

Rhetoric and Representation: Reassessing Territorial Diets in Early Modern Germany

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THE representative form of government is in a somewhat difficult situation today. Ever since Jean-Jacques Rousseau judged in 1762 that “à l’instant qu’un Peuple se donne des Représentans, il n’est plus libre, il n’est plus,” representative government has been exposed to a steady stream of harsh criticism.¹ The number of critics eventually increased to include Marxists, communitarians, and radical democrats.² On the other hand, it is a matter of fact that over the last decades, representative systems were developed in, or at least formally adopted by, the vast majority of nations. For example, more than 140 out of the nearly 200 world’s states formally have parliaments associated in the Inter-Parliamentary Union.³ Institutions such as parliaments and parties, and procedures such as elections and legislation form a ubiquitous and at the same time heavily disputed part of the present political landscape.

But in their efforts to deal with this ambivalent situation, political philosophy and political science alike have begun to treat concepts such as “representative government” as universal categories depending on nothing but pure reason. In so doing, they have lost sight of the very particular and culturally contingent history of their objects.⁴ This has several weighty consequences for present politics. The annual “Failed State Index,” for example, is compiled by using twelve indicators, including “Delegitimization of State.” A closer look at the methodology reveals that “Resistance of ruling elites to . . . political representation” is

¹Jean-Jacques Rousseau, *Du Contrat Social*, Jean-Jacques Rousseau, *Oeuvres complètes*, ed. Bernard Gagnebin and Marcel Raymond, vol. III: *Du Contrat social, Ecrits politiques* (Paris: Gallimard, 1964), 347–470, 431. I am grateful to Johannes Helmuth, Jörg Feuchter, and Kolja Lichy for an inspiring panel on parliamentary oratory at the fifty-eighth conference of the International Commission for the History of Representative and Parliamentary Institutions in 2007. In preparing this article, I have benefited from discussions with David M. Luebke.

²See, for example, Nicos Poulantzas, “Towards a Democratic Socialism,” *New Left Review* 109 (1978): 75–87; Benjamin R. Barber, *Strong Democracy: Participatory Politics for a New Age* (Berkeley, CA: University of California Press, 1984); Joshua Cohen and Archon Fung, “Radical Democracy,” *Swiss Political Science Review* 10 (2004): 169–180, 170–173.

³See Inter-Parliamentary Union, ed., *Inter-Parliamentary Union* (Geneva: Inter-Parliamentary Union, 2006).

⁴Frank R. Ankersmit, *Political Representation* (Stanford, CA: Stanford University Press, 2002), 15–34.

one of the measures employed to analyze this indicator. In this case, it is clear that a political structure of western origin is used as a criterion to judge non-western states.⁵ Moreover, there are consequences for historical research, because the neglect of history in contemporary political thought carries the additional risk of projecting modern political concepts anachronistically onto premodern conditions. That happened, for instance, when the constitutional historians of nineteenth-century Germany described medieval and early modern kingship in terms of modern sovereignty and on that account denied that the territorial estates were in any meaningful sense representative.⁶ This situation calls for intensified research in parliamentary history, not to intervene in current political arguments, but to provide the necessary historical background for those arguments.

In order to contribute to a better understanding of parliaments as the core institutions of representative government, this article turns to the territorial Diets (*Landtage*), the type of representative body found in most territories of the Holy Roman Empire during the so-called “Age of Absolutism” between the Peace of Westphalia in 1648 and the collapse of the Empire in 1806.⁷ Two observations concerning the territorial Diets provide a good starting point: the first is simply that delegates “talked”—they deliberated, voted, and delivered orations—as long as the Diet was in session; second, territorial estates claimed to be representatives of the *Land*, the territory, and the subjects.⁸ Most jurists and scholars of public law concurred in this judgment. Both facts are quite puzzling because they cannot be easily explained within the framework of universal categories that political scientists tend to employ. The standard approach would be to interpret these facts out of their political and institutional context and to conclude that delegates to territorial Diets talked even though there was almost nothing for them to

⁵Fund for Peace, “Failed States Index Indicators: 7. Criminalization and/or Delegitimization of the State,” URL: <http://www.fundforpeace.org/web/content/fsi/fsi_7.htm> (Accessed Nov. 17, 2009). See “The Failed States Index,” *Foreign Policy* (July/August 2009): 80–83. See also Pinar Bilgin and Adam D. Morton, “Historicising Representations of ‘Failed States’: Beyond the Cold-War Annexation of the Social Sciences,” *Third World Quarterly* 23 (2002): 55–80.

⁶See Ernst-Wolfgang Böckenförde, *Die deutsche verfassungsgeschichtliche Forschung im 19. Jahrhundert. Zeitgebundene Fragestellungen und Leitbilder*, 2nd ed. (Berlin: Duncker & Humblot, 1995). A good example is Karl F. Eichhorn, *Deutsche Staats- und Rechtsgeschichte*, 4th rev. ed., 4 vols. (Göttingen: Vandenhoeck & Ruprecht, 1834–36).

⁷See Kersten Krüger, *Die landständische Verfassung* (Munich: Oldenbourg, 2003); and Rainard Esser, “Landstände im Alten Reich. Ein Forschungsüberblick,” *Zeitschrift für Neuere Rechtsgeschichte* 27 (2005): 254–271. The concept of absolutism was challenged by Nicholas Henshall, *The Myth of Absolutism: Change and Continuity in Early Modern European Monarchy* (London: Longman, 1992), whose book stirred a heavy debate in German-speaking historiography. See recently Heinz Duchhardt, “Die Absolutismusdebatte—eine Antipolemik,” *Historische Zeitschrift* 275 (2002): 323–331.

⁸For the continuity of Diets, see the bibliography in Krüger, *Verfassung*, 87–140, and Brage Bei der Wieden, ed., *Handbuch der niedersächsischen Landtags- und Ständegeschichte*, vol. I: 1500–1806 (Hannover: Hahn, 2004). For the claim of representation, see Barbara Stollberg-Rilinger, “Was heißt landständische Repräsentation? Überlegungen zur argumentativen Verwendung eines politischen Begriffs,” *Zeitsprünge* 4 (2000): 120–135.

decide and even though there were no formal means by which to substantiate their claim to represent the Land and the people.⁹ Accordingly, all the talking and all the assertions seem irrational and useless.

This article suggests that the appearance of irrationality must not be attributed to the social practice of the estates but must, instead, be considered an effect of anachronistic and modernist assumptions about the functions of speech and the nature of representation. For this reason the article's task is twofold. The first, and rather more destructive task, is to identify, isolate, and exclude the modern connotations of the categories "talk" and "representation," in particular the coupling of talking with decision making and of representation with practices of authorization and accountability. Once the distorting influence of modern suppositions has been removed, it should be possible to reconstruct the specific rationality of the estates' actions. To that end, this article examines the circumstances and contents of the speeches that were delivered in two typical situations in the course of a Diet's proceedings. These speeches show that there was a close connection between talking and representation, that territorial estates deployed an elaborate system of speech and oration not only to make decisions but also, and in some cases primarily, to express and maintain their status as representatives of the Land and its people.

Making it Explicit: Modern Connotations of Oration and Representation

History, of course, can never be written from a purely objective point of view. That is especially true for parliamentary history, because the outstanding longevity of representative institutions and the names we give to those bodies invite claims of unchanging continuity through the ages. In the case of Germany, many parliaments of the Federal Republic's states (*Länder*) see themselves as successors to the territorial Diets of the old principalities.¹⁰ But the idea that the relationship between premodern assemblies of estates and modern parliaments is one of evolutionary progress toward democratic participation is common not only in the sphere of politics but also among historians, and it certainly is no coincidence that a decidedly comparative approach to the history of the representative institutions of Europe's states flourished during the 1960s and 1970s, a time when

⁹For the decline of the estates' decisive power, see Ronald G. Asch, "Estates and Princes after 1648: The Consequences of the Thirty Years' War," *German History* 6 (1988): 113–132, 125; Karl O. von Aretin, *Das Alte Reich*, 4 vols. (Stuttgart: Klett-Cotta, 1993–2000), vol. I, 91.

¹⁰See, for example, Walter Grube, *Der Stuttgarter Landtag 1457–1957. Von den Landständen zum demokratischen Parlament* (Stuttgart: Klett, 1957); Eckhart G. Franz and Jürgen R. Wolf, eds., *Landstände und Landtage in Hessen. Von der Einung des Mittelalters zur demokratischen Volksvertretung* (Darmstadt: Hessisches Staatsarchiv et al., 1983); Walter Ziegler, ed., *Der Bayerische Landtag vom Spätmittelalter bis zur Gegenwart. Probleme und Desiderate historischer Forschung* (Munich: Bayer. Landtag, Abt. für Öffentlichkeitsarbeit und Information, 1995).

the European Communities' member states ranked "representative democracy" among the "fundamental elements of the European Identity."¹¹ And given the fact that many historians perceive this kind of institutional continuity, it is more than likely that their analytical categories are infused with modern connotations. To make this observation is not to say that there can be truly objective categories of historical analysis, but to call for a scrutinizing look at the not-so-neutral "tools of the trade" historians use in generating knowledge, for as Pierre Bourdieu remarked, in "the social sciences, the progress of knowledge presupposes progress in our knowledge of the conditions of knowledge."¹²

A little etymology shows just how superficial and deceptive the continuity of terms can be. The very term "parliament" and its counterparts in the other European languages stem from the Old French verb *parler*, which literally means "to talk." To that extent, parliaments are, at least in etymological terms, primarily places of speaking and discourse. Indeed, the word did not stand for a general political concept but was used instead to denote two specific institutions, the English Parliament and the French *parlements*. Only since the late eighteenth century the term has been generalized to denote political representation in general. Accordingly, "parliament" became synonymous for "representation of the people." Following this example, Anglophone researchers often call all historic representative assemblies parliaments.¹³ Because the concepts of "representation" and "oratory" are so central to the field of parliamentary history, it is worth clarifying what those words meant in historical context.

