that substantially redefined the established limits and substance of statehood and necessitated rapidly revised sources of legitimacy.

In Italy, although the Statuto Albertino of 1848 remained in force after 1918 as the *formal* state constitution, the *material* constitution of the state was thoroughly altered during and after the war. This reform process had begun, as mentioned, with the franchise extension of 1912, and it continued with the institution of universal male suffrage in 1918. Through these rapid electoral reforms, the founding structure of the Italian state was deeply modified, and the inclusion of new social sectors in the political process, especially after 1918, brought an influx of new parties and politicians into parliament, which led to a full democratization of the political system and the abandoning of policies of *trasformismo*. Beginning with the 1919 elections, parties elected by national majorities assumed responsibility for forming the state executive, and the integrative role of parties, as organs for structuring and representing interests in civil society as a whole, expanded significantly. Owing to the parliamentary influence of the Italian Socialist Party (PSI), moreover, after 1918 the legal functions of the state were challenged by the fact that trade unions obtained access to state power, and they used this access to demand the continuation, under a democratic order, of elements of the wartime system of corporate political economy.

In this regard, it needs to be clearly stated that, unlike, diversely, Germany and Spain, post-1918 Italy did not experience a fully corporate revolution, and it did not obtain a constitutional system founded in corporate/material rights. Nonetheless, in the aftermath of the war it was vocally demanded, across divergent points on the political spectrum, that the liberal constitutional state in Italy should be expanded to include a material/corporate dimension, and the state should respond to its growth in political inclusivity by granting material and collective rights to economic actors, and even by extending its foundations to include full democratic control of the economy (Adler 1995: 123). On the political left this view was associated with the revolutionary syndicalist movement: theorists such as Sergio Panunzio, who later followed Mussolini into the Fascist movement, had in fact argued before the war that the modern state, promising political rights to an industrial workforce, could only preserve legitimacy if it evolved a corporate constitution – that is, a constitution able fully to incorporate the workforce in the state and to generate legitimacy by assuming and preserving an integral identity between state and society (Roberts 1979: 67). Subsequently, principles of reformist syndicalism assumed deep significance for the trade union

movement during the *biennio rosso*: that is, the period of intense quasi-revolutionary activity after 1918. At this time, syndicates widely attempted to preserve for the labour movement the powers accorded to the unions in the war (Vivarelli 1991b: 129–30), and as early as 1917 both the Socialist Party and the trade unions urged the foundation of a democratic political system incorporating an element of economic parliamentarism. This varied left-oriented advocacy of a post-liberal corporate polity culminated between 1920 and 1922 in drafts for a national Council of Labour, supposed to act as an economic parliament sitting alongside the political legislature (Lanciotti 1993: 303–6). On the political right, similarly, as early as 1914, nationalist syndicalists such as Alfredo Rocco (later Mussolini's Minister of Justice) had also argued for a corporate reconstruction of the liberal legal order. Rocco asserted that in mass democracies liberal legal principles reflecting inviolable rights of private initiative had to be renounced, and he suggested that mass-democratic states could only acquire legitimacy by means of a legal order powerful enough to subordinate particular economic prerogatives to the national interest and to integrate and represent an identical national will overarching *all* productive dimensions of society.[25] Indeed, the short-lived national republic of Fiume in 1920 was also centred around a corporate constitution, drafted by Alceste De Ambris.

Through the post-1918 period, therefore, the Italian state underwent a twofold inclusionary transformation. At an institutional level, the executive, traditionally at once ultra-sensitive to parliamentary groups and detached from parliament owing to its obligation to the monarch, underwent far-reaching political reform in which it was expanded in order fully to incorporate mass-democratically elected parties. At a more societal level, organized economic groups acquired powerful and often destabilizing political positions, and the expectation grew, across varying political faultlines, that the formal constitutional functions of the liberal state had to be demolished in favour of a corporate constitutional system. This was shaped by the assumption, intensified through wartime experiences, that political integration of citizens was a multidimensional process, that substantial material laws and rights of material inclusion were required to produce sustainable legitimacy for the state, and that a truly legitimate constitution immediately reflected both the political and the material will of the people.

[25] This is the essence of the address given by Alfredo Rocco and Filippo Carli to the Congress of the Nationalist Association in 1914 (quoted in Spirito 1934: 75).

The key example of deeply transformative constitutional transition after 1918, however, was the case of Germany. After the end of the war and the collapse of the Hohenzollern monarchy in late 1918, the emergent democratic state in Germany experienced a number of profoundly incisive constitutional changes. All of these, in different ways, at once built on wartime corporate experiences and radically extended the inclusionary foundations of statehood.

