

Vox Populi Vox Dei: Populism, Elitism and Private Reason

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ABSTRACT

Populists often claim that representatives represent the people by complying with their preferences and judgments. As Donald Trump argued in the National Republican Convention, he represents 'the voice of the people'.

This Article challenges the populist understanding of representation. It argues that representation requires the representative to endorse the perspective and worldview of the represented. But often endorsing the perspective of the represented requires the representative to act against the actual convictions of the represented. More specifically, we defend the claim that to look at the world 'from the perspective of the represented' the representative's decisions ought to satisfy the condition of *justifiability-to* the represented, namely, they must rest on reasoning that is accessible to the represented.

Our proposal has broader implications for political theory. It implies for instance that *private reason* has important role to play in politics. The perspective or worldview of the constituencies should be present in political deliberation. While the duty of representation does not always override conflicting considerations, it should be taken into account in the reasoning of the representatives and thereby should be regarded as an important element of democratic politics.

1. Introduction

It has been said that: "any comprehensive account of democracy will specify how closely the laws of a nation should correspond to the preferences of the citizens governed by them ... [T]he presumption of democracy is that there is a close correspondence between the laws of a nation and the preferences of citizens who are ruled by them."¹ It is therefore the duty of deputies in a democracy to take seriously the duty of representation, i.e., to take seriously the convictions and preferences of voters. It is this 'democratic' intuition that explains the appeal of contemporary populist politics.² Populists praise themselves for being attentive to the actual sentiments of the citizenry; they reject elitism, i.e., decisions that are made by representatives using the representatives' own judgment rather than surrendering their judgment to the judgment and preferences of the citizenry.³

This paper critically investigates the populist understanding of democracy. Our starting point is that deputies are indeed (sometimes) obliged to look at the world *from the perspective of the represented*, i.e., to function as representatives.⁴ Yet populists are wrong in inferring from this premise that representatives are always obliged to honor popular sentiments and act in accordance with the convictions of the represented or in accordance with their preferences. It is precisely because representatives are obliged to look at the world from the perspective of the

¹ Andrew Rehfeld, Representation Rethought, On Trustees, Delegates, and Gyroscopes in the Study of Political Representation and Democracy 103 *American Political Science Review* 214 (2009). Note however that theorists have argued that the correspondence requirement (that is satisfied simply by an overlap between the representatives' decisions and the convictions of the represented) is not sufficient for representation. Representatives should be accountable and accountability requires 'dynamic relationship' between the representative and the represented. See Eline Severs, Representation as Claim Making. Quid Responsiveness, 46 *Representation* 411, 417 (2010); G. Bingham Powell, Jr. Political Representation in Comparative Politics 7 *Annu. Rev. Polit. Sci.* 273-74 (2004).

² A well-known example of populist sentiments can be found in the statement by Donald Trump at the Republican National Convention that he represents the "voice of the people". Trump as well as other political leaders also claim to speak in the name of the 'silent majority'. This does not imply that populist leaders conform to this rule. In an ironic reaction to this statement, the political scientist Cas Mudde argued that "Where populist leaders claim to be vox populi, the voice of the people Trump is the voice of Trump." See http://www.huffingtonpost.com/cas-mudde/the-power-of-populism-not_b_9226736.html

³ The terms "elitist" and "populist" are used here as technical terms. We do not argue that these terms should not or could not be used in different ways. Contemporary discussions concerning populism define the term in different ways. Most of the definitions are grounded in sociological observations. See e.g., Jan Werner Mueller, *What is Populism* (2016). We in contrast are interested less in what populists do and more in how they justify their actions and what the source of their appeal is.

⁴ Note that there are theorists who reject this starting point. Some theorists maintain that representation is purely formal and does not rely on any pretense of correspondence between the decisions of representatives and the convictions of the represented. See Andrew Rehfeld, Towards a General Theory of Political Representation 68 *Journal of Politics* 1 (2006). Others emphasize different properties of representation, such as the reciprocal, dynamic, diffuse and systemic relations between the representative and the represented. See, e.g., Michael Saward, Representation and Democracy: Revisions and Possibilities 2 *Sociology Compass* 1000 (2008).

represented that they ought at times to deviate from these preferences or convictions when those are not consistent with the perspective or worldview of the represented. More specifically, to look at the world 'from the perspective of the represented' the representative ought to satisfy the condition of *justifiability-to* the represented. It is what we call the "private reason" of the represented, namely those decisions which can be justified *to the represented* rather than public reason, that is, those decisions which can be justified to all, which is the key concept in representation.⁵ Justifiability to the represented, as shown below, does not imply a complete subjugation of the representative to the convictions of the represented.

Our view can be regarded as located between two extreme views. Under the first view: "[T]he representative must do what is best for those in his charge...he must do what he thinks best, using his own judgment and wisdom."⁶ On this view, the representative is allowed (or perhaps even obliged) to correct every mistake or a wrong of the represented. Seemingly, we want our representative to act on our true beliefs, not on our mistaken ones. We refer to this view as *the elitist view* or as *the pure revisionary view of representation*.

Under the second view, the representative's duty is to reflect accurately the wishes and opinions of those he represents.⁷ Some scholars regard representation as requiring 'correspondence' or 'responsiveness' namely representatives are exclusively concerned with the degree to which the decisions rendered by decision-makers correspond to the actual preferences of the electorate.⁸ This does not entail that the duty of representation is an absolute one; perhaps, at times, the duty of representation is overridden by conflicting considerations. But when this happens the political deputy does not act as a representative; instead, she acts on the basis of duties which conflict with her duties as a representative.⁹ We refer to this view as the *populist view* or as *the pure deferential view of representation*.

In this paper we argue that the pure deferential (populist) view and the pure revisionary (elitist) view of representation are both false. We then argue for a hybrid view according to which sometimes representation requires acting on the preferences and judgements of the represented (even if the representative knows that they are erroneous), yet the duties of representation may also require deviation from the represented person's preferences and/or judgements. Such deviation is required when

⁵ As the term suggests, "private reason" refers to the *reason* of the represented, rather than her mere preferences. We elaborate on this concept below and explain why an account that refers to representatives as delegates is more compatible with representing the constituents' reason than with representing their mere preferences.

⁶ Pitkin 4.

⁷ Pitkin 4.

⁸ In the Constitutional Convention of 1787, the Anti-Federalist held the view that representatives are required to closely mirror their constituents (See Manin, *The principles of Representative Government* (Cambridge, Cambridge University Press, 1997), 109. Hardin2004, 91.

⁹ Hardin2004, 93. We use the term deputies as a general term for legislators or official decision-makers and the term representatives to denote deputies who act or ought to act for representational reasons.

the actual convictions of the represented are alien to the represented own perspective or outlook.¹⁰

The hybrid view captures the pre-theoretical intuitions concerning representation and provides criteria for identifying when representation requires respecting preferences and judgments of the represented and when it requires ignoring those preferences and judgments. An analogy from visual representation might be helpful. A photograph is often regarded as an accurate and therefore perfect representation of a person, and there is of course a sense in which it is.¹¹ But in certain respects a caricature can represent a person better than a photo. It is precisely because a caricature fails to depict some features of the represented and exaggerates other features that it may represent a person better than a photograph.¹² Similarly, it is precisely because the representative ignores certain actual preferences and judgments of the represented while respecting others, that it may represent her better than a populist, namely a person who always defers to the preferences and judgments of the represented.

A primary challenge of this Article is to draw criteria to identify which judgments and preferences of the represented ought to be taken by the representative as given and which judgments and preferences ought to be ignored or refined. This analysis is particularly timely given the extensive contemporary discussion on populism. A careful analysis of representation exposes that some of the populist pretension to represent rests on a misunderstanding of what representation consists of. The most important implication of our view concerning representation is that it gives a greater role in politics to private reason, namely to convictions that are not shared by all, or by the "public," or by all the "reasonable" citizens, but simply genuinely held by individuals. This view, which indeed borrows the justifiability-to requirement from *public reason* discourse and apply it in the context of representation, captures, to some extent, the intuitions underlying public reason theories. Yet, as demonstrated below, the hybrid view of representation, which rests on the idea that political representatives should respect their representatives' private reason, is not vulnerable to substantial criticisms of the idea of public reason.¹³

¹⁰ Note that our analysis refers to the simple case of representation where the represented has a clear view which may or may not be endorsed by the representative. There are cases where these conditions are not satisfied: the represented may have no view or, only vague convictions concerning what ought to be done. In such cases, representation is difficult or even impossible according to our account. In this paper we do not discuss these cases and assume that the perspective of the represented on the relevant matter is identifiable..

