Corporatism and neo-corporatism: developments in the 20th -century Italian legal order

Corporativismo e neocorporativismo: desenvolvimentos na ordem jurídica italiana no século XX

Corporativismo y neo-corporativismo: desarollos en el orden jurídico italiano en el siglo XX

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Abstract

The article seeks to analyze how the legal thought represented the idea of corporative and neo-corporative order in the framework of the 20th-century in Italian history. The first part is dedicated to highlight the evolutions of historical studies on fascist corporatism through a brief review of the main interpretations over the last decades. Then, the paper describes three different lectures of fascist corporative order brought by the jurists between the twenties and the forties: the vision of those who saw in corporatism the ideological and institutional answer for outlining the identity of the new totalitarian state; the interpretation, typical of jurists with a liberal background, who attempted to fit the corporatist phenomenon (and the 20th century in general) into traditional interpretative categories; and finally, the minority view embraced by jurists having different backgrounds and ideological sensibilities, but nonetheless convinced that the corporatist system should represent an opportunity to imagine types of relationships between private and public, political and economic spheres that were remote both from 19th century individualism and the new frontiers of totalitarianism. The second part tries to stress the so-called neo-corporatism, that is the season of "social consultation" spanning the 1980s and 1990s to see whether and in which sense it is possible to connect this experience both with the interwar corporatism and the democratic constitutional context.

Keywords: Corporatism; neo-corporatism; Fascism; Democracy; Legal history.

Resumo

O presente artigo se propõe a analisar como o pensamento jurídico representava a ideia da ordem corporativa e neocorporativa no contexto histórico italiano do século XX. A primeira parte está dedicada à evolução da historiografia do corporativismo fascista por meio de uma rápida revisão das principais interpretações das últimas décadas. Em seguida, o estudo apresenta três concepções diferentes da ordem corporativa fascista em se tratando da cultura jurídica entre os anos de 1920 e 1940: a visão daqueles que enxergavam no corporativismo a resposta ideológica e institucional com a qual se poderia definir a identidade de um novo Estado totalitário; a interpretação, típica dos juristas liberais, que buscava encaixar o fenômeno corporativista (e o século XX como um todo) em categorias interpretativas tradicionais; e, finalmente, o ponto de vista de uma minoria compartilhada por juristas que, apesar de suas premissas ideológicas e culturais diferentes, estavam convencidos de que o sistema corporativista deveria representar uma oportunidade de se imaginar tipos de relações entre as esferas públicas e privadas, políticas e econômicas, provenientes do individualismo do século XIX e das novas fronteiras do totalitarismo. A segunda parte deste artigo busca salientar o assim chamado neocorporativismo, ou seja, o período de "consulta social" nos anos de 1980 e 1990 para ver se e em que sentido seria possível conectar essa experiência com o corporativismo entre guerras, bem como com o contexto constitucional democrático.

Palavras-chave: Corporativismo; Neocorporativismo; Fascismo; Democracia; História jurídica.

Resumen

El artículo intenta analizar cómo el pensamiento jurídico haya representado la idea del orden corporativo y neo-corporativo en el contexto de la historia italiana del siglo XX. La primera parte está dedicada a la evolución de la historiografía del corporativismo fascista a través de una rápida revisión de las principales interpretaciones de las últimas décadas. Luego, el ensayo expone tres diferentes concepciones del orden corporativo fascista con respecto a la cultura jurídica entre los años 1920 y 1940: la perspectiva de quien ve en el corporativismo el dispositivo ideológico e institucional en torno al cual se debe definir la identidad del nuevo Estado totalitario; la interpretación, típica de los juristas liberales, que intenta reconducir el fenómeno corporativo (y, más en general, todo el siglo XX) dentro de las categorías interpretativas tradicionales; y por último, el punto de vista minoritario de aquellos juristas que, desde diferentes premisas ideológicas y culturales, estaban convencidos de que el sistema corporativo pudiera representar la oportunidad de imaginar relaciones entre privado y público, esfera política y económica, alejadas tanto del individualismo decimonónico, como de las nuevas fronteras del totalitarismo. La segunda parte intenta poner a prueba el presunto neo-corporativismo, es decir la temporada del (?) de los años 1980 y 1990, para verificar si, y en qué sentido, es posible relacionarlo no solo con la experiencia del corporativismo de entreguerras, sino también con el orden democrático constitucional.

Palabras clave: Corporativismo; Neocorporativismo; Fascismo; Democracia; Historia del derecho.

Fascist corporatism through its historiographical interpretations

Though few topics in historiography lend themselves as well as corporatism to comparative studies, or studies concerned in any case with the international dissemination of ideas and institutions that may be qualified as corporatist[1], the focus of this article will be limited to 20th-century Italy. It will seek to delineate the salient features of two different periods in history, from both a historical and legal perspective: Italy's corporatist experiences in the fascist era and during the period of 'social consultation' spanning the 1980s and 1990s, often defined as neo-corporatism[2]. The article will then explore both the specific characteristics of the two experiences and the reasons enabling a link to be created between them, highlighting differences and similarities.

For a number of years, fascist corporatism has been a subject of renewed interest among historians[3]. This interest has contributed to a significant reassessment of the role and weight of this side of fascist policy, which, at least on paper, the regime exhibited as an important sign of its originality and historical legitimacy: "the Fascist State – it was affirmed repeatedly – is necessarily corporatist". The issue of corporatism was basically shelved for a long time because it was considered a radical failure, a design incapable of giving rise to authentically new ways of conceiving the relationship between State and society, either in the realm of labour relations or in the complementary area of public regulation of the economy[4]. Therefore, what took shape in the years of the regime was merely a superfetation of offices and bureaucracies, and the only thing new about them was the name "corporatist". Moreover, they seemed to have contributed only to increasing the overall inefficiency of the Italian social, economic and institutional system. Thus, they were far from offering any prospects for a "third way", an alternative system that could replace both liberalism and socialism; they were yet limited to renewing, under a different guise, the alliance that already long existed between political power and the Capitalist bloc, thereby enabling a perpetuation of the traditional equilibrium between classes.

