

INSTITUTIONS OF SOCIAL PARTNERSHIP – LEGALITY AND LEGITIMACY

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When Theodor Geiger analysed institutionalization (which he also called democratization) of the class struggle, he pointed to the interconnection between this process and corporativism and the issues of power participation and of common decision-making of organized interest groups. He wrote: "The basis of democratic class struggle is organization and its method is consensus. People do not act as individuals but as members of parties, trade unions and associations of different kinds. But in fact, it is not a struggle. It is rather a cartel of organizations worked out in detail. Organizations develop new procedures to push their particular interests into the political process. They show their common interest in controlling the pie. It is naturally the pie of measures hiding the control of power through organization." (Dahrendorf 1991, p. 178)

In industrial democratic countries, the possibilities and forms of participation of organized associations of the capital and labour are sought and optimized at both the microlevel (at the level of a working team, institution) and the macrolevel of society. The rules and forms of this participation usually result from the long-lasting democratic shaping of the labour market taking into account the specific features of the development and the status of those societies. In most democratic countries with a market economy, two basic forms of such participation were created – collective bargaining concluded by a collective agreement and tripartition of the state, capital and labour representatives.

Bringing the organized social interests into harmony with state policy becomes of great importance especially in democratic capitalist industrial countries with strong social-democratic workers' movements and trade unions. "Tripartition of the state, capital, and labour in Great Britain, Austria, and in Scandinavia and Germany has various forms – from legally institutionalized to agreed and exists in various spheres – from tariff policy to energy or social policy." (Alemann 1981, p. 47)

Large associations take on some socio-economic and political functions. They take over communication between the state administration and the groups affected by its measures. Thus large associations fulfil important political tasks. The state

delegates some responsibility for decisions to them – for instance if the participants of the tariff agreement – entrepreneurs and employees – are vested with the power of making tariff policy. “Consensus of the state, capital, and labour, intertwined and interconnected systems called “new”, “liberal” or “social” corporativism bring advantages to all sides: better information for the state administration and assistance in channelling social interests, the possibility for associations to effectively enforce their own interests.” (Alemann 1981, p. 47)

“Not only differentiated interests but also theories typical of these interests are intertwined pluralistically and pragmatically and woven into the idea of social partnership.” (A. Pelinka 1981, p. 44)

Spiritual and theoretical resources of the ideas of social partnership are most explicitly present in social-Christian and corporativist conceptions and their implementation and functioning is most evidently associated with the practical application of social democracy and the social state.

Particularly in Central Europe both these currents of thought (Christian-social and social-democratic) are deeply rooted in the spiritual and scientific tradition and have an impact on the form of social historical reality. Both these lines of thought became the foundations of mass movements including strong Christian-social and social-democratic parties.

Delays in capitalist industrialization during the nineteenth century engendered the relative weakness of economic and political liberalism in this area (if compared, for instance, to England). These facts naturally also affect the form and functioning of social partnership. “The orientation of the ideology of workers’ associations in Austria is, as a consequence of historical and ideological development, specific, in comparison with workers’ associations in liberal economic systems: the conception of economic liberalism is dominated by Catholic social teaching, the ideas of the resolution of social conflicts within the free market and free competition are dominated by the ideas of trade-offs in solving the disputes following from the idea of social partnership.” (Alfred Klose 1977)

The notion of corporativism has its origin in the estate structure of medieval society. The ideas of the class structure are founded on the opinion that liberal, party-state parliamentarism is not able to fully represent all relevant social interests. Conceptions of corporativism want to replace the dominion of “a mere number of representations, employees’ groups or socio-economically defined classes quasi-estate functioning in liberal parliamentarism” (Mayer – Tasch 1971). At the same time they want to be critics of early liberalism “atomizing society instead of establishing an organic society and solidarity”. (Alemann 1981, p. 48)

A similar critique of parliamentarism and consideration of organic society is also evident for example in Catholic social teaching as well as in fascist social conceptions.

