

Corporatism

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Introduction

Narrowly conceived, corporatism refers to the practice of state-supported, formalized bargaining between the organized representatives of labour and capital. Such corporatist institutions became an important feature of many twentieth-century capitalist societies. While corporatist bargaining arrangements have come under strain in an era of globalization and deregulation, they remain important political and economic institutions in many countries. Yet the labour-capital corporatism that took shape in the welfare state is just one moment in a larger constitutional and political debate about the ideal of corporatism. The concept of the corporate body, developed in late medieval political thought, was central to early modern theories of the constitutional state. The vision of a society organized into corporate bodies was revived in nineteenth-century Europe as a reaction to the supposedly disintegrating individualism of rights-based constitutional theories. In the twentieth century, these debates gave rise to rival democratic and authoritarian corporatisms, ideals that were realized, to varying degrees, as liberal constitutional states went into crisis.

Behind these debates about corporatism were more fundamental issues in constitutional theory. While in the twentieth-century corporatism became associated primarily with economic actors, a central question in corporatist theory was the broader constitutional status of non-state associations and organizations that often had their own political powers to govern their members and engage in quasi-legislative activity. Did such organizations exist at

the pleasure of a sovereign state, or did they show that political authority was dispersed throughout society? In arguing for the independent legitimacy of such diverse corporate actors, proponents of corporatism were generally united in criticizing more liberal visions of constitutionalism for its abstraction and formalism. Many corporatist theorists thus advocated a sort of societal constitutionalism, where constitutional norms can be embodied in diverse institutions that are more proximate to individuals than the state—ranging from major professional and economic associations to a variety of civil society groups. The second major strain of corporatist thinking challenges the neglect of the role of organized power in rights-based constitutionalism. Corporatist institutions provide a formal role in the political process to organized societal interests, thereby recognizing the constitutional importance of forms of power beyond state coercion or equal voting rights. In this respect, corporatist institutions, with their focus on representing distinctive class perspectives, reintroduce into modern constitutions elements of the mixed regime characteristic of ancient polities (McCormick 2011). Relatedly, corporatist institutions, and especially those focused on the economy, challenge the divide between public and private right, and in particular the image of private law that rests on the ideal of free contract. In place of the free labour contract, economic corporatist institutions construct “the economy as a polity,” placing collective negotiations and problem-solving at the heart of economic institutions. Yet corporatist institutions varied widely in how inclusive these procedures were in practice, with many coming to privilege the interests of powerful insiders in a process scholars term labour market dualization. It remains an open question if corporatist institutions can overcome this dynamic and generate a genuinely inclusive and democratic process of societal constitutionalism.

The following discussion analyses corporatism both as a tradition in constitutional theory and as an empirical phenomenon that arose in the interwar and post-war periods. It argues that both can contribute to a theory of democratic constitutionalism that emphasizes

the importance of organized collective power, and not just the problem of regulating state coercion or distributing formal voting rights. Section I provides an overview of corporatist ideas in European constitutional and political thought. In a somewhat fashion, it emphasizes the contrast between integrative and pluralist understandings of corporatism, which came to inform rival conservative and socialist visions in the twentieth century. Section II examines the debate about post-war corporatist institutions and their role within liberal capitalist democracies. Section III, IV, and V examine the broader theoretical and normative significance of corporatism for constitutional theory. Section III argues that corporatist theories contribute a notion of societal self-legislation via non-state organizations, while Section V focuses on corporatist theories' contribution to debates about social rights and economic constitutionalism. Section V analyses the relationship between corporatism and democracy. It contends that corporatism points to a conception of organized collective power and societal constitutionalism that challenges liberal proceduralists' conception of the democratic order.

I. Corporatism in the History of Constitutional Thought

The concept of the corporation, which showed how a legal body could arise out of the plurality of individual members of a corporate body, was an important inspiration for modern constitutional theories. Early modern theorists of the state looked to corporate ideas for a model of how a collective could constitute a self-governing unity out of the diversity of its members. As the centralized European state evolved, corporatist ideas then became a resource for two currents of political thought. The first sought to rescue the capacity for self-governance of organizations outside the state. According to such theories, these corporatist bodies had a reality beyond their legal recognition by the state and so were a source of political authority in their own right. Here, the central idea was the real, as opposed to juridical, personhood of non-state groups and associations. Such theories thus emphasized the

corporatist challenge to the unitary model of the state associated with thinkers like Thomas Hobbes (Runciman 1997). The other strain of thought looked to corporatist institutions for more organic mechanisms of social integration than were provided for either by market-based modes of civil society or formal notions of political membership. Such theories looked to concepts of functional representation, whereby corporate bodies represented the social functions of their members, as opposed to the representation of interests provided by parliamentary models. This idea sought in the idea of corporatism a more genuine model of unity than was provided in juridical definitions of the state. These two currents of corporatism—one more pluralist, one more statist—form the backdrop for the twentieth-century debate over corporatism. While the idea of real group personalities would find its starkest expression in anarcho-syndicalism and functional representation in fascist theories of the state, many thinkers sought to combine elements of both and so to balance pluralism and statism in the theory of corporatism.

