) years by "deposing" the representatives.

At stake in the debate between these two views is really what it means for political freedom to be retained when its exercise is delegated. On the first view of representation, a society is perfectly free even if persons only exercise their political freedom at discrete intervals. On the latter view this is not sufficient for political freedom; we should only describe a society as free and sovereignty as popular if representation properly mediates public reason. We can get a hold on the debate by relying on some of the conceptual developments from theories of individual freedom, if we just shift the analytical gaze from the individual to the community. Charles Taylor has developed a useful theoretical distinc-

tion between “opportunity concepts” and “exercise concepts” of freedom (Taylor 1985, 213). Opportunity concepts, as the name implies, claim that freedom inheres in having the possibility of choosing. In the context of the electoral conception of representation, freedom is in the possibility at intervals for individuals to hire and fire representatives. Exercise concepts, on the other hand, claim that freedom resides in the condition of constant agency of one’s rational faculties. In the following, I will utilize Taylor’s distinction and call the first theory of representation the “opportunity view” and the latter theory the “exercise view.”

In this article I will defend the “exercise view” with the aid of Kant’s political theory and in contrast to an “opportunity view,” which I attribute to Locke. The promise of the Kantian version of the exercise view is that it can make it plausible for us that persons really exercise political agency continuously even when they live under representative government. We would not have to accept Hampton’s gloomy view about representatives that “they rule and we do not.” The first step will be to develop the extent to which Kant’s rational contractarianism and emphasis on communication in the public sphere can allow us to conceptualize the “presence” of the people in representation. The second step, which goes to the core of the disagreement between the two views, is to defend the Kantian theory of collective action through public institutions. The disagreement over the nature of self-government is partly a consequence of lacking agreement on an even larger issue, the nature of collective agency in a political community. It is hard to conceptualize what it means for a large number of strangers in a modern state with representative government to act together. The opportunity view of representation tends to exclude this altogether, emphasizing individual action oriented to private interests, whereas the exercise view provides a sophisticated vision of collective action through political institutions oriented to public reason.<sup>3</sup>

The conceptual task, then, is to find a theory of democratic representation that retains what is of obvious significance in the opportunity view – that citizens have a potential kind of freedom supporting contested elections – while vindicating the exercise view that the power of the people is constantly exercised “through” its representatives. If the exercise view of representation is true, then the implication is that political freedom is very demanding, requiring an enlightened population and a high degree of vertical and horizontal communication, such as has been claimed by for example Habermas. This matters also for designing institutions, where decisions must be made whether emphasis is to be placed on electoral mechanisms or on educating citizens and providing the economic conditions for a strong public sphere. The present essay, however, will be limited to some explorations of this problem at a conceptual level through an examination and defense of Kant’s theory of representation.

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3] The opportunity view could in principle emphasize individual action oriented to public reason or the common good, but this is not the case with the theorists I discuss in this article.

## I. POPULAR SOVEREIGNTY AND REPRESENTATION

It may appear excessively anachronistic to turn to thinkers like Kant and Locke in order to learn about democratic representation. After all, they did not conceive of themselves as developing democratic theories and the very term “democracy” for them signified *direct* democracy and not the kind of representative government the term usually denotes today.<sup>4</sup> Kant, in particular, is not widely known for democratic sentiments, which are often thought to conflict with his rationalism. Marxists fault him for not having a conception of “social praxis,” neo-Aristotelians claim that he has no understanding of collective action in public, and liberals reject his republicanism as a surrogate form of government by consent, a foil covering a defense of enlightened absolutism.<sup>5</sup> As for the concept of representation, seminal works such as those by Hanna Pitkin and Robert Dahl are silent about these authors, the latter brushes off Locke as having “had little to say about representation.”<sup>6</sup>

No doubt, Locke and Kant do not share all the concerns and nomenclature of modern theories of democratic representation. But the fact that Locke had little to say about “representation” does not mean he was unconcerned with the idea; to think otherwise is to confuse word and concept. When Locke actually uses the term he clearly thinks of representation as the work of rulers and legislatives (“representatives chosen by the people”), and about this he certainly has much to say (1967, §§ 151, 158). And the allegations of Kant’s anti-democratic sentiments, typically based on interpretations of his ethics, not his politics, do not withstand thorough examination (Maus 1992). The fact remains that these thinkers are among the earliest and most original theorists of how sovereignty can be popular yet delegated and in neglecting them modern democratic theorists deny themselves a valuable resource.