The ideas of corporativism have an ample tradition in the spiritual culture of many European nations. The period between the two world wars was – and not by

coincidence – an exceptionally prolific era for shaping various corporatist conceptions, models, and experiments. However, the fascist and Marxist variants of these experiments discredited the idea of corporatism. According to some contemporary theorists of (neo)corporatism it is just this discredit that brings about the neglect of the history and analyses of corporatism. There is a lack of scientific studies on modern corporatist theories and analysis of corporatist models and experiments dating back to the past century.

The ideas and experiments of corporatism create an important aspect of social and political order, constitution, policy and social history, of Germany, in particular. “No country has such old, continuous and influential traditions of corporatism as Germany. It is not a matter of coincidence. It is closely associated with the specific features of the political, economic, and social development of Germany throughout the last two centuries.” (Ulrich Nocken 1981, p. 24)

The first “modern” corporatist ideas were formed in Germany as a conservative reaction against the spreading ideas of the French bourgeois revolution. ‘Politisch-Romantische Schule’ developed an idealistic image of German medieval society as its alternative. The clinging to the traditional scheme of the Three Estates – nobility, clergy, bourgeoisie was characteristic of the predominating reactionary opinions of the most outstanding representatives of political romanticism (Friedrich Schlegel, Franz Baader, Adam Müller). These thinkers could not, however, ignore the social and political development of society either and tried to conform their ideas to the changed conditions. A. Müller is one of the chief representatives of the twentieth-century conservative-estate ideas, particularly of the neo-romantic school of Othmar Spann. Baaders’ conception as a combination of state-corporatist and socio-reformatory elements was characteristic of various versions of Christian social teaching (Bowen 1947, Stegmann 1974).

The 1848 revolution was not only a practical threat to further existence of the Estate order but it also cast doubt on the old-estate elements of corporatist ideas. Social and political crisis, growing radicalism and liberalism caused that the principal idea and the aim of corporatism was “to integrate new social strata and to resolve social problems, which could not have been ignored any more, in a conservative mode.” (Ulrich Nocken 1981, p. 25)

This period of updating of corporatism was characterized by emphasizing *employee-estate* ideas (berufsständische Ideen). These ideas were widely spread within corporatist-oriented theories with the exception of the very conservative feudal-estate system of Ludwig von Gerlachs. It was mainly associated with the efforts and attempts “to find a solution corresponding to new social and political situation through employee or combined employee-regional chambers but to avoid the dominion of political parties (Parteiherrschaft) and the class struggle.” (Bowen 1947, Herrfahrt 1921)

These ideas had not generally met with a wide reception at the time of their formation (liberal-democratic ideas were to the fore) but they became the intellectual

basis for the ideas of chair socialists (Kathedersozialisten) and efforts of the founders of organized employee's associations and chambers.

In connection with the social problems accompanying the industrialization of Germany, another influential line of German corporativism was developing – the system of the thought of *state socialism* developed by the *chair socialists*. The chair socialists, like the theorists of social Catholicism, were opponents of Marxist-socialist ideas, which through 'SPD' and the unions allied to it, met with a growing response among workers. On the basis of the conservative-organic theory of state they tried to develop a state-corporatist system including conflict resolution between employees and employers and thus to overcome the idea and the practical application of class struggle. Albert Schäffle, the influential representative of this conception, saw natural formation of corporatist structures which could be supported but could not be coerced by the state, as positive steps in creating cartels, trade unions, and employers' associations.

The ideas of corporativism cultivated at German universities remained just theories at the macrolevel with the exception of Bismarck's attempt to establish a Prussian and then a German national economic council (Volkswirtschaftsrat) as "the second parliament". However, at that time, corporatist structures were already developing at both the micro- and the institutional levels. From 1891 onwards, establishment of official workers' committees was permitted by legislative amendments and their recognition was compulsory after the 1905 miners' strike. "Formation of state-corporatist structures, for instance of workers' committees, leads in an authoritarian state partially to its attempt at integrating social groups into its control system. This might direct destabilizing conflicts into controllable channels. The ruling elites of the authoritarian state wanted to channel conflicts and their resolution beyond the parliamentary-political sphere and act against the growing power of political parties and parliament. A call for a state-corporatist solution was heard from interest groups, particularly from the weaker ones, which (as industry or trade unions before World War I) either were not sufficiently developed yet or were relatively losing through the process of industrialization... Rapidly growing sectors, like e.g. heavy industry, organized their strong unions. They tried to reach a monopolistic position as representatives of industry. The symptoms of the development of socio-corporatist structures are seen in negotiations and agreements of that time." (U. Nocken 1981, p. 30)

The structure of the representation of interests mirrors the structure of the socio-political system. The status, development, discrepancies in social structure are projected into the form of the structure of the representation of interests.