The term “corporation” comes from the Latin verb *corporare*, to embody. In the canonization of Roman law under Justinian, a corporation was a type of legal fiction that could embody a *universitas*, or entire collective of people, in a lasting entity that would outlive any individual. Also influential was the Roman constitution itself and the idea of the mixed regime, organized as it was around two distinctive corporate actors – the people and the senate. The Roman idea of the corporation became important to thirteenth- and fourteenth-century debates among European, and especially Italian, jurists that laid the foundation of modern constitutionalism (Canning 1980; Lee 2016). At the time, Europe was dotted with self-governing city-states and guilds which competed with hierarchical forms of feudal authority. For our purposes, the most interesting aspect of this debate was the effort to situate self-governing Italian city-states within the framework of authority derived from medieval interpretations of the Roman *lex regia*. According to the doctrine of *lex regia*,

Augustus received a grant of authority from the Roman people that provided him absolute authority—a view that very much interested individuals such as the Holy Roman Emperor Frederick I. Against this view, the Italian jurist Bartolus and his student Baldus argued for the independent authority of the free people (*populus liber*) of Italian city-states—pointing to a more pluralist notion of political authority. To do so, Baldus drew on the Roman notion of a corporation. As a corporation, the *populus* was at once a unity and a plurality, a body made up of plural individuals but one that could act in a unitary way to issue laws. Even more radically, Baldus argued that corporate bodies had a self-constituting reality aside from the concessive grant that created their legal personality. He argued that “the members themselves—when ‘rightly assembled’ [*congregator bene*]—are perfectly capable of acting for the whole corporation” (Lee 2016, 75). Thus, the self-governed city-states did not need a singular representative to embody their corporate personhood. Rather, through their self-legislation they could form a unity out of the multitude of their members.

In the short term, these fourteenth-century corporatist arguments would generally recede in the face of defenders of the central state. Yet these arguments too were couched in the language of the corporation, with early modern theorists of state sovereignty such as Bodin, Grotius, and Hobbes all using categories drawn from the medieval theory of the corporation to explain the nature of sovereignty and the relationship between the sovereign and the government (Edelstein 2021; Lee 2016). The concept of the corporation was similarly influential in the constitutional thinking of the early American republic (Ciepley 2017). Speaking schematically, though, the period from the late medieval Italian jurists through to the 19th century was marked by attempts to consolidate the modern, centralized nation-state. The dominant motif of constitutional thought was the establishment of the territorial state through a system of individual rights that would counteract the pluralized authority advanced by theorists like Bartolus.

Yet this state-building project came to face deep challenges in the nineteenth century, challenges which would lead to a resurgence of corporatist thought. Especially in continental Europe, states faced lingering patterns of regionalism. More centrally, the system of private right that was meant to bind individuals qua individuals to the state faltered in the face of the class divisions produced by capitalism. Liberal constitutionalism was facilitated by the emergence of capitalism and the breakdown of the economic bases of feudal authority. But the political promise of the negative rights of liberal constitutionalism was increasingly undermined by the capitalist class system. For conservatives, this was a symptom of the disintegrative egoism embodied in the very notion of negative rights. For radicals, it demonstrated the need to extend democratic principles beyond the state and into the economy. In both cases, corporatist concepts proved crucial for articulating these concerns.¹

This nineteenth-century revival of corporatist thought was a reaction to the upheaval caused by the French Revolution. Constitutional thinkers sought to combine principles drawn from the revolution with supposedly older corporatist traditions which would offset the destabilizing implications of revolutionary constitutionalism. Here we begin to see the second strain of corporatism, according to which corporate bodies provided an alternative mode of political representation and integration to electoral democracy. While pluralist thinkers tended to look to independent political bodies like city-states and guilds as their models, here the notion of medieval estates provided an ideal of functional representation. One of the clearest expressions of this hybrid is G. W. F. Hegel's constitutional proposals in *The Philosophy of Right* (Hegel 1991 [1820]). As Daniel Lee outlines, Hegel's proposals were situated within a larger debate about constitutional reform in Prussia, one where conservatives came to advocate for a constitutional order centred around the *Stände* or feudal

¹ For an expansion of the line of argument in this paragraph, see Thornhill (2017).

estates (Lee 2008). While Hegel partially sides with the French Revolution in advocating for a sphere of negative freedom in the domain of civil society, he also argues that the ideal of private right is self-undermining insofar as individuals' material dependence on the market tends to produce poverty and what Hegel calls "the rabble," as well as contingent moral concern through charity (Hegel 1991 [1820], §241, §244). The corporation, Hegel argues, overcomes this opposition between negative right and arbitrary moral concern. Hegel writes that in the corporation "*the ethical returns to civil society as an immanent principle*" (Hegel 1991 [1820], §249). By this, Hegel means that the corporation combines both civil society's focus on meeting material needs through exchange—members of a corporation or guild still sell their labour on the market—with more substantive ethical principles, insofar as the corporation also guarantees their members a level of material well-being and social recognition. As a result, Hegel advocates for legislation through an assembly of estates (*Ständeversammlung*) rather than an elected parliament. Just as corporations can integrate individual freedom with an ethical principle of care for their members in civil society, so too in the state do corporations integrate democratic principles of electoral representation with more organic notions of representing the properly formed and organized interests of their members.