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In 1769 Johann Jakob Moser published a book about the territorial estates as part of his general account of the German public law. According to Moser, the estates

¹¹"Document on the European Identity published by the Nine Foreign Ministers (Copenhagen, 14 December 1973)," Press and Information Office of the Federal Government, ed., *European Political Cooperation*, 5th ed. (Bonn: Clausen & Bosse, 1988), 48–54, 49. That the initial phase of the European integration generated support for parliamentary history can be seen from the fact that the number of studies presented to the International Commission for the History of Representative and Parliamentary Institutions reached a peak—unequalled ever since—in the 1960s and 1970s. See "Studies Presented to the International Commission for the History of Representative and Parliamentary Institutions, 1937–2001," *Parliaments, Estates & Representation* 22 (2002): 251–274. For the German Diets, see among others Peter Blickle, "Kommunalismus, Parlamentarismus, Republikanismus," *Historische Zeitschrift* 242 (1986): 529–556. Another famous example is, of course, Herbert Butterfield, *The Whig Interpretation of History* (London: Bell, 1931). See also Richard A. Cosgrove, "Reflections on the Whig Interpretation of History," *Journal of Early Modern History* 4 (2000): 147–168.

¹²Pierre Bourdieu, *The Logic of Practice* (Cambridge: Polity Press, 1990), 1.

¹³See Hans Boldt, "Parlament, parlamentarische Regierung, Parlamentarismus," in *Geschichtliche Grundbegriffe. Historisches Lexikon zur politisch-sozialen Sprache in Deutschland*, ed. Otto Brunner, Werner Conze, and Reinhart Koselleck, vol. IV (Stuttgart: Klett-Cotta, 1978), 649–676. See Francis L. Carsten, *Princes and Parliaments in Germany: From the Fifteenth to the Eighteenth Century* (Oxford: Clarendon, 1959); and recently Michael A. R. Graves, *The Parliaments of Early Modern Europe* (Harlow: Longman, 2001).

were “*Repräsentanten des Landes in favorabilibus et odiosis, Custodes Legum et Jurium Patriae*” (the representatives of the Land in favorable and troublesome times, the keepers of the laws and rights of the country), an opinion that in the later eighteenth century was common in the legal discourse of early modern Germany. As early as 1617, the jurist Heinrich Bocer, in a treatise concerning the right of taxation, mentioned the ones “*qui Subditos repraesentant, ut sunt: die Land-Stände*” (who represent the subjects, as are: the territorial estates).¹⁴

Beyond that, the meaning of representation belongs to the central topics of parliamentary history and has given rise to ferocious disputes over the years. Some historians supported the idea that territorial estates represented the whole community; others rejected it entirely. But in most cases, they agreed upon what was meant by the word “representation,” a modern, ahistorical concept of political representation, which, applied to the premodern estates led to manifest misinterpretations.¹⁵

To avoid such misunderstandings concerning territorial Diets, one has to search for what lies at the basis of the concept and to try to put all present-day connotations aside. According to Max Weber, a relationship is representative if “the action of certain members of an organization, the ‘representatives,’ is considered binding on the others or accepted by them as legitimate and obligatory.”¹⁶ At its core, representation is nothing more than a formal rule of attribution. It holds that some specific actions are counted as actions performed by every member, although they are actually performed by only a few. As the phrase “are counted as” indicates, representation is a fiction, because in reality only the representatives act. Nevertheless it is a very powerful fiction.¹⁷ Since representation is only a formal rule, it tells us nothing about how to establish or legitimate this form of “counting as.”

By contrast, the modern concept of representation contains much more; it is firmly coupled with ideas of authorization and accountability. As such, it is a definition that directs the attention to the relationship between the represented and

¹⁴Johann J. Moser, *Von der Teutschen Reichs-Stände Landen, deren Landständen, Unterthanen, Landes-Freyheiten, Beschwerden, Schulden und Zusammenkünften* (Frankfurt: n.p., 1769; repr. Hildesheim: Olms, 1977), 843; and Heinrich Bocer, *Tractatus de Jure collectarum* (Tübingen: Cellius, 1617), 33. See Barbara Stollberg-Rilinger, *Vormünder des Volkes? Konzepte landständischer Repräsentation in der Spätphase des Alten Reiches* (Berlin: Duncker & Humblot, 1999), 77–103.

¹⁵See the controversy between Felix Rachfahl, “Der dualistische Ständestaat in Deutschland,” *Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft im Deutschen Reich* N. F. 26 (1902): 165–219; and Friedrich Tezner, *Technik und Geist des ständisch-monarchischen Staatsrechts* (Leipzig: Duncker & Humblot, 1901). See Stollberg-Rilinger, *Vormünder des Volkes?*, 6. The unreflected use of a modernist concept of representation is still common in parliamentary history today; for example, see Katrin E. Kummer, *Landstände und Landschaftsverordnung unter Maximilian I. von Bayern (1598–1651)* (Berlin: Duncker & Humblot, 2005), 21, 45, and 219.

¹⁶Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, ed. Guenther Roth and Claus Wittich, vol. I (New York: University of California Press, 1968), 292.

¹⁷See Edmund S. Morgan, “Government by Fiction: The Idea of Representation,” *Yale Review* 72 (1983): 321–339.

the representatives: in order to appear as a legitimate form of representation, no assembly can dispense with some mechanism by which the represented take part in the process of choosing the representatives, for example through elections, and in such a manner that the ones appointed are obliged to look after their electors' interests.¹⁸ This type of representation can be called delegate representation.

As Hasso Hofmann and Barbara Stollberg-Rilinger have shown, this concept is not appropriate for understanding the premodern territorial estates. When representation was used as an argument, it was aimed at the relationship between the prince and the estates and was meant to guarantee the estates' capacity to act as a corporation, which in most cases was beneficial to the prince. Its purpose was to ensure that all individual estates were bound to resolutions made by the whole Diet, regardless of whether they agreed or were even present at all.¹⁹ This argument was borrowed from the late medieval theory of political bodies—the corporations.²⁰ In that context the idea was developed that a certain part, in this case the territorial estates, could be considered identical with the whole corporation, in this case the territory, and thus could represent it as a whole. But, as a matter of fact, the relationship between the subjects and the estates was of no real importance, because it was taken for granted that only a few possessed the right of political participation. Hofmann has characterized this arrangement as “identity representation.”²¹

One of the first historians to concern himself with premodern representation, Otto Brunner, emphasized that the modern “concept of representation is inapplicable to territorial Estates. They did not ‘represent’ the *Land*—they ‘were’ the *Land*.”²² This much quoted verdict refers specifically to the wide variety of forms that representation assumed in late medieval and early modern Germany and argues that representation was conceived in terms of identity, not in terms of delegation. But representation itself is not a fact; it is a claim because it is based on the fiction of counting the actions of some members as the actions of all members. It therefore belongs to the category of “things that

¹⁸Andrew Rehfeld, “Towards a General Theory of Political Representation,” *Journal of Politics* 68 (2006): 1–21, 3, calls that the “‘standard account’ of political representation.” See also Hannah F. Pitkin, *The Concept of Representation* (Berkeley, CA: University of California Press, 1967), 209–240.

¹⁹See Hasso Hofmann, *Repräsentation. Studien zur Wort- und Begriffsgeschichte von der Antike bis ins 19. Jahrhundert*, 4th ed. (Berlin: Duncker & Humblot, 2003), 321–347; Stollberg-Rilinger, *Vormünder des Völkens?*, 83 and 298–304.

²⁰A very influential and often cited early modern account on this topic was Nicolaus Losaeus, *Tractatus de Iure Universitatum* (Venice: n.p., 1601). See Otto von Gierke, *Das deutsche Genossenschaftsrecht*, 4 vols. (Berlin: Weidmann, 1868–1913; repr. Darmstadt: Wissenschaftliche Buchgesellschaft, 1954), vol. IV: *Die Staats- und Korporationslehre der Neuzeit*, 3–20.

²¹See Hasso Hofmann, “Der spätmittelalterliche Rechtsbegriff der Repräsentation in Reich und Kirche,” in *Höfische Repräsentation. Das Zeremoniell und die Zeichen*, ed. Hedda Ragotzky and Horst Wenzel (Tübingen: Niemeyer, 1990), 17–42.

²²Otto Brunner, *Land and Lordship: Structures of Governance in Medieval Austria*, trans. from the 4th rev. ed., trans. and introduction by Howard Kaminsky and James Van Horn Melton (Philadelphia, PA: University of Pennsylvania Press, 1992), 349 (italics in original).

exist only because we believe them to exist.” As John Searle has pointed out, such things require “*continued* collective acceptance or recognition” in order to exist and to have an ongoing effect on social reality.²³ In early modern times, this acceptance could only be ensured if the claim of representation was repeatedly asserted and publicly expressed. That was due, in large measure, to assumptions underlying customary law that made legal claims conditional upon their constant exercise.²⁴ But identity representation did not, in most cases, stipulate particular practices connecting the representatives and the persons or corporations they represented, such as elections. How, then, were the estates’ claims against “continued collective acceptance” realized in practice, or to be more precise: by what ways and means did the estates actually manage to “be” the Land?