¹¹ The debate about the objectivity of photographs and, more generally, the status of photography as an accurate mimicry of reality has been a major theme in art theory, in particular in the early part of the 20th century. For the complex relations between photography and reality, see e.g., Susan Sontag, *On Photography* (1977). For a similar analogy of political representation to a portrait, see Michael Saward, *Representation and Democracy: Revisions and Possibilities* 1000, 1009 (2008).

¹² For the concept of distortion in caricature, see Lawrence H. Streicher, *On a Theory of Political Caricature* 9 *Comparative Studies in Society and History* 427, 435-37 (1967).

¹³ Of course, (public reason) accounts of legitimate political authority, or legitimate political institutions, and accounts of political representation are not alternative accounts for the same thing. Nevertheless, there might be close relationship between political authority and political representation.

Needless to point out that exploring populism is particularly timely given the recent political developments. Many theorists have criticized populism on many grounds.¹⁴ Our analysis of representation adds an additional nail in the coffin of populism. It exposes that some of the populist pretension to represent rests on a misunderstanding of what representation consists of. Populism fails precisely where it claims to excel, namely it fails to represent the conviction of the public.

The main objective of the paper is not purely normative, in the sense that it does not aim at defending representative democracy or justify it on fundamental moral grounds. We assume (rather than argue) that representation requires endorsing the perspective of the represented. Our main purpose is explicating this idea and show how it supports the hybrid view of representation. But although our project is primarily conceptual and explanatory (rather than purely normative), in the end of the article we suggest that a pro tanto duty of representation, as understood here, can be grounded in familiar democratic moral values such as political equality and political autonomy (or collective self-governing) as well as on certain epistemic reasons. We cannot, however, defend the validity of these moral-political and epistemic values in this article.

The rest of the discussion proceeds as follows. Section 2 briefly reviews the existing theories of representation and establishes their shortcomings. We then proceed to present the hybrid view of representation under which the duty of representation sometimes requires deviating from the represented own convictions; such deviations are motivated by faithfulness to the represented genuine perspective. Section 3, provides a series of concrete examples and examines when representation requires deference to the preferences and judgments of the represented and when it requires deviating from these preferences and judgments. Our primary argument, which is developed in Section 3 and 4, is that representation rests on *justifiability-to* criterion, namely on the ability of the representative to justify his decision to the represented on the represented own terms. Consequently, the private reason of the represented has a primary role to play in politics and, in particular, in representation. In Section 5 we conclude by briefly elaborating on whether a pro tanto duty of representation, as understood here according to the hybrid view, can be grounded in familiar democratic values.

2. Populism, Elitism and the Hybrid View of Representation

Using a very broad brush, one can differentiate between elitist (pure revisionary) theory of representation and populist (pure deferential) theories of representation. Under elitist theories of representation, representatives are bound to decide wisely or correctly rather than conform blindly to popular sentiments. The representatives who operate in this way are often described as *trustees* who exercise their own judgments.¹⁵ Under populist theories of representation, the representatives have a duty to conform to the actual preferences and convictions of the represented. The

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¹⁵ Suzanne Dovi, Political Representation
<https://plato.stanford.edu/entries/political-representation/#Aca>

representatives who operate in this way are often described as *delegates*.¹⁶ When deviations from these preferences and convictions are required, e.g., when the preferences of the represented are unjust or irrational, the duties of representation are being overridden by conflicting considerations.

In her classic book on representation, Hanna Pitkin pointed out the dilemma raised by what she labels the mandate-independence controversy. Using our terminology, it is the dilemma between populist and elitist understandings of representation. According to Pitkin, the elitist view of representation fails to be genuine representation because: "a man is not a representative – or at most a representative in name only – if he habitually does the opposite of what his constituents would do." (Pitkin 151). Yet, on the other hand, Pitkin argued that: "[I]t is also true that the man is not a representative – or at most a representative in name only – if he himself does nothing, if his constituents act directly." (Pitkin 151). Our proposal can be conceptualized as resolving the Pitkin dilemma.

Edmund Burke is perhaps the most famous for endorsing an elitist view of representation. Under his view, government should rest on wisdom and not on will; the good of the nation emerges not from will but from "the general reason of the whole".¹⁷ As Burke told, his Bristol constituency: "if government were a matter of will upon any side, yours without question ought to be superior. But government and legislation are matters of reason and judgment."¹⁸ Burke also pointed out that the represented cannot bind the representatives because the represented were not present at the discussions in the Parliament.

Perhaps Burke is right that political deputies ought to use their reason alone and not subject themselves to the convictions of their constituencies. There is however something awkward in labeling the Burke-type trustee as a representative (rather than as a mere deputy). What normally characterizes representatives is their attentiveness to the perspective of the represented. There is a fundamental difference between a guardian or a custodian who is in charge of promoting the interest of a minor and a representative. The difference is that the former can safely ignore the views of the minor while the latter cannot. There is a distinctive interest served by a representative which cannot be served by a guardian, namely the promotion of autonomy of the represented.¹⁹ Needless to say, one can dispute the importance and significance of this

¹⁶ See Dovi id. Contemporary scholarship provides more nuanced classifications of representation. Thus, Jane Mansbridge differentiated between four types of representation: promissory, anticipatory, gyroscopic and surrogate. These variations however are not important for the analysis below. See also Andrew Rehefeld, Representation Rethought: On Trustees, Delegates, and Gyroscopes in the Study of Political Representation and Democracy. *American Political Science Review*, 103(2), 214-230.

¹⁷ Edmund Burke, Speech to the Electors of Bristol (1774)
<http://press-pubs.uchicago.edu/founders/documents/v1ch13s7.html>

Some commentators argue that the views of Burke are less conclusive than may seem from this famous letter to the electors of Bristol. For a detailed and presumably a historically accurate description of Burke's views, see James Conniff, Burke, Bristol and the Concept of Representation 30 *Western Political Quarterly* 329 (1977).

¹⁸ Burke id.

¹⁹ We discuss the relationship between representation and autonomy in Section 5.

concern. But, intuitively Burke's view erodes the difference between two distinctive concepts: representation on the one hand and guardianship on the other.

To bolster this argument recall that representatives are often described as speaking 'in the name of the represented.' Guardians in contrast are described as agents who are in charge of promoting the interests of people who cannot take care of themselves but they are never described as 'acting in the name of those people'. If the perspective of the represented is irrelevant to their role, it is difficult to understand the meaning of the phrase 'acting in the name of the represented.' Put this point differently, the requirement to endorse the perspective of the represented is a byproduct of the fact that the representative speaks *in the name of* the represented. While the represented is not always fully responsible (e.g., not legally responsible) for the acts of the representative, there is a certain responsibility that is attributed to her by virtue of the fact that he is represented rather than being taken care of.²⁰ Especially in democratic states, citizens often (justly) feel a certain degree of responsibility for the acts of their elected government (e.g., for their military actions) especially when they participated in the elections.²¹

Let us turn then to the populist idea of representation. Under the populist (pure deferential) view, representation requires the representative to endorse the actual preferences and judgements of the representative. The premise underlying this view is that a representative ought to comply with the judgements of the represented. Even if the represented is wrong and even if his judgment rests upon a mistake the representative has to represent and this requires her to subject herself to the actual preferences and judgments of the represented.

This view if taken to the extreme encounters the second horn of the Pitkin dilemma. Under this view, there is no fundamental normative difference between direct democracy and representative democracy. Representation is merely a mechanism to aggregate the preferences of individuals. The representatives are used as tools or limbs an extension of those who act through them. (Pitkin 152) This also does not fit what is often considered to be the role of representatives. After all, we expect our representatives to have virtues such as leadership, courage and personal integrity and those do not seem to be compatible with the idea that representatives are mere extensions of their constituencies.

The Pitkin dilemma is therefore a simple one: deputies cannot properly be called representatives if they are indifferent to what the preferences and beliefs of the

²⁰ The most extreme expression attributing responsibility to the represented can be found in the concept of 'political guilt' coined by Karl Jaspers in his book *The Question of German Guilt* (1947). For a liberal defense of collective responsibility, see Joel Feinberg, 65 *Journal of Philosophy* 674 (1968), For a survey of the literature see Marion Smiley, *Collective Responsibility* *Stanford Encyclopedia of Philosophy*

<https://seop.illc.uva.nl/entries/collective-responsibility/>

²¹ This sentiment is indicated in the name chosen by many dissident organizations calling themselves 'not in our name' such as the US organization established in 2002 (after the security measures taken by the US as a result of the 9/11 attack) and the UK organization calling for a 'democratic control of foreign policy.' This choice on their part indicates that they regard their representatives as acting in their name unless they dissociate themselves explicitly from the decisions of their representatives.

represented are. They may be excellent leaders who know precisely what the public good requires and are highly sensitive to questions of justice, but this alone does not make them representatives. But, at the same time, representatives are not merely robots deferring to the people; they must exercise judgment. How can this dilemma be resolved?