Hegel's defense of corporatism, as well as the larger debates about how to reconcile the principles of the French Revolution with Europe's old order, resonated throughout the nineteenth century. Much like Hegel, French thinkers such as sociologist Emile Durkheim turned to the corporation to reconcile the individual and the community in the face of fears of social disintegration driven by industrialization and an emerging culture of individual rights. Durkheim thinks the separation between the political and economic spheres and the general distance of the state from daily life means that economic activity "is for the most part removed from the moderating action of any rules" (Durkheim 1997 [1893], xxxii). Durkheim

looks to corporate bodies to establish “a professional morality and code of law within the various professions in the economy” and argues such corporations should become public institutions with the ability to regulate their members (Durkheim 1997 [1893], xxxvi). Corporately organized professional bodies could then become a “moral force capable of curbing individual egoism, nurturing among workers a more invigorated feeling of their common solidarity, and preventing the law of the of the strongest from being applied too brutally in industrial and commercial relationships” (Durkheim 1997 [1893], xxxix).

The late nineteenth century also saw the development of more pluralist corporatist theories. In France, the legal scholar Léon Duguit would build on Durkheim’s vision of solidarity through corporate organizations into a more explicitly functionalist theory of representation. But the most influential account would emerge from Germany, where the legal theorist Otto von Gierke would provide a landmark historical account of the concept of the corporation in European law. Gierke was central to the recovery of medieval and early modern theories of the corporation, such as the work of Bartolus and Baldus.² Gierke argued that corporate bodies had a real personality independently of their legal grant of authority. He traced this idea back to medieval German notions of fellowship (*Genossenschaft*), which he argues was obscured by the absorption of Roman legal categories into European thought (Runciman, cite Gierke himself). This idea informed Gierke’s critique of the German Draft Civil Code, which he felt was too based on the Roman divide between public and private law. Where the state recognizes private associations as corporations “private law wholly sheds its character of individual rights, and is transformed into social law” (Gierke 2019 [1889], 1108).

² These thinkers were important for Gierke’s four volume history of the law of cooperatives *Das Deutsche Genossenschaftsrecht*, which was first (in part) translated by Frederic Maitland, as Gierke (1900).

These corporations have a “common sense and common life” that “serve the unending, manifold ideals and material purposes of human existence, in a way that cannot be achieved through independent action” (Gierke 2019 [1889], 1110). Gierke also began turning to corporatist ideas as a way of recognizing the class tensions within capitalist society without turning to the perceived statism of socialism. In his critique of the Civil Code, Gierke argued that “our private law must absorb a drop of socialist ointment” (Gierke 2019 [1889], 1113). Corporate institutions such as unions and guilds were one lubricant. Like Hegel and Durkheim, Gierke saw corporatist institutions as tempering capitalist economic institutions with principles of cooperation and mutual support. Yet he tended to emphasize, more so than Hegel, the pluralist nature of such associations.

Gierke’s vision of corporatism in terms of a sphere of autonomous, self-governing entities that operate between the state and the market would prove influential. Yet Gierke himself was torn between his pluralist legal theory and his commitment to German state-building. His thought mirrored the already-noted tension within corporatist practice. Corporatist institutions were seen both as mechanisms for expressing a plurality of organized societal interests outside formal electoral representation *and* institutional mechanisms that could enhance the genuine unity of the state through a more organic notion of community. Subsequent debates about corporatism tended to polarize around this issue. In England, the pluralist school further developed Gierke’s thought into a full-fledged critique of state sovereignty and defense of pluralism. Filtered through the translations and work of the English legal historian Frederic Maitland, Gierke influenced thinkers such as John Figgis, G. D. H. Cole, and Harold Laski (Hirst 1989; Laborde 2000; Runciman 1997). Figgis used the idea of real group personality to argue for religious pluralism and the need to keep church organizations autonomous from the state. From Gierke’s notion of the real personality of non-state groups, Cole and Laski developed their socialist political theories. Cole built his

comprehensive vision of guild socialism, where the economy would be reorganized around labour and consumer cooperatives, on the Gierkian idea that “the laws of other functional associations have the same binding character and social status as those of the State” (Cole 1920, 126, cited in Runciman 1997). Laski pushed further to a pluralist theory that rejected the notion of state sovereignty and saw the dispersion of political power throughout society. These thinkers drew inspiration from earlier models of self-governing guilds and municipalities and sought to adapt those ideas to the context of industrial capitalism and parliamentary democracy.

At the same time as the pluralist school was pushing corporatism away from the state, early fascist thinkers built on corporatist ideals of organic integration to construct their ideal of the fascist state. In Germany, the influential legal theorist Rudolf Smend, reacting to the perceived chaos of the Weimar Republic, argued for integration into the state through corporate bodies that would ensure rights are matched to their obligations. He looked to Mussolini as a model and subsequently influenced Italian legal theories of the corporatist state (Caldwell 1997, ch. 5). A variety of thinkers in Italy, Spain, and Portugal built on the idea of organic unity and functional representation to argue that corporate organizations aligned with fascist parties provided a more authentic and immediate mode of political representation than liberal democracy.³ These thinkers often drew together modern corporatist ideals with Catholic notions of subsidiarity, influencing the authoritarian and fascist movements in Catholic countries like Austria, Portugal, and Italy. But whether

³ Sometimes this evinced fascinating cross-pollination: for example, the Spanish theorist of the corporatist state, Ramiro de Maeztu, had been a supporter of Cole’s guild socialism before going to the right. For a more extended discussion of fascists theories of the corporatist state, see Pinto (2017).