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As shown above, it is problematic to apply the category of “representation” to the territorial Diets because there seem at first glance to be no practices of accountability and authorization that supported the estates’ claim to represent the territory. Parliamentary oratory presents a different problem. Every phase of the territorial Diet’s proceedings was filled with oratory. But in most cases the function of oratory is difficult to determine.

This has to do with some common, modern-day assumptions about political power. When thinking about the concept of “political power” in general terms, historians often refer to a definition given by Max Weber: “‘Domination’ (*Herrschaft*) is the probability that a command with a given specific content will be obeyed by a given group of persons.” Among other things, this definition describes political rule as a binary relation between making a decision on the one hand and full compliance to that decision on the other.²⁵ From this perspective, the ability of institutions to make such decisions binding is the very essence of power. But Weber went even further and completely identified politics with power-struggle, reserving the term “political” only for those interactions in which “interests in the distribution, maintenance, or transfer of power are decisive.”²⁶ And regardless of whether political historians

²³John R. Searle, *The Construction of Social Reality* (New York: Free Press, 1995), 1 and 45 (emphasis in original); see also Morgan, “Government,” 321–2.

²⁴See Thomas Simon, “Geltung. Der Weg von der Gewohnheit zur Positivität des Rechts,” *Rechtsgeschichte* 7 (2005): 100–137, 101. For case studies analyzing the need to express abstract claims in social practice, see Marian Füssel and Thomas Weller, eds., *Ordnung und Distinktion. Praktiken sozialer Repräsentation in der ständischen Gesellschaft* (Münster: Rhema, 2005).

²⁵Weber, *Economy and Society*, 53 (italics in original). For Weber’s sociology of domination, see Wolfgang J. Mommsen, *The Age of Bureaucracy: Perspectives on the Political Sociology of Max Weber* (Oxford: Blackwell, 1974), 72–94. See also Achim Landwehr, “‘Normdurchsetzung’ in der Frühen Neuzeit? Kritik eines Begriffs,” *Zeitschrift für Geschichtswissenschaft* 48 (2000): 146–162.

²⁶Max Weber, “Politics as a Vocation,” in *From Max Weber: Essays in Sociology*, ed. Hans H. Gerth and Charles W. Mills (London: Kegan Paul, 1947), 77–128, 78.

referred to Weber's precise exposition, the underlying equation ("being political" = "having [political] power" = "making binding decisions") can be seen as the defining creed of traditional political history. Since 1857 and accordingly long before Weber, Johann Gustav Droysen explained in his famous lecture "Encyclopaedia and Methodology of History" that "the State . . . rules because it has the power. . . . That is the sum of all politics." And more than a century later, when social history seriously challenged traditional approaches, both German- and English-speaking historians still defined the subject of political history in terms of power and decision making: in 1983, John Garrard proposed to see "politics as an activity that focuses on, or that has relevance to, the taking of decisions," and he shared a strong emphasis on the "study of power" with Andreas Hillgruber who had defended a similar definition ten years before. This tradition of political history continues today.²⁷ So hence it follows that decision making seems to be the final purpose of political institutions and that all of their structures and procedures must be directed toward this end. If one applies this creed to parliaments as a special type of political institution, then parliamentary oratory must also be assessed according to its contribution to the assemblies' decisive power. To put it bluntly, parliamentary oratory is assessed by the extent to which "speaking" results in "doing."

There is no disputing the fact that the decisive power of the territorial Diets in the Holy Roman Empire dwindled in the seventeenth century. Two changes in Imperial law fortified this trend: in 1648, the Peace of Westphalia substantially strengthened the princely quasi-sovereignty, the *superioritas territorialis*, and six years later the estates were even obliged by the Imperial Diet to maintain their prince's fortresses and garrisons. And although the estates experienced, as some historians believe, a sort of renaissance in the eighteenth century, it is apparent that their most important power, the right of taxation, became heavily restricted or in some cases was lost completely.²⁸

²⁷Johann Gustav Droysen, "Enzyklopädie und Methodologie der Geschichte," in Droysen, *Historik. Vorlesungen über Enzyklopädie und Methodologie der Geschichte*, ed. Rudolf Hübner, 3rd ed. (Munich: Oldenbourg, 1958), 1–316, 259: "der Staat . . . herrscht, weil er die Macht hat. . . . Das ist die Summe aller Politik"; John Garrard, "Social History, Political History, and Political Science: The Study of Power," *Journal of Social History* 16 (1983): 105–121, 107; Andreas Hillgruber, "Politische Geschichte in moderner Sicht," *Historische Zeitschrift* 216 (1973): 529–552, 533. See the editors' "Einleitung" to the volume Hans-Christof Kraus and Thomas Nicklas, eds., *Geschichte der Politik. Alte und neue Wege* (Munich: Oldenbourg, 2007), 1–12, 1. See also the review of this publication by Barbara Stollberg-Rilinger in *H-Soz-u-Kult*, Nov. 22, 2007, <<http://hsozkult.geschichte.hu-berlin.de/rezensionen/2007-4-150>>.

²⁸On the causes for the decline of the estates' decisive power, see Carsten, *Princes and Parliaments*, 423–444; and Volker Press, "Vom Ständestaat zum Absolutismus. 50 Thesen," in *Ständetum und Staatsbildung in Brandenburg-Preussen. Ergebnisse einer internationalen Fachtagung*, ed. Peter Baumgart (Berlin: de Gruyter, 1983), 319–327; Ulrich Lange, "Der ständestaatliche Dualismus. Bemerkungen zu einem Problem der deutschen Verfassungsgeschichte," *Blätter für deutsche Landesgeschichte* 117 (1981): 311–334. For the estates' renaissance, see Press, "Thesen," 326; and Esser, "Ländstände im Alten Reich," 256. For the right of taxation, see Gerhard Oestreich, "Ständetum und Staatsbildung in Deutschland (1967)," in *Die geschichtlichen Grundlagen der modernen Volksvertretung. Die*

At the same time, just as the traditional political historian would expect, the territorial Diets “became more and more obsolete.”²⁹ In some principalities, such as Bavaria in 1669, the Diets were replaced by smaller standing committees; elsewhere they ceased to exist, as did the Brandenburg Diet in 1653.³⁰ With the Diets gone, parliamentary oratory lost its institutional frame and also vanished. But abolition was the exception, not the rule. In most territories, the princes kept on summoning Diets. Even in the lands where general Diets had ceased to exist, regional or district assemblies continued to play an important role. In the ecclesiastical territories, especially, Diets were held at regular intervals and in many territories annually.³¹ Every session involved a multitude of activities: delegates had to be chosen, mandates had to be issued, deliberations within and between the *curiae* (chambers) had to be managed and protocolled, votes had to be taken and, finally, negotiations had to be initiated with the princely officials before the Diet could come to a successful end. Most of these activities were based on speech and discourse, which is hardly surprising, given the deliberative nature of territorial Diets and the overall characteristics of premodern, face-to-face communities.³² But the question remains: given the very limited decisive power of the estates’ assemblies and assuming that contemporaries knew that all the talking would probably not result in “doing,” how can we explain the persistence of parliamentary oratory?

To answer this question, one has to get rid of the traditional idea that the power of political institutions lies solely in their ability to make binding

Entwicklung von den mittelalterlichen Korporationen zu den modernen Parlamenten, ed. Heinz Rausch, 2 vols., (Darmstadt: Wissenschaftliche Buchgesellschaft, 1974–1980), vol. II: *Reichsstände und Landstände* (1974), 47–62, 57–62.

²⁹Oestreich, “Ständetum und Staatsbildung,” 58: “Die Landtage . . . wurden mehr und mehr obsolet, wenn nicht ganz abgeschafft.”

³⁰For Brandenburg, see Peter Baumgart, “Zur Geschichte der kurmärkischen Stände im 17. und 18. Jahrhundert,” in *Ständische Vertretungen in Europa im 17. und 18. Jahrhundert*, ed. Dietrich Gerhard, 2nd ed. (Göttingen: Vandenhoeck & Ruprecht, 1974), 131–161. For Bavaria, see Carsten, *Princes and Parliaments*, 386–422; and Ferdinand Kramer, “Die bayerischen Landstände im Zeitalter des Absolutismus und der Aufklärung,” in *Der Bayerische Landtag*, ed. Ziegler, 97–118.

³¹For the importance of estates’ institutions in the local and district level in Prussia, see Wolfgang Neugebauer, *Politischer Wandel im Osten. Ost- und Westpreussen von den alten Ständen zum Konstitutionalismus* (Stuttgart: Steiner, 1992), 65–86. For the ecclesiastical principalities, see Ronald G. Asch, “Noble Corporations and Provincial Diets in the Ecclesiastical Principalities of the Holy Roman Empire ca. 1648–1802,” in *Realities of Representation: State Building in Early Modern Europe and European America*, ed. Maija Jansson (New York: Palgrave Macmillan, 2007), 93–111.