The organized interest groups, which can, through their political effectiveness, be rivals to political parties and weaken them functionally, used to be – under various pretexts and in various modes – also utilized by authoritarian and conservative political forces. The corporatist idea served conservative political and social aims mainly in the periods of crisis. In this connection, there is an important remark of

U. Nocken in which the author referred to a concrete historical example but which has a more universal validity: "It is symptomatic of the serious domestic political crises of Wilhelm's Germany that socio-economic groups increasingly created a corporatist system as a counterweight to the emerging democratic imperial parliament." (U. Nocken 1981, p. 30)

On the other hand, corporatist structures formed mainly after World War I were far from the ideas of the "cartel of estates". These structures were not based on reactionary-estate programmes of certain social groups but on the needs of an effectively organized economy (inclusive of war economy).

The period of the development of state-corporatist system after World War I in Germany can serve as an example of social integration and legitimation of the unions.

The social integration of the unions started with the civic peace (Burgfrieden) in 1914. The unions were awarded important socio-political concessions and elimination of the last restrictions in return for their cooperation in introducing the means of the war economy. The establishment of obligatory workers' committees and bodies dealing with conflicts in labour questions with the parity of representation was a significant improvement in state corporatism. At the same time, differences and controversies between trade unions which often hamper corporatist efforts, were reduced within the system of the war economy. However, common rejection of the bureaucratic methods of a "command economy" was an important element of the rapprochement between trade unions and industry. From that perspective the state corporatism in that form was in fact preparing its fall. However, within the framework of corporatist theories, efforts to legitimate the system of the war economy also appeared in a modified form – of the idea of W. von Moellendorff and W. Rathenau of a *collective economy* (Gemeinwirtschaft). Moellendorff and Rathenau rejected the liberal-capitalist and individualistic system. They proposed to create a new organic system based on institutions as functionally organized councils with a pyramidal arrangement culminating in national "employees" (berufsständischen) parliament. A belief that all economic and social problems can be resolved through planning and organization was part of the conception.

Political, social, and economic crisis after the defeat of Germany in World War I opened the way towards the implementation of the plans of Moellendorff and Rathenau. Social democrats were at the head of the government, who, at first sight, did not have much in common with aristocratic conservative Moellendorff. But "collectivistic versions of the positive effects of organised planning were the basis for the cooperation between Moellendorff and SPD government. Socialists saw in Moellendorff's idea of self-governing organizations the implementation of the ideas of the boards and a route towards slow socialization." (Alemann 1981, p. 33)

Trade unions policy focusing on the macrolevel was not the only possible way of the strategy of the democratization of the economy. Particularly at the macro-level, spontaneously formed boards were its important alternative. Mostly left-ori-

ented boards were understood by the official trade unions leaders as a competition, even as a threat, and therefore they were weakened intentionally. Attempts at revitalizing and strengthening the collaboration between the employees and employers often failed precisely because of the lack of unity of employees' associations (trade unions). "In contrast to the year 1918, when workers' boards had given a positive impetus to class theories, at the beginning of the 1930s, conservative-authoritarian models were the centre of corporatist ideas and structures. In the situation of the decline and disintegration of the political and economic system, there were a number of groups inclined to the utopia of a harmonious, authoritarian estate society." (U. Nocken 1981, p. 37)

The example of Germany as a concrete historical illustration of the development of corporatist conceptions and structures reflects not only many general components and characteristics of the functioning of corporatism but it also points out that both the idea and the practice of corporatism draw on various sources of ideas, are realized in different forms and can primarily pursue different goals.