Catholic or not, these authoritarian versions of corporatism sought to subsume both the individual and the corporate bodies within the state. Such bodies did not have an autonomous, self-governing capacity but were rather mechanisms for ensuring the unity of the state filtered into society. Thus, while pluralist theories blended into anarchism, the more integrative theories of corporatism lent themselves to fascist uses during the period of political crisis that followed World War I.

II. The Century of Corporatism?

While many theories of corporatism began from a plurality of self-regulating corporatist institutions—ranging from churches and universities to professional associations to volunteer groups—towards the end of the nineteenth century class conflict became the predominant axis of societal conflict, reconfiguring corporatist debates. The central question became whether corporatist forms of governance in the economy could help resolve increasingly politicized conflicts between labour and capital. This section provides an overview of the debates about the specifically economic form of corporatism that evolved alongside the welfare state.

During World War I, participant states developed various corporatist arrangements within the economy to pacify labour and maximize cooperation for military mobilization (Thornhill 2017). In the immediate post-war period, legal and political scholars used these institutional innovations as a basis for developing a theory of corporatism that focused on the politicization and even democratization of the economy. While important theorists developed these ideas in interwar Italy, the most prominent debate took place in Weimar Germany.⁴ The Weimar Constitution, crafted by Gierke's student Hugo Preuß, included direct

⁴ For Italian debates, see Goldoni and Wilkinson (2018) and Rubinelli (2019).

provisions for corporatist arrangements, albeit provisions that were never fully realized in practice. Designed to mollify advocates of the council democracy that arose during the German Revolution, Article 165 called for workers' councils within corporations as well as a national economic council, with the ability to draft laws, that would operate alongside parliamentary democracy. This produced an intensive debate among German public law scholars about the exact constitutional status of such corporatist self-regulation (Collin 2017.) During this period, we see the increasing split between pluralist-democratic and centralist-authoritarian versions of corporatism. Social democratic thinkers like Hugo Sinzheimer, again largely influenced by Gierke, saw in corporatist institutions models for the autonomous emancipation and direct democratization of the economy alongside parliamentary democracy (Dukes 2014). At the same time, many Italian and German proto-fascist and fascist thinkers identified in corporatist institutions a mode of national social integration superior to parliamentary democracy, institutions that could embody national unity rather than the sectional interests of parties (Caldwell 1997; Pinto 2017). In either case, however, corporatism pointed to an organization, politicization, and constitutionalization of the formerly private sphere of economic activity—and so to a source of legal authority that rivalled parliamentary sovereignty.

Much like World War I, World War II fostered the creation of corporatist governance arrangements across belligerent states, arrangements that became central to the developed corporatism that was a key element of the post-war welfare state. Even as the most extreme forms of corporatism in fascist countries were dismantled after the war, all countries retained some degree of corporatist arrangements. And these arose alongside the post-war solidification of the notion of social rights and the institutional structures of the welfare state. Corporatism was a core component of a more general idea of coordinated capitalism or “embedded liberalism,” where the market mechanism was replaced by a variety of political

coordination mechanisms (Hall and Soskice 2001; Ruggie 1982; Schonfield 1965; Polanyi 2002 [1944]). They enabled the state to help coordinate wage policy and counter-cyclical state spending and existed alongside widespread acceptance that the state could play an active role in sectoral planning and strategic investment as part of a more general mixed economy. The normalization of corporatism now gave rise to an extensive debate about how best to characterize such institutions as well as how to think about their macropolitical and macroeconomic effects. While earlier debates about corporatism involved philosophers and legal scholars, the study of these institutions proved foundational to the post-war comparative study of capitalist political economy.

Initially, scholars distinguished corporatist systems with reference to state-enforced monopolies on the representation of key economic interest groups (Schmitter 1974; Molina and Rhodes 2002). Corporatism was different from pluralism because the state recognized a single representative of the collective interests of labour or capital. And they pointed to the two-way intertwinement of the state and these collective actors—peak-level economic associations were deeply involved in the policy-making process, and the state played an active role in various aspects of collective bargaining in the economy. While corporatist arrangements varied between countries, for the purposes of scholarly debates the “ideal-type” became the system that evolved in Sweden, where peak-level employers’ and workers’ associations would negotiate sectoral wages and would coordinate macroeconomic policy with an elected pro-labour government. Another important model was Germany’s system of codetermination, where workers would receive elected representation on the boards of major companies—a legacy of the Weimar constitution.