The most recent historiographic literature – although without criticizing these more traditional interpretations - has now essentially addressed two aspects of corporatism from a different perspective. Some studies have challenged, at least in part, the notion of failure, arguing that although the corporatist experiment did not take off, as corporations never became – in Mussolini's emphatic words – the "high command of the Italian economy", this did not mean that it left no traces in Italy's political and economic life during the fascist regime and after its fall (Cassese, 2010; Gagliardi, 2010). Another pillar of traditional interpretations was also called into question, namely the idea that reflection on corporatism had given rise

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only to negligible theoretical proposals: alongside the many who continued to uphold traditional positions just naming them as corporatist, there were also authors who took the idea of corporatism seriously, seeing it as an opportunity to supplant the 19th century liberal vision of society. By the view embraced by many legal thinkers who lived during fascism and able to influence historiographic interpretations, the legal science of that period could be divided into two single large categories distinctly separate and internally homogeneous, highlighted by Salvatore Pugliatti's (1950) well-known reconstruction. On the one hand, there were the actual Jurists, the only ones worthy of this name, obstinately loyal to liberal individualist ideology and a formalistic and legalistic conception of juridical phenomena by which they had succeeded in saving the legal order from succumbing completely to fascist influence. On the other hand, there were the apologists, culturally mediocre persons, not even qualifiable as jurists, who engaged in a noncritical celebration of fascism, and thus, deserved to be forgotten.

Now this view has also progressively lost ground. As may be easily surmised, this was a reductive reconstruction, almost Manichean in nature, which oversimplified a singularly complex universe actually not remained tied to a traditional individualist conception of society, inasmuch not all jurists continued to adhere to a legalistic and formalistic vision of law, nor did they always show to be sceptical towards the corporatist approach. On the contrary, in corporatism, many of them saw a welcome sign of restored State authority, necessary above all in order to govern a phenomenon like syndicalism, which in their view was dangerously apt to produce conflicts and social unrest. From this perspective, Francesco Carnelutti's thought was emblematic, who can certainly not be accused of having fascist sympathies, yet after the regime had fallen, he regretted the abolition of the 1926 syndical law and declared the choices of the fascist legislator to be preferable to those of the Republican Constitution, which, by recognising the right to strike (Art. 40), opened the doors of the Italian legal order to an authentic "act of war" (Carnelutti, 1949: 138).

Secondly, the rigid division of the theoretical realm into jurists and apologists failed to consider the voice of an important minority of legal thinkers who viewed the corporatist approach with interest, as it offered an opportunity to supersede the liberal idea of society, but did not adhere to the totalitarian interpretations of corporatism itself.

Finally, reconstructions like Pugliatti's denied that there was any theoretical substance in the interpretations of corporatism adopted by the so-called regime jurists, who were all indistinctly placed on the same level. Instead, a closer look from the recent historiography revealed that the galaxy of regime jurists was not populated only by insignificant or noisy figures, but also by some culturally robust ones (Alfredo Rocco, Giuseppe Bottai, Giuseppe Maggiore,

Sergio Panunzio and Arnaldo Volpicelli, just to mention a few), who engaged in debate over the features that fascism and corporatism should have in order to bring about an authentically revolutionary shift in Italian history.

In this regard, it is not easy to identify a *dies a quo*, the moment when these insights began to be a matter of discussion among historians; it has been an uneven process, largely characterised by the simultaneous presence of different types of interpretations. One cannot neglect to mention Paolo Ungari's pioneering work of some decades ago, *Alfredo Rocco e l'ideologia giuridica del fascismo* (1963). However, for a long time, his book remained an isolated product in the field of research; it was not until the mid-1980s[5] that Italian legal historiography began to probe into the many different ideas and theoretical aspects of legal thought in the fascist years, bringing to light many complex possible technical and ideological combinations, elements of continuity and breaks with the past. This did not imply a complete rejection of the interpretations of traditional historiography, but rather, precisely, an awareness of the complexities, a readiness to ask more questions and to explore different interpretative perspectives.

THE TOTALITARIAN IDEA OF CORPORATISM

I shall limit myself to giving here a brief summary of the numerous interpretations spawned by the corporatist proposal, focusing my attention on some aspects that are relevant as an introduction to the discussion on neo-corporatism.

From this perspective, it is possible to identify three main interpretative fronts: firstly, that of regime jurists convinced that corporatism should provide the ideological and institutional tools for outlining the framework of the new totalitarian state; secondly, the interpretation, put forward by the majority of legal theorists scientists from a liberal background, who attempted to fit the corporatist phenomenon (and the 20th century in general) into traditional interpretative categories; and, finally, the minority view embraced by jurists having different backgrounds and ideological sensibilities, but nonetheless convinced that the corporatist system should represent an opportunity to imagine types of relationships between the private and public, political and economic spheres that were remote both from 19th century individualism and the new frontiers of totalitarianism.

Regarding the regime jurists, as previous noted, there were not only figures (though there were plenty of those too) who devoted themselves to base celebratory rhetoric, but also by authors who undertook a non-superficial, theoretically astute analysis of the features that the Fascist State should have in order to represent an authentically new chapter in Italian history.

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Moreover, it was not a horizon characterised by uniform perspectives: Alfredo Rocco and Ugo Spirito, Giuseppe Bottai and Sergio Panunzio, Carlo Costamagna and Arnaldo Volpicelli, all expressed different interpretations both of fascism and of corporatism. However, despite the differences, for the purposes of this essay, it is possible to identify some common threads.