First, as in Italy, the immediate aftermath of the war saw a fundamental change in the role of political parties in Germany. As discussed, in imperial Germany political parties played a role that was not absolutely central to the decision-making process: the link between the ministerial executive and the Reichstag was frail, and the legislative functions of the state did not fully rely on party-democratic initiative. Notably, in fact, the legal status of parties remained equivocal in Germany after 1918, and the 1919 constitution of the Weimar Republic did not classify political parties as public organs of the state (Art. 20). Moreover, certain counterweights to the power of democratically elected parties persisted under the 1919 Constitution: in particular, the executive was structured around a president elected by general plebiscite, who retained important powers of parliamentary veto. Nonetheless, after 1918, political parties became fully integrated elements of the German state: the Weimar Constitution bound the executive to strict principles of ministerial accountability before parliament (Arts. 54, 56, 59), and it enormously augmented the competences of the elected legislature (Art. 68).

Second, owing at once to its proximity to Russia, to the extent of its wartime quasi-corporate integration of the labour force, and to the pivotal role of the Social Democratic Party in the constituent assembly in early 1919, the emerging democratic state of post-1918 Germany was founded, almost by necessity, as a state with a pronounced *material constitution*. A number of different parties – primarily the Roman Catholic party (Zentrum), the Social Democrats and the left liberal party (Deutsche Demokratische Partei) – contributed to the constitutional drafting process, and the constitution finally reflected a compromise between the social groups speaking through these parties. However, the joint influence of the Social Democrats and the left liberals was particularly strong:[26] a fundamental aspect of the Weimar Constitution

[26] Represented primarily by Hugo Preuß, the left-liberal conception of the legitimate constitution had a strong corporate inflection. Preuß argued for 'organic social law' as the basis of the state (1889: vii), and he claimed that a legitimate state condensed its power and legitimacy, not solely in an abstracted legal personality, but in a corporate/material personality.

(ratified July 1919) was that it subjected previously private spheres of social exchange to far-reaching state jurisdiction, and, echoing the Russian constitution of 1918, it allocated rights as rights of productive groups and classes. In addition to the usual guarantees of property and free contract, which it enshrined in Articles 152–153, the Weimar Constitution gave expansive legal protection to the workforce (Arts. 157, 160–161), and it guaranteed rights of union activity, rights of co-determination at the place of work, and rights of shop-steward representation (Art. 165). In fact, it provided for the eventual nationalization of key industrial enterprises (Art. 153(2)), and it foresaw an overarching system of labour law, in which the state was expected to offer arbitration in industrial conflicts and to organize labour law around a progressively reconciled equilibrium between labour and management.[27] During the drafting of the constitution, it was even projected that trade unions would be accorded certain quasi-legislative functions in respect of economic management in the new democracy, and that unions would generate material legitimacy for economic statutes. These ideas of material constitutionalism had already assumed substance before the constitution was ratified: they were cemented through laws of late 1918, which instituted a system of collective bargaining and the creation of a Central Community of Labour (Zentralarbeitsgemeinschaft) in 1918, to act as a forum for inter-associational statutory negotiations over wages and production conditions. Indeed, the structure of the post-1918 German state had, to a large degree, been determined prior to the actual constitutional process, and representatives of business and labour had decided as early as late 1918 that the constitution was to accommodate corporate or even quasi-syndicalist arrangements (Albertin 1974: 660). However, these principles were formalized in the constitution in 1919. They were reinforced in 1920, with the passing of a co-determination law, and in particular in 1923, with the creation of a system of state arbitration in wage disputes, which in part integrated different actors in industrial negotiations into the state (Englberger 1995: 183).

In these respects the Weimar Constitution placed itself strikingly outside the theoretical perimeters of liberal constitutionalism and, reflecting diverse conceptions of political corporatism, it committed the Weimar Republic to a system of pervasively inclusionary welfare

[27] This never became reality. But on singular elements of this planned experiment, entailing objectively binding collective-bargaining agreements (1918), laws for a chamber of labour, and laws for labour tribunals (1926), see Bohle (1990: 14, 58, 133).

