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Democracy and the Symbolic Constitution of Society

HANS LINDAHL*

Abstract. Building on Cassirer's philosophy of symbolic forms, this paper argues that the continuities and discontinuities characterizing the passage from medieval politics to modern democracy can best be understood by reference to political power's symbolic structure. For the one, political power, whether theocratic or democratic, always mediates an absolute power; as mediation, political power enacts the twofold movement which Cassirer has identified as characteristic of all human symbolization: a distancing of, and approximation to, reality. For the other, democracy institutionalizes a category distinction between meaning and being, making of political unity a functional, rather than substantial, unity.

According to Kelsen, an irreducible dualism between ideology and reality characterizes democracy. The ideology or "idea" of democracy is popular sovereignty: the identity between the people as the subject and the object of domination, that is, a society of free and equal individuals. Nevertheless, a concrete consideration of democracy's institutions and functioning imposes a number of restrictions on the realization of this idea, not least because majority rule, rather than unanimity, governs democratic reality. Rather than an identity, the difference between the subject and object of domination characterizes real democracy. "Inevitably, it seems, the social reality which claims to be democratic falls more or less short of the idea of democracy. For the idea of democracy, as the idea of freedom, means [...] the negation of all social and, in particular, of all state reality" (Kelsen 1968c, 1747). Certainly. But then the inverse question arises: Why retain the idea of democracy? If democracy's reality always falls short of its idea, how and why is the postulate of popular sovereignty a necessary condition for a democratic society? Kelsen's explanation of the democratic ideology is naturalistic: "The enormous [...] significance of the notion of freedom for political ideology can only

* I appreciate comments to this paper made by Wim Staat and Bert van Roermund, colleagues at the Faculty of Philosophy at Tilburg University.

be explained insofar as it originates from that primordial instinct of hostility toward the state which sets the individual against society" (Kelsen 1981c, 5–6). The reference to a "primordial instinct" merely highlights the problem, without resolving it: What is the relation between the "ideology" and the "reality" of democratic society, such that popular sovereignty cannot be simply unmasked and henceforth banished as a mere "illusion"? In what sense, if any, does the *relation* between these two terms, not only "reality," define a democratic society?

Precisely this problem lies at the core of Claude Lefort's political philosophy. In effect, what Kelsen calls the "ideology" or "idea" of democracy is part and parcel of Lefort's inquiry into the symbolic status of power in medieval and modern politics. The closing sentence of the Introduction to *Essais sur le politique. XIX^e–XX^e siècles* perhaps best summarizes the interest animating Claude Lefort's entire philosophical project: "Attentive to signs of repetition and to signs of the new, we attempt to reveal the symbolic dimension of the social" (Lefort 1988, 6). His essay *The Permanence of the Theologico-Political?* further sharpens this question as follows: "How [can we] conceive the links between the religious and the political, and the possibility of their being broken[?]" (ibid., 235). As these citations suggest, the symbolic delivers the key to how the Middle Ages and modernity are continuous and discontinuous. Their *continuity*: "Both the political and the religious bring philosophical thought face to face with the symbolic [...] in the sense that, through their internal articulations, both the political and the religious govern access to the world" (ibid., 222). Their *discontinuity*: "The birth of [modern] democracy signals a mutation of the symbolic order, as is most clearly attested to by the new position of power" (ibid., 16). An innovation in the "symbolic order" explains the strict disjunction between religious and political institutions characterizing modern Western societies, along with the emergence of the other institutional trappings of democracy. Accordingly, Kelsen's distinction between ideology and reality characteristic of democracy reappears, in the context of Lefort's political philosophy, as a specific instance of the general distinction between the symbolic and the real apposite to political power.

This preliminary reference to political power and symbolization suggests that the problem concerning the relation between the "ideology" and "reality" of modern democracy can be reformulated in terms of two interconnected questions. First: What determines the "symbolic dimension of the social" as *symbolic*? More specifically, what concept of the symbol is germane to political power in general? Second: A mutation of the symbolic dimension of *society* presupposes a mutation of *symbolization* itself; what innovation of political symbolization accompanies the apparition of modern democracy?

These questions will be addressed in two stages. Section 1 begins by highlighting Lefort's fundamental insight concerning political power in general, namely, the "internal-external" articulation of society. In other words, political

power *mediates* between a point “outside” society and the social order itself. Why is this relation constitutive for political power? A response to this question lies concealed in the conception of mediation. Whereas Lefort does not systematically develop this question, it governs Ernst Cassirer’s philosophy of symbolic forms. He argues that the human relation to reality is mediate, that is to say, symbolic. Drawing on Cassirer’s general analysis of mediation or symbolization, section 2 addresses the second of the aforementioned questions: What *innovation* of symbolization accompanies the apparition of modern democracy? This section considers popular sovereignty—the “idea” or “ideology” of democracy, in Kelsen’s vocabulary—from two interconnected perspectives. For the one, the passage from medieval politics to modern democracy transforms the epistemological and ontological meaning of representation; for the other, I will argue that this transformation yields the key to the relation between modern democracy and the constitutional state (the *Rechtsstaat*).

1. Political Power and the “Work” of Symbolization

Contemporary political science oscillates between *normative* accounts of political power, centered in the validity of legal rules, and *empirical* approaches, that see in political power a strictly factual—generally psychological and sociological—phenomenon. As a result, the controversy surrounding the concept of political power has bogged down into an exercise in providing additional arguments for or against either of these two positions, or attempting a more or less syncretistic reconciliation of the two. The inability to move beyond this opposition suggests that reaching a deeper understanding of the concept of political power requires reformulating the terms of the discussion. Here, as elsewhere, one must begin by uncovering the common presupposition of the adversary positions. Closer consideration indicates that both the normative and empirical approaches envisage political power as an *institutional* phenomenon. This presupposition must be questioned, not because it is incorrect, but because it highlights a secondary, derivative manifestation of power. Political power is undoubtedly *also* an institutional phenomenon, but institutions are not its primordial locus; the locus of political power is *symbolization*.

Political Power and the “Internal-External Articulation” of Society

This basic insight is Claude Lefort’s most important contribution to political philosophy. Indeed, he castigates political science for favoring a purely institutional analysis of power—a domain he calls “politics” (*la politique*)—, thereby neglecting or even denying the fundamentally symbolic nature of power—a domain he calls “the political” (*le politique*). In his view, political power always brings about an “internal-external articulation” of society, a

reference to a point *outside* society, whence the latter organizes itself. Focusing on "the political," Lefort views medieval and modern politics, both democratic and totalitarian, as distinct episodes in the symbolization inherent to political power.

The following passage condenses the essentials of Lefort's reflections on the concept of political power:

The fact that [society] is organized as *one* despite (or because of) its multiple divisions and that it is organized as *the same* in all its multiple dimensions implies a reference to a place from which it can be seen, read and named. This symbolic pole proves to be power, even before we examine it in its empirical determinations [...] power makes a gesture towards an *outside* (*un dehors*), whence [society] defines itself. Whatever its form, [political power] always refers to the same enigma: that of an internal-external articulation, of a division which institutes a common space, of a break which simultaneously establishes relations (*mise en rapport*), of a movement of the externalization of the social which goes hand in hand with its internalization. (Lefort 1988, 225)

This passage interweaves at least four different features:

(1) Every society is organized around the basic relation between an "outside" and an "inside." More sharply: A society cannot be reduced to one or the other of these terms; it is the *relation* between a "*dehors*" and a "*dedans*," between the symbolic dimension and empirical reality.