Pitkin solution to the dilemma rests on the belief that ultimately, "the representative's obligation is to the constituent interests, but the constituent's wishes are relevant to that interest. Consequently, the representative also has an obligation be responsive to those wishes. He need not only obey them, but he must consider them, particularly when they conflict with what he sees as the constituent's interest, because a reason for the discrepancy must be found." (Pitkin 152) We disagree. Our disagreement rests on common-sense intuitions concerning representation. To be a representative, the deputy ought to endorse the perspective of the represented. Caring about the interests of the represented is not taking her perspective seriously, even if the wishes of the constituents are being taken into account as part of their interests, for one's interests are not necessarily compatible with one's perspective. Indeed, in cases in which the deputy promotes the interests of the citizens against the citizens' own convictions, he may still be doing the right thing but he cannot claim to act *as a representative*.

David Plotke proposed also a solution to this dilemma and argued: A political representative looks toward the preferences of those they represent, toward others' preferences and toward their own view of overall welfare.²² But precisely like Pitkin, Plotke includes considerations which are not representational considerations, e.g., the representatives' 'own view of general welfare' (irrespective whether this view is shared by citizens).

The flaw in both attempts to resolve the Pitkin dilemma is the implicit equation of the political deputy with the political representative. This identification is natural as often we refer to political deputies as our representatives. But it is wrong to equate these two concepts. It is plausible that a political deputy ought to take seriously the constituents' interests as Pitkin argued. and that she ought to take into account the overall welfare of the community as Plotke argued. But this does not imply that when she acts in this way she acts as a representative. Political deputies may have duties other than representation. What is distinctive about representation is that it requires the deputy to take the viewpoint *of the represented*, to endorse *her* perspective to act in *her* name rather than merely to promote her interests.

Our view is more consonant with the characterization of Rogowski who argues that one person A is represented by another person B "to the extent that B's action in the matter...reflect what may be called A's ideal preferences."²³ But this characterization leaves open the primary challenge of identifying the proper idealization and explaining its rationale. While it is rather clear why *actual* preference satisfaction is often morally valuable, it is much less clear why the satisfaction of preferences that people would have under certain ideal conditions is normatively desirable. This is the challenge that we address in the following sections.

²² Plotke

²³ Ronald Rogowski, Representation in Political Theory and in Law 91 Ethics 395, 396 (1981)

3. Taking the Perspective of the Represented Seriously

Representation, we maintain is about taking seriously the perspective of the represented. The crucial question is therefore what it means to take seriously (or even subject oneself) to the perspective of the represented? The populist view provides a simple answer: ideally, the representative should accurately mirror the actual preferences and judgements of her constituents. However, this view fails to acknowledge the complexity of preferences and judgements; for instance, the prevalence of conditional and second-order preferences. Representation is indeed about taking seriously *the perspective of the represented*, yet, at times, endorsing one's perspective requires deviating from one's preferences and/or convictions.

The following hypothetical can illustrate this point. Assume that the representative Alan represents Daniel who supports capital punishment. Daniel believes (assume unjustifiably) that capital punishment deters and is *therefore* desirable. Assume also that Daniel is a consequentialist who believes that if capital punishment does not deter it ought not to be used. What should the representative do?

The populist view holds that representation requires the representative, Alan, to support capital punishment on the grounds that this is what the represented, Daniel, would have done. But it is intuitively plausible to argue that if Alan knows that in fact capital punishment does not deter, he ought to vote against capital punishment as only such a decision on his part takes seriously the belief of the represented that capital punishment is justified *only to the extent that* it is conducive to deterrence. Alan's decision to oppose capital punishment is not designed to promote the interests of the represented or even to do justice, but simply to represent the 'genuine' or 'authentic' convictions of the represented and to give effect to his 'real' commitments even when they deviate from his actual convictions. In the language of Madison, the representatives may have "to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens."²⁴

In light of this view, one could be tempted to adopt an elitist, purely revisionary, approach. This is the view taken by Andrew Rehfeld. In his sophisticated analysis of delegates and trustees, Andrew Rehfeld attacks the view that representatives ought only to promote the preferences of their voters. He argues that representatives,, who vote for a just law, that say, upholds minority rights, "would be bad representatives if their constituents wanted to deprive that minority of those rights." In such a case, "the representative was unresponsive but not necessarily a bad representative for doing the right things." (216)

We believe that Rehfeld's elitist view is misguided too. It is misguided not because the deputy who protects minority rights against the wishes of her constituencies does not do the right thing but because by voting in this way she does not represent. While a good deputy has pro tanto duties of representation, these duties can be overridden by other considerations such as the concern for minorities. It is misleading however to

²⁴ The Federalist Papers no. 10 (Madison).

label such a decision-maker as a good *representative* although she may be a good deputy.

Consider now a different case in which the representative needs to decide whether to vote for capital punishment. Alan represents Deborah who supports capital punishment on the grounds that it is just. Further Deborah also believes that if it were to be the case that capital punishment is unjust it ought not to be used. Assume that Alan justifiably believes (or even knows) that capital punishment is in fact unjust. The elitist view holds that in this case representation requires the representative to correct the mistake of the represented and act on his “real” commitments, namely the commitment to act justly. But, in contrast to the previous case (the case of Alan and Daniel), it seems intuitive that the representative cannot 'represent' the represented by voting against capital punishment even if he justifiably believes (or knows) that the represented is wrong in his moral judgment.

The challenge, the hybrid view proposed by us addresses is to provide a principled, non-ad-hoc, answer to the following question: when *the duty of representation* requires the representative to refine the views of the represented (in light of her other beliefs and convictions) and when it does not. We raise here three possible answers and in the rest of the paper justify the third answer that rests on requirement that the representative's decisions be justifiable to the represented.

A. Normative versus Descriptive Convictions

Consider the following case: Brian, the represented, believes (unjustifiably) that circumcision is healthy as it reduces the risks of urinary infections and he wants therefore Alan (his representative) to vote against any bill which regulates circumcision. Alan, the representative, knows on the basis of reliable scientific evidence that Brian's conviction is erroneous. Compare this case to the case in which Alan represents Ben, an Orthodox Jew who believes that it is mandatory for Jews to circumcise their sons. He therefore expects Alan to oppose any proposal to regulate circumcision. Assume, however, that Alan justifiably believes (or even knows) that Ben is wrong, and that in fact it is permissible (or even required) for Jews not to do so.

It seems to us that there is a major difference between these two cases: while in the first case, Alan can vote for regulating circumcision without infringing his duties as a representative, in the second case he cannot. This is because by voting to regulate circumcision Alan honors Brian's perspective, namely he acts in a way that is conducive to the health of the child. In contrast, by deviating from the express wish of Ben to vote against any regulation of circumcision Alan infringes his duties as representative. This is true irrespective of whether Ben's conviction that circumcision is required by God is reasonable or credible. How can this difference between these two cases be explained?

One difference between the cases of Brian and Ben is that the former involves a *descriptive* conviction (circumcision is healthy) while the latter involves a *normative* conviction (Jews are obliged to circumcise their sons). It seems that often the

representative can ignore mistaken factual beliefs but she cannot ignore the mistaken normative beliefs of the represented. The case for such a distinction is supported also by the earlier example of capital punishment. The (erroneous) factual conviction of the represented (Daniel) that capital punishment deters can be set aside by the representative Alan. By contrast, the normative conviction of the represented (Deborah) that capital punishment is just cannot be set aside; it ought to be honored by the representative.

The conjecture that the intuitive difference between mistaken judgments that the representative ought to correct and mistaken judgments that the representative should honor lies in the difference between descriptive and normative beliefs get further support from considering cases involving the application of *thick concepts* – concepts such as “cruelty” which involve both descriptive and normative components. Take the following example: the represented believes that capital punishment is just because she believes erroneously that it is not a cruel punishment. Can the representative *qua representative* vote against capital punishment on the grounds that the represented is mistaken in her belief that capital punishment is not cruel? Well, at least intuitively, it is not clear. The doubts surrounding such a case could be attributed to the thickness of the concept of cruelty. It is not either a purely descriptive concept; neither is it a purely normative one. Hence, it is not easy to determine whether the representative should subject himself to the erroneous normative mistake of the represented or to act against the express preference of the represented and vote against capital punishment.