³²For the Electorate of Cologne as an example, see Ulf Brünnig, “Wege landständischer Entscheidungsfindung. Das Verfahren auf den Landtagen des rheinischen Erzstifts zur Zeit Clemens Augusts,” in *Im Wechselspiel der Kräfte. Politische Entwicklungen des 17. und 18. Jahrhunderts in Kurköln*, ed. Frank G. Zehnder (Cologne: DuMont, 1999), 161–184. See also Rudolf Schlögl, “Vergesellschaftung unter Anwesenden. Zur kommunikativen Form des Politischen in der vormodernen Stadt,” in *Interaktion und Herrschaft. Die Politik der frühneuzeitlichen Stadt*, ed. Rudolf Schlögl (Constance: UVK, 2004), 9–60.

decisions. John Stuart Mill, whose “Considerations on Representative Government” had a profound influence on contemporary political thought, took a step in the right direction when he questioned the priority of decision making and declared with respect to representative assemblies “that talking and discussion are their proper business, while *doing*, as the result of discussion, is the task not of a miscellaneous body, but of individuals specially trained to it.” In his view, the practice of talking is an end in itself and not subordinate to doing or decision making. If that is the case, parliaments should be judged according to their ability to enable proper talking. For Mill, a representative assembly has to be “a place of adverse discussion for all opinions relating to public matters, both great and small; and, along with this, to check by criticism, and eventually by withdrawing their support, those high public officers who really conduct the public business.” Here, the key terms are “adverse discussion” and “criticism,” for they indicate very clearly the type and style of talking Mill has in mind. It is the public and agonal dispute between different political interests, a form typical of modern mass-democracies.³³

In analyzing premodern parliamentary institutions, however, Mill’s useful proposal to distinguish “talking” from “doing” must be accompanied by an elimination of his presentist assumptions about the functions and criteria of talking. These assumptions are quite out of place in the study of late medieval and early modern parliamentary oratory. In contrast to modern representative bodies, medieval and early modern parliaments, including territorial Diets, cherished unity and harmony as their central values, and because they inhabited a political culture predicated on hierarchy, consent, and honor, it was nearly impossible to express dissent in public speech.³⁴ Instead, it has been shown that persuasion and legitimacy—normally perceived as the result of “adverse discussion” (Mill)—can also be produced by other means such as ceremony or ritual.³⁵ And under premodern conditions, even parliamentary oratory itself

³³John S. Mill, *Considerations on Representative Government* (London: Parker, Son, and Bourne, 1861), 105–6 (italics in original). The term “doing, as the result of discussion” is a bit vague. Mill didn’t want to say that the assembly decides and the individuals merely execute the decisions, because later in the same chapter he makes it very clear that the decision making is solely part of the “doing”: “popular assemblies attempt to do what they cannot do well—to govern *and* legislate,” 106 (my emphasis). See also Ernst Fraenkel, “Der Pluralismus als Strukturelement der freiheitlich-rechtsstaatlichen Demokratie,” in Ernst Fraenkel, *Deutschland und die westlichen Demokratien*, 6th ed. (Stuttgart: Kohlhammer, 1974), 197–221.

³⁴For the importance of public consent, see Gerd Althoff, “Colloquium familiare—colloquium secretum—colloquium publicum. Beratungen im politischen Leben des früheren Mittelalters,” in Gerd Althoff, *Spielregeln der Politik im Mittelalter. Kommunikation in Frieden und Fehde* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1997), 157–184. For possible forms of latently expressing dissent, see Gabriele Haug-Moritz, *Der Schmalkaldische Bund 1530–1541/42. Eine Studie zu den genossenschaftlichen Strukturelementen der politischen Ordnung des Heiligen Römischen Reiches Deutscher Nation* (Leinfelden-Echterdingen: DRW-Verlag, 2002), 246–256.

³⁵For the Middle Ages, see Thomas N. Bisson, “Celebration and Persuasion: Reflections on the Cultural Evolution of Medieval Consultation,” *Legislative Studies Quarterly* 7 (1982): 181–204; for

could have other purposes than discursive reasoning, “notably the creation and celebration of political community.”³⁶ Accordingly, the question arises, what were the specific functions of oratory in the context of representative institutions that possessed only very restricted authority to make binding decisions any more?

Representing through Talking: Two Examples

These questions about the practice of representation and the function of oratory refer to unresolved problems that derive from the application of modern concepts to medieval and early modern subjects. Because this transference is so often implicit or even unreflected, this article so far has tried to single out the modernistic assumptions regarding “representation” and “oratory,” to make them explicit, and to remove their ahistorical aspects. But to say that representation is not necessarily based on practices of authorization and accountability and that talking is not always aimed at decision making is obviously not enough. It is one thing to reject a presentist approach, quite another to replace it with something better.

Of course, it cannot be the aim of this article’s remaining segments to supply generally applicable answers. Nevertheless, because early modern representation so often lacked ground practices and because parliamentary oratory was so commonly a practice without function, it is reasonable to expect that there might be some connection or relationship between the two phenomena. To substantiate that guess, it will be helpful to examine the oratorical practice of a concrete example to get an expression about the function of “talking.” The sort of speeches and the persons who delivered them have to be identified. Moreover, the contents that were discussed and the rhetorical devices that were employed have to be analyzed.

As a case in point, let us examine the Landgraviate of Hesse-Kassel.³⁷ Its Diet consisted of two chambers, or curiae. The first was called “prelates and knights”

the early modern period, see Barbara Stollberg-Rilinger, “Herstellung und Darstellung politischer Einheit. Instrumentelle und symbolische Dimensionen politischer Repräsentation im 18. Jahrhundert,” in *Die Sinnlichkeit der Macht. Herrschaft und Repräsentation seit der Frühen Neuzeit*, ed. Jan Andres, Alexa Geisthövel, and Matthias Schwengelbeck (Frankfurt am Main: Campus, 2005), 73–92.

³⁶Peter Mack, *Elizabethan Rhetoric: Theory and Practice* (Cambridge: Cambridge University Press, 2002), 251. See also Johannes Helmuth, “Der europäische Humanismus und die Funktionen der Rhetorik,” in *Funktionen des Humanismus. Studien zum Nutzen des Neuen in der humanistischen Kultur*, ed. Thomas Maissen and Gerrit Walther (Göttingen: Wallstein, 2006), 18–48, 37.

³⁷On Hesse-Kassel in the so-called “Age of Absolutism,” see Hans Philippi, *Die Landgrafschaft Hessen-Kassel von 1648–1806* (Marburg: Elwert, 2007). On the territorial estates in general, see Günter Hollenberg, ed., *Hessen-Kasselische Landtagsabschiede 1649–1798* (Marburg: Elwert, 1989), especially the editor’s “Einleitung,” XIII–LXIX; Conrad W. Ledderhose, “Von der landschaftlichen Verfassung der Hessen-Casselischen Lande,” Conrad W. Ledderhose, *Kleine Schriften*, vol. I (Marburg: Akademische Buchhandlung, 1787), 1–176; Andreas Würzler, “Desideria und Landesordnungen. Kommunal- und landständischer Einfluß auf die fürstliche Gesetzgebung in Hessen-Kassel

(*Prälaten und Ritterschaft*). The only real prelate was the Commander of the Teutonic Order's Hessian Province, who held the highest rank in the chamber. The other "prelates" were delegates from three worldly institutions that were the legal successors of monasteries secularized during the Reformation and exercised those monasteries' right to sit in the first chamber.³⁸ These were, in descending order of rank, the chief directors of the noble convents Kaufungen and Wetter, the chief director of the four Hessian Hospitals, and the delegates from the University of Marburg. The knighthood was composed of noblemen who were immediate vassals of the landgrave. The titular president of the knights, the hereditary marshal of Hesse, presided over the noble curia and the whole Diet. The second chamber, called the *Landschaft*, comprised the privileged cities. Günter Hollenberg has distinguished three types of assemblies. Normally, all prelates, nobles, and two delegates from each town were summoned, but "full" Diets such as this were not held after 1666. The second type was much smaller in size: in a "narrow Diet," representation was based on the division of the territory into five districts (*Strombezirke*) that corresponded roughly to each of the five main watersheds in Hesse-Kassel.³⁹ Under this system, the nobility of each district elected two delegates, and the towns another two. In contrast, all of the prelates were still summoned to this so-called "narrow" Diet. A third form emerged in the eighteenth century, when attendance was reduced again to a maximum of three prelates, one noble, and one communal delegate from every district.⁴⁰

As was already mentioned, the period around 1650 was a turning point in the history of the territorial estates in general. This is also true for Hesse-Kassel: on the one hand, the incessant efforts of the princes and regents to extend their prerogatives had generated open conflict with the Hessian nobility since 1646. A compromise, in which a system of absolutist government was prevented by integrating *necessitas* into territorial law, ended the conflict in 1655. But it weakened the estates' right of taxation permanently.⁴¹ On the other hand, it was not

1650–1800," in *Gemeinde und Staat im alten Europa*, ed. Peter Blicke (Munich: Oldenbourg, 1998), 149–207; Günter Hollenberg, "Die hessen-kasselischen Landstände im 18. Jahrhundert," *Hessisches Jahrbuch für Landesgeschichte* 38 (1988): 1–22; Karl E. Demandt, "Die Hessischen Landstände nach dem 30jährigen Krieg," in *Ständische Vertretungen*, ed. Gerhard, 162–182.

³⁸See Hans Siebeck, *Die landständische Verfassung Hessens im sechzehnten Jahrhundert* (Kassel: Schönhoven, 1914).