(2) As the concept of identity implies a relation between two terms, the reference to an "outside" constitutes and guarantees the *identity* of a political society; social identity does not coincide with, nor can it be built up from, an assemblage of empirical features. Consequently, *internal* social divisions are such thanks to the reference to an exterior, whence they can appear as divisions within *one and the same* society.

(3) Social identity possesses a *mediate* structure: Every society necessarily relates to and orders itself by the detour of an "other," namely, its "outside." In other words, the relation of an empirically given society to itself is *indirect* or mediated, rather than direct or immediate.

(4) In its straightforward and unproblematic meanings, political power is the capacity to order society. Yet, as noted above, the real social order refers to an "outside" whence it draws its unity. Accordingly, political power *mediates*. Mediation is not merely one property amongst others pertaining to political power; mediation is its *defining feature*. Political power mediates by relating the "internal" and "external" terms of society, that is to say, by referring to a "ground" which lies beyond social relations in empirical space and time.

These four features determine what I will call the "symbolic constitution of society." But what concept of the symbol does political power imply? And why does symbolization define political power? Lefort's response to these questions appeals to Lacan's threefold distinction between the symbolic, the imaginary and the real.¹ This approach, to my mind, is problematic. I wonder

¹ For an analysis of Lefort's reception of the symbolic in Lacan, see Flynn 1992, 184ff.

whether a *psychoanalytic* concept of the symbol is sufficiently comprehensive to give account of the "symbolic dimension" in general, a dimension that, by Lefort's own admission, "constitutes the relations human beings establish with the world" (Lefort 1988, 222). A psychoanalytic approach to politics, science, myth, art and mankind's other symbolic domains is of course possible and fruitful. But the question is whether psychoanalysis can meet the double methodological imperative of explaining the *general* structure of our symbolic relation with reality, and accounting for, and respecting, the *specificity* of each symbolic domain.

Rather than simply grafting Lacan's concept of the symbolic onto the problem posed by political power, an approach closer to Lefort's own phenomenological background consists in letting the problem of political power, as revealed in the "internal-external" articulation of society, determine the relevant concept of symbolization. In other words, the concept of the symbol apposite to political power lies concealed in the "internal-external" articulation of society; our task is to uncover it and explore its political and legal implications.

Mediation: Distancing and Approximation

The key to our problem is, clearly, the concept of *mediation*. In effect, Lefort's analyses show that the relation between an "outside" and an "inside" of society is mediate, rather than immediate. Rulers always exercise power in the name of another power, be it God (in medieval politics) or the sovereign people (in modern democracy). Despite all differences separating modern democracy from medieval politics, in both eras political power mediates by relating the empirical order to a pole situated "outside" the community. But this remains a highly formal characterization of mediation; it merely specifies political mediation as a relation. While political power is certainly a relational concept, this assertion brings us no closer to a concrete understanding of mediation.

A consideration of mediation in the context of the "internal-external" articulation of society reveals two characteristic features. First, political power mediates because political power always resorts, implicitly or explicitly, to the general form "Acting in the name of ... we hereby order that ..." Who commands, commands on behalf of another, namely the "highest," power. Second, the power in whose name society is ordered is situated "outside" the community. Neither God nor the sovereign people are political actors within the community. In this twofold sense, the ruler mediates between the sovereign and the political community. The implications of this insight can best be understood by examining the general concepts of legitimacy and illegitimacy. In effect, although modern democracy drastically revises the concept of legitimacy which governed medieval politics, it retains the fundamental feature of the latter's understanding of legitimacy. All

legitimate exercise of political power must present itself as *conditioned*, that is, it presupposes and points to an *unconditioned* power which makes political and legal judgments binding. This, precisely, is the import of the formula "Acting in the name of ... we hereby order that ..." It is no coincidence, then, that popular *sovereignty* should take over the position left open by the theological *causa sui*. For the word "sovereignty" means, minimally, the *highest or unconditioned power*.

In contrast with legitimacy, the illegitimate exercise of political power commandeers unconditionedness for itself. The expression "an order is an order" is the quintessential manifestation of political absolutism. Illegitimacy ensues when political power no longer recognizes its submission to another, the "highest," power. Expressed otherwise, the dissolution of the distinction between unconditioned and conditioned power coincides with the collapse of transcendence (the "external" pole of society) into immanence (society as an order of empirical relations). Consequently, effective resistance to illegitimate political power is made of the same stuff as the exercise of legitimate political power: Rather than brute violence, opposition commences by postulating a transcendent moment to which the real exercise of political power is subordinated. In other words, all effective opposition to illegitimacy reconstructs the fundamental distinction between conditioned and unconditioned power which has been shattered. Only by rebuilding this distinction, by recognizing its own subordination to a transcendent moment, may resistance itself raise a claim to legitimacy. It would be possible to show that all successful political opposition follows this basic pattern.

The distinction between legitimate and illegitimate power reveals a fundamental feature of the human relation to political reality. The loss of legitimacy, and the subsequent resistance to the political power which has usurped the title of the unconditional, suggests that, at least politically, what *is* cannot be absolute; the ruler must appear to humans as a conditioned political reality. In other words, the relation between the sovereign and the participants of a political community cannot be immediate. How should we interpret this peculiar fact? Thus: *Mankind demotes the political reality it faces to the status of a conditioned reality because it cannot bear to directly confront a political reality which is absolute or unconditioned*. Two interconnected aspects of this thesis deserve to be highlighted. For the one, human beings continuously "approach" political reality; the task of God or the sovereign people, as the foundation of the political order, is precisely to allow political reality to be revealed, thereby bringing reality near. For the other, the mediateness of the human relation to the political world, as brought about by the reference to either the theological God or the sovereign people, deprives political reality of unconditionality. When placed "outside" the domain of empirical politics, the immediacy of unconditioned power *recedes* into "farness"; political reality becomes a *conditioned* political reality. *Proximity goes hand in hand with remoteness*, not merely as inevitable "side-effects" of mediation, but as its

specific accomplishments. Hence, not only are both aspects—distancing and approximation—present in medieval politics and modern democracy, but they exhibit an internal and necessary connection; they are the two sides of what we call *mediation*. Whereas Lefort's analyses focus on the medieval God and popular sovereignty as the "outside" of society, in the sense of the detour whereby access to the political world is possible, he neglects their second, no less fundamental achievement: removing the immediacy of unconditioned power. From this perspective, the spatial metaphors of inside and outside display an unexpected richness, for they imply an *interval* between conditioned and unconditioned power, a distance brought about in mediation. A fundamental question arises at this point: Is the internal connection between proximity and remoteness the necessary feature of the human relation to *political* reality only? Or does it accrue to political reality because the interconnectedness of these two aspects determines the human relation to reality *in general*?