Yet as these corporatist systems evolved, they became important components of the general policy-making process in each country. While initially corporatism was seen as an alternative to other forms of pluralist interest-group politics, over time scholars of

corporatism saw it as a particular mode of interest group activity, with higher degrees of concentration and formalized cooperation as part of what scholars called “policy concertation.” Philippe Schmitter, for example, distinguished between state corporatism and societal corporatism, where the latter involves a more informal notion of spontaneously organized corporate interests, while in the former the state directly constitutes the corporate institutions (Schmitter 1974). This broader definition captured the more diverse array of policy arenas in which corporatist actors were engaged. That is, corporatist institutions expanded beyond a strict focus on wage negotiations and macroeconomic policy and became, in the seminal formulation of Schmitter, “a particular...institutional arrangement for linking the associationally organized interests of civil society with the decision structures of the state” (Schmitter 1974, 68). Corporatism, here, exists along a spectrum with pluralism, and many states have more corporate arrangements in some policy domains along with more pluralist arrangements in others.

Yet just as corporatism became a routinized facet of industrial democracies, such systems entered a crisis of both democratic legitimacy and macroeconomic effectiveness. First, “actually-existing” corporatism was far from the sort of economic democracy envisioned by thinkers like Sinzheimer. Both neo-Marxist and conservative critics highlighted the tendencies towards centralization, depoliticization, and unaccountability within these corporatist institutions. Jürgen Habermas observed how the functioning of the corporatist welfare state undermined the operation of critical public debate: “organizations strive for political compromises with the state and with one another, as much as possible to the exclusion of the public; in this process, however, they have to procure plebiscitary agreement from a mediatized public by means of a display of staged or manipulated publicity” (Habermas 1992 [1962], 232). New Left social movements were one reaction to this artificial publicity. Writing in 1974, Schmitter noted that corporatist arrangements are

“being bombarded with demands for more direct forms of participation, undermining both the stability of established internal hierarchies of authority and their claims to democratic legitimacy” (Schmitter 1974, 127). Especially as German codetermination legislation limited the practice to the largest corporations and specific economic sectors, corporatist arrangements were increasingly seen as serving the interests of a core labour aristocracy operating in coordination with major corporations, groups divorced from broader societal currents and democratic movements.

These democratic challenges intersected with the economic crises of the 1970s to unravel the ideal-typical, peak-level corporatism. Changes in the structure of work, European integration, and increasing competitive pressures all undermined the viability of coordinated wage policy. Yet corporatism as a system of consultation and interest-group representation persisted through these transformations, even if in a more decentralized or informal manner. In some cases, corporatist institutions even re-emerged as a system of “policy concertation,” with countries such as the Netherlands and Spain implementing peak-level “social pacts” to adapt to changing economic circumstances (Molina and Rhodes 2002, 309). Similarly, within the European Union there exists a complex system of consultation and negotiation with “social partners,” which include European-wide trade union and employer federations. This system of quasi-corporatist consultation is formalized by Article 152 of the *Treaty on the Functioning of the European Union* which states that the EU should “facilitate dialogue between the social partners, respecting their autonomy.” While weakened, corporatist arrangements thus persist as an important element of constitutional democracies, existing as a system of formalized policy negotiation that operates alongside other forms of democratic representation such as elected parliaments.

III. Corporatism and Societal Self-Legislation

As we have seen, corporatism embodies a diverse historical tradition as well as an array of institutional manifestations. But within this broad field, some core constitutional concepts are distinctive to corporatist thought. What is corporatist constitutionalism? Here, I want to argue it has three pillars: 1) an ideal of society self-regulation and so of the autonomous law-making capacity of non-state actors;⁵ 2) a distinctive vision of economic constitutionalism and economic democracy based around organized actors in the economy—one that incorporates but goes beyond social rights; and 3) a challenge to liberal proceduralism and a vision of democracy based on organized power. The first aspect situates corporatism relative to society, the second to the economy, while the third positions corporatist ideals relative to the state.

As we saw with Gierke, the development of corporatist ideas was closely tied to the concept of genuine group personhood. Corporatist theories point to the capacity of non-state actors for self-legislation and the production of legal norms. Corporatist constitutionalism challenges the exclusive legislative prerogative of the state, arguing instead that societal actors have autonomous quasi-legislative capacities. The debate about economic corporatism brought this out in the contexts of administrative and labour law. Rather than legislating things like working conditions or wages directly, the state delegates these competencies to corporate actors, albeit in close dialogue with the state and within general parameters. Yet for pluralist theories of corporatism the ideal of societal self-legislation extends to a variety of non-state groups and actors, such as religious organizations, universities, and professional associations. In this regard, corporatist theories are in the background for the late-twentieth-century revival of the concept of civil society, which emphasized the politics of

⁵ Albeit one that, in practice, always required extensive state involvement in and regulation of corporatist arrangements.

“substitution,” whereby civil society actors would take over functions otherwise carried out by the state (Cohen and Arato 1992; Klein and Lee 2019). While such theories focused on the discursive and cultural benefits of an active civil society, corporatist theories point to the juridical dimension of civil society. For pluralist thinkers, civil society groups were genuine sources of obligation and authority that existed alongside the legal structure of the state. Thus, corporatism points to an ideal of societal self-legislation or self-regulation that exists alongside the formal law-making powers of the state. Corporatist arrangements often involve the delegation of official recognition of quasi-legislative powers to societal actors within a general framework.