However, while the intuitive difference between normative and descriptive judgments – regarding the question which judgments of the represented should be endorsed by the representative – captures something important, there are counterexamples which imply that this test is inadequate. Assume that Ben, the Orthodox Jew, believes that God ordered him to circumcise his son and, assume also, that this belief is false. Intuitively it seems that the representation requires acting on the basis of the conviction of the represented and vote against regulation of circumcision. Thus, despite the fact that it is stipulated that the erroneous belief is *factual*, still if the representative does not endorse Ben's judgement, he fails to represent Ben in this matter.

Further, it is difficult to explain why the difference between normative and descriptive beliefs is relevant to the duty of representation. Even if this distinction could accommodate all the cases, we still need to explain what makes it the case that normative and descriptive convictions should be treated differently in this regard. Why should representation subject the representative to erroneous normative convictions of the represented but not to erroneous factual convictions? To the extent that there is a difference between normative and factual convictions this difference must rest on a more fundamental distinction.

B. Intensity of Conviction; Core Beliefs and Identity-forming Beliefs

Perhaps in determining the content of the duties of a representative, one ought to act on the basis of the *intensity* or *depth* of the conviction of the represented. The more

intense or deep the conviction is, the more this conviction should be honored by the representative and ought to guide his decisions. Views that are held weakly by the represented may be revised by the representative while views that are held strongly have to be honored and complied with.

This conjecture, taken literally, is however false, as can be demonstrated by our earlier hypotheticals. In honoring Ben's conviction concerning circumcision, the intensity of his conviction does not really matter. Even if Ben is lax Jew and even if, at times, he is ambivalent about circumcision, the representative ought to honor his express convictions. This is also true in the case in which the represented believes that capital punishment is just. The mere fact that Deborah does not care much about her conviction in the justness of capital punishment is irrelevant. Conversely, Daniel may care a lot about deterrence and support strongly capital punishment on the grounds that it deters. Yet, we think that if Alan, the representative, knows that Daniel's conviction is false, he should ignore it and vote against capital punishment *on representational grounds*.

Perhaps instead of speaking about the intensity of the conviction, we should draw the relevant distinction between convictions that define one's personal identity, that are part of one's core commitments and convictions which are peripheral or superficial. Identity-forming convictions merit respect irrespective of their falsity whereas mistaken peripheral convictions can be ignored. The belief in God could be regarded as identity-forming conviction or as a core belief and therefore can naturally be perceived to be one that merits respect on the part of the representative irrespective of whether this belief is true or false. In contrast, the false belief that capital punishment has deterrent effect is not a core conviction and thus can be ignored.

We think that this conjecture is unpersuasive. It is not a necessary condition for being endorsed by the representative that the belief that God commanded to circumcise one's son be part of one's core beliefs or forms part of one's identity. Such convictions could be peripheral to one's identity and they merit respect independently of the question of whether they are "identity-forming" or "core beliefs." Ben in our example may sincerely declare that he has grave doubts concerning circumcision and that he regards it as peripheral to the Jewish religion without undermining or eroding the duty of the representative to vote in accordance with his (weak) conviction.

C. Justifiability *to* the Represented

If the previous suggestions fail, what then is required in order to subject oneself to the perspective of another person? In other words, what does it mean to take someone's perspective without actually "being him"?

By representing, the representative looks at the world from the perspective of the represented and this also implies that the decisions and acts of the representative can be, in some sense, attributed to the represented; they are done in his name. The represented can therefore be regarded as an agent who is responsible for the acts of the representative.²⁵ This observation sheds light on the question investigated here. To

²⁵ See note 19.

identify the duties of representation we can ask under what circumstances it is appropriate to attribute an act or a decision of the representative to the represented and when the represented can challenge the attribution of the decision or the act to them. The former cases are cases of representation while the latter are not.

The key to drawing the line between commitments of the represented that representation requires respecting and commitments that should be ignored or refined is the requirement of *justifiability to the represented*. More specifically, the decisions and acts of the representative can be attributed to the represented only if they are justifiable to her *from her own perspective*. When the requirement of justifiability is satisfied, the represented is able to endorse the decisions and acts of the representative and regard them as if they were his own. Looked at from this perspective, both the pure deferential (populist) view and the pure revisionary (elitist) view of representation should be rejected.

Deferential representation is a case in which the representative acts on the basis of the actual preferences of the represented. Apparently, there is nothing more representative than to endorse the actual preferences of the represented and act accordingly. But as indicated above, there are cases in which representation seems (at least intuitively) to require deviating from the express preferences of the represented. The question is what distinguishes these two types of cases. To illustrate that justifiability to the represented is the appropriate test let us reconsider the cases of Alan and Brian. Brian believes that circumcision is healthy. Can Alan *as a representative* vote for regulating circumcision under these circumstances? Under the requirement of justifiability, Alan must be able to demonstrate to Brian that he is wrong on his own terms. If Alan has strong scientific evidence for his belief and Brian accepts that science is the appropriate method to decide such issues, then the requirement of justifiability to the represented is satisfied. In this case, Alan can justify his decision to regulate circumcision on grounds that are acceptable to Brian.

The issue becomes more difficult if Brian does not accept that science is the appropriate method to decide such issues. If Brian rejects science altogether and believes that health issues should be settled by consulting the Bible, Alan cannot represent Brian by voting for regulating circumcision because his reliance on scientific judgments is not justifiable to Brian.

What about the case of Alan and Ben (The orthodox Jew)? Can Alan demonstrate to Ben that *on his own terms* he has no duty to circumcise? We think he cannot. Even if Alan could demonstrate that there is no good evidence for Ben's belief that God commanded Jews to circumcise their sons, he cannot meet the justifiability-to-requirement if Ben does not accept the view that every commitment, including religious ones, should be supported by evidence. In other words, even if Alan's view is in fact justified, and even if it is justifiable to certain people, it may be not justifiable to Ben, for it rests on grounds that Ben does not accept.

On the basis of the above examples, it seems, that the justifiability-to-requirement can accommodate some of our pre-theoretical intuitions regarding the distinction between commitments which representation requires to respect (e.g., Ben and Deborah) and commitments which representation requires to revise or ignore (e.g., Daniel and

Brian). But why representation requires meeting the justifiability-to requirement? Can this requirement be grounded in the very concept of representation? We turn now to examine the relationship between representation and justifiability.

4. The Justifiability-to Requirement and Private Reason

A. Justifiability and Politically Extended Agency

Recall that representation ultimately requires endorsing the perspective of the represented. Taking the perspective of the represented presupposes above all engaging with her agency. There are some convictions of individuals which, to be properly represented, must be taken at face value while other convictions must be rejected as acting on their basis is not faithful to the represented and, consequently, in such cases the representative ought to deviate from the express preferences of the represented.

One can rephrase the argument in section 3 in terms of agency. It can be said that there is nothing which challenges the agency of the represented if, based on knowledge the representative has, he disputes Brian's belief that capital punishment has deterrent effects and votes accordingly. By contrast, there seem to be something unfaithful to the represented agent in challenging (as a representative) the conviction of the represented that capital punishment is just. We maintain that the difference between these two cases is captured by the justifiability-to requirement. In the first case, the decision to vote against capital punishment is justifiable to the representative in his own terms while in the latter case the it is not. Hence, in the former case the decision can be attributed in some sense to the represented while in the latter case it cannot.

Most typically (although as the example of factual religious beliefs illustrates, not always) the convictions that should not be attributed to a person against his express views are normative convictions. Attributing to a person factual proposition he does not hold but he would have held had he been familiar with the evidence available to the representative, is often justifiable. However, attributing to a person normative proposition that he rejects is typically unjustifiable to him.

This observation refers only to *fundamental* (or *pure*) normative beliefs, that is, beliefs in normative propositions such as “pain is pro tanto bad,” or “it is pro tanto wrong to humiliate a person,” whose acceptance is not contingent on the acceptance of a non-normative proposition, for instance, regarding the presence of certain factual circumstance. Suppose, for example, that I believe (the fundamental moral proposition) that pain is pro tanto bad. You believe that pain purifies your soul. Although, presumably, I am justified in my belief, I cannot justify it *to you*. By contrast, normative beliefs which are not fundamental (e.g, that spitting on a person is pro tanto wrong) can rest on simple descriptive mistake that can be corrected in a way that is justifiable to the representative (e.g., if she simply is not aware of the fact that in the particular culture spitting on a person is not humiliating). Before we discuss the

epistemological characteristics of the justifiability requirement let us explain the connection of justifiability requirement to the concept of agency.