The "Work" of Symbolization

Cassirer formulates the guiding insight of his philosophical anthropology as follows: "Man's outstanding characteristic, his distinguishing mark, is not his metaphysical or physical nature—but his work. It is this work, it is the system of human activities, which defines and determines the circle of 'humanity'" (Cassirer 1992, 68). This system of activities includes, in Cassirer's analyses, the domains of language, myth, religion, art and science. What characterizes them as *activities*? What is the unifying feature which, despite their differences, defines them as "work"? All of these domains "interpose themselves *between* us and objects. Yet they do not thereby merely characterize, negatively, the *distancing* of the object from us; they create the only possible, adequate *mediation* and the vehicle through which any spiritual being can at all be grasped and comprehended by us" (Cassirer 1994b, 176).² Although Cassirer seems to contrast distancing and mediation, he actually contrasts "distancing" with "grasping" and "comprehending," i.e., with coming near to, or approaching, the object. The term "mediation" encompasses both terms. The "distancing" to which Cassirer refers is an *ideal* distance, namely, the meanings and orders of meanings human beings interpolate between themselves and reality: "No being is tangible or accessible except

² Referring to language as a symbolic form, Cassirer observes that "not in proximity to the immediately given but in progressive *removal* (*Entfernung*) from it, lie the value and the specific character of linguistic as of artistic formation. This *distance* from immediate reality and immediate experience is the condition of their being perceived, of our spiritual awareness of them" (Cassirer 1953, 189). Accordingly, Cassirer stands here close to Heidegger's thesis concerning "de-severance" (*Ent-fernung*) as a mode of being of *Dasein*, as the thing *Dasein* brings close to itself is already revealed *as* this or that, and, to this extent, distanced through symbolic mediation. Recast in Heidegger's vocabulary: *Ent-fernung* presupposes the distancing brought about by "significance" (*Bedeutsamkeit*). See Heidegger 1985, pars. 18, 23.

through meaning" (Cassirer 1957, 299). Conversely, "grasping" and "comprehending"—approximation—bring reality near in the sense that something appears to human beings as "this" or "that," i.e., as the embodiment of a meaning. Consequently, mediation is symbolization, the production of symbols. In effect, the symbol designates "the totality of those phenomena in which the sensuous is in any way filled with meaning, in which a sensuous content [...] represents a particularization and embodiment, a manifestation and incarnation of a meaning" (ibid.). Thus, when Cassirer notes that man's outstanding characteristic is his "work," he means that humans are symbolizing beings: "We should define [man] as an *animal symbolicum*. By so doing we can designate his specific difference, and we can understand the new way open to man—the way to civilization" (Cassirer 1992, 26). Civilization encompasses *symbolic forms* such as science, myth, art and language. Both bringing reality near and placing it at a distance, that is, mediating our access to reality, symbolization is always already "at work" in the various ways human beings relate to the world. More emphatically, *distancing and approximation are the work of symbolization*; these are its constituent features. Human beings relate symbolically to the world because they retreat from reality in the very act of approaching it.

Although Cassirer did not concretely analyze politics and law as symbolizing activities,³ his general characterization of symbolization and the symbol provides the key to understanding the "internal-external" articulation of society, as described by Lefort. In effect, power mediates the relation between the sovereign and political society because the work of symbolization governs the human relation to reality in general. All "generative principles" of society—"the political" in Lefort's vocabulary—are variations on the single symbolic process of distancing and approximation. Lefort's exposé of the "political forms" of society falls within the double task Cassirer assigned a philosophy of symbolic forms, namely, reconstructing the common root of the process whereby human beings constitute any and every world for themselves, and the specificity of the processes which give birth to the different worlds inhabited by human beings. No less than language, myth, art, religion or science, "the political" designates a specific constructive process, namely, the symbolic activity whereby human beings constitute the *political* world.

³ Cassirer's last work (Cassirer 1974) was concerned with understanding the mythical roots of totalitarianism, and in this sense it is, of course, a treatise on political philosophy. But his work offers a critique of *political theory*, rather than providing a systematic analysis of the symbolization inherent to politics and law as specific domains of human civilization. Significantly, Kantorowicz (1957, Preface) notes that he "cannot claim to have demonstrated in any completeness the problem of what has been called 'The Myth of the State' (Ernst Cassirer). The study may be none the less a contribution to this greater problem [...]" (Kantorowicz 1957, ix). Lefort has repeatedly recognized his indebtedness to Kantorowicz's work.

"Limiting the Unlimited"

But what does the "work" of political symbolization achieve? What purpose governs the twofold movement of distancing and approximation which political power shares with all human symbolization? In an essay devoted to the concept of space, Cassirer summarizes the general function of symbolization as follows: "limiting the unlimited, determining the relatively indeterminate" (Cassirer 1985, 100). In other words, symbolization strives to condition reality by integrating it into a system of meaning. For conditioning reality means placing it at an ideal distance whence it becomes intelligible and familiar, hence approachable. This, precisely, is what it means to "determine" the "relatively indeterminate." The general function of symbolization allows Cassirer to "correct and enlarge the classical definition of man[;] instead of defining man as an *animal rationale*, we should define him as an *animal symbolicum*" (Cassirer 1992, 25–26). All domains of human culture are governed by the double movement of approximation and distancing inherent to symbolization, and in each case the task of symbolization is the same: coping with reality, limiting the unlimited. Building on Cassirer, Hans Blumenberg asserts that the "work of myth" is a "work on the reduction of the absolutism of reality" (Blumenberg 1985, 7).⁴ From the perspective of Cassirer's philosophy of symbolic forms, this task clearly accrues not only to myths, but to symbolic activity in general. In this sense, the rationality intrinsic to symbolization consists in mediating "the single absolute experience that exists: that of the superior power (*Übermacht*) of the Other" (ibid., 21). Thus, the "internal-external" articulation of society, which Lefort was concerned to adumbrate in its general political implications, is a particular manifestation of the general concept of rationality unveiled by Cassirer. Political power is legitimate or rational when conditioned, i.e., when mediated by an unconditioned power, situated outside the political community, which depletes the former of its absolutism. Legitimate political power is "rational" not merely because symbolically mediated, but because mediation removes unconditioned power, whether theocratic or democratic, from the sphere of political reality. Hence, Lefort's insight into the symbolism of political power should be reformulated and radicalized as follows: *Political power is essentially symbolic because the animal symbolicum continuously exerts itself to push away an absolute reality—power in its most pregnant sense—, interpolating between himself and reality a new absolute: his meanings.*

⁴ Elsewhere, Blumenberg draws the anthropological implications of this characterization of human being as an *animal symbolicum*: "I see no scientific approach to anthropology other than destroying [...] what is allegedly 'natural', shifting its 'artificiality' to the functional system of what is the elementary achievement of human being: 'life' [...]. The absence, in human beings, of specific dispositions to reactive behavior in relation to reality, that is, their instinctual poverty, is the point of departure for the central anthropological question, namely, how this being, despite its biological indisposition, is able to exist. The answer can be formulated thus: If it does not deal directly with this reality. The human relation to reality is indirect, circumstantial, dilatory [*verzögert*], selective and, above all, 'metaphorical'" (Blumenberg 1981, 115).