Above all, a common issue was the analogous evaluation of the crisis of the liberal State, afflicted by an authentic "social phobia" (Panunzio, 1931: 171), which had neither wanted nor known how to address the problem of the relationship with the modern, organised and conflict-ridden mass society. This was one of the reasons that made corporatism a particularly suitable theoretical and institutional foundation for defining the framework of a new power, not interested only in keeping society under surveillance and stifling discordant voices, but also in conquering it and making it embrace the fascist world view. Corporatism could go well beyond the regulation of labour and economic relations and be a machine appointed in promoting a tentacular reach of the State by transforming all social organisations into "fecund auxiliaries" (Bottai, 1928: 398) of its power. Indeed, the totalitarian State was constantly committed to "seeking a consensus that did not rely on a spontaneous, vacillating, elitist 'public opinion', but rather relied on a complex organisation which, by influencing the everyday experience of citizens, attempted to obtain their adhesion to the regime's watchwords" (Costa, 2001: 270). thus, a State that conquered society (also) by organising it. Then, corporatism could and should aspire to become the instrument called upon to take the State everywhere, to transform society into a militia actively devoted to the fascist cause.

Of no lesser importance was the role envisaged for the syndicates, governed by Law no. 563 of 1926, which constituted the first chapter in the process of implementation of corporatism. It was considered by its author – Alfredo Rocco – as the "most profound transformation the State had undergone since the French Revolution" (Rocco, 1926: 335), and it was included in a legislative cycle that produced many of the so-called "exceptional Fascist laws" *(s.c.: leggi fascistissime).* According to Rocco, this law had fulfilled a "very great political task" (Rocco, 1927: 30), not only and not so much because it had put non-fascist trade union organisations out of action, but also (and even more importantly) because it had inaugurated a system of governing the trade union phenomenon capable of guaranteeing the State a presence of varying intensity that would enable it to balance the quality and quantity of its intervention. However, many jurists from liberal backgrounds read it as a confirm of traditional 19th century images of the legal order, just subjecting a phenomenon such as syndicalism, dangerously wont to produce conflicts and social unrest, to State control, especially looking at the prohibition, under pain of criminal prosecution, of strikes and lockouts[6].

Actually, it inaugurated a whole new season in the relations between State and syndicates. The legal recognition[7], the right to conclude collective agreements[8] or have recourse to the magistracy of labour[9] , and the strategic ambiguity of some legislative definitions,[10] together with the massive government presence in the life of Unions[11], did not describe the indecisive oscillation between the granting of autonomy and reaffirmed need of a controlling State (Stolzi, 2007: 33-35). They rather expressed the lucid choice of those who had understood that governing the changing dynamics of the new society required sufficient room for manoeuvre; thus, the State stood the sole arbiter of collective life, able manipulator of the pawns that gravitated around its space. It remained alone, without, however, being isolated, precisely because it had succeeded in creating channels for identifying and cataloguing the society subjected to its power.

The attribution to the syndicates of such tasks as aiding, selecting and moralising members was, thus, perfectly consistent with this approach: not only were they designed to compensate for the suppression of the demands and conflictual aspects of trade unions, but also deemed necessary, in a positive sense, to define the legal space of individuals on new bases. On the one hand, in fact, States with a totalitarian vocation "show a constant concern for their subjects, without precedents in the nineteenth century tradition" (Costa, 2001: 364), and the quality and quantity of individual needs that the State took upon itself increased accordingly. At the same time, and not contradictorily, this unprecedented extended

> "attention to subjects is directly proportional to the delegitimisation of their space […] the oldest and most tenacious idea of liberty, liberty as *immunitas* and protected space, gives way before an order that in order to sustain itself and develop must be able to count of the 'total' willingness and compliance of its subjects, on the inexistence or in any case transitoriness of areas of freedom. […] Liberty thus […] ceases presupposing a plurality of options and becomes a tool for reinforcing a common faith" (Costa, 2001: 365).

Corporatism as a 'new way'

The best way to introduce our discussion regarding the second front of the interpretations of corporatism is probably to refer to it as a different way of construing history and, more in general, the relationship between historical eras; according to the advocates of the totalitarian system, corporatism should have served as one of the vehicles for achieving a clean break between past and future, one of the instruments called on to validate fascism as the starting point of a truly new chapter in history, finally capable overcoming the long-time

vice of western civilisation and rethinking the relationships between public and private, state and society. In the eyes of these authors, this vice could be summed up in a single world: individualism. Individualism meant that the West, since the fall of the Roman Empire, had no longer been able to ensure the prevalence of the State and its power of cohesion over the disintegrating force of individuals and groups.

For those who decided to take the corporatist paradigm seriously – without, however, embracing its totalitarian implications – it was necessary to start off from a different reading of the relationship between past and future. The needed to delineate a new model of coexistence, capable of rising to the challenges posed by 20th century mass society and redefining the boundaries of state sovereignty, based on the idea that there were some positive outgrowths of the past that the present neither could nor should call into question. These undoubtedly included the distinction between private and public. Moreover, there was the conviction that the private realm should continue to embody a space of individual freedom and autonomy, not left entirely in the grip of the new power of groups and of the State.

In this case as well, there was no uniform theoretical horizon. Indeed, looking on this side of the legal thought on corporatism, the civil law expert Enrico Finzi, the legal philosopher Widar Cesarini Sforza, the commercial law specialist Lorenzo Mossa and the constitutionalist Costantino Mortati, they all had different theoretical profiles wholly remote from one another, as their backgrounds lay in different disciplines, and they also differed in their ideological sensibilities. Yet, they were convinced that corporatism should represent an opportunity to include in the jurists' agenda (at least) two questions, long avoided and eluded: the question of the so-called functionalisation of subjective rights and the question of the role of the collective dimension of law, the dimension of organised interests (Stolzi, 2007: 301 ss).