Because the two authors share a commitment to equal liberty and government by consent it is interesting to explore why Kant departs from Locke in choosing the exercise view of representation.<sup>7</sup> A difference is evident in how they view the notion of contract as the source of legitimacy, where Locke’s theory presupposes a contentious relation between society and government and Kant presupposes cooperation. This reflects different political contexts. The *Second Treatise on Government* (1690) and *A Letter Concerning*

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4] Locke 1967, § 132. Kant ZEF 352, 379. Kant’s works are abbreviated as follows: RL: *Metaphysische Anfangsgründe der Rechtslehre*; TP: *Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis*; KU: *Kritik der Urteilskraft*; ZEF: *Zum ewigen Frieden*; WA: *Beantwortung der Frage: Was ist Aufklärung?* The numbers refer to volume and page in the Prussian Academy edition. Translations are from Gregor 1996.

5] See Marcuse 1972, 81; Arendt 1982, 44, 60 and Berlin 1997, 224.

6] Dahl 1989, 28; Pitkin 1967. The exception is Urbinati 2006, which contains a discussion of Kant.

7] Locke writes that men are inherently “free, equal and independent,” a trinity Kant repeats (Freiheit, Gleichheit, and Selbständigkeit). See Locke, 1967, § 95 and Kant TP 290; RL 238, 314. There is no evidence that Kant read Locke’s political philosophy although he certainly read many authors influenced by Locke. About Lockeanism in Kant’s Germany, see Fischer, 1975, 431-446.

*Toleration* (1689) were conceived in times of profound conflict between society and government, where those who supported a liberal agenda faced the prospect of intolerant and arbitrary absolutism attempting to impose an unpopular religion on the people (Laslett 1967). Locke's thought is not just a philosophical exploration of good government but an argument in this debate, shaped by conflict.<sup>8</sup>

The contrast to Kant's context is remarkable. His *Doctrine of Right* (1797) and smaller political writings were conceived over several decades under a Prussian monarchy that may have been authoritarian but still was a progressive force. In comparison to other states on the continent Prussia was characterized by religious tolerance, a large amount of freedom of speech, and a fairly free market. During the century prior to Kant, the Hohenzollern had won a contest against the nobility and the old estate institutions and it replaced the petty powers of local magnates with well ordered bureaucracy and the rule of law (Berdahl 1988). As a consequence, the monarchy enjoyed great support by the German *Aufklärung* whereas those who challenged the monarchy were typically conservative forces supporting the old *Reich* (Valjavec 1951, 22, 39). Unlike in England, German liberalism was not born out of conflict with state authority; to the contrary, it grew out of a common struggle where the crown was an ally against the unjust and disorderly institutions of the decrepit old regime. The progressive government of Frederick the Great provided the hope of spreading the *Aufklärung* and rationalizing society, paving the way for truth and freedom.

It is not surprising, therefore, that while Locke and Kant share a foundation in the moral right to equal liberty they diverge on what it means for government to be subject to consent. Kant's principled accommodation between freedom and authority contrasts to Locke's emphasis on the autonomy of society, jealously guarded against the state. Traditionally, consent had mattered at two stages: in the creation of society and in the creation of political authority. Taking up the contract tradition, Locke requires actual consent by persons in the first stage whereas Kant conceives the original contract as "*an idea of reason*" (TP 297, RL 315). If we use Joseph Raz's terms, we can classify Locke's contract as involving "performative agreement," while Kant's theory is one of "cognitive agreement" (Raz 1986, 81). Performative agreements take place when expressed consent changes the moral situation so that consent is in itself a source of obligation. Thus when Locke's individuals join society, they expressly or tacitly assume an obligation to abide by majority agreements. For Kant, however, there is no right to remain in the state of nature because this is incompatible with the protection of equal liberty, and, furthermore, merely agreeing cannot change a moral situation. A person might agree to join a Mafia and take up the obligation to extort and kill, but such promises could not create genuine obligation. Hence, while Kant retains the traditional language, his original contract is a cognitive agreement, and, furthermore a hypothetical cognitive agreement, a standard for human rationality and morality that does not create a new moral situation. The creation