³⁹This division was established around 1600 at first for military purposes. See Gunter Thies, *Territorialstaat und Landesverteidigung. Das Landesdefensionswerk in Hessen-Kassel unter Landgraf Moritz (1592–1627)* (Darmstadt: Hessische Historische Kommission, 1973).

⁴⁰The reality was far more complex than this general overview. For details, see Hollenberg, "Einleitung," in *Landtagsabschiede*, ed. Hollenberg, XXIX–XXX.

⁴¹See Armand Maruhn, *Necessitäres Regiment und fundamentalgesetzlicher Ausgleich. Der hessische Ständekonflikt 1646–1655* (Darmstadt: Hessische Historische Kommission, 2004). See also Armand Maruhn, "Duale Staatsbildung contra ständisches Landesbewusstsein. 1655 als Epochenjahr

before the third decade of the seventeenth century that the politically dominant knights began to think of themselves as a corporation. The idea, moreover, that it was this corporation's duty to look after the welfare of the entire territory emerged as a result of these conflicts over princely prerogative.⁴²

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The internal deliberations of the chambers are the first example concerning political oratory. Both curiae deliberated alone, in separate rooms and in secrecy. Apart from the delegates, only scribes were allowed to enter the room. This situation was essential to the chambers, and I will analyze it on the basis of the Diet of 1666, the last general Diet.⁴³ It was opened in traditional and solemn forms on January 10 by the Regent, Countess Hedwig Sophie in Kassel. With the hereditary marshal, five prelates, thirty-three knights, and fifty-one communal delegates, the estates were, as it is noted in the Diet's recess, present "in good numbers."⁴⁴

The next day the first chamber met and received the princely agenda. The usual method to establish the chamber's collective will was the so-called *Umfrage*, a ceremonious form of inquiry led by the president of the curia. It had two salient characteristics. First, the votes were cast according to the chamber's order of precedence, with the highest-ranking delegate voting first. In this way, every inquiry both expressed and reenacted the chamber's hierarchy of status. Second, there was no distinction between deliberation and voting. Accordingly, the term "vote"—used here to translate the technical term *Votum*—has to be understood here in its broader, early modern sense as a "formal expression of opinion by a member of a deliberative assembly on a matter under discussion."⁴⁵ Participating in such an inquiry therefore indicated that a delegate accepted not only the outcome but also his position within the hierarchy of rank.⁴⁶

der hessischen Landesgeschichte," *Zeitschrift des Vereins für Hessische Geschichte und Landeskunde* 109 (2004): 71–94. See the text of the agreement in Hollenberg, ed., *Landtagsabschiede*, 56–66.

⁴²Robert von Friedeburg, "Widerstandsrecht und Landespatritismus. Territorialstaatsbildung und Patriotenpflichten in den Auseinandersetzungen der niederhessischen Stände mit Landgräfin Amelie Elisabeth und Landgraf Wilhelm VI. von Hessen-Kassel 1647–1653," in *Wissen, Gewissen und Wissenschaft im Widerstandsrecht (16.–18. Jahrhundert)*, ed. Angela De Benedictis and Karl-Heinz Lingens (Frankfurt am Main: Klostermann, 2003), 267–327, 319.

⁴³See Hollenberg, ed., *Landtagsabschiede*, 89–96. The first chamber's minutes of the 1666 Diet are in Hessisches Staatsarchiv Marburg (hereafter cited as HStAM) 73 no. 62, [no foliation], 24 pages, beginning with "Actum Cassel, auf dem Landtage des 11. t. Jan: 1666."

⁴⁴Hollenberg, ed., *Landtagsabschiede*, 90: "in gutter Anzahl."

⁴⁵"Vote," *The Oxford English Dictionary*, 2nd ed., 20 vols. (Oxford: Clarendon, 1989), vol. XIX, 767–768, 767.

⁴⁶See Tim Neu, "Zeremonielle Verfahren. Zur Funktionalität vormoderner politisch-administrativer Prozesse am Beispiel des Landtags im Fürstbistum Münster," in *Im Schatten der Macht*.

In this confidential situation, shielded from the gaze of communal delegates, alert princely ministers, and the courtly public, it was possible to debate controversially and to come to substantial decisions—or so one would expect. But that was not really the case. The first item on the princely agenda concerned the monthly contribution for the standing army. Since 1650 it had been fixed at 2,500 *Reichstaler* per month as the base unit, but it was doubled five years later. The regent demanded this sum be doubled again in 1666. All in all eleven votes were cast on this score; five individual ones from the “prelates” and six collective proposals, one from the knights of each of the five districts, and one from the knighthood of the principality of Hersfeld. For the highest-ranking and thus first-voting prelate, the chief director of the noble convents, Rab Alhard von Dersch, it was a clear case: “The doubling of the monthly contribution cannot be refused.” But the younger Chief Director Georg von Schwertzell partly disagreed with him. It was also his opinion that “it will scarcely be possible to refuse an increase of the monthly contribution,” but instead of the 10,000 *Reichstaler* demanded, he proposed “to grant the simple contribution three times so that the sum total would add up to 7,500 *Reichstaler*.” The deliberations described so far fill only two of fourteen pages of protocol. And yet no new proposals were advanced. In principle all delegates agreed with von Schwertzell. But only two of them made their agreement explicit. One was Georg Milchling von und zu Schönstadt, the chief director of the Hessian Hospitals, who “does not know anything further to say in addition to what Chief Director Schwertzell said and conforms to him.”⁴⁷

The other seven opinion-expressing votes, especially the one cast by the university’s delegate, Professor Johann Hartmann Kornmann, are far more extensive. Although being in complete accordance with von Schwertzell’s proposal, all seven voters embedded their approval in a more or less extensive explanation.⁴⁸ They told a story arranged in three acts, starting with an approval in principle: “Concerning the first question, every loyal, prudent, and reasonable

Kommunikationskulturen in Politik und Verwaltung 1600–1950, ed. Stefan Haas and Mark Hengerer (Frankfurt am Main: Campus, 2008), 23–53.

⁴⁷HStAM 73 no. 62, 2: “die duplirung der monatlichen contribution werde . . . allerdings nicht wohl können abgeschlagen warden”; HStAM 73 no. 62, 2–3: “ersterung der bisherigen monatlichen Zulage allerdings abzuschlagen, sich nicht wird wohl thun lassen”; “etwa die einfache Contribution uf eine gewisse Zeit dreyfach zuverwilligen, alß, daß sich die gantze Summe auff 7500. Rhr belauffen mögte”; HStAM 73 no. 62, 3: “wiße er weiter nichts zuerinnern, alß von dem Herrn Obervorsteher Schwertzel geschehen, Conformirte sich deßwegen mit demselben.”

⁴⁸Mack, *Elizabethan Rhetoric*, 250, showed that the members of Parliament in the Elizabethan era “often began by summarizing the arguments of a previous speaker and replying to each point in turn, in the manner of university disputations” (my emphasis). For the Diet of Hesse-Kassel, a similar academic influence can be traced because Kornmann’s vote is structured exactly like a disputation. Of course, that is no surprise, because he actually was a university man, but it was also not uncommon for his noble colleagues to arrange their speeches more or less like that.

patriot can do nothing else than answer it with 'yes,' because first an increased contribution is indeed extremely necessary because of the growing danger to the fatherland." After that, certain reservations follow: "Because it is commonly known that the fatherland is completely poor and moneyless, the impossibility of paying the demanded contribution is more than obvious." Finally, a compromise is offered: "Concerning this purpose the simple contribution may be granted three times per month."⁴⁹

Comparing the statements contained in the votes, one can identify two distinctive characteristics that they all share. First, all of them basically display the same narrative structure. To make clear how similar the stories really are, the quotations cited above have been compiled from three different statements. Of course, the "stories" are not identical in a strict sense, but differ in length, eloquence, and rhetorical detail. For example, only the nobility of the Schwalm district requested that "if there were some of the territory's citizens who want to do military service and are found to be qualified, they should be employed before others."⁵⁰ But in the end, these were minor additions to a basic narrative framework that all delegates used: a story about the estates trying responsibly to reconcile the prince's demands with the needs of the territory and its people.

The second feature is to be found in the constant and stereotyped references to the Land, the "Fatherland" (*Vaterland*), and to the "countryman" (*Landmann*). Words that invoke these concepts can be found in virtually every vote and must be ranked as the cornerstones of the estates' own oratorical style.⁵¹ What is noteworthy is the abstract nature of the concepts. Normally, they occur without any

⁴⁹HStAM 73 no. 62, 4: "die erste frage betreffend, kann dieselbe von einem jeden treuen umsichtigen und verständigen Patriot anders nicht, alß mit ja beantwortet werden, denn erstlich ist eine solche mehrere defensions Verfassung allerdings und höchstnötig, wegen . . . dahero auch dem Vaterlandt selbst zuwachsener nicht geringer gefahr"; HStAM 73 no. 62, 24: "weilen aber notorium daß unser Vatterland gantz ohnbemittelt u[nd] geldloß ist, und daher die ohnmöglichkeit solche forderung monatlich zu entrichten genugsamb vor augen zustehen"; HStAM 73 no. 62, 21: "daß nemlich zu solchem behuff daß triplum des Monathlichen simpli erleget werden mögte."