There's no time to highlight in detail these interpretations; just a word to say that their vision of individual rights, as the reflection on social interests, was considered capable of transforming the traditional idea of private sphere, and to make it possible constraints and freedoms, rights and duties, autonomy and participation to coexist. This was the direction taken by the theories on property rights, represented as a discretional power, free and restricted at the same tame (Finzi, 1935) and on enterprise (Mossa, 1935); and this was the direction also taken by their reflections on organised interests (Cesarini Sforza, 1942). Their reflections on corporatism were along these lines: neither a mere façade behind which to perpetuate traditional images of the legal order, nor a bizarre masquerade staged by fascism to justify its historical novelty; rather an option worthy of attention to the extent in which it would constitute a breakthrough, a means for combining autonomy and heteronomy, market and regulation,

private and public. The disillusionment with corporatism, as implemented, arose essentially from the fact that this very mechanism, which could have represented a positive chapter in Italian history, did not succeed in becoming anything more than an inefficient expression of a suffocating, bureaucratic authoritarianism. In such a context, those who called for corporatism and the references to it contained in the 1942 Civil Code to be maintained, following the Liberation in the conviction that a democratic framework could instil new life into the corporatist idea – an idea that seemed to be able to mitigate the excessive power of the "capitalist ruling classes" (Mossa, 1951: 111), once the authoritarian character it had taken on in the years of fascism had been expunged – remained isolated voices.

As we all know, things went quite differently: included among the few "parasitic creatures" (Calamandrei, 1945: 58) that infested the Code, the references to corporatism were deleted from the body of the new legislative text. In the view of many legal experts, the purging of such references served to render the 1942 Code a mere update of the previous Code of 1865, a further expression of a traditionally individualistic and voluntaristic conception of private law, which fascism had attempted, unsuccessfully, to chip away at. This widespread interpretation was not shared by one prominent figure of the 20th century legal community, Filippo Vassalli, who, among other things, was the true *deus ex machina* of the Civil Code of 1942. Despite remaining convinced, from the first decade of the 20th century to the 1960s, private law should remain the law that gave individual complete freedom in choosing the ends of their own actions, and maintaining, accordingly, that every conceivable relationship between private and public that departed from their reciprocal non-interference represented a threat to liberty and the individual, Vassalli lucidly assessed the transformations of the 20th century and judged that the Code, 'his' code, would be able to keep abreast of them, by placing private law in constant contact with the area of social and public interests, and extending its scope to areas (enterprise, labour) unknown to the 19th century legislator.

Precisely because it was the result of the work of jurists who were able to read and interpret their times, the Civil Code of 1942 should be considered a fully 20th century code. This does not imply that it was a legal translation of the ideology of fascism, of a regime that, in Vassalli's view, never succeeded in fully appropriating the law for itself, civil law in particular, and its refined technical intricacies, which only the expert hands of the jurist – and not the politician – were able to manage and adapt to processes characterised by increased intermingling between private and public, which constituted a hallmark of the 20th century legal experience as a whole, not only those aspects tied to authoritarian or totalitarian regimes (Vassalli, 1947).

Corporatism as the 'same way'

However, Vassalli's attitude remained an isolated one, no doubt dictated by the need to defend his own job as a code drafter, but also supported by his profound conviction that jurists should be able to interpret the relationship between different historical times and give their own contribution to navigating the waters between continuity and change.

We, thus, introduce the discussion on the third – and last – front of legal reflection on corporatism. Although, in this case as well, we see a significant variety and complexity of positions, a common denominator can be found in what I have elsewhere referred to as reductive arguments (Stolzi, 2007). Both in the private and public law realms, the prevailing attitude was to try and fit, to reduce, the main novelties of the 20th century panorama into the usual interpretative schemes, as if the jurists' mission consisted solely in classification and on insisting on the eternal validity of the traditional – and traditionally individualistic – conception of law.

The interpretation of corporatism was no exception: never considered as an overall theory concept capable of completely redefining the relationship between State and society, its assessment was segmented, limited to individual parts. Not that this prevented an appreciation of some of its manifestations – e.g. Carnelutti's position on the syndical law – or rather of that parts were the ones it was deemed possible to fit in with a traditional view of the legal order, characterised, as such, by a clear separation between private-individual and public-state matters. Whereas every reference to corporatism as a design intended to create a different structuring of the legal and political realms was regarded with scepticism, even destined in itself to fail due to subverting an image of the existing order (founded on the basic non-interference between society and state).

This way of approaching corporatism and the 20th century in general produced significant consequences especially after the fall of fascism; in particular, such interpretations served as a basis for portraying the regime as merely a parenthesis, a malignant tumour that could be contained and circumscribed within the chronological limits of the regime, and then promptly forgotten. That an author of Calamandrei's calibre would suggest "let's take up the path again as if we had left it yesterday" (Calamandrei, 1950: 273-274) clearly expressed what was perhaps the most common attitude among jurists, i.e. the idea that it was possible to confront the period following the end of fascism by re-proposing 19th-century images of the legal order

and, with them, the idea of an abstract 'technical' legal knowledge, remote from the impure terrain of politics[13].