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8] For a good discussion of Locke in his context, see Franklin 1978, 91ff.

of society, the first stage where consent matters, is an historical circumstance, which individuals have a duty to support for the sake of equal liberty, regardless of whether it results from individual choice.

It is at the second stage of consent that representation matters, because this is when an already constituted society chooses a government. Locke writes at the beginning of the *Second Treatise* that a purpose of the book is to find a way of “designing and knowing” who should be an authority (§ 1) and this turns out to be a matter of how to create legitimate institutions of representation. The details are vague, but the now integrated sovereign people certainly makes a number of decisions: electing a form of government (by one, the few, or many), designating who is to assume office, putting time-constraints on government, creating taxation-schemes and, finally, it may take back its consent in revolution.<sup>9</sup> In this second contract the people and the government are on each side and since there, in cases of conflict, can be no enforcing agency or judge, apart from God, the people has to enforce the contract themselves through revolution. Locke, however, has very little to say about political agency between the moments of establishing and rejecting a government. Popular sovereignty manifests itself occasionally when political society confers or denies trust in government; representation expresses a potentiality for the citizens to act; it is not conceived as their constant exercise.

As mentioned, it is often mistakenly thought that Kant has no theory about elections and accountable representatives because his original contract is hypothetical. But the hypothetical contract is not incompatible with supporting government accountable in elections, and Kant does just this in the second stage of consent. In some sparse comments on electoral procedures, Kant affirms that citizens should have the freedom to give or withhold their consent. Sometimes he even speaks of citizens having a right to directly “vote in legislation” although he proceeds to specify that it is a matter of choosing representatives (*Repräsentanten*) (TP 295-6, RL 317).<sup>10</sup> Elections are needed for the sake of security, because autocracy is “conducive to despotism” (RL 339). Kant’s theory of a separate republican peace is testimony of the great importance for his republicanism that citizens control government. As “colegislators” citizens have the right to “give their free assent, through their representatives” and Kant conjectures that it will make them unlikely to support war because they have to carry the costs (ZEF 8: 350, RL 346).<sup>11</sup>

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9] Locke holds that representation should be proportionate to property, so he cannot be said to support the egalitarian foundation of democracy. See 1967, § 158.

10] Like Locke, Kant betrays the egalitarian foundation of democracy by attaching a property requirement to the vote, excluding wage laborers and women as “passive citizens.” This exclusion is justified in a republican, if unconvincing, manner: only those who are financially independent can have the impartiality it takes to serve the commonwealth (RL 6: 314).

11] Unlike Locke, Kant does not conceive of the relation between society and government as a contract, because there can be no third party to enforce it. This argument is familiar from Rousseau, who used it to assert the independence of the sovereign popular assembly against the government. See Rousseau

As a result, the people is said to act “through” elected officials:

Any true republic is and can only be a system of representing the people [*ein repräsentatives System des Volks*], in order to protect its rights in its name, by all the citizens acting through [*durch*] their delegates” (RL 341).

The notion of acting “through” representatives is puzzling. The most intuitive way of making sense of it is the notion of “imperative mandate,” where representatives are instructed by their communities what they should vote, so that they merely convey a decision taken elsewhere.<sup>12</sup> But that cannot be Kant’s view, because he states that as long as legislation is within a range of what could possibly be agreed to it remains legitimate even if a people were mistakenly of the opinion that it was a wrong decision (TP 297). Thus, representatives are free, yet at the same time they ought perfectly to act in the place of the people. An alternative way to make sense of persons acting “through” free representatives is to think of delegates as particularly sensitive to popular emotions, sentiments, and needs. Edmund Burke conceived of it in this way and called it “virtual representation.”