democracy, based in a broad catalogue of programmatic integrative rights. The Weimar Constitution was based in a highly ramified model of state inclusion, in which the principle of citizenship was extended from persons holding formal civil and political rights to persons holding rights of material entitlement, cross-class collaboration and stake holding in industrial production. Indeed, the labour-law sections of the constitution reflected the belief that the integration of citizens as holders of multiple political and economic rights could create a high degree of identity between state and society to support the state's authority and to ensure that the state was consolidated as a powerful and structurally legitimate actor.[28] These material rights in the constitution were grouped together as a corpus of collective objective entitlements, and, in principle at least, the legitimacy of the state was made contingent on the extent to which it could activate and enforce these rights, or to which associated claimants over material/participatory rights in civil society could be satisfied in their demands for the even distribution of material goods and the equitable arbitration of labour disputes. The pattern of material constitutionalism that emerged in the early Weimar years is often construed as a distinctive system of *organized capitalism*, in which trade unions and associations of big business, under the constitutionally defined supervision of the state, acted as democratic partners in economic legislation, whose legislative authority was deduced from, and transmitted through, the inclusive group rights of their memberships.[29] This system of interpenetrated capitalism was originally promoted on the political left: it was an important part of Marxist revisionist orthodoxy throughout and after the First World War.[30] However, it also had advocates on the right (Winkler 1973: 22). By the mid 1920s, in fact, even theorists originally in the liberal camp openly advocated economic organization including the 'institution of compulsory syndicates under state control' as the most effective means of economic control and stabilization (Sombart 1925: 64).

[28] Note here the impact of the works of Hugo Sinzheimer (1916). Sinzheimer argued that corporate agreements could form a material constitution on which to found the state and its legitimacy. He represented the SPD in the drafting of the Weimar Constitution.

[29] For discussion see Feldman (1974). For important critical analysis of this system, see Hartwich (1967: 18); Könke (1987: 46).

[30] The origins of this theory can be found in Rudolf Hilferding's revisionist analysis of class struggle as mediated through high-level negotiations between rival mass associations (unions and entrepreneurial bodies) (1947 [1910]: 505).

Third, although the provisions for economic regulation were the most distinctive aspects of the Weimar Constitution, perhaps the most impassioned intention of the constitutional fathers of the Weimar Republic focused, not on questions of material distribution, but on the construction of a fully abstracted and unified state in Germany, and on the elimination of regional privileges and variations retained under the imperial constitution. For this reason, the 1919 Constitution stipulated emphatically that the competences of federal states were subordinate to imperial authority (Art. 13), and it even made provision (fateful, as it transpired) for the imperial executive to use emergency powers in order to break federal resistance to central legislation. The insistent unitary conception of the 1919 Constitution was to no small degree a result of the fact that some framers of the constitution, notably Hugo Preuß and Max Weber, were prominent representatives of the late-imperial German liberal class. As such, they represented a social group whose reformist ambitions (and the ambitions of their parents) had been consistently thwarted by the reactionary force of Prussian conservatism. Because of this, they were strongly driven by the aim to create a strong central state, in which imperial power prevailed over the laws of the constituent states and the particularist pull of Prussian interests on the policies of the empire was terminated. Although closer to organic and decentralized ideals than his fellow constitutionalists of 1919, Preuß, in particular, argued that only a unitary constitution would make it possible, finally, to transform the German state into a generalized and inclusive national-democratic state, in which all Germans were equally assimilated, and he saw the final subordination of Prussia to the Reich as the last building block in the creation of an authentic national state.[31] To Preuß, as to other early-Weimar democrats, a constitution founded in principles of political democracy and democratic welfarism, evenly including all members of German society, appeared as the sole effective device for finally eliminating centrifugal elements from the political arena and for constructing the German state as an institution obtaining a monopoly of national power.[32] Just as German liberals in 1848 had viewed national

[31] After 1918, Preuß in fact advocated the dissolution of Prussia into smaller regions (1926: 438–9).

[32] As evidence, note Friedrich Naumann's speech in the National Assembly in February 1919 (1919: 100–5). Naumann, who presided over the drafting of the catalogue of basic rights in the Weimar Constitution, argued that the new constitution afforded an opportunity for 'bourgeois transformation', which was the precondition for the emergence of a people's state (*Volksstaat*).

democracy as a strategy of national state building, therefore, the German liberals and liberal socialists of 1918 saw welfare democracy as a technique for obtaining the same end.[33]

On each of these counts, the Weimar Constitution reflected a most decisive attempt, in distinct dimensions, to consolidate the structural density of the German state. It was designed firmly to ensure that the will of the German people (both in its political and its material dimensions) suffused the institutions of the state, and that all instruments of political authority in German society were concentrated in, and subject to, one integrally formed political order. Both of the two most salient (and closely linked) principles of the Weimar Constitution – its commitment to welfarism and its national unitarism – reflected the fact that the Weimar Constitution was designed to overcome the tradition of weak statehood in Germany, and it was intended to produce a model of state power that was at once politically and materially condensed and inclusive. National corporatism and administrative unitarism were thus perceived as complementary correctives to the tradition of weak statehood in Germany.