One persistent question within the corporatist tradition is how autonomous this self-legislating capacity ought to be. Insofar as, for theoretical advocates of corporatism, corporatist arrangements are meant to correct for the supposedly disintegrative effects of private right doctrines, then advocates of corporatism viewed such institutions as mechanisms for improving integration into the state. From this perspective, corporatist arrangements are less about self-legislation than enhancing state legitimacy. More pluralist views of corporatism pointed to the ability of a variety of groups, ranging from religious organizations to medical and legal professional bodies to universities and so on, to produce their own quasi-legal standards governing their members based on their insider knowledge and expertise. Similarly, for those who see corporatist politics as a response to power imbalances within society that cannot be recognized within a private right framework—such as the tension between free labour contract and the power imbalance between labour and capital—corporatist arrangements are to be given greater leeway for self-direction. The role of the state is to help compensate for such power differences rather than integrate social groups through corporatist institutions.

IV. Corporatism and Economic Constitutionalism

Alongside these pluralist theories of group self-legislation, corporatist thinkers also developed a vision of economic constitutionalism that complemented, even as it went beyond, notions of social rights central to the welfare state. Advocates of corporatism pointed to the failures of private right doctrines to respond to the inequalities generated by power imbalances within capitalist societies. The system of private right was predicated on the idea that workers could eventually move out of a dependent position and achieve independence as artisans or farmers. The development of industrial capitalism undermined this vision, giving rise to demands for various social rights that would compensate for market processes and protect workers against new social risks such as workplace injury or against sickness and old age. Today, such social rights are widely entrenched in constitutional structures or implicitly recognized as part of a political order (King 2018; Young 2012). They typically include rights to social security and in-kind provisions such as health care and housing, as well as rights to certain protections within the economic sphere, such as the right to form a union. Social rights thus tend to draw in public law principles like justice or the common good into the formerly private arena of contractual freedom.

Theorists of corporatism share the social rights critique of the capitalist economy. Many corporatist theories also reject the idea that the economy can be constituted through free contracts justified via the notion of private rights and autonomous choice. Because of the grand power disparities and the tendency of capitalist economies towards large-scale organizations and corporations, most workers simply accept the terms of contract offered. Moreover, the idea of private right fails to account for the new needs and risks associated with capitalist economies. Yet corporatist theories go beyond the rights-language of this aspect of the welfare state. For more liberal and left corporatist theories, social rights were only one component of a more ambitious democratization of the economy. They rejected the exclusive focus on top-down social rights secured by the state. Rather, the same set of

concerns that gave rise to the need for social rights—the new risks and inequalities generated by capitalism—also gave rise to a need to reorganize the economy on a more cooperative and democratic basis. Thus, corporatist theorists put more emphasis on responding to economic risks and power imbalances in the economy via the direct politicization and cooperative reorganization of economic institutions. In contrast, theories of social rights are indebted to T. H. Marshall’s account of social rights as extending and complementing traditional economic rights (which Marshall includes within civil rights), ensuring people have the genuine basis on which to exercise their freedom of contract and so on (Marshall and Bottomore 1987). Yet this introduced tensions into the practice of corporatist politics. In some cases, such as the United States, corporatist actors, such as trade unions, were often sceptical of centralized policies based on social rights such as public health care or collective wage setting, which they worried would encroach on the collective bargaining process. In other cases, such as Sweden, corporatist actors saw such central social welfare policies as enhancing their bargaining power and so ability to push for deeper democratization of the economy.

Corporatist theories thus often proposed an ideal of economic constitutionalism. For theorists of an economic constitution, like Sinzheimer, the economy was a domain of power relations that had to be regulated according to public law principles like equal voice, rather than a domain of private exchange or social risk. The economic constitution thus referred to what political principles would guide the organization of power within the economy. Rather than a dichotomy between public rights and private rights, democratic corporatism sought to draw suitably refined public law concepts into the legal regulation of economic relationships. Such theories thus view the organization of the economy as part of a constitutional order, rather than something that public law encases or regulate externally (Dukes 2014).

V. Corporatism and Democracy

Corporatism's relationship to democracy remains vexed. Within the corporatist tradition, theorists disagreed sharply about whether corporatist institutions are mechanisms for state integration or express a pluralist conception of political authority. And in both cases, there was not necessarily a strong connection to democracy. Indeed, pluralist theories of the real personhood of associations may require the defense of the right to organize such groups non-democratically and hierarchically. Similarly, as we saw, theories of functional representation often sought to substitute corporatist institutions for electoral mechanisms organized around principles of political equality. At the same time, for thinkers like Cole and Sinzheimer, corporatist ideas were to deepen and enhance democracy, especially within economic production. Yet even when that more democratic vision came into practice in the post-World War II era, critics contended that corporatist institutions became arenas for bargaining between entrenched, internally undemocratic insiders who struck deals at the expense of broader societal interests. Nonetheless, taken as an ideal and model, corporatist thought and institutions often support a distinctive vision of democracy. Taking up the more democratic variant of corporatism, this section considers how corporatist theories and institutions challenge the procedural formalism of many current approaches to constitutional democracy. Instead, corporatism is part of a more broadly understood political constitution, one which encompasses the organization of power in society more broadly, and not just the distribution of formal political rights. In this regard, corporatist theories echo pre-modern constitutionalism, according to which constitutions are both a formal-legal doctrine *and* the way in which polity is actually constituted through the organization of different political actors.