According to the standard view, agency is identified with the performance of (or the exercise of the capacity to perform) intentional actions. The value of political representation rests on the belief that the actions of political deputies should not be detached from the mental states (intentions, beliefs etc.) of the constituencies. Representation thus “extends the agency of the represented,” so to speak, to the political sphere. Of course, the agency of the represented is not fully exercised, for there is another agency involved, namely that of the representative. And the represented does not have control (let alone full control) over the representative’s actions. Yet, if the representative indeed represents, her actions match to some extent the intentions and beliefs of the represented. In this way, the represented earns her power to act in the political sphere. Likewise, the actions of the representative can be attributed, to some extent, to the represented. We call this, indeed limited and rather weak capacity of the represented to affect political actions, which, in turn, results in some degree of responsibility attribution: “politically extended agency.”

The involvement of another agent – the representative –in the decision-making process raises the possibility of correcting mistakes. This may count as a potential advantage of representative democracies over direct democracies.²⁶ Our question is which mistakes should be corrected from the standpoint of representation. If the above analysis is sound, the answer is rather simple: deviation from the beliefs and preferences of the represented is required when such deviation promotes the ideal of extending the agency of the represented to the political sphere. Some mistakes of the represented agent cannot be corrected without eroding her extended agency. However, sometimes deviating from the actual preferences and judgments of the represented enhances rather than erodes the extended agency.

The justifiability-to requirement is one way (but not the only way) to translate the abstract and somewhat metaphorical idea of “politically extended agency” to the institutional contexts of political representation. The justifiability-to requirement focuses on the reason of the represented agent rather than on her will.²⁷ It is interested in the cognitive elements of the represented person’s mental states rather than her conative mental states. This focus on reason rather than on will is compatible with our pre-theoretical intuition that the intensity of Ben’s preference concerning circumcision and Daniel’s attitudes towards deterrence do not matter so much to the question whether correcting their mistakes is consistent with representation. However, we cannot rule out the possibility that different people have different intuitions about such particular cases, and that a different model of representation that focuses on will, not on reason, can be found compelling.²⁸ Loosely speaking, the justifiability-to requirement ensures that the representative, when acting as a representative, will act

²⁶ Though, of course, the potential mistakes of the representative, who may erroneously believe that she can justify her decisions to the represented, should be taken into account as well.

²⁷ For a similar distinction in a different context (of ...) see Woldron’s (1987) account...

²⁸ We return to this point below when we discuss whether our conception of representation can be grounded in democratic values such as collective self-governing.

on reasons that are not alien to the represented perspective.²⁹ In this way, the constituents' reason is incorporated into the political actions of their representatives.

The notion of justifiability-to is not new. It plays an important role in political philosophy, most notably in the Rawlsian tradition. *Political Liberalism* (*Public Reason*) theories are committed to the idea that a necessary condition for the legitimacy of political authority is that it can be justified *to* those who are subjected to it. Surprisingly, the concept of justifiability-to has never been explicitly discussed in the context of political representation. This is puzzling not only in light of the extensive use of this notion in political philosophy, but also because related notions, such as authority and accountability, have attracted wide interest in the representation literature. Our proposal imports the justifiability-to requirement from the discussion of authority, but give it a twist: instead of talking about public justification or a public reason theory we go for "private justification" or, if you wish, a "private reason" theory.

Roughly, the general motivation underlying public reason theories is that since we all are born free and equal, subjecting us to a coercive authority cannot be legitimate unless it is justifiable to each and every one of us.³⁰ On this view, truth or impersonal epistemic justification are not sufficient for imposing coercive political authority.³¹ Using Estlund's (2008, 5) example: "even if the Pope has a pipeline to God's will, it does not follow that atheists may permissibly be coerced on the basis of justifications drawn from Catholic doctrine."³²

Public reason theories restrict the scope of those to whom justification is owed, either by excluding citizens who are considered "unreasonable,"³³ or by idealizing the conditions under which such justification is offered.³⁴ This restriction is necessary because in a constituency consisting of all the citizens as we actually find them, it is hard to believe that there is anything at all that can be justified to all. Thus an *actual* justifiability requirement entails anarchism.³⁵ However, it is objected that the limitation of the justifiability requirement only to the "reasonable" – roughly, those

²⁹ We discuss several articulations of this idea in the next section.

³⁰ For example, Nagel (1991, 33) says that "[t]he task of discovering the conditions for legitimacy is traditionally conceived as that of finding a way to justify a political system to everyone who is required to live under it." Similarly, Waldron (1993, 36-7) states that "liberals are committed to a conception of freedom and of respect for the capacities and the agency of individual men and women, and that these commitments generate a requirement that all aspects of social world should either be made acceptable or be capable of being made acceptable to every last individual."

³¹ Rawls (1997, 765-6) refers to reasonable pluralism (or reasonable disagreement) – the fact of a plurality of conflicting reasonable comprehensive doctrines, religious, philosophical, moral etc. – as the reason why *truth* should be replaced by *justifiability* as the criterion for the legitimacy of political principles. Note that in our view, truth (as well as impersonal epistemic justification) should be replaced by justifiability as the criterion for representation; thus, we reject the elitist view. But as we explain below, this does not imply that we accept something similar to Rawls's "political not metaphysical" idea or assume that the truth of political principles does not matter, as we do not hold that representation is a sufficient or a necessary condition for the legitimacy of political authority.

³² David M. Estlund, (2008). *Democratic Authority: A Philosophical Framework* (Princeton: Princeton University Press).

³³ See, e.g., Hampton (1993, 299); Raz (1998, 37).

³⁴ See., e.g., Quong (2011, 291).

³⁵ Enoch (2015, 118).

who are motivated to interact with others as free and equal and view the other's comprehensive doctrines as reasonable too (even if false) is not defensible, perhaps even self-defeating.³⁶ Arguably, it excludes everyone who does not share these commitments, indeed, all non-Rawlsians.³⁷

Nothing similar to this problem arises for "private justification" theory of representation. On this view, representatives owe justification also to their "unreasonable" (in the Rawlsian sense) constituents. On the other hand, non-exclusionary justifiability condition for representation does not entail the power to act on the basis of pernicious or irresponsible preferences of the represented, for the duty to represent, as we understand it, is a pro tanto duty of representatives; not a necessary condition for the legitimacy of political authority.³⁸ The duty to represent can be overridden by other conflicting duties that the deputies may have.

The account of representation which is based on justifiability-to requirement, might be regarded as an alternative response to the same challenge that public reason theorists struggle to address. The question in short is: "[g]iven pervasive disagreement about morality, how can we engage in the practice of morality ... in a way that also manages to respect others as free and equal interpreters of morality?"³⁹ Thus, the proposal that representation requires justifiability-to is potentially fruitful. It may reconcile two tremendously influential ideas in political philosophy: on the one hand, the intuitive idea that justifiability is an essential element of democratic institutions,⁴⁰ on the other hand, the forceful criticism that public justifiability cannot be a necessary condition for the legitimacy of political authority.⁴¹ Both ideas can be true if justifiability-to is a necessary condition for representation (but not for legitimate authority), and representation is a pro tanto duty of political deputies.

One final clarification before we proceed to discuss what it takes for a decision to be justifiable to someone: The justifiability-to requirement seems to involve certain epistemic commitments. Yet, it is argued, that the notion of justification applied by public reason theory is in fact not "epistemological" but "practical".⁴² It is worth emphasizing, then, that our understanding of the justifiability-to requirement in the context of representation intends to be epistemological; not practical. Indeed, the ultimate justification of the justifiability-to requirement for representation must be normative, but the criterion for what counts as justifiable to the represented is defined in epistemic terms.

³⁶ Wall (2002); Enoch (2013).

³⁷ See, e.g., Hampton (1993, 299); Raz (1998, 37?); Enoch (2015, 120-126).

³⁸ This is not to say that private justification requirement for representation does not have its own problems. Such a requirement can be satisfied by a single representative only with regard to a limited number of constituents who share similar perspectives, so an aggregation problem (which is not discussed here) arises.

³⁹ Quong (2014).

⁴⁰ Rawls (1999, 508).

⁴¹ Enoch (2015).

⁴² Rawls (1996, 44); See also Talisse (2006, 110) and Enoch (2017) who argues that the apparent epistemic commitments of public reason theorists are by and large indefensible, so that they are better not relying on epistemology at all, but rather putting forward non-epistemic account of the seemingly epistemic concepts they employ (justifiability, reasonableness etc.).

B. Justifiability and Epistemology

The proposed account of representation that incorporates a requirement of justifiability to the represented presuppose that justifiability-to and epistemic justification can come apart. This assumption is needed because if any justification, by virtue of its nature, is accessible to everyone, the justifiability-to requirement is trivially satisfied.⁴³ If whenever a belief is epistemically justified, it can be justified-to anybody, it follows that the representative can justify to everybody every epistemically justified decision or act. However, the assumption that epistemic justification is sufficient for the satisfaction of the justifiability-to requirement is implausible. Indeed, if representation requires endorsing the perspective of the represented, looking at the world through his eyes, and so forth, then an impersonal, agent-neutral concept of justification seems inappropriate.