Neocorporatism

From the 1970s onwards, some authors (U. von Alemann, U. Nocken, R.G. Heinze, P.C. Schmitter, K. von Beyme, H. Kastendieks, M. Grosers, Teubner, J. Esser, W. Fach, Wasenberg, Panitsch...) have been making attempts at a new conceptualization of corporatism, trying to catch and shed light on these processes in connection with the topical concepts of pluralism, post-industrial society, and contemporary evolutionary processes. The concept of *neocorporatism* has become central to these discussions. Discussion about neocorporatism is at present a meeting point of various academic standpoints and political interests. Therefore the concept itself is accepted affirmatively or pejoratively but often not descriptively. The analytical level of discussion and innovative "engagement" of corporatism can be positively assessed but it can be reproached for its debts to conceptualization.

The thesis stating that in liberal-democratic and capitalist industrial countries the issues of the relation between state and large organized social groups become significant is the key issue of these discussions. A question was formulated: how do large organized associations (Grossverbände) influence the state? Many-sided *socialization of the state and nationalization of (non-governmental) associations* was reflected. Analyses concerned mainly the relation between the state, capital, and labour – "corporate pluralism" and corporatism in connection with the changes in the balance between public and private powers. In connection with the exploration of the impact of interest groups on state politics, European social theorists (U. Nocken, U. Alemann) became alerted to differences between European (particularly German) and Anglo-American development. In European conditions an analysis based on the theory and the model of Anglo-American pluralism is of-

ten inappropriate and limiting since pluralism and liberalism in American perspective played a limited role in the history of Europe.

Central to traditional theories of the state and associations is the differentiation and separation between state and society (inspired by Thönnies differentiation between *Gesellschaft* and *Gemeinschaft*). Political parties are considered to be bearers of or candidates for state dominion while interest associations are here presented as part of the social sphere. According to this conception social interests are organized into social associations, "state will" is organized and expressed in political parties. Empirical investigations show, however, that associations also often change into large formalized and hierarchized social organizations which articulate not only the specific interests of their members.

In contrast to some traditional conceptions of corporativism, it is not a hostile attitude to liberal parliamentarism but a symbiotic alliance of state institutions, political parties, and social associations that is the key issue and central idea of neocorporativism.

Philippe Schmitter and Gerhard Lehmbruch specify the assumptions of the representation of interests through *social corporativism* in capitalistic industrial corporations by satisfying the following conditions:

- by strengthening economic concentration
- by extensive state intervention in both economic and social spheres
- by rationalization of the processes of decision-making also in the interest of
- the more evident incorporation of social groups into political and social processes, whereby
- supervision of these processes assumes a stable, pluralist social order through
- social corporativism which can interconnect and bring previously pluralistically split interest structures together.

Schmitter principally differentiates between the *state* corporativism surviving in authoritarian regimes and the *societal* corporativism of liberal-democratic states.

Lehmbruch differentiates in similar terms between *authoritarian* and *liberal* corporativism. "Liberal corporativism is not based, on a romantic-reactionary programme of estate structure", on the more or less rigid assignment of statuses which was a specific feature of pre-industrial social structures, but on the conflicting differentiation of interests of capitalist industrial society characterized by relatively high sector and class social mobility. In contrast to authoritarian-corporativist experiments, liberal corporativism is created on the grounds of freedom of assembly and autonomous associations." (Lehmbruch 1979, p. 53)

F.G. Heinze and U. Alemann (1981) tried to generalize discussions about neocorporativism through two dimensions: dimension A expresses *social impact* and dimension B *social determinants* of the development of neocorporativism and made the following table:

Four levels of discussion about corporativism

B. Social determination	A. Social impact Character of system	Structural variants
Socio-political integration	(1) From pluralism to corporativism	(2) Corporativism as institutionalized pluralism
Socio-economic structure	(3) From capitalism to corporativism	(4) Corporativism as cooperative capitalism

In the first case dimension A assumes the character of a system, i.e. neocorporativism is described as a system in relation to other systems like pluralism (1) or capitalism (3). In the second case, neocorporativism is understood as a structural variant of the system, that means investigation of neocorporativist structures within pluralism (2) or capitalism (4).

Dimension B denotes dominant social determinants of the development of neocorporativism. Socio-political integration is considered to be the key function of neocorporativism. Incorporation of the politically most important associations into processes of decision-making is placed to the fore.