⁵⁰HStAM 73 no. 62, 23: "wann einige von den Landtskindern sein würden, so sich im Kriegs dienste gebrauchen lassen wollten, auch qualifizirt befunden, daßselbige vor anderen employret und gebraucht werden mögten."

⁵¹Recently, Robert von Friedeburg has thoroughly examined the use of the notions of *Vaterland*, *patria*, and *Patrioten* during the conflict between the princely family and the nobility in the first half of the seventeenth century. See Friedeburg, "Widerstandsrecht," and Robert von Friedeburg, "The Making of Patriots: Love of Fatherland and Negotiating Monarchy in Seventeenth-Century Germany," *Journal of Modern History* 77 (2005): 881–916. See also Raingard Esser, "Landstände und Landesherrschaft. Zwischen 'status provincialis' und 'superioritas territorialis': Landständisches Selbstverständnis in deutschen Territorien des 17. Jahrhunderts," *Zeitschrift für Neuere Rechtsgeschichte* 23 (2001): 177–194. The present article has a different focus: the analysis begins after 1655, the year the conflict was settled, and does not deal, like Friedeburg does, with documents from a lawsuit but with parliamentary oratory. The words most often used in this context were *Vaterland*, *Land*, and *Landmann*. Instead of *Landmann* sometimes the words *Landeskinder*, *Untertanen*, and *Leute im Land* occurred. See HStAM 73 no. 62.

specifying attribute: the Hessian Land, for example, is almost never spoken of, nor is the countryman in Marburg. Moreover Landmann, being a collective singular and hence more abstract, is in most cases preferred to plural forms such as *Landeskinder* (literally “children of the land”) or *Leute im Land* (literally “people in the land”). And what is more, the nobles understood the Land as an independent entity separable from the prince. At the beginning of their statement, for instance, it is declared by the nobility of the Fulda district “that, to begin with, they most humbly thank His Serene Highness for the most gracious and paternal [*landesväterliche*] provision proved and borne here below for the fatherland.”⁵² Of course, every noble delegate knew that the prince, as *Landesvater* (“Father of the Land”), had a very close connection to the Land, but nevertheless they drew the picture of two different entities, and the prince did not appear so much as the owner of the Land, but rather as someone who had obligations to it, more like a guardian.⁵³

The internal deliberations of the first chamber, one can now infer, functioned not primarily as a means to enable adverse discussion resulting in binding decisions. The delegates did not argue at all. Instead, their votes were strikingly similar in style and content; all of them not only agreed to von Schwertzell’s proposal, but they also told the same “story” and invoked the same abstract concepts. In general it seems that the principal function of this specific form of “talking” was to produce and strengthen the very institution “noble curia,” its self-image, and coherence through repeated and stereotypical verbal articulation, because institutions such as a Diet and its chambers heavily rely on “the continued collective intentionality of the users, [and therefore] each use of the institution is a renewed expression of the commitment of the users to the institution.”⁵⁴ And although it may seem strange at first that during an

⁵²HStAM 73 no. 62, 18: “alß thuen sie vors erste I[hrrer] F[ürstlichen] D[urchlaucht] vor die hier-
under vor das Vatterland erwiesene u[nd] getragene g[nädigste] Landsväterliche Vorsorge unter-
th[änigst] danck sagen.” For the concept of Landesvater, see Paul Münch, “Der Landesvater.
Historische Anmerkungen zu einem Topos der deutschen politischen Kultur,” *Journal für Geschichte*
5 (1986): 36–43; and Volker Seresee, *Politische Normen in Kleve-Mark während des 17. Jahrhunderts.*
Argumentationsgeschichte und herrschaftstheoretische Zugänge zur politischen Kultur der frühen Neuzeit
(Epfendorf am Neckar: Bibliotheca-Academica, 2005), 186–191.

⁵³See Robert von Friedeburg, “Why Did Seventeenth Century Estates Address the Jurisdictions
of Their Princes as Fatherlands? War, Territorial Absolutism, and the Duties of Patriots in Seven-
teenth Century German Political Discourse,” in *Orthodoxies and Heterodoxies in Early Modern
German Culture: Order and Creativity 1500–1750*, ed. Randolph C. Head and Daniel
E. Christensen (Leiden: Brill, 2007), 169–194, here 188. This is similar to how the relationship
between the *Kaiser* and the *Reich* was conceptualized since the late Middle Ages. See Ernst Schubert,
König und Reich. Studien zur spätmittelalterlichen deutschen Verfassungsgeschichte (Göttingen: Vanden-
hoeck & Ruprecht, 1979).

⁵⁴Searle, *Construction*, 57. That institutions are dependent on their constant (re-)actualization in
social acts is widely accepted. See Karl-Siegbert Rehberg, “Institutionen als symbolische Ordnun-
gen. Leitfragen und Grundkategorien zur Theorie und Analyse institutioneller Mechanismen,” in
Die Eigenart der Institutionen. Zum Profil politischer Institutionentheorie, ed. Gerhard Göhler (Baden-
Baden: Nomos, 1994), 47–84.

internal meeting the same things were said over and over again, for the estates, who had no regular staff, no central archive, and no building as a permanent meeting place, this stereotyped oratory was probably their most powerful tool to express and stabilize the institution.

But institutional self-preservation was not the only function of the “talking” in question. Parliamentary oratory also reinforced the estates’ claim to represent the whole territory. That is revealed by a look at two features that make especially prominent parts of the expressed self-image. On the one hand the estates emphasized over and over how much they participated in the political process together with the prince and that they had “deliberated and considered the obvious danger and the critical times sufficiently.” On the other hand they presented themselves as the ones who, if necessary, represented the interests of the territory against the prince, for example when they demanded “that the augmented armed forces may not be used to attack anyone, but only to defend the fatherland.”⁵⁵ The repeated use of this narrative structure not only sustained the institutional strength of the Diet, but also claimed an intrinsic connection between this particular institution and the whole territory. And because this is exactly the type of connection “representation” is about, this article’s initial guess that the function of “talking” in the context of territorial Diets was to express “representation” is supported by the narrative structure of the statements. But is that also valid for the second characteristic, the constant reference to “fatherland” or “countryman”? Or could such abstract concepts, as it was argued, only be invoked “as vacant evasions or as platitudes”?⁵⁶

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Skipping ahead to the second example, the orations delivered at inaugural ceremonies to the Diet of 1715 will be analyzed to shed light on the functions of abstract concepts. Unlike the deliberations of the noble chamber, the inauguration was not an internal and secret affair; on the contrary, it was structured by the presence of the court and the landgrave. Moreover, the inauguration of the Diet was a ceremony, a precisely standardized sequence of actions that symbolized sociopolitical order and made it visible.⁵⁷

⁵⁵HStAM 73 no. 62, 18: “vor augen schwebende gefahr und gefährliche zeiten genugsamb überlegt u[nd] erwogen”; HStAM 73 no. 62, 9: “daß die mehrere kriegs verfaßung ahn und vor sich selbst zu keines Menschen offension, sondern alleinig zur defension des Vatterlands angesehen sein mögte.”

⁵⁶Seresse, *Politische Normen*, 118: “als inhaltsleere Ausweichformel oder als Allgemeinplatz.” See also Kummer, *Landstände und Landschaftsverordnung*, 33.

⁵⁷For the context and agenda of the Diet, see Hollenberg, ed., *Landtagsabschiede*, 216–222. The research on ceremony is immense now. For a definition and a review of the latest research, see Barbara Stollberg-Rilinger, “Hofzeremoniell als Zeichensystem. Zum Stand der Forschung,” in *Musik der Macht—Macht der Musik. Die Musik an den sächsisch-albertinischen Herzogshöfen Weißenfels, Zeitz und Merseburg*, ed. Juliane Riepe (Schneverdingen: Verlag der Musikalienhandlung Wagner,

Two orations were at the center of this ceremony. An account of the Diet's generic sequence of events, found in the archives of the estates, distinguishes twelve steps. At first, the princely councillors and the estates took up position inside a hall; after that the landgrave, accompanied by his court, entered the hall and sat on his throne. "On the Prince's left side," the account continues, "the chancellor stands next to him and delivers the proposition by heart, if it is short. If it is detailed, he gives a short address and the Secretary of Fiefs reads the proposition out." After that "the hereditary marshal or his deputy steps forward toward the prince und speaks in the name of the estates according to the tradition." At the end of the ceremony, all delegates were allowed to kiss the prince's hand.⁵⁸

In the early modern period, it was generally understood that carelessness in the conduct of ceremonial practice could seriously weaken one's rights and liberties, and because of this the description and documentation of virtually every ceremonial detail was of utmost importance. And although orations were common elements of ceremonial acts of all kinds, their manuscripts were rarely preserved because, according to Georg Braungart, such orations were regarded as "ephemeral."⁵⁹ In the case of Hesse-Kassel, this is true only for the speech of the hereditary marshal; the proposition, on the other hand, was always put in writing, because the chambers communicated among themselves and with the prince mainly in writing and, accordingly, needed the exact wording to formulate their documents. Not without reason, the protocols of the Diet's proceedings recorded that the hereditary marshal, at the end of his speech, "requests thereupon a copy of the proposition."⁶⁰

Fortunately, both speeches, the hereditary marshal's orations and the prince's proposition, are preserved in the archives for the Diet of 1715. The reason for

2003), 11–22. For the early modern discourse on ceremony, see Miloš Vec, *Zeremonialwissenschaft im Fürstenstaat. Studien zur juristischen und politischen Theorie absolutistischer Herrschaftsrepräsentation* (Frankfurt am Main: Klostermann, 1998).