This persistence of a certain way of conceiving law and the jurists' role beyond time and the needs of the time in which it had arisen represented a characteristic of trait of Italian legal thought in the first decade of Republican Italy. Perhaps the most eloquent evidence of this lies precisely in the way in which the legal community approached the text of the Italian Constitution of 1948. Belonging to the family of 20th-century democratic constitutions (Fioravanti, 2017), the Republican charter did not limit itself – unlike 19th-century liberal constitutions – to specifying the State's powers and establishing a limited catalogue of individual rights and freedoms, but rather embraced the entire life of the community, outlining a notion of coexistence that was defined on the basis of the relations among all the elements making it up and which envisaged the private, collective and public, political, legal and economic dimensions as being interconnected in the new republican life. Faced with such daunting prospects, a large part of the legal community ventured interpretations aimed at reducing the impact of the newborn constitution on the Italian legal system; the unity of the structure of the constitutional text was undermined, in particular, by the distinction, introduced through decision case law[12] and echoed by many jurists, between preceptive constitutional rules and programmatic rules, that is, between rules that were immediately applicable and rules that, by contrast, could take on a normative value only if translated into specific legislation.

Apart from a few noteworthy exceptions[14], it was not until the second half of the 1950s – the establishment of the Constitutional Court in 1956 was decisive in this respect – that the intimate coherence of the Republican Constitution was recognised, along with its function as a fundamentally normative instrument, an authentic driving force of the life of the Republic.

Neo-corporativism in Italian democracy

The question we need to ask ourselves at this point is therefore: where did the issue of neo-corporatism come from? What link does it have with the interwar doctrine of corporatism and with the idea of coexistence enshrined in the Italian Constitution?

The term neo-corporatism was used in Italy and elsewhere (Vardaro, 1988) in reference to trilateral agreements between the government, employers' organisations and trade unions which had a significant role over a fifteen-year period of Italian history, starting from the beginning of the 1980s and up to the end of the millennium. The birth of such forms of social concertation is usually tied to the so-called Scotti Protocol of 1983, whilst the last act of this

model of relations between the state and trade unions is the so-called Christmas Pact of 1998. Lying somewhere in the middle is the Ciampi-Giugni protocol, which attempted, albeit unsuccessfully, to institutionalise practices of concerted action, that is, to make them an ordinary tool for managing economic relations and guiding the main choices of industrial policy. The meaning attributed to corporatism warrants clarification: although, starting from the 1960s, the terms 'corporatism/corporate' were used to indicate processes towards an increasingly lobby-based segmentation of society, and the consequent prevalence of particularistic interests over the general interest, about concertation, the reference to corporatism has described – as in the years of fascism – quite the opposite, i.e. an aspiration to guarantee the fulfilment of some general interests through procedures that replaced conflict with bargaining among the parties involved. Moreover, the role of the State was never envisaged as a mere arbitrator, a simple mediator between the parties (lobbies), but rather as a subject called upon to make a decisive contribution in discerning and defining what could be regarded as a general interest[14]. On the other hand, the prefix 'neo-', placed before the word corporatism, was meant to indicate a significant change in course compared to the experience of fascism: democratic corporatism was new first of all because it presupposed trade union pluralism; secondly, because it did not rule out the possibility of conflict between the parties or recourse to the typical instruments of democratic conflict, such as strikes; finally, because an agreement was seen as the hoped-for, but not mandatory, outcome of the bargaining, which the parties were not obliged to participate in.

Reconstructing, from closer up, the context in which the practices of neo-corporatist agreements and the objectives it was believed they could achieve were born and developed, we basically note that those practices, too, arose from the perception of an ongoing crisis and were an attempt to provide a response capable of creating a relationship among the many different levels and players involved in the country's economic policy.

Just a quick glance at the agreements in question to show, despite not having identical contents, they are all similar for a particularly broad array of interventions. They do not limit themselves, in particular, to addressing the aspects most directly tied to employment relationships (pay, working hours, retirement benefits, etc.), but include references to such aspects within a broader policy framework aimed at holding together a number of different plans (tax-related aspects; additional benefits for dependent children; the containment of prices and fees for transport, electricity, and healthcare; the conditions for access to social safety net programmes; etc).What emerges, therefore, is a planning attempt that aims not only at achieving, through State intervention, a truce among contenders, i.e. trade unions and employers, but

also involving them in the realisation of a shared future coexistence that would withstand the impact of the simultaneous transformation of the economic and political systems. The second half of the 1970s coincided, in fact, with the weakening of the driving force that had characterised the "Glorious Thirty" and had enabled the country to undergo profound transformation within a relatively short space of time[16].

The fact that work occupied an important place in this trajectory of development of the legal order is not surprising; indeed, the central importance attributed to work enables us to address one of the questions posed at the start of this section, namely, the relationship between neo-corporatism and the Constitution. This is a question that can probably be answered only by considering the role of work acknowledged by the Republican constitution; even leaving aside the solemn *incipit* – Art. 1: "Italy is a democratic republic founded on labour" – the Constitution links work to two key concepts of the democratic lexicon, freedom and dignity (Art. 36). Considered a powerful vehicle of emancipation (not only economic) of the person, and hence tied to the freedom to build one's own destiny, work is simultaneously regarded as an essential means of relating to the world and belonging to a democratic community. Art. 4 of the constitutional text states this in a crystal-clear manner: "The Republic recognises the right of all citizens to work and promotes those conditions which render this right effective"; the article then continues by indissolubly linking rights and duties, autonomy and belonging: "Every citizen has the duty, according to personal potential and individual choice, to perform an activity or a function that contributes to the material or spiritual progress of society." Then, of course, work comes into the text of the Constitution also in its collective, unionist dimension. Only that the provision in question, Art. 39, would become one of the most hotly debated (and criticised) in the life of the Republic. Indeed, on one hand the expression that opened the article – "Trade unions may be freely established" – marked a clear break with fascism, on the other the rest of the article,[17] which authorised only registered trade unions to enter into collective agreements with *erga omnes* effects, opened some issues. The obligation of registration – it was argued – risked placing trade unions under State control, paving the way to solutions dangerously similar to the ones experienced during the years of dictatorship.[18] Despite being formally abolished, unlike so many norms and institutions that were transmitted from fascism to the republic largely intact, corporatism seemed nonetheless capable of casting its authoritarian shadow over every proposal that envisaged a stable link between public power and the rights of labour organisations in the new republican context. It was, thus, not by going through the registration procedure provided for in Art. 39 – a procedure that was never implemented – that trade unions in Italy achieved the

institutional stature that contributed to making them, at least for a certain number of years, a major player when it came to economic policy choices.