Procedural views of democracy, broadly speaking, begin from an ideal of resolving disagreements while respecting participants equal dignity or standing (Christiano 2008; Kolodny 2014; Viehoff 2015) The procedural ideal gets expressed in constitutional principles

of universal suffrage and equally weighing individual votes, which are further complemented by political rights like free assembly. Those then translate into something like equal political influence through electoral procedures that give everyone equal weight in electing representatives, who along with political parties are meant to aggregate their constituents' preferences and values into a coherent policy program. Historically, this vision of democratic constitutionalism complemented the division between public law and private law. The same principle of equality that enshrined a sphere of equal rights in the private sphere grounded a standard of equal procedural rights in the public sphere.

On a more conceptual level, advocates of the procedural view argue that fair procedures equalize our power over each other. Such procedures thereby reconcile the existence of a coercive legal order with our basic autonomy and equality. Given conditions of deep disagreement, the existence of a coercive legal order would seem to entail that some individual or group exercises power over you in a way that conflicts with your deeply held beliefs. There is thus a deep puzzle regarding how to reconcile autonomy with the existence of a legal order. Proceduralist arguments then proceed in two steps: first, even given conditions of disagreement, a legitimate legal order can provide the valuable good of coordination that prevents unilateral action to realize individual conceptions of justice. Yet the existence of such a legal order would then seem to violate our equality, insofar as it would entail that some individual or group (whoever makes the laws) exercises coercive power over us through the creation of the laws. By giving everyone the equal probability of being the decisive vote, however, a one-person, one-vote procedure can generate a legal order while positioning all participants as equals and so ensuring no individual or group exercises power over anyone.

Corporatist theories of democracy challenge the narrow conception of power with which proceduralist views operate (Klein 2021). Within liberal constitutional theories, the

paradigmatic problem is regulating and controlling coercive state power. Within power debates, this variety of power is typically called “power-over” and refers to the ability to get an agent to do something they would otherwise not do. Yet as a variety of scholars have noted, this view of power is too narrow, identifying power with one subset of how it can operate (Abizadeh 2021). If we take power to mean the ability to realize one’s goals in a social context, then the ability to overcome someone’s resistance is only one aspect of power. Power also arises from the reliable ability to get others to cooperate in your endeavours. Corporatist institutions are one mechanism that integrates cooperative forms of power into a constitutional order. For corporatist theories, political institutions do not just distribute coercive power over one another—the focus of the procedural views. They also influence and structure cooperative forms of power. Even as they are legally recognized, corporate bodies rely on the voluntary cooperation of their members to be effective. For example, within the economy, labour unions counteract the power of employers through the voluntary organization of their members and their willingness to cooperate to realize shared goals.

As a result, while electoral institutions provide a fixed distribution of power-over through their voting procedures, corporatist institutions, even where they are only relatively egalitarian themselves, can be an important mechanism in large-scale egalitarian feedback loops that produce the relatively equal distribution of both power-over as well as cooperative “power-with.” From this perspective, political institutions are not just formal rules and procedures that distribute individual political rights but also mechanisms with regular effects on the organization and relative capacities of different societal actors. Thus, to understand the constitutional significance of corporatist institutions, we need to examine the temporal feedback loops between the structure of the institutions and the broader balance of political power. In this regard, corporatist institutions also exist in a dynamic relationship with formal, electoral institutions. They can provide a check on the elitist tendencies of electoral

institutions when they are cut adrift from non-state groups like labour unions by enabling forms of political organization and mobilization beyond electoral systems (Mair). Indeed, scholars of comparative political economy have observed that the selection of different electoral institutions at key historical moments is in many respects endogenous to both the organizational structure of labour and capital as well as the perceived threat of a pro-labour government (Ahmed 2012). This is one reason, for instance, that we often observe a coincidence of corporatist economic governance arrangements in countries with more proportional electoral systems.

Corporatist institutions are thus part of the more informal, political constitution (Bellamy 2009) as opposed to the formal juridical constitution. In an influential discussion of corporatism, Gerhard Lehmbuch (1984) observes that corporatist arrangements were often hindered by formalization, something missed in the corporatist theories we examined earlier. Because the role of electoral institutions is “the aggregation of highly heterogeneous, individual acts of political choice,” they need high degrees of formalization “to cope directly with the problems of maintaining stability, predictability, and responsiveness in representation.” In contrast, “corporate representation presupposes a high degree of prior, inter-organizational aggregation: its stability and predictability rest upon the internal cohesion of relatively centralized association. And in the maintenance of such cohesion, a rigid formalization of procedures of inter-organizational coordination could prove to be counterproductive” (Lehmbuch 1984). Insofar as corporatist institutions rely on cooperative forms of power, such as the voluntary willingness of their members to participate in collective action like strikes, they require less formalization than institutions that rely on coercive power—and indeed the introduction of too much coercive power can introduce a logic of distrust that corrodes the functioning of the institutions. At the same time, the informal nature of representation to which Lehmbuch points can also conceal the operation

of powerful insiders who dictate the terms of corporatist bargains. Such arrangements also tended to privilege already-organized and concentrated interests. While guild socialists like Cole thought that the corporate organization of production had to be balanced by the corporate organization of consumers through consumer co-operatives, corporatist arrangements were often seen as privileging the interests of labour and capital over that of consumers.