Thus neocorporativist discussions cover conceptions of corporativism as: 1. specific social system, 2. structural variant of the system and 3. specific strategy. R. Heinze proposes for the conception of corporativism "not to turn it into a new paradigm of social structure but to use it as an analytical instrument for determining the corporativist strategies of participants, their different interests, the means and forms used by participants within various socio-political regions." (Alemann 1981, p. 9)

The formation and application of corporativist structures and strategies is naturally not an autonomous process. It is conditioned by economic and political conditions and by *defining the role of the state*.

In a social state, the state administration takes on extensive guarantees for social policy and the economy. The other side of the coin is the expansion of the state, its intervention in and impact on important spheres of the life of society, even of the individual.

In the eighties, part of the representatives of the social sciences began to emphasize the crisis of the social state also in connection with the reflection and analysis of the politics of industrial states. "It relates to the fall of corporativism and the collapse of the reformist consensus which dominated in the post-war era of social reconstruction. The fall of corporative consensus can be associated with radical reorganization all over the capitalist world which is today understood by many authors as an absolutely new period in the development of capitalism – leading towards its disorganization (Offe 1985) or towards the end of organized capitalism (Lash and Urry 1987)." (B.S. Turner 1990, p. 189)

On the other hand, the 1980s crisis awakens a new interest in the issue of distributive justice also as the foundation of social reconstruction and social reforms. Discussions about the questions of social participation and civic rights are often inspired by the ideas of T.H. Marshall, especially his theory of “three-component citizenship”.

In spite of its almost general acceptance and legitimation in the socio-political practice of most democratic industrial states, the idea and practical application of social partnership are often a target of criticism. The critique stems from various theoretical positions and has various practical goals, with different measure of intensity.

The renowned Austrian theorist of social partnership, Anton Pelinka (1981, p. 69) classified the critique of social partnership into five main types:

- *classical-liberal position*
- *Marxist position*
- *state-legal position*
- *“democratic” position*
- *reformist position*

An analogous typology but with different type names was published by Egon Matzner (1974, p. 445):

- *conservative type*
- *radical-social type*
- *state-legal type*
- *radical-democratic type*
- *critique “for the self”*

From the perspective of the aim of this article, the most relevant critique is that from the *state-legal* position. Its starting point is the criticism of the absence of social partnership in the constitutions of many countries in which it is functioning. Social partnership is thus a system of the formation of decision-making, unexpected, not amended and thus uncontrolled by the constitution. Social partnership is according to these critics something like “counter-government” or “side, second government”. This is why social partnership is judged as a “particularly pressing example of the contrast between the constitution and constitutional reality” or as a “blank place of the constitutional reality”. Disharmony between legal norms and reality is also in this case regarded as a threat to the rule of law. The question “dominion of unions” raised in the work of Theodor Eschenburg under the same title (Stuttgart 1963), defenders of this opinion reply – yes.

Pointing at the deficit of democratic legitimacy in connection with social partnership is also part of the argument of this type of criticism. A critical *deficit of democratic legitimacy* is seen by the defenders of this position in the fact that nei-

ther social partnership as such, nor representatives of its bodies and committees were elected and approved by the people (citizens). The indirect, following *secondary* legitimation partially consisting in the functioning of these bodies in cooperation with democratic legitimate organs, partially through delegation of the representatives by the members of democratically structured associations, is not considered to be a sufficiently democratic approach.

The inner structure of associations functioning within the framework of social partnership is also often regarded as insufficiently democratic.

Sociological literature shows that the understanding of the rule of law in terms of including all forms and centres of the power of the public into the mechanism of constitutional and legal control leads more probably and more often to the critique of social partnership. This also applies to the understanding of democracy stressing subordination of all forms of social power to direct democratic legitimation.

In these connections the question of legal amendment of the institutionalization of social partnership in our country is being updated. At present there is a legally amended region of collective bargaining at institutional or regional level (so-called collective agreements of higher level) in our country. The institution of social partnership at the macrolevel of society – *Council of economic and social agreement* and its competencies is not a subject of legal amendment and this fact is not an object of legal discussion. Is this problem in the context of the rule of law in our country a pseudoproblem?

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