Suppose, for example, that you are justified in your belief that abortion should be legal because it protects the liberty and privacy of women. This does not imply that you can justify this conviction to your pro-life friend who believes that abortion is morally equivalent to murder and therefore should be illegal. The point is not merely that it is unlikely that your friend will be convinced by your pro-choice arguments. This could happen also if your view is justifiable to her. After all, people can be unconvinced by the best argument in the world regardless of whether it is accessible to them or not. The point is rather that any argument you can provide seems to lack dialectic power against your pro-life friend, in a way somewhat similar to the way that Moorean arguments have no dialectic force against the skeptic.⁴⁴

As many acknowledge, arguments are “dialectical creatures:” they offer pieces of reasoning to audiences.⁴⁵ It is neither necessary nor sufficient condition for the argument having dialectic power that the relevant audience (the interlocutor) will be actually convinced by the argument. Yet, it seems that in order to be dialectically

⁴³ This view is held for example by Joseph Raz (1998).

⁴⁴ G.E. Moore’s canonical argument against skepticism about the external world is as follows: (1) Here is a hand. (2) If there is a hand, then there is an external world. (3) Therefore, there is an external world. Here is Moore (1939, 166): “I can prove now, for instance, that two human hands exist. How? By holding up my two hands, and saying, as I make a certain gesture with the right hand, ‘Here is one hand’, and adding, as I make a certain gesture with the left, ‘and here is another’. And if, by doing this, I have proved *ipso facto* the existence of external things, you will all see that I can also do it now in numbers of other ways: there is no need to multiply examples.” Some non-Mooreans (sometimes referred to as “Rationalists”), hold that Moore has justification to reject skepticism about the external world but deny that Moore’s argument supplies such a justification. See e.g., Vogel, J. 1990. Cartesian Skepticism and Inference to the Best Explanation. *Journal of Philosophy* 87: 658-66; Wright, C. 2004. Warrant for Nothing (and Foundations for Free?). *Aristotelian Society Supplementary Volume*, 78: 167-212; Silins, N. 2007. Basic Justification and the Moorean Response to the Skeptic." *Oxford Studies in Epistemology: Volume 22*: 108. Others believe that Moore’s argument can justify certain beliefs (e.g., that I’m not a brain in a vat who merely appears to have hands), but it begs the question and therefore lacks any dialectic force against the skeptic. See, e.g., Pryor, James. "What's Wrong with Moore's Argument?" *Philosophical Issues* 14, no. 1 (2004): 349-378.

⁴⁵ Pryor (2004, 369).

effective, an argument must offer a reasoning the interlocutor (in our case, the represented) can rationally accept.⁴⁶

It is doubtful that your pro-life friend can rationally accept your pro-choice reasoning given her fundamental conviction regarding abortion. She may recognize that securing privacy and liberty for women are important democratic values, but still deny the pro-choice view, maintaining that the prevention of murder trumps other considerations.⁴⁷ Just like Moore's argument, which lacks dialectic power against the skeptic's doubts about the external world, the pro-choice argument that the moral right to autonomy and privacy prevails in this case has no dialectic power against the pro-life advocates: it begs the question against her position that in this case, it is the fetus's moral right to life that prevails.

This view is not to be conflated with the view that there is no fact of the matter in such disputes. Moreover, it is compatible with the view that one of the parties to the debate is epistemically justified while the other is not. The skepticism expressed above is not about the possibility that one party would have a justified belief, but rather about the justifiability of that belief *to* the other party.

Under normal circumstances, a representative who votes for legalizing abortion cannot justify her decision to constituents who hold a pro-life position according to which abortion is morally equivalent to murder. Her voting for legalizing abortion does not reflect the moral perspective of these constituents, and clearly does not "extend their moral agency to the political sphere." Therefore, she fails to represent them in this regard (though she might be epistemically justified and she might be doing the right thing all things considered).

A different conclusion is called for if the represented objects to legalize abortion in the first trimester merely because of a (scientific) factual mistake, e.g., because she believes that there is no physical difference between a fetus and a new born baby. In this case, there is available reasoning that the represented can rationally accept. Informing her about the relevant descriptive facts is all that is needed (at least in principle). Furthermore, in case she is well informed but refuse to change her mind, she does not act on her own convictions.

In the rest of this section, we consider several articulations of "justifiable-to" that aim at capturing the intuitive difference between the cases described above.

CSE R's justified belief in p is *justifiable to* S if and only if S would have believed in p had she shared R's evidence.

⁴⁶ Id.

⁴⁷ For a similar analysis, see Tallise (2006, 108-9). The pro-choice advocate may insist that the pro-life case is based on the premise that abortion is morally equivalent to murder, which is held on the basis of theological reasons, and thus does not satisfy the requirement of public justification. However, as Tallise points out, the "two can play this game": a similar response is available also to the pro-life advocate, for any articulation of the pro-choice position "will be either itself reasonably contestable, or invoke deeper moral principles that are reasonably contestable."

Arguably this *counterfactually shared evidence* account appears persuasive. For example, presumably, had Daniel shared Alan's evidence that capital punishment does not deter, he would most probably believe that capital punishment is wrong. Thus, Alan's voting against capital punishment is justifiable to Daniel according to CSE and therefore compatible with representation, as our pre-theoretical intuition suggests. CSE is compatible also with our previous intuitive judgment regarding Alan and Deborah case. According to this hypothetical, Alan believes that capital punishment is unjust while Deborah believes that it is just, but both of them seem to share the same evidence.⁴⁸ Thus, Alan's belief is not justifiable to Deborah according to CSE and therefore if he votes against capital punishment, he would fail to represent her.

However, this account will not do. Suppose that even if Daniel would share Alan's clear and convincing evidence that capital punishment does not deter at all, in all likelihood he would still believe that capital punishment is permissible, simply because he is irrational or because he often fails to endorse the conclusions of his own convictions. In such a case, we would still want to say that Alan's belief, that capital punishment does not deter and is therefore impermissible, is justifiable to Daniel. It seems, then, that the notion of justifiability-to must be (epistemically) normative: it does not matter whether the represented would be convinced but whether he should have been convinced had he shared the representative's evidence, given her perspective about the matter:

RCSE R's justified belief in p is *justifiable to S* if and only if S would have believed in p had she shared R's evidence and been epistemically *rational*.

This formulation accommodates the above counterexample. Furthermore, employing a normative notion of justifiability seems in line with a conception of representation that focuses on reason rather than on will. If we aim at interacting with one's reason, as opposed to one's mere desires, it seems legitimate (perhaps even necessary) to presume that that reason operates under some rationality constraints.⁴⁹

Yet, this notion of justifiability is inadequate because it fails to distinguish between different types of evidence. If we take "evidence" to refer to anything that justify beliefs, then RCSE must be rejected. For example, if the atheist in Estlund's Pope example is epistemically rational, she would have believed Catholic doctrine had she shared the Pope's evidence, namely, his direct line to God's will. Similarly, if moral intuitions are the epistemic justifiers for fundamental moral beliefs (in analogy to perceptual experience being the justifier for beliefs concerning appearance)⁵⁰ then, presumably, the pro-life advocate would have rationally believed that abortion is

⁴⁸ We use here "evidence" in a narrow ordinary-language sense. Whether or not Alan and Deborah share all the evidence depends on how widely "evidence" is understood. If "evidence" refers to anything that can epistemically justify belief, then arguably not all the evidence is shared. We return to this point shortly

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permissible had she shared the basic moral intuition of the pro-choice advocate. Thus, RCSE implies that the justifiably-to requirement is trivial; it implies that every justified belief is also justifiable to the represented. In order to address these counterexamples, we need to restrict the type of evidence (or justifiers⁵¹) only to evidence that is *accessible*, in certain sense, to the represented:

ACCESSIBILITY R's justified belief in p is *justifiable to* S if and only if
R's justification for p is *accessible* to S.

The plausibility of this account depends, of course, on how one understands the term “accessible.” Presumably, the justification (or evidence) need not be directly accessible to the represented (S), so that she can become aware of it merely by reflection or introspection.⁵² Such a condition would render Alan’s belief that capital punishment deters unjustifiable to Daniel, for he cannot become aware of it merely by reflection or introspection. Moreover, the accessibility requirement should not refer to any justifier that the representative (R) has for his belief that p. It is sufficient that an essential part of the representative’s evidence will be accessible to the represented. On the other hand, a mere possibility that the represented would become aware of the evidence is not enough. The justification must be accessible to her as she actually is, not as she could have been in some far hypothetical world. For example, Catholic doctrine (even if true and justifiably held by the Pope) is not justifiable to the atheist in Estlund’s example, because the Pope’s direct line to God’s will is not accessible to the atheist as she actually is. Similarly, though perhaps less clear, the pro-choice moral intuition is not accessible to the pro-life advocate as she actually is, namely, given her different fundamental moral intuition. Thus, the pro-choice advocate’s belief that abortion should be legal, even if justified, is not justifiable to the pro-life advocate. Given her moral convictions, there is no available pro-choice argument she can rationally accept.