Without a doubt, a decisive step in this process was the introduction of the Workers' Statute (Act 300 of 1970), a legislative text that, for the first time, established a stable link between the individual and collective dimensions of employment relationships. That is, they were seen as two complementary aspects, necessary in order to address both the problem of worker protection in the workplace and the more general issue of the existing balance of power in the realm of production. In the text of the Statute, considerable attention is focused on the rights and freedoms of the individual in the workplace[19], not depending on whether individual workers join the union; at the same time, promoted the solid roots of trade unions within enterprises as an essential means for the expression and protection of those same individual rights and freedoms (Stolzi, 2014). Therefore, this type of legislation was deemed capable of transforming trade unions into an effective countervailing power, an essential player in socioeconomic dynamics; however, such an objective – according to the vision adopted by the father of the Statute, Gino Giugni – should not be pursued by wrapping trade unions in a protective membrane constructed by the State, nor by relying on the recipe provided in Art. 39 (which Giugni regarded as "illusory"), Giugni (1997: 124) rather by creating conditions that would enable trade unions to grow and develop 'from below', as a typical, essential organisation of the economic and social realms.

These brief notes, as background information on the subject of neo-corporatism, enable us to formulate two observations.

The taboo of "collective", the organisation of occupational interests, was overcome by embracing the private-social conception of trade unions, which proudly declared their distance from interwar notions of corporatism. Not only – as it is clear – from authoritarian or totalitarian visions of corporatism, but also from those associated with the second front of interpretation, as discussed in the previous paragraphs. Behind the emphasis on the collective dimension of the law and on trade unions as a necessary and beneficial expression of organised interests, it was not possible to find any trace of ideas resembling those of Mossa, Cesarini Sforza, or Finzi. That scientific approach, for various reasons, tended to expire along with its authors, or in any case did not exert any influence on the discussion among labour law specialists. However, it was precisely labour law that formed the theoretical and institutional context leading to reflections on the role of trade union organisations, which would be essential in order to define the contours of neo-corporatism. Underlying the vision of Giugni and, in general, of the new generation of labour law specialists, there was an important process of methodological

renewal which had been triggered by a private notion of labour law, a sort of expansion of the categories of private law in a social direction. From this starting point, trade unions sought to take on a role as an essential element of the democratic dialectic, a necessary presence in workplaces, but also, as a player that could attain a strong position in the legal system overall and have a major impact on economic policy choices. Considerable headway in this direction was achieved by a judgment of the Constitutional Court (nº. 290 of 1972), which recognised the legitimacy of political strikes, that is, of strikes "aimed at influencing governmental and parliamentary decisions" (De Luca Tamajo, 2008: 105) as a means of "workers' participation in the political, economic and social organisation of the country" (De Luca Tamajo, 2008: 105). "The symbolic value of this acknowledgement was considerable, as it gave rise to a legitimisation of trade unions exerting their power of protest outside a specific company setting and an implicit recognition of their fundamental role in the overall constitutional balance" (De Luca Tamajo, 2008: 105), so much so that this judgment of the Constitutional Court was highlighted as playing a role in favouring the planting of the first "seeds of neo-corporatism" (De Luca Tamajo, 2008: 114).

Then, this vision of the trade union as a social formation that, if placed in a position to express itself, might succeed in gaining, with its own strength, an incisive role in legal and political dynamics, works as long as it is sustained by a certain structuring of the economy and production and of the political system. As long as a large part of wage earners are employed in factories and the universe of white collar workers is characterised by serial tasks with a low degree of specialisation; as long as many are working under the same roof and the workplace also becomes the place of a common identity; as long as there are just a few types of employment contracts with relatively uniform characteristics which lend themselves to being negotiated as a whole by trade unions; as long as the economy has a prevalently national dimension and the national players (enterprises, State, trade unions) have a decisive role in it, one might imagine a scheme of relationships that combines private citizenry represented by opposing unions and a role consisting prevalently of mediation performed by the State.

However, when this framework of reference begins to crumble, the game becomes complicated for everyone. The phenomena that, starting from the mid-1970s, have presented themselves to the historian are,thus, many, contradictory, and are still largely ongoing: on the one hand, new watchwords have begun to circulate – efficiency, productivity, flexibility – which do not have an identical meaning, but all seem to describe the need for greater correspondence (also) between the organisation of work and evolution of the economic and production systems; on the other hand, we are witnessing an increasing reliance on welfare-

-type measures in the State's intervention (from the bailout of companies with public funds to massive recourse to the wage supplementation fund), a trend that denotes the system's difficulty in coming up with answers capable of ensuring a real recovery of competitiveness for both businesses and workers (Stolzi, 2015).