⁵⁸„Wann bishero LandtCommunicationsTage, alhier in der Residenz Statt Cassel gehalten worden, und der Landes Herr zugegen gewesen, ist es gemeinlich folgender maßen zugegangen" (hereafter cited as "Description"), HStAM 73 no. 84, fols. 62^r–64^r (fols 62^v–63^v): "Auf dero linken Seite neben dem LandesHerrn stehet der Cantzler und thut die proposition, wenn sie kurz ist memoriter, wenn sie aber weidläuffig, so lässt er Sie nach einer kurtzen anrede . . . durch den Lehen Secretarium ablesen"; "Description," HStAM 73 no. 84, fol. 63^r: "tritt der Erbmarschall oder dessen Vicarii näher vor den LandesHerren, und führt nahmens sämbtlicher Stände das Wort nach der convenienz." This is a very common pattern. In most of the Empire's territories, the inauguration ceremonies were structured that way. See Moser, *Von der Teutschen Reichs-Stände Landen*, 1501–4. For an analysis of a Diet's inauguration ceremony, see Tim Neu, "Inszenieren und Beschließen. Symbolisierungs- und Entscheidungsleistungen der Landtage im Fürstbistum Münster," *Westfälische Forschungen* 57 (2007): 257–284, 263–271.

⁵⁹Georg Braungart, *Hofberedsamkeit. Studien zur Praxis höfisch-politischen Rede im deutschen Territorialabsolutismus* (Tübingen: Niemeyer, 1988), 8: "ephemerer Vorgang."

⁶⁰"Description," HStAM 73 no. 84, fol. 63^r: "verlanget so denn copiam der proposition."

summoning a Diet in that year was the marriage between the Hessian crown prince Frederick and Ulrike Eleonore, the hereditary princess of Sweden, and in particular the extraordinary costs generated by the nuptial celebrations. Therefore the proposition called the estates “to assist with a considerable and for this purpose adequate voluntary tax.”⁶¹ Because both the hereditary marshal’s speech and the proposition survive, we are able to compare the different ways they referred to abstract concepts and reveal the underlying rationality of parliamentary oratory. To begin with the marshal’s speech, one notices immediately that it was very short, covering just two pages in the records. Contemporary experts on court protocol, such as Veit Ludwig von Seckendorff, urged brevity for such orations: “the speech would be made very brief,” he recommended, “and be finished soon.”⁶² Its brevity notwithstanding, however, the general narrative structure that characterized voting within the noble chamber is evident here as well: first, the marshal congratulates the prince on his son’s marriage and acknowledges in principal the estates’ duty to contribute with a tax, then emphasizes the burdens of the people and concludes with the expectation that the prince will consider this misery on behalf of his subjects.

What is most notable about the speech is that it refers repeatedly to the concepts “fatherland” and “subjects” (*Untertanen*)—and this *without* making any concrete statement about the requested tax. Two examples may suffice: the estates hoped “that the Most High may bless the marriage and that the fatherland may enjoy more and more peace and reach happiness.” Furthermore, “the loyal prelates, knights, and cities have the most devoted confidence in His Serene Highness that He will take the current misery of His mostly exhausted subjects to heart as He has taken care of His lands’ conservation during His whole reign.”⁶³ In only two pages of text, the Diet’s director managed to work in no fewer than four references to these concepts. It is the same rhetorical device as in the votes, but with a slight modification: in the internal deliberations the predominant word referring to the people in general was “countryman,” here

⁶¹“Proposition, welche d[er] H[err] Cantzler Goeddeus d[en] 13. Novembris. 1715 zu Caßel in der geheimbden Rathsstuben denen H[errn] von Praelaten- Ritter und Landschafft Deputirten vorgetragen” (hereafter cited as “Proposition”), HStAM 73 no. 78, fols. 93^r-94^v (fol. 94^v): “mit einer erklecklichen und zu diesen Behuff anreicheriger freywilligen Steuer an die Handt zu gehen.”

⁶²Veit L. von Seckendorff, *Teutsche Reden und Entwurff von dem allgemeinen oder natürlichen Recht nach Anleitung der Bücher Hugo Grotius*, with an afterword (hereafter “Nachwort”) by Miloš Vec (Leipzig: Gleditsch, 1691; repr. Tübingen: Niemeyer, 2006), 49: “daß die Rede gar kurz zu begreifen / und bald aus seyn würde.”

⁶³“H[errn] Erbmarschallen Beantwortung auf vorstehende proposition” (hereafter cited as “Marshal’s speech,” HStAM 73 no. 78, fols. 95^r-96^v (fol. 95^r): “daß die . . . hohe Vermählung der allerhöchste segnen und das liebe Vaterland ie mehr und mehr ruhen und glückseligkeit erlangen . . . möge”; and “Marshal’s speech,” HStAM 73 no. 78, fol. 95^v: “tragen zu Ihro hochfürst[licher] Durch[laucht] getreue Praelaten, Ritter und Landschafft das unterthänigste Vertrauen, dieselbe werden, wie Sie Zeit dero gantzen Regierung vor dero Landten Conservation ihre meiste Sorge getragen, also auch die ietziige Noth ihrer gutentheils erschöpften Unterthanen Sich weiter zu hertzen gehen lassen.”

it is “subjects.” That is probably to be understood as a concession to the presence of the prince.

A comparison with the chancellor’s argumentation reveals the specific character of the estates’ parliamentary oratory. In the proposition, “subjects” are mentioned only once and the concept of “fatherland” is not invoked at all. Instead the prince wanted the estates to understand “that this noble marriage contributes to the exceptional luster and respect of the princely House of Hesse and that the necessary granting of funds will be appreciated as a sign of their most obedient patriotic devotion.”⁶⁴ The central concepts here, as in other cases, are “Father of the Land” and the “House of Hesse.” As Landesvater, the prince demands “patriotic devotion,” which means nothing less than regarding his interests as identical with those of the territory as a whole or, at least, to declare his exclusive right to determine those interests.⁶⁵ Because this is the same claim of identity representation also held by the estates, this point is very conflict-laden and it is not without reason that the fierce conflict between the princely dynasty and the estates in the first half of the seventeenth century was largely a dispute over the right to speak legitimately in the name of the “fatherland.”⁶⁶ And the landgraves—in contrast to the estates, who imagined the prince as a “guardian” and stressed his responsibilities toward the Land—saw themselves as “owners” emphasizing their rights. Thus, Landgrave Carl claimed in the recess of the last Diet before 1715 that he acted “for the best of *his* territories.”⁶⁷

In addition to the emphasis on possession, there is another revealing detail: Landgrave Carl speaks of territories in the plural, whereas the estates almost always referred to the one “Fatherland.” That made sense because like in most early modern composite states, the princely house indeed reigned over more territories than just the Hessian Landgraviate. Carl also ruled the county of Schaumburg, for example.⁶⁸ Here, the second concept used by the court

⁶⁴“Proposition,” HStAM 73 no. 78, fol. 94^r: “wohl erkennen werden, daß diese Vornehme Heyraths Alliance zum sonderbahren Lustre und aufersehen des Fürst[lichen] Haußes Hessen gereicht, und die dazu geschehende Verwilligung als ein Zeichen ihrer gehorsambsten patriotischen devotion.”

⁶⁵This was done by defining the princely superioritas territorialis as a *summa potestas* just like the Bodinian *maiestas* (“sovereignty”). See Gierke, *Das deutsche Genossenschaftsrecht*, vol. IV, 223–233; and Dietmar Willoweit, *Rechtsgrundlagen der Territorialgewalt. Landesobrigkeit, Herrschaftsrechte und Territorium in der Rechtswissenschaft der Neuzeit* (Cologne: Böhlau, 1975), 121–172.

⁶⁶See Friedeburg, “The Making of Patriots,” 911; Friedeburg, “Widerstandsrecht,” 323–5. For an assessment of the category *Ständekonflikt*, see Gabriele Haug-Moritz, *Württembergischer Ständekonflikt und deutscher Dualismus. Ein Beitrag zur Geschichte des Reichsverbands in der Mitte des 18. Jahrhunderts* (Stuttgart: Kohlhammer, 1992), 5–42.

⁶⁷Landtagsabschied (Diet’s recess) 1704, in Hollenberg, ed., *Landtagsabschiede*, 203–211, 203: “zum Besten ihrer Landt” (my emphasis). Similar phrases are to be found in almost all recesses.