These considerations illuminate the nature of the problem created by the loss of political legitimacy. In effect, the loss of political legitimacy is a specific instance of the general danger posed by the erosion or, in extreme cases, disintegration of a symbolic world. This, the "boundary-experience" *par excellence*, exposes humans to a *direct* confrontation with reality, a reality which, because direct (i.e., ungrounded), is opaque; because opaque, unintelligible; because unintelligible, threatening. In a word, exposure to social reality without the mediation of meanings is the experience of no longer being able to cope with *chaos*. Accordingly, there is a structural equivalence, for the symbolic constitution of the world, between the erosion or disintegration of political legitimacy and what Thomas Kuhn has called, respectively, "anomalies" or "crises" in science. Both situations lead to the same reaction: attempting to cope with chaos by way of a robust symbolic activity. Political terror provides us with an exemplary case of the general experience of dread accompanying direct exposure to reality. Not surprisingly, all manifestations of political terror enact, in one way or another, a "return to the origin"; they aspire to strip away the layers which have hitherto veiled the sheer presence of a community; they recreate what Cassirer has called the typical demand of metaphysics, namely, "to lay bare a primal stratum of reality, in which reality itself may be apprehended free from all symbolic interpretation and signification" (Cassirer 1957, 2). The result—political absolutism—is a figure of the absolutism of reality.

Conversely, political resistance draws its impetus from the insight that "nothing wants to go back to the beginning [...]. On the contrary, everything apportions itself according to its distance from that beginning" (Blumenberg 1985, 21). Political resistance manifests itself in the capacity to interpose a "ground" between immediate reality and humans, i.e., the renewed production of meanings which tame and hold at bay the terror of reality. When it is once again possible to distinguish between conditioned and unconditioned power, the oppressiveness of political reality abates; symbolization has already done its work. Reflecting on resistance against totalitarianism, Václav Havel noted: "Any existential revolution should provide hope of a moral reconstitution of society, which means a radical renewal of the relationship of human beings to what I have called the 'human order,' which no political order can replace" (Havel 1985, 92). The content Havel assigns to the "human order" need not concern us here. Rather, his reflection offers us a paradigm of the symbolic activity constitutive of political resistance. Distinguishing between a non-appropriable "human order" and the "political order," Havel in effect reintroduces the distinction between unconditioned and conditioned power, transcendence and immanence. His act of resistance exercises political power: The "political order" forfeits its absolutism when mediated by the "human order." In a nutshell, Havel's remark reenacts the basic achievement of the symbol: distancing and approximation.

Mankind's symbolic activity never ceases, whatever the domain in which it is deployed, because the *animal symbolicum* stands in the twilight zone between the absolutism of reality and the absolutism of a conclusive story about reality, such that the narrative about reality could definitively substitute for "real" reality. At every step, however, reality encroaches on and infiltrates the symbolic worlds mankind constructs for itself, forcing on it the Sisyphean task of repeatedly, continuously repairing the gaps in this world. Thus, the absolutism of reality lies not only behind, but also *ahead* of the symbolic being, as death—the definitive manifestation of absolutism—makes abundantly clear. Simulation can never sufficiently dissimulate reality; in this sense, at least, Lefort is right when saying that politics confronts man with the "excess of being over appearance." Politically, this situation means that social life stands between a total collapse of legitimacy and the safe haven of total legitimacy. Worldly society finds itself somewhere in the hiatus between the Fall and the *civitas dei*, between the state of nature and utopia. Contemporary events bear out this insight. In effect, the massive production of norms witnessed in the so-called "regulatory state" reacts, albeit belatedly, to the acute anxiety brought about by the medieval sharpening of contingency into "theological absolutism."⁵ The attempt to cope with the acute experience of chaos which accompanied the "loss of world-order" at the end of the Middle Ages called forth the specific symbolic activity that finds in modern science and technology its most visible manifestations. From this perspective, instrumental law in contemporary society is an outstanding example of the general function of symbolic activity: *believing* that the endangering quality of reality is being neutralized. Here, as elsewhere, the boundary between rationality and rationalization is at best blurred. The loss of legitimacy accompanying the failure of instrumentality in the later phases of the regulatory state coincides with the renewed obtrusion of reality's absolutism into everyday life: The threat of unemployment refuses to go away. "Flexible labour," "deregulation" and "self-regulation" become so many figures of the symbolic activity aimed at, once again, domesticating reality.

2. We, the People

The foregoing section addressed the first of the general questions raised by Lefort's analyses of the passage from medieval to modern politics: What concept of the symbol is apposite to political power in general? We can now turn to our second question: What *mutation* of political symbolization governs the democratic transformation of the "inside-outside" relation?

⁵ "The world as the pure performance of reified omnipotence, as a demonstration of the unlimited sovereignty of a will to which no questions can be addressed—this eradication even of the right to perceive a problem meant that, at least for man, the world no longer possessed an accessible order" (Blumenberg 1986, 171).

Lefort traces this innovation along two interrelated fronts, namely, the *disembodiment* of political power and the *desubstantialization* of social unity. For the one, whereas the political theory of “the king’s two bodies” allowed the medieval monarch to function as the representative of an ineffable transcendence, the disembodiment of political power means that the “place” of power has been “emptied.” For the other, whereas the medieval God functions as the *real* ground of social order, democracy refuses to hypostatize the people into a substantial unity. Although correct as far as they go, surely these two features—disembodiment and desubstantialization—do not suffice to explain the transformation inaugurating modern politics. On the one hand, although the democratic exercise of political power can no longer be understood by appealing to the medieval theory of the king’s two bodies, transcendence still lies at the core of democracy to the extent that political power must be exercised on behalf of the people. Rather than simply negating transcendence, democracy interprets transcendence in a novel manner. While suggestive, the metaphor of the “empty place” of political power offers scant assistance in revealing this positive concept of transcendence. On the other hand, the mere negation of a *substantial* unity of society—Lefort speaks of democracy’s “logic of negation” (Lefort 1994, 149)—leaves in suspense how reference to the people reformulates social *unity*. Here one must concede Carl Schmitt’s contention that no politics is possible in the absence of social unity, precisely to be able to combat the corollary he draws: Social unity is substantial. To function as an effective principle of political integration, popular sovereignty must inaugurate a novel concept of social unity, not merely negate substantial unity. Lefort does not develop this problem in depth, which is remarkable, as it delivers the key to the democratic innovation of symbolization.

Consequently, the following questions guide our further inquiry into the symbolic constitution of a *democratic* society:

- (a) What, positively considered, is the “desubstantialization” of political unity?
- (b) What symbolic order enables political unity in the absence of substantial unity?

Let us turn to the first of these sets of questions. “The political,” says Lefort, implies that every form of instituting society depends on the relation which humans entertain with the world. Thus, the institution of society rests on a particular understanding of the *relation between thinking and being*. I will argue that an epistemological and ontological transformation heralds the political transition from the Middle Ages to modernity, namely, a transformation of the concept of *representation*. More specifically, the advent of democracy signals the passage from a *substantial* to a *functional* concept of representation. Cassirer (1994a) has shown that modern science emerges with a functional, rather than substantial, understanding of the relation between thinking and reality. But neither this early work, nor his later generalization and radicalization

of the functional concept of representation (Cassirer 1957), explore the *political* consequences of this transformation. These are none other than the advent of democracy. Politically, the functional concept of representation yields the “positive” conception of what Lefort calls the desubstantialization of society.⁶ In a nutshell, whereas the *substantial* unity of society prevails in medieval politics, the people denotes a *functional* unity. Let us first consider how the concept of a substance and its properties determines social unity in medieval politics, thereafter examining the priority of functions in modern democracy.

