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Massimo Faggioli, Alberto Melloni (eds.)

REPRÆSENTATIO

Mapping a Keyword for Churches and Governance

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ALAN WATSON

Repraesentatio in classical Latin

Representation was a concept well-known to the Romans and Roman law. But I have a difficulty for this paper. For long the word *repraesentatio* was not used with the meaning appropriate to this meeting; the use of one person or thing to take the place of another person or thing or of one or a few reasons or things to take the place of many. Then I have a second difficulty: the great *Thesaurus Linguae Latinae* has not yet reached the letter «r» and there may be examples I have missed.

But first I should say something briefly about representation where the word is not used. The emphasis must be on Roman law where we find the words *cognitor* and *procurator ad litem* to mean someone who represents another in court. Little detail is needed for the purposes of this meeting. In both cases the principal drops out of the law suit and the *cognitor* or *procurator* takes his place¹. The *cognitio* process fell out of use rather early, but Justinian in his *Institutes* 4.10. pr. has:

We must now point out that one may take proceedings in one's own name or in that of another. In the name of another, as a procurator, tutor or curator; for, at one time, there could be no action on behalf of another save on behalf of the people, in respect of liberty or as a guardian. Further, it was provided by the *lex Hostilia* that a theft action might be brought in the name of those who are in enemy hands or absent on public service or for those who are in their guardianship. And, because there was no small inconvenience in the fact that it was not permissible either to sue or defend an action in the name of another, men began to litigate through procurators; for sickness, age, the need to go abroad and many other occasions are often an obstacle to persons pressing their claims in person. (Justinian's *Institutes*, 4.10).

He writes as if these actions listed at the beginning were the sole instances for the old *cognitio*. The *actio pro populo* is a reference probably to the early *actiones populares*, actions that could be brought by anyone to serve the public interest; *actio pro libertate* is presumably the claim that a person held as a slave is in reality free; and the *actio protutela* is generally thought to be obscure².

¹ See, e.g., M. KASER, *Das römische Zivilprozessrecht*, Munich 1966, 152ff; W.W. BUCKLAND, *Textbook of Roman Law*, ed. by P. STEIN, Cambridge³1963, 708ff.

² See, e.g., BUCKLAND, *Textbook...*, 308.

Formalities were required for the appointment of the *cognitor* but this was not the case for the much more widely used and later *procurator*. Simple agreement between him and his principal was enough.

Another situation, not involving procedure, should be mentioned. In Roman law a *filius familias*, a son in power, and slaves could not own property. Anything they acquired automatically belonged to the father or owner. There were restrictions, of course, but they need not concern us much at this point in any detail.

The details of these are set out in the *Institutes* of Gaius (written around 161 A.D., in *G* 4. 69–74)³. To avoid a long quotation from the sources let me give a short paragraph from W.W. Buckland⁴.

In classical law, though probably not in primitive law, a *filius-familias* was capable of contractual obligation, but *filiæ* and those “*in mancipio*” were not. As he has no rights, he can have in principle no actions, but convenience dictated some exceptions. A few actions, thought of as affecting personality, rather than property, were open to him, and a few others in cases of urgency where the *pater* for some reason was unable to act, might be brought by him, but only as it seems as actions *in factum*. It is doubtful whether the rule that he could be sued personally on delict is classical.

What has to be noticed at this point is that a contract (or delict) by a son or slave gives rise to an action by or against the father or owner in the father or owner’s name. The son represents the father. But words like *representatio* are not used.

To come at last to the words *repræsentatio* and *repræsentare*. We have the difficulty already mentioned of the absence of the *TLL*; plus that Latin dictionaries such as the *Oxford Latin Dictionary*⁵ deliberately exclude Christian Latin. It appears, though, that both words are not uncommon though *repræsentatio* is less frequent. Both have a wide range of meanings though *repræsentatio* is again much more restricted. What, however, is striking is that the sense of our representation, a person or thing appearing for another person or persons or another thing, is absent. Thus, the noun appears primarily as meaning payment in ready money or the immediate payment of a trust, or bringing something before the mind. The verb is, as I have said, much wider⁶. For it the *OLD* lists eight distinct meanings, of which only one seems relevant to our enquiry. This is entry four, and it is the shortest of them all: «to show or present in person (usu. reflex.)». Only four texts are cited; Columella, 1.8.11; 11.1.26; Apuleius, *Metamorphoses* 10.9; *Digest* 48.5.16 (15).3 (from Ulpian). Alas for us, the first three are not about representation but simply mean «to present». The remaining, *Digest*, text reads:

³ Cf. F. DE ZULUETA, *The Institutes of Gaius*, 2 vols., Oxford 1953, 69ff.

⁴ BUCKLAND, *Textbook...*, 102.

⁵ *Oxford Latin Dictionary*, Oxford 1982, vi. Abridged «*OLD*» from here on.