We suggest that the difference, in terms of accessibility, between descriptive beliefs such as the belief that capital punishment does not deter and moral beliefs, such as the belief that capital punishment is morally unjust lies in the difference between two types of epistemic justification. Only in the latter case the disagreement between the representative and the represented concerns *basic* belief. According to one approach (“doxastic basicity”), a justified belief is “basic” just in case it is justified without owing its justification to any other beliefs of the agent. Like in the case of Moore’s argument concerning the existence of the external world, an argument for a conclusion which is a basic moral belief that transforms justification from the premises to the conclusion must be question-begging; for there is no further justified

⁵¹ Here (as opposed to the previous paragraph) we adopt a wide understanding of “evidence.” We use “evidence” and “justifier” interchangeably, as anything that can justify beliefs: properties, experiences, states of affairs (including mental states) and so on.

⁵² One version of *justification internalism*, referred to as “accessibilism,” is the view that something is a justifier for agent S only if it is *directly* accessible to S. See Feldman and Conee (2001). This view regarding epistemic justification is taken, for instance, by Ginet (1975, 34) who says: [e]very one of every set of facts about S’s position that minimally suffices to make S, at a given time, justified in being confident that p must be directly recognizable to S at that time.”

belief that can serve as a premise in an argument for that conclusion. For example, one's justified belief that she feels pain is basic for it is justified not by virtue of its being the conclusion of any argument.

It is evident that Alan's belief that *it seems to him* that capital punishment is unjust is basic in that sense. It is suggested, however, that this is true also with respect to his belief that *capital punishment is unjust*. On this view ("experiential foundationalism") what justifies Alan's belief that capital punishment is unjust is not any of his other beliefs but the mental experience that it *appears to him* that capital punishment is unjust.⁵³

Let us illustrate this account regarding basic *moral* beliefs by comparing it to a similar account regarding basic *perceptual* beliefs. On this view, what justifies your perceptual belief that there is a tree out there is the perceptual experience that it appears to you that there is a tree out there (not any further beliefs of yours). The proposed analogy between moral intuition⁵⁴ and perception is not necessarily complete. What is important for our analysis is that in the case of basic moral belief, the agent has no additional epistemic justification for her belief except her private experience.

In the case of justified basic beliefs, the justification is in an important sense private. You can say to your pro-life friend that in the conflict between the woman's moral right to autonomy and the fetus's moral right to life the former concern prevails, but if she does not share this basic conviction, there is nothing more you can say to justify your belief. On this account, your private moral intuition that *it seems to you* that the moral right to autonomy prevails is what justifies epistemically your basic moral belief that the right to autonomy prevails. This is analogous to the case in which your private perceptual experience that it seems to you that there is a tree out there justifies your basic perceptual belief that there is a tree. In both cases the justifier of your belief is not accessible to others who do not have the same experience or intuition. Consequently, the accessibility condition is not satisfied when the representative and the represented have different basic (moral or other) beliefs. It follows that cases of disagreement resulting from a conflict between basic beliefs cannot be settled. Since the justification in these cases is private and not accessible to others, each side has no non-question begging argument that can support her view.

This understanding of the justifiability requirement explains our previous conclusion regarding which convictions of the represented cannot be ignored or revised. It explains why the relevant distinction is not between moral and non-moral convictions as such, but rather between basic and non-basic beliefs. But the proposed analysis explains also the *prima facie* intuitive appeal of the suggestion that moral and descriptive judgments are importantly different in this regard. Indeed, also descriptive justified beliefs can be basic (think again of perceptual beliefs). Unlike moral intuitions, which varies significantly also between reasonable people, in normal conditions people tend to share similar perceptual experiences; similar basic mathematical intuitions and so forth. Thus, typically the justifiability requirement will

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be satisfied when the disagreement between the representative and the represented is descriptive (e.g., on whether capital punishment deters) and will not be satisfied when the disagreement is fundamentally moral.

The epistemological claims made above are not uncontroversial.⁵⁵ We think, however, that the proposed analysis of the justifiability requirement, which distinguishes between basic and non-basic justified beliefs, nicely accommodates our pre-theoretical intuitions concerning representation. In the following concluding section, we ask why representation can be politically desirable. After all, if one denies that representation is valuable, one may agree with every claim made above and yet conclude that it is a futile endeavor.

5. Is Representation Morally Valuable?

One may object to this analysis on the grounds that political deputies do not have a duty (or reason), even not a *pro tanto* one, to justify their epistemically justified decisions to their constituents. This objection is most powerful when referred to the representative's first-person perspective. Suppose that you deliberate on whether to employ a certain policy which is better than all the other alternatives in every respect except justifiability. It promotes better the wellbeing of the represented, it does more justice to third parties (e.g., voters of the other parties; potential convicted murders whose capital punishment is at stake; women whose right to have abortion is at stake) and so on. In that case, the objection goes, you have no reason, even not a slight one, in favor of employing a different policy than the best one just because the best policy is not justifiable to your constituents.

Suppose then that the second-best policy, namely the one that is justifiable to your constituents is slightly less desirable and you deliberate whether to vote for it. Arguably, according to our account, in this case you should support the second-best policy, for it is only slightly less desirable than the best one, so even a weak *pro tanto* duty of justifiability would result in preferring the second best policy to the best one. However, if the best policy is better in terms of the constituents' wellbeing; it does more justice to third parties, and so on, why should we prefer the second-best, less desirable, one?

The response to this objection is twofold. Note first, that this paper does not defend the view that political representation is ethically or moral-politically valuable. We took it for granted that political representatives are required to endorse the perspective of the represented and argue that, thus understood, representation requires justifiability to the represented. The argument thus takes the form of transcendental argument: justifiability to the represented is a necessary condition for the possibility of representation. The question whether in the end of the day the view that representation is morally valuable can be defended is beyond the scope of our enquiry.

⁵⁵ For example, epistemologists who adhere to naturalized moral epistemology would deny that moral justification is acquired via intuition and *a priori* reasoning. In addition, some would reject the distinction between basic and non-basic beliefs. For instance, some coherentists deny the idea of doxastic basicity and hold that every justified belief gets its justification from other beliefs.

Having said that, we think that the proposed understanding of representation, is nonetheless, normatively appealing. It explicitly refers to familiar liberal values such as autonomy agency and political equality, and implicitly to other familiar liberal-democratic values, such as political participation. We briefly provide here three main reasons for believing that representation is a pro tanto duty of deputies: the first relies on what we take to be the appropriate epistemic response to peer disagreement; the second and third arguments rely on the moral values of political equality and autonomy respectively.

Given that seemingly reasonable people disagree on almost every political, practical question, taking the genuine perspective of other agents regarding such matters as a prima facie evidence seems epistemically appropriate.⁵⁶ A rational deputy who is only interested in identifying the right decision must take into account the views of his constituencies whom she counts as her epistemic peers.⁵⁷ Of course, representatives do not regard *all* their constituencies as their epistemic peers, nor they should do so. They might even reasonably think that some of their constituencies are ignorant, stupid or morally corrupted. This is why the duty to represent is only pro tanto duty. However, it is plausible that a democratic political deputy should treat her constituencies at least as people whose perspectives are epistemically relevant. After all these people vote for her and presumably share her core convictions regarding central political issues. Thus. their sincere basic moral convictions should count as some (second-order) evidence.

Under this view, the conflict between being a Burkian trustee and being a delegate is mitigated since in order to identify what the right decision is, the Burkian trustee must consult the views of his constituency. Furthermore, recall that the justifiability requirement is practically relevant mainly in cases of fundamental moral disagreement. In such cases, apparently reasonable people may take very different positions (think, for example, of Kant and Bentham or Rawls and Nozick). Thus, the representative's belief that she has a direct access to truth in such matters, so that she can safely ignore the perspective of the represented, is not epistemically warranted.

The force of this argument is, however, limited given the controversies between epistemologists concerning the appropriate response to disagreement. As just said, , it is not obvious that representatives treat their constituents as peers; nor that they should treat them so. Furthermore, peer disagreement arguments cannot justify giving one's own constituencies greater weight in decision-making than people who are foreigners or non-citizens. There is no reason to believe that the former are typically better peers than the latter. Therefore, from the first-person perspective of the representative, there is no reason to consider her constituencies, and only them, as epistemic peers.