Substances

According to Lefort, two features determine the substantial unity of society in medieval politics: the transcendent grounding and the “naturalization” of social order. Concerning the first of these features, notes Lefort, medieval political theory establishes “a new relation between the *particular*, which is still inscribed within the limits of a body, of an entity which is organized spatially and temporally, and the *universal*, which is still related to the operation of transcendence” (Lefort 1988, 251). The exercise of political power by the medieval monarch actualizes the relation between the immanent and the transcendent, the individual and the general. Yet not the reference to transcendence, as Lefort seems to suggest, but the assumption that the theological God is a transcendent *being*, specifies medieval politics over against democracy. In effect, this assumption discloses a fundamental identity between the *summum ens* and the *ens creatum*, despite the abyss separating them: *Both are beings*. Although the doctrines of creation *ex nihilo* and contingency drastically revise the world view of antiquity, the medieval relation between the highest and created being repeats a fundamental implication of Greek thinking. In effect, medieval political theory presupposes that transcendence—the general—is an *ontic* category. In other words, the theory of the king’s two bodies presupposes that the “ground” of political order, no less than the “grounded,” is a mode of being. This presupposition, at the root of all medieval theorizing about the “body politic,” goes back to the view which obtained its accomplished expression in Aristotle’s ontological substantialism. “The manifold determinations of being are only thinkable [as determinations of] given and existent substances. The logical-grammatical modes of being as such can only find their real support and ground in a fixed reified substance which must be immediately given (*primär vorhanden*)” (Cassirer 1994a, 10). The ontological priority of a thing and its properties entails that the general can only function as the condition of intelligibility of an

⁶ Lefort opposes a functional understanding of democratic politics; nonetheless, this opposition obeys a too limited interpretation of the concept of “function.” In the view defended hereafter, functions refer to the general process of objectivation, a process which Cassirer elucidates by reference to the category distinction between being and meaning. Significantly, Lefort himself was concerned to defend this distinction.

individual—as its *ground*—if the general denotes the common feature inhering in a series of individuals. Hence, the ground belongs to the order of what it grounds: existence. The objectivity of judgment requires that the logical generality of a concept reproduce the ontic generality of a *species*.

Concerning the second feature of substantialism in medieval politics, Lefort notes that when “the religious basis of power is fully affirmed, [the ruler] appears to be the keeper of the law which inheres in social relations and maintains their unity” (Lefort 1988, 228; translation modified). The reference to a law inhering in social relations reveals a fundamental dualism: Social order denotes first and foremost an *ontic* hierarchy, i.e., a classification of beings according to their inherent properties, and only secondarily a *conceptual* order, which reproduces the former. Politically, this entails that legal concepts represent ontic essences, i.e., that the legal order reproduces a social order independent of, and antecedent to, all legal conceptualization. Accordingly, the “natural determination” of society presupposes that (legal) concepts are merely intellectual *reproductions* of the common features of things as these give themselves immediately to us in experience. In other words, medieval politics and political theory remain bound by the assumption that thinking *represents* being. In a word, ontological substantialism goes hand in hand with epistemological representationalism: A representation denotes “the ‘conception’ (*Vorstellung*) that refers to the object standing behind it. The ‘sign’ thereby possesses an entirely different nature as the signified, and belongs to another domain of being” (Cassirer 1994a, 373). Here, once again, this presupposition is older than medieval politics; it lies at the birth of Western semiotics, and governs all thinking on the symbol and symbolization prior to modernity. Representationalism implies that thinking functions abstractively, comparing the immediately given—presence—to identify and describe the features (forms) shared by series of beings. Thus, the substantial unity of society in medieval politics implies a specific interpretation of the relation between representation and presence: *Representation presupposes the priority of, and direct access to, presence.*

Let us conclude this conspectus of the substantial concept of representation by pointing to two of its implications in medieval politics. On the one hand, notice the paradox it entails in respect of social unity, namely, suppressing the *relationality* of social relations. By granting priority to things and their properties, substantialism proves incapable of thinking of social unity as a *unity of relations*. In effect, the social relations in which individuals are engaged do not determine their position within the social order; rather, what individuals *are* in themselves defines their social positions and relations. As Cassirer notes, “the relation is not independent over against the [thing]-concept [...] it can only add secondary and external modifications that do not affect [the thing’s] real ‘nature’” (Cassirer 1994a, 10). The *substantial unity* of society, i.e., the hypostasis of society into a “natural” order, consists, ontologically speaking, in the transformation of all relational

determinations into the properties of subjects. On the other hand, representationalism implies a specific concept of *truth*. In effect, a thing given absolutely and meaningful in itself functions as the ground of truth, as the source and measure of the objectivity of knowledge. As Cassirer puts it, "all knowledge receives its character, its value and its certainty from the object to which it is related" (Cassirer 1993, 196). This presupposition governs the medieval understanding of the objectivity of political judgment. The notion of a hierarchical order of ends, ultimately resting on the highest end—God—, defines the framework within which all questions concerning the legitimacy or objectivity of social ends could be raised and discussed.

Functions

Lefort has pointed out that the decapitation of Louis XVI has a political significance far surpassing a mere regicide. The beheading of the French monarch, which signals the birth of modern democracy, effectively brings about the "desubstantialization" of society and the "disembodiment" of political power. But what is the *positive* meaning of what Lefort formulates *ex negativo*? What is the epistemological and ontological purport of this violent political deed? My thesis is that the "disembodiment" of political power and the "desubstantialization" of society can be positively conceptualized as the political institutionalization of a functional concept of representation. In other words, "We, the people" designates a *functional unity*.

Concepts represent things and their accidents; this presupposition defines, as we have seen, the relation between thinking and being at the heart of Aristotle's logic and ontology, and determines the interpretation of society as a substantial unity. An entirely different view of the relation between thinking and being inaugurates democracy's interpretation of society as a functional unity. In effect, the modern priority of functions over substances finds its point of departure in a *Faktum* fundamentally at odds with ontological substantialism: "Nowhere [...] do we find anything isolated and detached" (Cassirer 1957, 286). In other words, human beings have no access to a reality composed of absolute and independent elements, which concepts reproduce or represent in their pure immediacy. This critique of representationalism does not do away with the concept of representation; it interprets the latter in a new way. As Cassirer puts it, representation now has a purely functional significance, that is, it expresses "an ideal rule that relates the particular, given here and now, to the whole (*das Ganze*), unifying them into a conceptual synthesis" (Cassirer 1994a, 377). The "whole" to which Cassirer refers is a *meaning* and order of meanings; the "particular, given here and now," designates a *presence*. The generality of a meaning, whereby the individuals composing a series, can be recognized as "the same," does not abstract a common property contained in those individuals; it is an *ideal*, rather than an *ontic*, category. Meaning is irreducible to, and cannot be derived from, being.

A meaning is not a *part* of the series of elements it unifies; it is the *condition* whereby the individuals composing a series can be recognized as "the same." In turn, that individuals can be recognized as "the same" indicates that they stand for, or "represent," a meaning. In short, representation designates the relation between presence and meaning, that is to say, a *symbol*. Representation denotes "the intending (*das Meinen*) of a 'universal' in the particular" (Cassirer 1957, 314), not the conceptual reproduction of an absolute, immediately given substance. The relation between thinking and being apposite to this novel concept of representation becomes apparent: "'To conceive' and 'to relate' always prove to be correlates, genuine reciprocal concepts. This correlation *as such* remains in force, regardless of which 'world concept' we move in" (ibid., 298). Cassirer also calls this process of representing or symbolizing reality "objectivation."