Virtual representation is that in which there is a communion of interests and a sympathy in feelings and desires between those who act in the name of any description of people and the people in whose name they act. (Burke 1969, 169, 174)

But for Kant the source of law is in reason and discovering reason requires no particular sentiments; if anything, sentiments are likely to lead astray and cause myopia and selfishness among legislators and subjects alike, obstructing autonomous decision making. Nor does legislation find its source in material interests; while it protects and affects interests, law is formal and directed only at maintaining equal liberty. Instead of sentiments and interests, representatives connect with the people through the thought experiment of the original contract and through reasoning in the public sphere.

The people act “through” their representatives, then, not because the latter just convey decisions or sentiments, but because the medium of political communication is public reason. Kant’s theory of public reason separates power and communication by identifying a mode of reasoning from a public, i.e. universal, point of view. Subjecting proposed policies to the test of universalization without contradiction (reasoning according to the universal principle of right), legislators and subjects alike can methodically abstract from prejudices and loyalties to partial associations, assessing policy for its universal implications. A representative who is asked by a lobby group in his constituency to pursue legislation intended to lower environmental standards for factory waste in rivers would have to consider the question from the perspective of both those who live upriver and those who live downriver. Kant uses the same procedural logic for determining rights to property:

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1987, 3.16. For Kant, however, the sovereign assembly is representative, not popular, because the people cannot act collectively absent representative institutions and as a consequence no justification can be given for popular revolution.

[12] Imperative mandate has generally been abandoned since the 18th century; see Manin 1997, 163-167.

the right to a particular plot of land is an imposition on the free movement of everyone else (who are obliged to keep off unless invited), hence property rights can only be compatible with freedom if they are decided from a universal point of view by an “omnilateral” will (RL 263).

Public reason, then, is not merely instrumental to the material interests of a constituency (as in the model of imperative mandate) nor is it instrumental to preferences and interests (as it was on Burke’s model). Rather, reason is free, oriented to truth, or as Kant prefers to put it, one reasons like a scholar.<sup>13</sup> Since reasons are universal and not tied to private material interests or a particular personal history they are the same whether one is a subject or a ruler, and they can therefore be shared perfectly. Evidently reasons must be expressed in language, opening for the failures of communication, deliberate rhetorical obfuscations, and demagoguery that make up much of political life, but in principle reasons can be conveyed and shared among persons and their representatives such that one can claim that persons act “through” their delegates.

Kant’s talk about reasoning as a “scholar” may lead one to think his representatives are a kind of experts who have no reason to listen to their lay audience. Relying on a literal interpretation of the idea of reasoning like a scholar, Ciaran Cronin concludes that it betrays an anti-democratic sentiment (2003, 64). What is plausible about the literal interpretation is that Kant does indeed want to avoid advocacy for sectarian interests.<sup>14</sup> But public speech is certainly not limited to experts and scholars; the point is that we should assume the objective perspective of someone interested in discovering the truth. Because legislation belongs to the moral domain it cannot be the application of theoretical reason about facts but must be practical reason about norms, which does not allow for scientific expertise.<sup>15</sup> Reasoning about norms presupposes the ability to judge what a community could deem acceptable, requiring an understanding of the will of all persons concerned. Proposed policies must be not just general but also justifiable to those subject to them and this requires, in Kant’s view, communication between citizens and rulers. To be sure, Kant has high hopes for the ability of delegates to reason independently, but equally clear is that they are fallible and cannot do without or substitute for a reasoning public.

Kant expresses the commitment to justification from a public point of view in the publicity principle, which states that “All actions relating to the rights of others are wrong if their maxim is incompatible with publicity” (ZEF 381). Again, if those who live

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13] The representative might propose to act not like a scholar oriented to truth but exclusively as an advocate for his community, but that policy would also have to withstand the test of universalization without contradiction.