It is at this historical turning point, not coincidentally, that reliance on the so-called neo--corporative model of concerted action has gained ground. That the new types of relationships between government and social partners fit into the framework of a "political exchange", which also reflects their need to reaffirm their (increasingly threatened) centrality, appears to be beyond doubt. At the same time, reading this phenomenon in light of a single transition – from the trade union's economic role to its political role – risks being reductive. If, indeed, we consider politics as the place for elaborating a certain vision of coexistence, and, of the relationships deemed relevant for the purpose of producing that vision, trade unions express by necessity a political vocation, whether it be tied to workers' demands, or lays emphasis on its different 'post-conflictual' role. If anything, a distinctive feature of neo-corporatist agreements lies in the fact that they see the "work issue" as one of the decisive variables for defining the overall equilibrium of a given socio-political and economic system: by placing work at the centre of a web of interdependences and relationships (welfare, social safety net, cost of life, contract types etc.), regarded as essential for defining the conditions of citizens in the legal system, such agreements may perhaps be viewed as the extreme (last?) attempt to devise an overall plan of national economic policy, as a response aimed at (re)creating, in view of (and as a consequence of) the multiplication of the areas of crisis and regulatory demands, a perception of time that is sensitive to the prospect of planning and of the future. The concerted action has been relied for sure as a means of accompanying decisive phases in the life of the legal system. An attempt to square the circle, which, since the second half of the 1970s, has featured increasingly high on the country's agenda, to find ways to curb public spending and unemployment and at the same time re-launch business and job opportunities.

It is not surprising, therefore, that efforts at concertation resumed starting from the early 1990s: the end of the first Republic, the irreversible crisis of the old party system, together with the challenging objectives laid down in the Maastricht Treaty – signed by Italy in 1992 – in fact favoured the adoption of procedures considered capable of assuring a transition towards new economic policy goals while avoiding (excessive) conflict. It was not only the "technical" governments formed following the "Tangentopoli" bribery scandal that relied on concerted action[20] (Amato, Ciampi and in part the Dini government for pension reform); subsequent centre-left governments (Prodi, D'Alema, Prodi)[21] also adopted this approach, whereas centre-ri-

ght governments sought to reaffirm the centrality/autonomy of government choices, tempered and, at the same time, favoured, starting from the beginning of the new millennium by the adoption of the so-called "method of social dialogue". The latter was founded, precisely, on seeking a dialogue, though not necessarily an agreement, with social partners, given that, in the event of a lack of convergence, the government judged that it could act autonomously.[22]

What role the new political era that began in 2001 with the Berlusconi government played in bringing about the breakdown of concertation, or whether that breakdown is tied, more profoundly, to the increasing difficulty in imagining the lines along which the future should be built, are questions that lie beyond the scope of this essay. It is certainly possible to acknowledge a dual phenomenon: on the one hand, the notion of "work" risks losing its role as the cornerstone of democratic citizenship; on the other hand, accordingly, the State and trade unions, for different reasons, are experiencing a particularly critical period, which seems to have impacted their very identity as indispensable representatives of economic power.

In this regard, it appears especially significant that the main Italian trade union organisation, the CGIL (Italian General Confederation of Labour), drew up, in 2015, a *Carta dei diritti universali del lavoro (Charter* of *Universal Labour Rights)* which provides (Art. 28) for a mechanism of trade union registration similar to the one envisaged by Art. 39 of the Constitution. This is significant precisely because Art. 39 was long considered negatively by the trade union organisations themselves, as they saw it as posing a threat of excessive public control over their life and, for this, too close to the fascist idea of corporatism; whereas now, in the current atmosphere of crisis and uncertainty, registration is considered a useful instrument for certifying the trade union's existence and ensuring it possesses a strong institutional role.

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Notes

1 Mazzacane; Stolleis; Somma (Ed.), 2005; Pasetti, 2016; Costa Pinto (Ed.), 2016; Costa Pinto (Ed.), 2017.

2 Due to space, I will not examine the catholic corporatism, although it embodies a relevant chapter to come into contact with the many different faces of the corporative galaxy along 19th and 20th centuries. Rooted in a strong anti-statualistic view (especially in its Italian version, conditioned by the conflictual relationship between Church and State during the political unification process), this side of reflections on corporatism criticized, in most of their expressions, the State-based corporatism promoted by fascism. At the same time, the interpretation of corporatism brought by the Regime represented a stimulus to reaffirm the differences, but also to deepen the reflection on the role that the State should play in the contemporaneity. See: Cerasi, 2017; Pollard, 2017.

3 Costa, 1986; Mazzacane (Ed.), 2002; Santomassimo, 2006; Stolzi, 2007; Gagliardi, 2010; Cassese, 2010; Cau, 2010. denis, 2007, p. 189-35.olution*. llo tansiero giuridico moderno, pp. tinuità dello Statoidica dell'

4 In the fascist period, references to corporatism alluded to an overall project of social, political and economic reform, a project that was supposed to develop in two successive and interdependent phases. The first phase, termed "union corporatism" – the only one, as we see in the next pages, which received an adequate normative and institutional expression – was based on the legal recognition of unions of workers and employers. In contrast, the second, more authentically corporatist phase provided for the formation of corporations, that is, organs of the state made up of elements drawn from unions, the administrative apparatus of the state, and the National Fascist Party. Corporate groups were to be entrusted the task of promoting and realizing a so-called third-way model of economic organization: that is to say, they were intended to promote a system of economic-production relations capable of combining the continued respect for property and private initiative with various patterns of public intervention in economic matters (from direct intervention intended to have restricted scope, to the imposition of qualitative and quantitative results on production activities, which was intended to become the general rule).