In response, one may suggest a different version of this argument from disagreement, which focuses not on the epistemic relationship between political deputies and their constituencies but rather on epistemic relationship between the constituencies

themselves. On this view, we should treat our fellow citizens⁵⁸ not as epistemic peers, perhaps, but as people whose perspectives are epistemically relevant to our judgements. Especially, with regard to basic moral convictions, it could be claimed that no one has a reason to believe that her own moral intuitions are more reliable than others'. This idea, one may argue, is manifested by political representation, which guarantees that the citizens' different perspectives will be represented in the political sphere. However, people differ in their cognitive abilities moral sensitivities, etc. Thus, although the basic convictions of other persons should be given some weight, it is doubtful that from an epistemological point of view, the basic moral beliefs of each and every person should be assigned an equal weight. Thus, on this proposal, the strength of the pro tanto reason to represent is not uniform but rather depends on the comparative epistemic competence of the particular representative and the particular represented.

If epistemological arguments, such as the above argument from (peer or other) disagreement are rejected, the justification for representation must rest on other reasons, namely, moral ones. One option which is apparently attractive is political equality. If the represented voted for you in democratic elections, taking their perspectives into account (again, only as pro tanto reason for action) seems morally appropriate – at least from the point of view of a liberal-democratic theory that adheres to “one person one vote” principle and takes equality of political power to be pro tanto justified. However, it is unclear that respecting the private reason of the represented is the best way to promote her political equality. Arguably, the fact that the decisions of the representative are justifiable to the represented does not mean that the latter has an equal opportunity to influence political decisions. Moreover, while it is plausible that persons' interests and well-being deserve equal treatment, it is implausible that there is a general duty to treat all person's reason equally.

A more plausible suggestion, then, is that the hybrid view of representation can be rationalized in terms of autonomy and self-governing. Imagine for simplicity a constituency that includes only a single constituent who elects a single delegate from several candidates. In this scenario, it seems obvious that consideration of autonomy and agency of that single voter should not be completely ignored.⁵⁹ Representation, in the proposed sense, provides an opportunity for a person or a group to exercise their autonomy even when the exercise of such an autonomy is detrimental to the person's own interests (as stipulated in the case of circumcision) or rests on false or unjustified convictions (as stipulated in the case of the pro-life advocate).

It could be objected that our appeal to autonomy is incompatible with our previous conclusion that the distinction between commitments of the represented that representation requires respecting and commitments that should be ignored or refined does not rely on the depth of the commitment and the degree to which it is essential to the personal identity of the represented. Indeed, the fact that one's commitment is

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⁵⁹ This singleton-constituency example abstracts from the problem that your decision on behalf of your voters, which you take to be less desirable, may harm third parties – those who did not vote for you. Thus, the argument sounds more plausible when the second-best policy does not (negatively) affects legitimate interests of third parties.

deep and central to one's identity implies that ignoring it is particularly detrimental to one's personal autonomy. Consider, for example the case of Ben, the orthodox Jew who believes that it is mandatory for Jews to circumcise their sons. If Ben's conviction is weak and peripheral to his identity, a rule that prohibits circumcision is only marginally detrimental to his personal (or parental) autonomy and his ability to be the author of his life story.

However, the notion of autonomy that can justify our model of representation differs from the liberal understanding of autonomy which equates autonomy with personal autonomy.⁶⁰ On the proposed account, by contrast, what dictates whether a conviction is part of the genuine perspective of the represented (so that promoting it is conducive to her political autonomy), hinges not on the conviction being part of her conception of the good life, or the degree to which she perceives it as essential to her personal identity, but rather on whether it is justifiable to the represented given her own basic beliefs.

The justifiability requirement can be vindicated only by a conception of autonomy that is closely related to the agent's reason (as opposed to her desires). One such conception that comes to mind is Kant's conception of moral autonomy, namely, the ability to impose on oneself the moral law. Yet, Kant's conception of moral autonomy is not suitable for vindicating the justifiability condition for representation, because it assumes that the self-imposed moral law must be universal, so that any justified moral judgment of the representative is justifiable to all moral agents. There are, however, other reason-focused accounts of autonomy that are not committed to the Kantian conception of moral autonomy.⁶¹ What is needed is a conception of autonomy that is compatible with the idea of private reason, namely, that the justification of basic beliefs is private and not accessible to every agent.

To the extent that representation (as understood by us) promotes autonomy, the representative should be regarded as the pipe through which the private reason of citizens must go through in order to be present in the public sphere. Such a transformation should maintain authenticity, namely it should be meaningfully attributable to the represented. The requirement of justifiability guarantees that even if the represented resists the position taken by the representative, the position can be meaningfully attributed to the represented. It is her basic commitments that are being promoted (even when she fails to notice it) and thus it could be meaningfully stated that her autonomy is being promoted.

We think that this conception of autonomy is more suitable than personal autonomy for vindicating the value of representative democracy. The reason is that democratic elections can be hardly seen as promoting autonomy at the personal level. The effect of one's voting in democratic elections on her personal autonomy is actually zero.

⁶⁰ For example, it differs from Mill's view of autonomy as "one of the elements of wellbeing," as well as from Raz's view of the value of autonomy as consisting in the ideal of "self-creation" and the agent being the "part author of his life." On the proposed account, by contrast, it is the convictions of the represented that are being promoted independently of their particular contribution to the wellbeing of the represented.

⁶¹ See, e.g., Meyer 1989 who identifies autonomy with the capacity to choose deliberatively and rationally.

Thus, if the value of representation is grounded in autonomy, it must refer to a different notion, such as collective self-governing. It is doubtful whether the value of autonomy can be extended from the personal level to the collective level, but if this can be done, it might be along the lines described above.

Turning back to the above objection, we think that biting the bullet is a viable option. Yes, if the best policy is just slightly better than second-best, and only the second-best is justifiable to your voters, then your pro tanto reason to represent them might prevail. This conclusion sounds quite sensible once we remind ourselves that the justifiability requirement is grounded in the values of political equality and political autonomy, namely, the idea that political representatives should reflect to some extent the reason and moral agency of the represented.

The proposed account of representation may have additional important implications. For instance, it is evident that in order to be represented the represented must have *a perspective of her own* that can in principle be endorsed by the representative. The question of what counts as a perspective could also be a matter of controversy. Arguably, a perspective is a more demanding requirement than a mere preference.⁶²

It is often the case that represented have no clear conviction and even if they have they have no single clear justification for their convictions. In such cases the hybrid model as developed here is inapplicable. Further work needs to be done to extend the analysis to such cases.

6. Summary

Representation has become an urgent concern given the rise of populist forces and the elitist challenges. This Article responds to the populist challenge. Even if one is willing to accept the view that deputies have a strong pro tanto reason to represent this does not imply that they automatically ought to endorse the convictions of the represented. As a matter of fact, the duty of representation requires them at times to reject rather than endorse the views of their constituencies.

Our proposal has however broader implications for political theory. It implies for instance that private reason has important role to play in politics. The perspective or

⁶² In the case of *County v. Longford*, the English High Court of Justice discussed the issue of "undue spiritual influence" of a priest on voters, holding that "the priest may counsel, advise, recommend... but he may not appeal to the fears, or terrors, or superstition of those he addresses." Similarly, in the case of *Elram v. Rahman* the high court also maintained that a Muslim clergy may not use "the power and influence of religious office to convince the faithful that it is their religious duty to vote for or against a particular candidate." These cases might be conceptualized as cases in which the represented has no perspective of her own and hence, she cannot be represented. It is not therefore the (alleged) irrationality of religious beliefs that is relevant here; instead, it is the fact that a person who regards as authoritative the advice of others in political matters cannot be described as a person who has a perspective of her own on these matters. She can be said to have a second-order conviction – a conviction in the good (or even incorrigible) judgment of the priest or the imam? After all, in deliberation it is often rational to take into account the views of others. Yet, if the trust has no boundaries and if it rests on no reasons whatsoever it does not count as a "perspective" for the sake of representation. We cannot steal this issue here.

worldview of the constituencies should be present in political deliberation. In order to represent, i.e., to look at the world 'from the perspective of the represented' the representative's decisions ought to satisfy the condition of *justifiability-to* the represented, namely, they must rest on reasoning that is accessible to the represented. While the duty of representation does not always override conflicting considerations, it should be taken into account in the reasoning of the representatives and thereby should be regarded as an important element of democratic politics. Representation is not merely a formal requirement; it has real political and moral implications.