14] This separates Kant from contemporary theories of representation that emphasize advocacy, for example that of Nadia Urbinati. Urbinati, however, underlines that “advocates are expected to be passionate and intelligent defenders. An advocate who is exclusively a partisan is not an advocate” (2000, 775).

15] Practical reasoning about norms is therefore indirect: it is not about what is good in itself, but what could be shown to be right for a public organizing itself as a community. This constructive aspect separates pure practical reason both from theoretical reason, which is oriented toward discovering facts, and from technically practical reason, which is oriented toward ends rather than rational acceptability. See Rawls 1993.

upstream devise a principle about polluting rivers, which they could not express publicly without betraying blatant partiality, then that principle must be ruled out as unjust. That does not mean persons and groups cannot pursue sectarian interests, it only means they must develop their proposals such that they could be acceptable to the public at large.

Considering the significance of public reason in mediating between citizens and their representatives it is not surprising that Kant defends freedom of expression in numerous ways. Justice requires the “*freedom of the pen*” not just because there could be no contribution to justice in repressing free speech (RL 238) but because it is a natural right for the people to enlighten itself and become worthy of self-government (WA 40), and because it is requisite for a person to continuously control and influence government by expressing “what it is in the ruler’s arrangements that seems to him to be a wrong against the commonwealth” (TP 304). In Kant’s model, then, popular sovereignty is manifest not just in the opportunity for electing representatives but continuously through the virtual presence in a shared public reason, expressed in the public sphere.

While this explains why Kant chose the exercise view of representation it might not be obvious why Locke did not do the same. Locke certainly shares Kant’s faith in reason, writing that every grown person (except lunatics, idiots, and madmen) is a “rational creature” capable of understanding the law of nature on which positive law rests (§§ 12, 60). Patrick Riley thinks Locke arrives at a “more or less Kantian notion of will as the capacity to bring oneself to act to the conception of a law that one understands and uses in shaping one’s conduct” (1982, 81) and John Gray holds Locke and Kant to be representatives of a distinct reason-based liberal tradition, opposed to a non-rational tradition (2000).

But in fact Locke employs instrumental reason, not anything resembling Kant’s public reason, in justifying the authority of the political domain and of laws. Justice is a feature of natural law providing rights, most importantly the right to property, which is not justified by reference to formal principles of reason but by how much a person is capable of cultivating the land. Government is merely a remedial tool to enforce such rights and does not contribute to determining what they are. Subjects and legislators in Locke’s state therefore do not engage in anything resembling the public use of reason (from a “universal” point of view), rather, they start by staking out the various property rights individuals already have and then seek to establish policies that protect and coordinate these disparate interests. As a result, the reasoning representatives engage in is not from a general point of view, but subject to all sorts of private interests and allegiances making it impossible to claim that the people as a whole acts “through” the government.

It is therefore not surprising that Locke has no theory about the role of communication in representation. Debate is mentioned once in the *Second Treatise* (§ 222) where Locke identifies a breach of trust if a prince interferes with the “mature debate” necessary for deciding on the public good. Yet, this debate takes place only among the elected representatives, not between people and the government. Freedom of expression comes up again in *Letter Concerning Toleration* but the toleration for diversity of opinions Locke defends is not for the purpose of allowing citizens to reason in public but for the sake of freedom of conscience in private (Locke 1983, 35). While Locke nowhere in the *Second*

*Treatise* denies the significance of the formation of public opinion – and as a publicist he can hardly have been unconcerned with it – he provides no theory for how interests will be conveyed to and understood by the assembly. This is because reason for him has the subordinated role of merely conveying private interests, and because the chief method for keeping representatives in accordance with the public interest is the threat of resistance.