⁶ *OLD*, 1621.

Quod si quis præsens sit, vice tamen absentis habetur (ut puta qui in vigilibus uel urbanis castris militat), dicendum est deferri hunc posse: neque enim laborare habet, ut se repræsentet. But if a person is present yet is usually treated as absent (as for example who is serving in the *vigiles* or in the urban cohorts) it should be stated he can be accused, for he does not need to take pains to represent himself.

Here *repræsentare* is used to mean «to represent», but it is to represent one-self. Still we may see here that the verb could perhaps be used with the meaning «to represent another».

To come now to what I think is the main subject of my talk: «repræsentatio» to mean in classical Latin «representation», and «repræsentare» to mean «to represent». This is the modern usage whether the representation is to be taken as real or figurative. The earliest such usage is claimed to be by the theologian Tertullian from Carthage who lived from around 160 A.D. until some time after 220.

I tend to believe this attribution, not just because there is no earlier evidence but Tertullian is credited with 982 new word formations⁷. He also seems to be the inventor of the word *repræsentor* of which he is the sole user⁸. And Otto Hinze has maintained that in Tertullian we find for the first time *repræsentatio* in the common usage of today⁹.

My task today is not to set out the theological background but to discuss the early usage of *repræsentatio* in the current use of «representation».

Aguntur præterea per Græcias illa certis in locis concilia ex universis ecclesiis, per quæ et altiora quæque in commune tractantur, et ipsa repræsentatio totius nominis Christiani magna veneratione celebratur¹⁰.

Moreover, the Greeks hold in fixed places councils from all the churches in which are treated some higher matters in common and this representation (*repræsentatio*) of all the Christian name is celebrated with great veneration.

The greater councils represent the lesser churches.

Igitur et manifestam fecit duarum personarum coniunctionem ne Pater seorsum quasi visibilis in conspectu desideraretur et ut Filius repræsentator Patris haberetur. Et nihilominus hoc quoque interpretatus est quomodo Pater esset in Filio et Filius in Patre¹¹:

⁷ B. ALTAMER, *Patrologie*, Freiburg ⁵1958, 131: quoted by H. HOFMANN, *Repräsentation*, Berlin 1974, 47 n. 2. So far as possible I will quote other works through Hofmann because his references are very full.

⁸ See HOFMANN, *Repräsentation*, 47 and note 2 (at page 48).

⁹ See HOFMANN, *Repräsentation*, 48 and note 4.

¹⁰ *De Ieiunio* 13.6, in *Quinti Septimi Corpus Christianorum, series latina 2*, in *Florentis Tertulliani*, II, Turnhout 1954, 1272.

¹¹ *Adversus Praxean* 24.7, in *Corpus Christianorum 2*, 1195.

Therefore he made manifest the conjunction of two persons so that the Father would not be longed for, as if he were visible in sight, and that the Son would be regarded as the representative (*repræsentor*) of the Father. And nonetheless this also is interpreted in this way that the Father is in the Son and the Son in the Father.

The Father is joined in one with the Son so that the Son is the representative of the father, but they are one being.

Sed ille quidem usque nunc nec aquam reprobavit creatoris, qua suos abluit, nec oleum, quo suos ungit, nec mellis et lactis societatem, qua suos infantat, nec panem, quo ipsum corpus suum repræsentat.

But he, indeed, (the better God who is not God the Creator¹²) does not reject the water of the creator by which he cleanses his people, nor the oil by which he anoints his people, nor the union of honey and milk by which he suckles his people like an infant, nor the bread, with which he represents (*repræsentat*) his own body.

This time an inanimate object, bread, represents, takes, the body of Christ.

Conclusions

The Romans knew well the twin concepts of representation and representatives in law suits and in the relationships between father and son, and owner and slave. But for these concepts they did not use the terms *repræsentare* or any cognate.

To Tertullian, it seems, goes the credit of first using *repræsentare* and *repræsentator* in their modern senses of «to represent» and «representative». That his context is theological probably should not surprise since he is, above all, a theologian.

Thus, he uses *repræsentare* to mean that the one larger and more important may represent the many and less important¹³. This usage had a long and successful future.

More importantly perhaps, he claims that he made manifest the conjunction of two persons, that the Son would be the representative of the Father, and that the Father is in the Son and the Son is in the Father. They are one being¹⁴. It is no doubt fanciful to see here a reminiscence of the Roman *patria potestas* but we must remember the tradition that Tertullian somehow had some legal knowledge.

¹² The Marcion heresy which Tertullian attacks was that God was threefold: Jesus, God the Creator and the Better God who was hidden but controlled all things.

¹³ *De Ieiunio...*, C.13.

¹⁴ *Adversus Praxean...*, 24.7

Lastly, the Better God does not reject the good works of God the Creator including those by which he nourishes his people, «nor the bread with which he represents his own body», a clear reference to transubstantiation.