But rather than repeating the substantialistic dualism of an ontic and a conceptual order, the functional understanding of representation entails a *monistic* view of order, because being and meaning, matter and form, are internally related: "The particular [...] subsists only in its relation to the interconnection, that possesses one or other form of universality [...] and similarly the universal can be manifested only by the particular, and can authenticate and conserve itself in no other way than as the order and rule for the particular" (ibid., 381; translation modified). This monistic view on order has a far-reaching implication: Persons and things have no absolute meaning, given prior to and independent of the order of meanings in which they are cognized. In other words, *representation, rather than presence, enjoys priority; the real can only be apprehended when mediated by meanings*. "There is no naked matter of the purely factual to which [meaning-]categories are later added; rather, it is these categories, with their particular meanings, which constitute the concrete particularity of the factual" (Cassirer 1993, 210). Objectivity, thereby acquires a *functional* meaning. In short, the priority of functions over substances postulates meanings as both the medium and the limit of our access to the world.

Representation and Political Unity

This insight returns us to Lefort and the second set of questions outlined at the outset of this section. For his thesis that democracy maintains the separation between the symbolic and the real says nothing other than that democracy institutionalizes the category distinction between meaning and being. Retrospectively, this coincidence confirms that what Lefort calls the "desubstantialization" of society consists, positively considered, in the functionalization of social unity. Louis XVI's decapitation is the leading political metaphor of a far more fundamental epistemological and ontological truncation: the separation between meaning and being. But this finding also marks the *limit* of Lefort's inquiry into the symbolic status of the people.

Indeed, Lefort postulates the people as the pole of social unity, without, however, concretely discussing how democracy functionalizes social unity. Consequently, Lefort's theory of democracy leaves a crucial question unanswered: How does democracy succeed in translating the category distinction between meaning and being into a *political* principle? Expressed in Cassirer's vocabulary, what "symbolic form" enables *political integration* in modern democracy?

This problem finds its locus in the relation between democracy and the constitutional state (the *Rechtsstaat*), which was the object of a sharp polemic between Carl Schmitt and Hans Kelsen. The context of their discussion is the very problem which interests Lefort, namely, the continuities and discontinuities leading from medieval to modern politics. Their polemic focuses on the key notion of representation. Schmitt views the relation between democracy and the constitutional state as an example of what he calls "political theology." According to his well-known secularization thesis, "all significant concepts of the modern theory of the state are secularized theological concepts" (Schmitt 1985, 36).⁷ In particular, the relation between the sovereign people and the legal order reenacts, in a modern guise, the medieval distinction between the *summum ens* and the *ens creatum*. "According to the medieval conception, only God has a *potestas constituens* [...] For Althusius, the people has merely a *potestas constituta*. The secularization of the concept of the constituting power makes its appearance later" (Schmitt 1993, 77). This parallelism allows Schmitt to argue that the sovereign people is the "first" or uncaused cause of the legal order and that, as the "effect" of its cause, law is subordinated to the sovereign. In other words, the *political* unity of a people (a "concrete" order) precedes and conditions the merely *normative* unity of a legal system: "The concept of the legal order comprises two entirely different elements: the normative element of law and the existential element of the concrete order. Unity and order lies in the political existence of the state, not in the laws, rules or whatever other normativity" (ibid., 10). The historiographic import of the secularization theorem, namely, that modernity continues theology by other means, boils down to the assertion that democracy retains the substantialistic concept of representation governing medieval politics. For in Schmitt's theory of democracy, the homogeneity of the people is "absolute" in the sense of an ontic unity directly accessible to cognition and given prior to all normativity and meaning-bestowing activity. The secularization theorem implies that the passage from a transcendent grounding of political power in medieval politics to democratic immanence (discontinuity) does not disturb the basic

⁷ For an extensive critique of the secularization theorem, see Blumenberg (1986). The political implications of Blumenberg's analysis of the continuities and discontinuities leading across the epochal threshold into modernity support in great measure Lefort's account of the transition from medieval politics to modern democracy.

representationalist progression (continuity) at the heart of medieval politics: being → politics → law.⁸

In contrast with Schmitt, Hans Kelsen's analysis of the relation between law and democracy envisages the discontinuity between medieval and democratic politics as a profound transformation of the concept of representation. This is not surprising, as his pure theory of law can be understood as systematically developing the legal implications of the modern priority of functions over substances. Expressed in Lefort's terminology, Kelsen's theory shows that the advent of the *Rechtsstaat* implies a transformation of "the political." This change concerns, first and foremost, a *novel understanding of the relation between law and state*. In particular, Kelsen exhaustively criticizes the established doctrines of the state, which, as he shows, hypostatize the state into a *substance*. Once categorized as a substance, the state becomes the efficient cause of the legal order, to which the latter is subordinated.⁹ The traditional doctrine of the relation between law and state thereby incurs in the *dualism* constitutive of ontological substantialism: an immediately given real order—the state—and a conceptual order—law—which reproduces the former. As Schmitt's democratic theory makes clear, at the heart of a dualistic vision on the relation between state and law lies the age-old assumption that thinking represents being. In a word, dualism presupposes the priority of presence over representation.

Explicitly evoking Cassirer's early work, *Substanzbegriff und Funktionsbegriff*, Kelsen observes: "What Cassirer has achieved for the basic concepts of the natural sciences [...] can be achieved in an entirely analogous manner for the basic concepts of legal science, in particular for the concept of the state: transforming them from substance- into functional concepts." (Kelsen 1981a, 212). In this context, Kelsen's functional theory of the state develops along two fronts. Negatively, his critique of the "two-sides" theory of the state (Jellinek) is a specific instance of Cassirer's critique of the metaphysical "two-world" theory apposite to substantialism in general. Positively, Kelsen shows that the priority of functions over substances leads to a *monistic* interpretation of the relation between state and law: "State and law coincide [...] as an order, the state is identical with the legal order" (Kelsen 1968b, 1727). Thus, there is no separate real state order "behind" or "below" the legal order, namely, a "concrete order" in Schmitt's usage of this expression. To the contrary, functionalizing the concept of the state entails that there is a *single* order—a political society—which has law as its symbolic form.¹⁰

⁸ For an analysis of the polemic between Schmitt and Kelsen from the perspective of a critique of representationalism, see van Roermund 1997, 145ff.

⁹ "The state is seen as an ontic fact (*Seinkfaktum*), as the *effectual power* [...] that stands 'behind' law, in view of bringing the latter from its sphere of ideality into reality, in view of carrying it over from a mere 'ought' into 'being'" (Kelsen 1981a, 2). See also Kelsen 1968a, 95ff.