The most significant reason for Kant's divergence from Locke's liberal tradition and its single minded emphasis on government accountability is no doubt the German *Aufklärung* and its commitment to progress. Where Locke saw government as a necessary evil limited to coordinating society according to unchanging natural rights, Kant conceives of government as a progressive institution, a way for society to settle on principles of justice and consciously determine its future. While Kant's enthusiasm for the public sphere may resemble a revival of ancient liberty, his inspiration likely comes from the contemporary Prussian context where government was instrumental in defeating the old *Reich* with its inegalitarian systems of privilege and its loyalties to guilds, estates, petty principalities, and towns. Kant conceives of the public will as a new source of authority, judging with supreme right whether the institutions of the old regime – particularly the nobility and the church – may persist. The government, as the institution in charge of implementing public reason, takes on the tremendous job of completing a social reform of revolutionary dimensions. Because Kant is convinced that the commitment to equal liberty requires government by consent the transformation has recognizably to take place through the agency of the people and it is to this purpose Kant develops the exercise conception of representation.

## II. COLLECTIVE AGENCY

The Kantian theory of representation as acting through others may appear unrealistic in presuming that an entire people can exercise collective agency. We know what it is for a person to act and what it is for a smaller group of people to unite around a shared agenda, but how can a large number of strangers in a state with representative government be said to act collectively? Acting collectively means among other things that every member of a group has reason to think of collective decisions as an expression of his or her will. But in large states it would seem that economic or cultural conditions generate too divergent interests for there to be any conceivable common good.

This objection is not problematic for the opportunity conception, which does not presuppose that persons under normal circumstance act collectively; their interests collide and politics is the domain of interest. Persons chiefly participate politically in the voting booth and that is not collective action. This is also the reason for the skepticism to the notion of the people acting through its representatives; government is a tool for interests and not an expression of shared reason and it is in the nature of interest that they are not shared by everyone. Nonetheless, Locke's view of revolutionary collective action presupposes a people as a unified subject spontaneously rising up against a ruler, after all "the proper Umpire [is] the Body of the *People*" (1967, §§ 241, 208, 242). Locke never explains

how a people can coordinate its actions absent institutions and the matter is not helped by his uncertainty on whether individuals or the body of the people is the final source of authority (in the preceding paragraph he boldly writes “*every Man is Judge for himself*”). He may have thought that when a tyrant arises private interests are distributively aligned so as to make concerted action possible, but in practice this of course hardly ever happens, if anything revolutions are the frequent contexts for faction. Absent the utopian idea of spontaneous collective action, the opportunity view only makes sense of individual liberty occasionally exercised in the voting booth and leaves us skeptical to representative government as a genuine form of democracy.

The Kantian answer has to do both with principles and institutions. With regard to principles, what allows a meaningful sense of collective action is that, as I said, the Kantian state is governed by a procedural not a material notion of justice. The principles of justice elaborated through public reason are procedural because oriented to the formal conditions for allowing persons to pursue their good in private. These formal freedom-securing conditions make up the system of right. The principles have nothing to do with the always divergent individual preferences but are necessary conditions for any organization of people aiming to secure equal liberty. The principles that representatives ought to enact, therefore, are those that conceivably could be agreed to by any person sharing the commitment to maintaining the basic structure of society. To be sure, it is metaphorical to say that the people then acts collectively. Even in a perfectly managed constitution a good number of people will always disagree with current policies. But while these persons may not feel that justified public decisions emanate from them, they must potentially be able to see them as such.

But there is a second way in which Kant makes sense of collective action, which has to do with representative institutions, because Kant claims that acts are formally designated as acts by the people in so far as they are taken by public legal authority.<sup>16</sup> To consider public decisions as acts by the people may appear rather close to Hobbes’s constructivist view of representation, which stipulates that all acts of the sovereign are legally to be taken as so many acts of the people because there is no extra-political unity to the people, which is constructed in the act of representation and only acts through the ruler.<sup>17</sup> This is worrisome, because when all the sovereign actions are *ipso facto* ascribed to the people there can in principle neither be misrepresentation, accountability, or responsiveness. But while Kant retains Hobbes constructivism,<sup>18</sup> implying that the people can only act through the government, the difference is that Kant conceives of the political community, including the government, as an organically unified entity, whereas Hobbes conceives of society in mechanical terms where the sovereign is not a member but a social engineer.