As we already noted, thinkers such as Habermas and Schmitter drew attention to the internally undemocratic nature of much actually-existing corporatism. And this informality also makes corporatist institutions vulnerable to shifts in the underlying cooperative networks and so the larger economic context in which they operate, as we saw earlier. But here the contrast with formalized electoral institutions should not be overdrawn. Insofar as they also rely on various forms of informal cooperative power, especially political parties, they are also vulnerable to changes in their effective functioning if the underlying coalition structures of political parties shifts, even if formal rules do not markedly change—as has been evident in phenomena like the rise of anti-systemic parties, the weakening of traditional party systems, and the increasing use of extra-electoral mechanisms like referenda.

Lastly, corporatist arrangements make up a part of the “material constitution” (see Chapter 40) and indeed can be seen as embodying a modern form of the mixed regime. The material constitution refers to the “underlying material context, to the basic political and social conditions of possibility of constitutionalism and the dynamics of constitutional change” (Goldoni and Wilkinson 2018, 568). The material constitution points to how the organization of different societal actors, and especially economic actors and interests, generates the preconditions for the effective functioning of formal-judicial constitutional systems. Insofar as corporatist modes of representation operate alongside parliamentary systems, through organizational networks with electoral parties, they will partially condition

the forms of representation and interest-aggregation that operate in other parts of the constitutional system. Moreover, corporatist institutions will form a point of connection between the constitutional system and the underlying material structure of capitalism. The changing fortunes of corporatism have affected other features of constitutional systems. The decline of labour parties with close ties to organized union associations has deeply altered the nature of democratic representation in many constitutional contexts, giving way to new forms of personality-driven parties, unstable multi-party alliances, or anti-systemic politics.

Here, again, it is worth recalling the dual connotations of the word constitution: both a formal-legal document and a general way that a political system is “constituted.” For classical constitutional theories in ancient Greece and Rome, the constitution referred precisely to how political institutions expressed or related to material relations of wealth inequality and class orders. Modern public law constitutional ideals are founded on a notion of formal and juridical equality and equal treatment by the law, one that gets embodied in the principle of electoral representation based on equal voting rights. Yet the underlying material divisions to which classical notions of the mixed regime referred do not disappear, and indeed some scholars argue that the fiction of juridical equality becomes a cover for electoral aristocracy (Manin 1997; McCormick 2011). The concept of the material constitution reminds us of these connections between constitutional design and the underlying material structure of a society. Corporatist institutions are one institutional mechanism that reintroduces more materialist, mixed regime forms of constitutionalism into modern constitutional systems centred on formal equality. Corporatist institutions provide representation to groups on an explicitly materialist basis, incorporating workers as workers and so on, and explicitly embodying principles of representation and negotiation based on relative power. Yet we can also note how constrained such modes of corporate representation are as compared to other models of the mixed regime. They can only incorporate lower classes insofar as they are members of

corporate organizations. As a result, they will often entrench the relative power of the most privileged segments of the working class. Given this partial recognition of the interests of workers, such institutions will then benefit from the relative secrecy of negotiations, enabling them to strike deals between representatives of labour and capital that may be politically unpalatable. These limitations of representation and transparency are part of what made such modes of corporatism vulnerable in changing economic conditions.

Conclusion

Modern corporatist institutions represent a key form of mediation between the constitutional system and both organized groups in society and the structure of capitalist economies. Even as their fate has waned since the 1970s, many constitutional systems continue to feature corporatist forms of interest representation and negotiation that operate alongside parliamentary and electoral democracy (Lijphart 2012). Such institutions challenge the public-private divide and introduce public law constitutional principles into the organization of the economy, emphasizing themes like equality of voice and inclusion as opposed to formal contractual freedom. And such principles go beyond, even as they encompass, the idea of social rights associated with the welfare state. Social rights compensate for the inequalities and risks generated by capitalist production, while corporatist institutions were attempts to politicize and partially democratize the actual governance of such production itself. Corporatist institutions also point to the capacity of organized societal actors to produce binding legal norms themselves, thus engaging in a form of cooperative self-regulation. Corporatist institutions thus often went beyond the opposition between formal rule of law and substantive social justice goals, providing societal actors latitude to reflexively determine their norms of mutual interaction even as the political system compensated for power imbalances.

Even as they only partially realize principles of inclusion and political equality, these corporatist institutions channel the cooperative forms of power and can help mobilize democratic majorities against entrenched forms of power. The democratic possibilities of corporatism were recognized by many key corporatist theorists going back to early Italian city-states and finding fullest expression in the Weimar Republic. Such a democratic vision existed alongside more state-based, integrative theories of corporatism that saw in corporatist modes of representation an alternative to the supposedly atomizing and divisive nature of parliamentary politics. Most ambitiously, for thinkers like Sinzheimer and Cole corporatist ideals introduced a constitutional vision of equal political power into the organization of the modern economy. While corporatism as it took shape in the twentieth century fell short of this ideal, the ideal itself remains valuable in the face of our current conditions of concentrated economic power and hollowed out of formal democracy.

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