¹⁰ Here, once again, Kelsen and Cassirer are akin. The "basic norm" (*Grundnorm*), which, according to Kelsen, functions as the necessary "presupposition" of a legal system, secures a monistic understanding of social order against the metaphysical dualism of substantialism (see Kelsen

Law as the Symbolic Form of Democratic Society

Four implications of this transformation are fundamental for our theme. First, the shift from a substantial to a functional concept of the state is no merely theoretical or doctrinaire achievement; it determines the symbolic achievement constitutive of the institutions which define the *Rechtsstaat* as a historical phenomenon. Take the legality principle, traditionally summarized in the formula "power becomes legal competence." The principle that all state acts must have a legal basis, i.e., must be legal acts, presupposes the identity between state and law. As Kelsen puts it: "It belongs to the essence of the state that power becomes law because an act can only be understood as a state act [...], can only be imputed to the state, by the normative order of law" (Kelsen 1993, 44).¹¹ Expressed in these terms, the legality principle is the quintessence of the symbolic achievement of the *Rechtsstaat*. Indeed, the formula "power becomes legal competence" exemplifies the basic concept and function of symbolization, as discussed in section 1: distancing and approximation. Marshalled against the absolutism of political reality, as crystallized in the formula "*princeps legibus solutus est*," the identity between law and the state regulates political power. Regulated power is power mediated by law; when mediated by law, power has been deprived of its absolutism. In other words, the legality principle deprives political power of its immediacy, removing it to what Cassirer calls an "ideal" distance, in this case the domain of legal acts. By proclaiming that political reality can only manifest itself within legal forms, the legality principle in effect depletes or conditions the power of political reality. *The constitutional state is a late historical manifestation of the gambit constitutive of rationality in general, namely, "work on the reduction of the absolutism of reality."* The further historical career of the legality principle can be interpreted as the progressive radicalization of this basic motive of (legal) rationality. Again, the principle of "legal certainty" (*Rechtssicherheit*), intimately bound up with the legality principle, is legal

1967, 201ff.). In other words, the "basic norm" ensures that law retains the category distinction between meaning and being constitutive of the symbolic in general. Accordingly, the basic norm functions as the legal antidote to ontological substantialism, which, in Cassirer's words, strives "to transpose problems of meaning into problems of pure being. Being is the foundation in which all meaning must ultimately be in some way grounded. No purely symbolic relation is looked upon as known and certain unless its '*fundamentum in re*' can be revealed—that is to say, unless what it *signifies* in itself is reduced to some *real* determination" (Cassirer 1957, 94). By refusing to derive the validity of a normative order from the alleged priority of a factual state of affairs, the basic norm acknowledges and secures the symbolic—in *casu* normative—character of legal concepts and relations. In this sense, the pure theory of law is a "phenomenology" of law, rather than a legal ontology, inasmuch as Kelsen resists the temptation to transform "the phenomenological question [...] into an ontological question [such that] acceptance of what an expression proclaims as its 'meaning' is replaced by the question of its underlying reality" (ibid.). Herein lies the purity of the pure theory of law.

¹¹ To be sure, Kelsen notes that the *Rechtsstaat*, in the formal sense of the identity between state and law, may not be confused with the specific state-order ordinarily labelled with this term. But the determinate features and institutions ascribed to the *Rechtsstaat*, in the historical sense of the word, presuppose its formal or functional concept.

shorthand for the modern commitment to reducing the absolutism of political reality to an endurable level.

Second, the identity between state and law sheds light on the problem posed by the unity of the people in democracy. Commencing from popular sovereignty as the idea of democracy, Kelsen asks: "But what is the 'people'? That it gathers a *manifold of persons* into a *unity* seems to be a fundamental presupposition of democracy [...]. Yet for a consideration of the reality of events, nothing is more problematic than precisely that unity which appears under the name of the people" (Kelsen 1981c, 15). The politics of democracy reveals a society rent by strife, whether national, religious or economic; division, not unity, is the reality of democratic society. This, of course, was also Lefort's thesis. Moreover, both Lefort and Kelsen recognize that social division presupposes social unity, i.e., that division is *internal*. What unity is available to democratic society, in the absence of which no politics, whether democratic or otherwise, is possible? Lefort's comment, "division is, in a general way, constitutive of the very unity of society," confuses, rather than sharpens, the problem (Lefort 1988, 18). For what kind of unity makes possible and even necessitates a continuing and irreducible social division? Kelsen's pure theory of law suggests the answer: Democracy functionalizes political unity by making of it the unity of a legal order. More precisely, *the functional unity of the people is the unity of a legal order, a normative unity*. "The unity of the people [...] is constituted by the unity of the legal order valid for the individuals [...] whose behavior is regulated by the national legal order" (Kelsen 1945, 233). The achievement of symbolic mediation implied in the twofold "by" in this citation, rather than merely a set of institutional arrangements, determines the internal connection between democracy and the constitutional state in modern politics.

Third, the identity between law and state effectively recognizes the novel concept of *representation* ushered in by modernity.¹² In effect, the category distinction between meaning and being constitutive of this new concept of representation obtains its political expression in a monistic view of state and law. When conceptualized as a functional, rather than substantial, unity, the state denotes an order of (normative) meanings. Kelsen refers, in this context, to the legal norm as an "interpretative schema": "The specifically legal meaning of this [external] act is derived from a 'norm' whose content refers to the act; this norm confers legal meaning to the act, so that it may be interpreted according to this norm [...]. The judgment that an act of human behavior, performed in space and time, is 'legal' (or 'illegal'), is the result of

¹² This thesis modifies the idea I defended earlier, according to which the identity between law and the state signaled the "purely symbolic status of law" (Lindahl 1996). This earlier statement conflated meanings and symbols, whereas Cassirer defines the symbol as the *relation* between a meaning and its bearer. This point impinges, furthermore, on the concept of representation apposite to a functional understanding in the relation between thinking and being. While drawing on insights of this earlier article, the present paper offers an analysis of political symbolization more faithful to Cassirer's philosophy of symbolic forms.

a specific, namely normative, interpretation" (Kelsen 1967, 4). We encounter here the basic phenomenon of representation as outlined by Cassirer: Legal judgment relates an individual (real) act to an order of legal meanings. In this sense, each particular act, as a *legal* act, "represents" or symbolizes the political unity to which it belongs. There is no "concrete order" behind the legally qualified acts which these acts merely "reflect" or "reproduce," as implied by Schmitt's dualistic analysis of the relation between the political and legal orders. Instead of the metaphysical dualism implied in Schmitt's distinction between a "normative element" and an "existential element," Kelsen's monistic theory of law draws out the political implications of the novel concept of representation articulated by Cassirer: "Everything factual first receives its clearly determinate meaning from the meaning-totalities (*Bedeutungszusammenhänge*) in which it stands, and from the meaning categories that form it" (Cassirer 1993, 210). In other words, modern democracy recognizes that there is no substantial political unity preceding and conditioning an order of legal acts.

Fourth and last, the legal functionalization of social unity in modern politics can be summarized in Cassirer's vocabulary by asserting that *democracy makes of law the symbolic form of the political world*. In other words, law is the "viewpoint" (*Gesichtspunkt*) or "perspective" whence democracy reveals the political world, i.e., renders it visible (*sichtbar*). Let us briefly highlight two aspects of how law conditions the political world of democracy. Both bear directly on the central problem of politics, the problem concerning *social ends*.