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16] Pogge (1988, 407-33) describes this phenomenon in terms of contemporary theories of justice.

17] Hobbes’s sovereign carries the “person of the state” and without the unifying public “sword” there simply is just a confused multitude. Society and state are made identical through Hobbes’s idiosyncratic notion of “absolute representation.” (1991, 114). See Skinner 2002, 177-208, and Pitkin 1967, 14ff.

18] Kant writes “the people [*Volk*] owes its existence only to the sovereign’s legislation” (RL 6:320, ZEF 8: 352, TP 8: 302).

Before looking at the implications for representation it is worth briefly outlining Kant's theory of the organic state. Understandably, the organic feature of Kant's republic has generally been overlooked. Otto von Gierke influentially argued that the idea of the state as an organic whole assumes a group personality with "independent" existence, which is more than merely the aggregate of the parts over which it has legal authority (1957, 50-51, 114). Modern natural law theory, of which Gierke takes Kant to be a representative, replaced this ancient and medieval doctrine with a new moral foundation in individualism and social contract, it conceived society as "artificial," a merely "mechanically" constituted whole (1957, 136). With Gierke in mind, we might easily think Kant is at once too individualistic and too authoritarian to qualify as an organic theorist of the state. The theory is too individualistic, because it assumes a social contract, taking the individual as the moral source of authority, yet it is simultaneously too authoritarian, because it relies on political authority and not spontaneous citizen association to hold society together.

But Gierke wrongly concluded that in Kant we "find the analogy of the organism entirely absent," (1957, 331-1) because in the *Critique of the Power of Judgment* Kant compares a state to an organized being not entirely different from Gierke's theory. With a barely veiled reference to the then ongoing French revolution, Kant speaks of "a recently undertaken fundamental transformation of a great people into a state" where "the word **organization** has frequently been quite appropriately used . . . of the entire body politic." (KU 5: 375, bold in the original).

The most significant difference between Kant's organism metaphor and the tradition is that the constitutive parts are individuals, not associations,<sup>19</sup> which Kant probably associated with the guilds, corporations, and estates of the unjust and disorderly old *Reich*. Kant does not presume that the whole is of greater value than the parts or that the parts are inherently unequal. The state as an organism, rather, presupposes equal liberty. Kant likely takes his cue from Rousseau, whose thinking is rife with the organism analogy, and who wrote of the state that "the citizens are the body and members."<sup>20</sup> Likewise for Kant, "each member should certainly be not merely a means, but at the same time also an end" (KU 5: 376). Subjects are ideally also citizens, so that those united in society by public authority also constitute the authority through elections and communication in the public sphere and as a result, the ruler, through which the community acts, is not considered an external manipulator engineering political unity but a member of the political community. The consequence of the organic and constructivist view of the political community as it relates to institutions is that representation can plausibly be described as the people acting "through" its delegates. Representation is not merely an instrument for bringing to bear the interests of society but a way for society to construct itself in the first place. There can be no way for society as a whole to act except "through" representatives, because there is no society in their absence. Representation for Kant therefore is not merely mirroring

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19] In Hegel's *Philosophy of Right* associations make up the state (the family, the corporations, and the three parts of the government) and only find their reality through the larger whole. A hand cut off from the body still looks like a hand, "but it has no actuality." See Hegel 1991, 270A.

20] Rousseau, 1987, 114. See also 1987, 3.11.

facts but takes on the large role of continuously constituting the community. This procedure, as I described it in the previous section, includes the constant contestation in the public sphere of the principles of right, what Kant refers to as the general will.