⁶⁸For the concept of “composite states,” see Helmut G. Koenigsberger, “*Dominium Regale* or *Dominium Politicum et Regale*: Monarchies and Parliaments in Early Modern Europe,” Helmut G. Koenigsberger, *Politicians and Virtuosi: Essays in Early Modern History* (London: Hambledon, 1986), 1–25. The concept was used in Michael Kaiser and Michael Rohrschneider, eds., *Membra*

becomes relevant, because the notion of the princely “House” (*Haus*) constituted a layer of authority, speaking in spatial terms, “above” the territories. Therefore, the “House,” as the more general concept, incorporated, so to speak, several different “fatherlands” and could be invoked in order to transcend rhetorically the interests of particular territories.⁶⁹ The Diet’s main topic in 1715 gives a good example. To attain the royal consent to the marriage, the landgrave demanded that the estates of Hesse-Kassel fund “expensive legations” to Charles XII, the king of Sweden, and other members of the royal family.⁷⁰ After Hessian Crown Prince Frederick became king of Sweden in 1720 and landgrave in 1730, enormous sums of money were transferred from Kassel to Stockholm year after year.⁷¹ The Diet of 1724 had to deal with a comparable situation when Landgrave Carl called for funds to secure for his house the right of succession in the county of Hanau-Münzenberg.⁷² In both cases, the money raised in Hesse-Kassel was used in attempts to bring new territories outside the landgraviate under the reign of the princely family. And it is certainly not without reason that in both cases, the language used to justify these expenditures placed the princely “House” above the Land: the recess from 1724 states that the succession in Hanau-Münzenberg, among other things, is of great interest “not only for the luster and the prosperity of the princely House, but also for the peace of the whole Land.”⁷³ Two concepts were at the prince’s disposal, the Land and the “House.” At the estates’ disposal, however, was only the Land.

The comparison between the different ways the ideas of “fatherland,” “subjects,” or “countryman” were employed by the princely ministers and the estates reveals the underlying rationality of using such abstract concepts in speeches and texts. It is true that they are more or less “empty” of content due to their abstractness. Accordingly, orators who used them frequently were often accused of indulging in empty and evasive talk.⁷⁴ But such criticism

Unius Capitis. Studien zu Herrschaftsauffassungen und Regierungspraxis in Kurbrandenburg (1640–1688) (Berlin: Duncker & Humblot, 2005). But the Diet of Hesse-Kassel also “represented” more than just one territory, namely, beside Lower and parts of Upper Hesse, the county of Ziegenhain, the principality of Hersfeld, parts of the county of Katzenelnbogen and Schmalkalden. See Hollenberg, “Einleitung,” in *Landtagsabschiede*, ed. Hollenberg, XXII.

⁶⁹That “house” is the more abstract category is not necessary. On the contrary, during the Hessian Ständekampf the nobility claimed to defend the unity of the whole Hessian “Fatherland” against the particular princely “Houses” of Darmstadt and Kassel. See Maruhn, *Necessitäres Regiment*, 97–127.

⁷⁰“Proposition,” HStAM 73 no. 78, fol. 94r: “kostbare Schickungen.”

⁷¹Wolf von Both and Hans Vogel, *Landgraf Wilhelm VIII. von Hessen-Kassel. Ein Fürst der Rokokozeit* (Munich: Deutscher Kunstverlag, 1964), 17.

⁷²See Hollenberg, ed., *Landtagsabschiede*, 248–258; Both and Vogel, *Landgraf Wilhelm VIII.*, 69–70.

⁷³Landtagsabschied 1724, in Hollenberg, ed., *Landtagsabschiede*, 248–258, 251: “nicht nur des fürstlichen Hauses lustre und Aufnehmen, sondern auch des ganzen Landes Ruhestand.”

⁷⁴See, for example, Kummer, *Landstände und Landschaftsverordnung*, 33; and Seresse, *Politische Normen*, 118 and passim.

missed the point. Referring to abstractions such as *Vaterland* and *Landmann* was not primarily about concrete matters of policy; it was not, in other words, about “doing.” Rather, it was about legitimacy. To be sure, both parties had specific material interests, in this case the acquisition of new principalities on the prince’s side and the prevention of high or new taxes on the estates’ side. But each party also had to present these stakes as legitimate, and the orators therefore made great efforts to mix concrete interests with abstract categories that carried powerful legitimizing value. Whoever could attach his requests to the “fatherland” wielded a powerful tool to push them through. As Robert von Friedeburg has shown for the Hessian case, the reference to the *Vaterland* “turned out to be a possibility to transfer the corporate rights of the estates, which were qualified by the princely adversary increasingly as falling under private law, into the sphere of power claims subject to public law instead.”⁷⁵ And as the evidence presented here has shown, after the conflict was settled in 1655, the estates continued to claim to speak in the name of the Land for exactly the same purpose: to draw on the legitimacy that this idea conferred.

But not everyone could use this oratorical device. A peasant, for instance, would have made a fool of himself if he had dared to identify his needs with the public interest; prince and estates alike would, at best, have laughed at him.⁷⁶ Obviously, a certain necessary requirement had to be fulfilled to be able to “talk” in the way described. The person in question had to be considered a legitimate representative of the abstract entity to which he referred, because counting one’s particular interests as general is exactly what the fiction of political representation was (and is) all about. In the case of the estates, speaking effectively in the name of the Land presupposes that they were regarded as its true representatives. Moreover, because representation, as a fiction, requires constant re-actualization, every oratorical act that invoked such claims supported and reaffirmed the estates’ underlying claim to “be” the Land.

Conclusion

Let us return, finally, to the initial question of this article: what were the functions of parliamentary oratory in the territorial Diets? In political science and the traditional history of parliaments, the implicit model for political speeches is

⁷⁵Friedeburg, “Widerstandsrecht,” 323: “sich als Möglichkeit erwies, vom fürstlichen Gegner zunehmend als ‘privatrechtlich’ qualifizierte korporative Besitzstände der Stände stattdessen in die Sphäre öffentlich-rechtlicher Machtansprüche zu überführen.” See also Friedeburg, “The Making of Patriots,” 904–914.

⁷⁶This is by far no general claim because in some territories, such as East Frisia, peasants could legitimately also identify their interests with the interests of the Land. The village housefathers were able to do so because they actually were members of the *Hausmannstand*, one of the territorial estates of East Frisia. See David M. Luebke, “Signatures and Political Culture in Eighteenth-Century Germany,” *Journal of Modern History* 76 (2004): 497–530.

usually the deliberative sort, by means of which a speaker tries to persuade the audience through argument. Analyzed from this perspective, the form of oratory specific to the territorial estates, such as the ceremonial order of the Diet as a whole, was dismissed as irrelevant and empty pretense, simply because it did not contribute much to “real” decisions. Thus Georg Braungart judged that speeches at territorial Diets were “often an empty ceremony that preserves the outer appearance but corresponds neither to the political reality nor to the true intentions.”⁷⁷ But the analysis presented here of binding statements delivered during the noble chamber’s internal deliberations and of the hereditary marshal’s inaugural speeches clearly shows that all these speeches, instead of aiming at adversarial discussion and decision making, belonged to a very different kind of speech—that is, early modern ceremonial oratory. This form occurred in almost every early modern context and was, according to Miloš Vec, constituted by “a highly formalized character in connection with political or courtly representation.” With respect to the special case of parliaments, Thomas Bisson argued some twenty years ago that because the “ceremonial representation of society was a constant and variable feature” of such assemblies, they “were often the scene of a political rhetoric consistent with the ceremony and designed to elicit undebated assent.” And although he was concerned with medieval assemblies, the intrinsic connection between parliamentary oratory and political representation could also be proved for the Elizabethan Parliament, the French *États Généraux*, and the German *Reichstag*.⁷⁸

Inspired by these scholars’ work, this article has looked at a much neglected representative institution, the territorial Diets in the Holy Roman Empire, and examined how the connection with political representation was established and maintained through the oratorical practice of the estates. It was possible to identify two rhetorical structures that characterized the speeches and statements: on the one hand, a common narrative structure that presented the estates as struggling to reconcile the princely demands with the needs of the territory and its people; and, on the other hand, the repeated reference to abstract political concepts such as “fatherland” and “countryman.” At first glance, both devices had functions that were not directly linked with representation. The

⁷⁷Braungart, *Hofberedsamkeit*, 130: “oft nur ein leeres Zeremoniell, das den äußeren Schein wahr, aber weder der (innen-)politischen Realität noch den wahren Intentionen entsprechen muß.” But see also Georg Braungart, “Die höfische Rede im zeremoniellen Ablauf. Fremdkörper oder Kern?,” in *Zeremoniell als höfische Ästhetik in Spätmittelalter und früher Neuzeit*, Tübingen, ed. Jörg J. Berns and Thomas Rahn (Tübingen: Niemeyer, 1995), 198–208, where he convincingly describes the functions of the courtly speech in general.

⁷⁸Miloš Vec, “Nachwort,” in Seckendorff, *Teutsche Reden*, 1*–85*, 47*: “hoch formalisierten Charakter in Verbindung mit staatlicher oder höfischer Repräsentation”; Bisson, “Celebration and Persuasion,” 184 and 183. See Mack, *Elizabethan Rhetoric*, 215–252; and Johannes Helmrath and Jörg Feuchter, eds., *Vormoderne Parlamentsrhetorik. Reden und Kommunikation auf europäischen Repräsentativversammlungen des 14. bis 17. Jahrhunderts* (Frankfurt am Main: Campus, 2008).

“storytelling” symbolized and strengthened the institutional structure of the noble chamber, while invoking the Land added legitimacy to the estates’ interests. A closer look at these rhetorical devices revealed that their efficacy was based on the fact that the estates were counted as the ones representing the Land. But because the “fact” of representation is actually a “fiction” that has to be constantly actualized and expressed in social practices, the speeches and voting statements also functioned latently as means of establishing and maintaining the fiction of representation and thus securing the estates’ right of political participation. To be sure, “talking” enabled deliberation and decision making as well, but it also functioned at least partly, and in some cases primarily, as a means for “representing through talking.” In short, the estates talked representation into existence. The historically important and powerful idea that the estates “were” the Land resulted from a social practice, by which they continually made and remade the Land.

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