5 A syntesis of the main historiographical interpretations of fascism and their changings can be read in Stolzi, 2014.

6 Arts. 18 et seq. (lockouts were prohibited only if carried out "without a justified motive").

7 As it is well known, the law did not expressly state that only Fascist syndicates would be granted recognition, but Art. 1 para. 3 established, among the conditions to be met in order to obtain recognition, that the syndicate leaders would have to give "assurance of their competence, morality and secure national faith". Moreover, Rocco himself clarified the meaning of the legislative expression: "we have no difficulty – these his own words – in declaring this very moment that recognition will be given to Fascist syndicates" (Rocco, 1926: 387). That this recognition represented a sort of wedge, a means of sanctioning the State's entry into the dynamics of labour relations and promoting the widespread expansion of its power, is confirmed by what would today be called the representativeness required of Fascist syndicates, which was particularly low. On the employers' side, it was in fact sufficient that the syndicates asking for recognition employed 1/10 of the total workers "employed by enterprises of the type for which the association was established, existing in the district where the enterprise operates" (Art.1, para. 1); on the workers' side, it was necessary that those who joined the Fascist syndicate represented "at least one tenth of the workers in the category for which the association was established, existing in the district where the association operates" (Art.1, para. 1). Since for each cate-

gory of workers and employers only one association could be recognised (Art. 6, para. 3), the provision was clearly intended to ensure the survival of Fascist syndicates only.

8 Art. 10 authorised recognised syndicates to conclude collective labour agreements with erga omnes effect.

9 Arts. 13-17 settled magistracy of labour with jurisdiction over collective labour disputes.

10 It has been noted, for example, that the ambiguity in the definition of collective bargaining (regulatory vs. negotiating aspects) could allow the executive ample space for manoeuvre, especially in cases referred to the judicial authority. See: Jocteatu, 1979: 118; observations of a similar kind can be found in 1978: 64 and 80.

11 In my opinion, this is a decisive aspect of the legislative text in question; what was envisaged was not, in fact, simply state direction of the life of syndical associations, but the possibility for the government authority to intervene in every aspect of the life of institutions, fully confirming the idea of a regulatory system that allowed wide margins in determining the amount of (illusions of) autonomy and outside interventions; merely by way of example, see the provisions relating to the recognition of associations (Art. 4); the disciplinary power exercised over them by federations and confederations (Art. 6); the appointment of presidents and secretaries of associations to be approved by ministries (Art. 7); the supervision of the Prefect or Minister over the life of associations (Art. 8); the revocation of recognition (Art. 9).

12 Corte di Cassazione; Sezioni Unite penali, 7th February, 1948. See: Gregorio, 2006.

13 See: Teti, 1990; Cappellini, 1999.

14 Finzi, 1950; Barile, 1951.

15 In this regard, Vardaro speaks of neo-corporatism as an instrument that was born and developed in the context of a "reaffirmed centrality of the State" (Vardaro, 1988: 20). Tiziano Treu defines neo-corporatism as a "child, but a polemical one, of conflictual pluralism" i.e. an idea of coexistence that does not reject the idea of pluralism, but which, at the same time, sees the State as a strong decision-maker, not a mere arbiter between the interests in play (Treu, 1988: 440).

16 From rules concerning individual dismissals of employees (1966), to the protection of working women (1963/ 1971/ 1977), from the creation of child care facilities to the reform of family law (1971/ 1975), from the introduction of divorce (1970) to fair rents (1968), from the Workers' Statute (1970) to the establishment of the national health service (1978), what took shape from the 1950s to the end of the 1970s was a set of legislative provisions that attempted to realise an idea of coexistence consistent with the objectives of social justice and economic development laid down in the Constitution.

17 "No obligations may be imposed on trade unions other than registration at local or central offices, according to the provisions of the law. A condition for registration is that the statutes of the trade unions establish their internal organisation on a democratic basis. Registered trade unions are legal persons. They may, through a unified representation that is proportional to their membership, enter into collective labour agreements that have a mandatory effect for all persons belonging to the categories referred to in the agreement".

18 A warning to this effect was given, for example, in G.F. Mancini's well-known lecture in Bologna in 1963.

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19 Art. 1 provides that workers, without distinction as to political opinion, trade union affiliation or religious faith, have the right, in the places where they work, to freely manifest their thought, in observance of the principles of the Constitution and the provisions of the law in question; a similar approach may be seen in all of the provisions of Title I of the law (Of the freedom and dignity of workers) aimed at strictly delimiting employers' activities of oversight and monitoring of workers through security guards (Art.2), the use of audio--visual systems (Art. 4), health check-ups (Art. 5) and personal inspections (Art. 6).

20 A Protocol on "incomes policy, combating inflation and the cost of labour" was issued on 31st July, 1992. It made express reference to "an economic and financial situation that risks worsening further" and declared that an "action to rein in inflation and a significant reduction in government debt" had to be pursued without delay. "The objective – we read – is not only to get back in line with the parameters of the Treaty of Maastricht" but also "to save our development potentialities «in order to avoid jeopardising […] what Italian labour has built over the decades and the prospects for economic security of a large part of the national community". Among other things, it provides for the abolition of the sliding pay scale system; the so-called Ciampi-Giugni Protocol is dated 23rd July, 1993.

21 On 24th December 1996, a Pact for Employment was signed with the aim of "favouring active governance of employment dynamics and absorbing unemployment without triggering inflationary spirals"; an outgrowth of this agreement is the so-called "Treu Package" (Law 196 of 1997), which will be touched upon shortly. On 22nd December 1998, on the other hand, the so-called Christmas Pact was signed, under the D'Alema government (see Martone, 2009: 16 ff.).– A "Protocol on welfare, work and competitiveness: toward equity and sustainable growth" was signed under the second Prodi government on 23rd July 2007 – but this falls outside the chronological scope of this essay.

22 A model that has a central role in the so-called White Paper on the Labour Market in Italy, behind which lies the work of Marco Biagi, and which was presented in October 2001; moreover, the Treu Package (Art. 11, law 196 of 1997) aimed above all "to try to stem the centrifugal forces of autonomous trade unionism" (Martone, 2009: 65), providing that "in the case of inaction or disagreement among the comparatively most representative trade union organisations, the power to identify the possibility of temporary agency work shall return to the legislative authority".

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