A different objection to the exercise view of the people acting “through” representatives is that it relies on a notion of the general will whereas Schumpeter and many authors following him have forcefully argued that no such thing can exist. Value-disagreement is inherent in modern society and a single, coherent will of the community cannot be the starting point of politics, it is rather the creation of elites manipulating public opinion. The desire for a general will is anti-pluralistic, potentially oppressive, and so we should give up the “eighteenth century philosophy of democracy” and its notion of a people governing itself “through” its representatives (Schumpeter 1947, 263)

Schumpeter’s critique may in fact be devastating for certain utilitarian theories of popular sovereignty, but Kant and procedural versions of the exercise view are not good targets. Kant’s general will is a minimal condition of what every concerned party to some collective decision could or could not rationally agree to, it does not rely on a controversial conception of the common good but is simply designed to exclude policies that unduly restrict negative liberties. Far from anti-pluralistic, such a liberal defense of rights is the condition of possibility of social and political pluralism because it allows the pursuit of any interest compatible with mutual freedom. The general will is a rational construction, it does not require social consensus, and hence it cannot justify attempts at indoctrinating a population to adopt a shared view. In this regard, Locke is in a more difficult position because he assumes an entire people can agree and act collectively in revolutions. To Kant, the general will is approximated through the political process as a whole, including all the decisions and deliberations taking place both in the political and the public sphere together constituting the public use of reason, and this certainly respects plurality (O’Neill 2000).

Another understandable objection is that the rhetoric of the general will may easily be utilized ideologically for factions to amass power by claiming to speak for the entire people. The exercise view of representation where government is conceived as the extension of the people may lead to excessive trust in government, and as Schumpeter warned, governments claiming excessive popular legitimacy can easily use this power for “crushing opponents in the name of the people” (1947, 268). Conversely, the opportunity view certainly has the advantage of increased popular vigilance in controlling the boundaries of the government, which is often portrayed as an opposed or hostile interest. With no pretension of actual popular “presence” in government, there is all the more reason to monitor it. Yet, there is no reason why the exercise view needs to be less vigilant in controlling government. The standard is no less exacting, and just because the ideal is a mediated public “presence” in political decision making does not mean that any decision by representatives automatically qualifies. After all, any theory of popular sovereignty is vulnerable to populist exploitation.

The implication of the exercise view is that we ought to imagine citizen agency as not restricted merely to occasional participation in elections. To be sure, voting is the only

and indispensable means by which citizens can decisively control government. But on the Kantian conception citizens also exercise agency on an everyday basis in the public sphere. No doubt, this is an idealistic picture and it is natural to question whether it makes sense to think of the people acting “through” representation when the political process is full of rhetoric, demagoguery, and bargaining; surely what we often see is not the exercise of public reason but the play of power, interest and exclusionary visions of the good. This is in fact a broader objection, which can be leveled at any theory defending rational communication as an influence on politics. The Kantian answer is not that sectarian interests will ever disappear, but that political agents can only credibly justify their demands in terms that are acceptable generally, in other words, in terms of the agency of the people. To be sure, if a political context is entirely corrupt it makes no sense to speak of the people acting “through” the representatives – but then again it is ultimately this ideal that allows us to say that politics is corrupt.

### III. CONCLUSION

I have enlisted Kant in the attempt to make sense of and defend the notion of persons exercising agency “through” political representation. I have not dealt with the complexities of contemporary representative systems, which would require a separate study even if the conceptual apparatus would remain the same. In exploring and developing the Kantian theory of representation I found it answering to the twin challenges of making plausible that representatives can mediate public reason and of explaining how a society acts collectively in the political domain. Contrary to the dominant view in theories of representation, freedom in representative systems is not available only as an opportunity for occasional interventions, but can be made sense of as a people’s continuous agency “through” representatives.

Representation on the Kantian view is not of objective interests or arbitrary decisions and does not rely on sentimental connections between persons and delegates. Rather, representation is legislation according to reasons that apply to persons because they are justifiable in terms of rational democratic procedures. These procedures include the continuing constitution of society not just through periodical elections but through contestation in the public sphere where persons seek to justify claims about what constitutes acts of the people “through” its representatives. The exercise view, which integrates the agency of persons and delegates, holds the key to understanding contemporary representative systems as fully democratic.<sup>21</sup>

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