On the one hand, the novel concept of representation at the core of modern democracy implies that legal rules *constitute*, not merely reproduce, social order and hierarchies. The constitutive character of legal rules conditions the political world of democracy because the question concerning social ends can no longer be separated from the legal norms in which these ends are (or can be) stipulated and enacted. In other words, democracy posits a strict correlation, even a tautological relation, between social ends and legal forms: "An end of the state is pursued in a legal form because something is an end of the state only if pursued in legal forms" (Kelsen (1993, 43). This has a decisive implication for the political world of democracy, namely, *its variable scope*. As the state cannot pursue ends other than through legal forms, the political decision concerning ends (hence the domains of social life open to state intervention), is *eo ipso* a decision concerning the limitation or extension of the legal order. The juridification of society, in the straightforward sense of the greater "extension" and "specialization" of law, presupposes the more fundamental juridification constitutive of "the political" in modernity, namely, the legal functionalization of social unity.¹³ The sharp antagonism between the partisans and foes of state interventionism, between the greater

¹³ See Voigt 1980, 15ff.; and Kelsen 1993, 40ff. For a critique of juridification, see Broekman 1979.

or lesser scope of state activity, shares a presupposition which this antagonism confirms, rather than disturbs: In democracy, law is the symbolic form of the political world.

On the other hand, law conditions the political world of democracy in the sense that the legal or state order is also the unity wherein *division*, thus political majorities and minorities, can ensue. In other words, a legal order not only determines the (normative) unity of a people, but constitutes the locus of political conflict and division. In effect, the legal functionalization of society in democracy implies that the ends posited in legal norms lose the real foundation they enjoyed in ontological substantialism. Lefort acknowledges that democracy institutionalizes an "irreducible indeterminacy" (*indétermination dernière*) concerning the foundations of law and of the final ends of society. A half century earlier, Kelsen had already said the same: "No specific goal belongs to the essence of the state" (Kelsen 1993, 40). *Political generality* (i.e., the generality of the ends embodied in a legal system) becomes problematic in principle, as does the legitimacy of the established order. In other words, legitimacy, the political mode of truth, forfeits its representationalist foundations to become a *functional* concept. Law—the normative unity of a political society—becomes the object of continuous negotiation and change in democracy because the positive legal order always displays a legitimacy deficit; as Lefort puts it, "that which has been established never bears the seal of full legitimacy" (Lefort 1988, 19).

Popular Sovereignty: Redefining the Political Absolute

This last comment introduces the final stage of our discussion on the sovereign people as the political symbol of democracy. In effect, if democracy always displays a situation wherein the given social order is less than fully legitimate, by what concept of legitimacy is the positive legal order measured, such that the latter always falls short of this measure? Does the sovereign people involve a further specification of social unity, that democracy postulates without ever actualizing? In other words, *what is the political criterion of truth, once democracy functionalizes social unity?*

This question confronts us with the problem posed at the outset of this paper, namely, the constitutive relation between the "idea" or "ideology" of democracy—popular sovereignty—and democracy's "reality." In effect, what concept or concepts of social unity does popular sovereignty imply? As opposed to democracy's "reality," the idea of democracy postulates "the identity of the rulers and the ruled, of the subject and object of dominion (*Herrschaft*); it means the dominion of the people over the people" (Kelsen 1981c, 14). The people appears twice in the principle of popular sovereignty, and in both cases as a unity. As the *object* of dominion, the people denotes a *normative* unity, i.e., the unity of a positive legal order to which the ruled are subordinated. This concept of unity, as we have seen, is precisely the

outcome of the functionalization of social unity effected by democracy. But the pregnant meaning of popular sovereignty comes to the fore in the other term of the identity, namely, the people as the *subject* of dominion, as a *material* unity or unity of *ends*: "The unity of 'the people' is that much more essential for [democracy] as here the people is not so much the *object* as the *subject* of dominion" (ibid., 15). Accordingly, popular sovereignty postulates the identity between political society as a formal and as a material unity, that is to say, the identity between a normative and a purposive unity. In other words, the sovereign people denotes a legal order wherein all the individuals subordinated to its prescriptions are *free*, a political society in which division has been surpassed in favor of unity or agreement concerning the ends posited in the legal system. Qualifying the principle of popular sovereignty as an "ethico-political postulate," Kelsen hastens to contrast it with the reality of democracy, which reveals intractable and continuous social division within the unity of a legal order. Whereas the "idea" of democracy postulates the *identity* between the normative and purposive unity of a political society, democracy's "reality" discloses an irreducible *difference* between the two.

The disjunction between the "idea" and the "reality" of democracy tempts one to indulge in an "either/or" choice, wherein, of course, the prestige of the term "reality" seems preferable to a mere "idea." Nevertheless, a discussion of political symbolization in democracy must refuse this temptation. The point, rather, is to understand the *relation* between the "idea" and the "reality" of democracy, for this relation is essentially *symbolic*. More emphatically, democratic society is symbolically constituted because a democratic society is the *relation* between an "idea" and "reality," between the "outside" and the "inside" of society. One would entirely misconstrue the significance of popular sovereignty, were one to write it off as an unrealizable claim. The reality of democracy always falls short of the idea of a society of free and equal citizens because this idea functions as the *political absolute* of democracy, that is, as its truth-measure. No "political form" whatsoever can economize on a political absolute. Or, what means the same, every possible concept of legitimacy presupposes and even *is* a specific interpretation of the politically unconditioned. The necessity of a political absolute is simply an implication of the symbolic relation human beings entertain with reality. In effect, the work of political symbolization consists in providing the "viewpoint" of an unconditioned instance, whence political reality can be revealed as conditioned. In a word, all politics presupposes an absolute to be able to deplete political reality of its power. Such, clearly, was the role fulfilled by the theological God in medieval politics. No less than medieval politics, also democracy relies on the reference to a political absolute: the sovereign people. As Kelsen has noted, the concept of sovereignty denotes not merely a superlative, but an "*absolutum*" (Kelsen 1981b, 39). Thus, popular sovereignty discloses the fundamental continuity

leading from medieval to modern politics. By "demoting" political reality to a conditioned reality, the theological God and the people enact the double function of the symbol: distancing and approximation.

But popular sovereignty also catalyzes the political innovation which gives birth to democracy. For the sovereign people not only ushers in a new absolute, but a novel *concept* of the political absolute. Herein lies the key to the innovation of the symbolic heralded by democracy. Indeed, medieval politics interpreted the political absolute as a *being*, i.e., as a *real* absolute; the otherworldly *summum ens* was the uncaused cause of the worldly political order. The political absolute undergoes a fundamental transformation when functions replace the former priority of substances: The exercise of political power can no longer be legitimated by reference to a real social order preceding positive law. Democracy cannot simply jettison the requirement of a political absolute, once functions replace substances, because otherwise the positive legal order itself becomes unconditioned. In other words, the concept of political legitimacy cannot fall together with the concept of positivity, other than at the cost of reinstating the absolutism of reality. Thus, democracy must define the political absolute in a new way. Such, precisely, is the task of the idea of a society of free and equal citizens. The established order never succeeds in gaining full legitimacy in democracy because, mediated by popular sovereignty, political reality has been "relativized," depleted of its absolutism. We can now answer the question posed by the characteristic dualism which Kelsen had discovered in democracy. The relation between "ideology" and "reality" is constitutive for democratic society because the sovereign people achieve for democratic politics what one might call the "imperative" governing symbolization in general, and political symbolization in particular: limiting the unlimited.

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