It is important to note in this that not all newly democratized states after 1918 opted for an expansive model of statehood, and some in fact strategically aimed to avoid the full material transformation of the political order and its sources of legitimacy. Important in this respect was the case of Austria. Like other European states, Austria had been subject to a regime of authoritarian-corporate control during the war. Moreover, after the war, a democratic constituent assembly was convoked in Vienna which, like its counterpart in Weimar, originally aimed to draft a constitution to sanction redefined rights of ownership, to place property under state jurisdiction and to provide for rights of corporate/economic co-determination at the place of work.[34] However, owing in part to disputes over the legal status of property, the final constitution of the First Republic of Austria (ratified in 1920) did not contain a distinct catalogue of rights, and it referred to the rights established in 1867 as the basis of fundamental law. In fact, the Austrian constitution of 1920, drafted largely by the liberal-socialist lawyer Hans Kelsen, was deeply shaped by the

[33] Preuß's intention to revivify the ideas of 1848 is widely recorded (Elben 1965: 68–9). The belief that a national state must be not only a legal state, but also a *social state*, was again expressed most emphatically in the writings of Naumann. He argued that rights must be applied as institutions performing a national-social function of integration (Vestring 1987: 265).

[34] This is documented in Ermacora (1980: 60); Berchtold (1998: 165).

sense that the primary function of the constitution was at once abstractly to preserve and place limits on the power of the state, to locate political authority on consistent legal foundations and to offer mechanisms to avoid the absorptive concentration of all societal contests around the state. At one level, this constitution provided for a very powerful legislature. It rejected both the doctrine of the strict separation of powers and the doctrine of the balanced constitution, and it designated the parliament (Nationalrat), acting jointly with a federal council, as the centre of all legislative authority (Art. 24): it opposed the split executive and the plebiscitary provisions typical of other post-1918 constitutions, and, although it provided for presidential office, the president was elected by parliament and federal council (Art. 38) and had restricted powers to dictate parliamentary procedure (Art. 28). At the same time, however, the 1920 Constitution contained the particular innovation that it established a constitutional court. This court, unlike the Supreme Court in the United States, was separated from the regular judiciary, and it was authorized procedurally to oversee all acts of parliamentary legislation. This institution also strengthened the legislature. It was designed both to ensure that federal law prevailed over the laws of particular states within the Austrian federation (Art. 140), so that the central state retained a full monopoly of political power, and to preserve the state against the use of prerogative measures by powerful social actors both within and outside the executive (Art. 139).[35] More importantly, however, the constitutional court was established as the effective guardian of the constitution, and it was given responsibility for determining the legality of all acts of state (including parliamentary laws, acts of the head of state and acts of other supreme federal and regional organs (Art. 142)) by ensuring that the norms established in the constitution acted as the foundation for all legislation.

Central to Kelsen's plans for the Austrian constitution was his belief that the state and the law both automatically fell under the same 'normative order', that the legal basis of the state could always be isolated against any particular act of state or actor within the state, and that the state was not empowered to act without legal formalization of its power (Kelsen 1922: 87). On this basis Kelsen claimed that the state needed to be regulated by a constitutional court, as an 'organ distinct from the

[35] This was of particular significance after the prerogative regime in the war, and it was shaped by anxiety about the potentials implicit in emergency laws for the overthrow of democratic government. For commentary see Adamovich (1923: 20); Merkl (1999 [1921]: 416).

legislator and thus also independent of all state authority'. This meant that the political force (that is, the sovereignty) of the state could not be applied outside the apolitical norms of constitutional law, interpreted by the court: the state, in consequence, was always held to its proper functions by the court (1929: 53). This argument brought towards conclusion the earlier positivist notion that a constitution conferred legitimacy on a state by at once normatively authorizing and factually depoliticizing the source and the use of state power.[36] In particular, Kelsen's plan reflected the belief that the task of a constitution was to form a state that was fully independent of all particular persons, that state power ought not to be personalized in any group of objective actors and that all exchanges between state power and society needed to be subject to pure legal control. Kelsen's ideal of a constitutional depersonalization of the state, thus, was intended specifically to restrict the particular, volitional dimension of legislation and to construct the state as an actor with clearly defined and static functions and sources of legitimacy, yet also to abstract a clear body of public law to facilitate the positive use of power.

Despite this exception, however, across different national settings the process of constitutional formation after 1918 normally involved a strong impulse towards extreme state enlargement, which intensified the quasi-corporate experiences of the war. In particular, the classical restrictive or exclusionary function of constitutions was comprehensively transformed during the transition from the imperial to the mass-democratic era, and the new constitutions after 1918 at once founded state legitimacy in a strong material will and defined the state as the ultimate source of arbitration and regulation for all primary antagonisms pervading society. In many cases, this placed extraordinary burdens on emergent states, and states were forced to transform themselves in a short space of time from very limited constitutional monarchies to highly materialized constitutional orders which derived their legitimacy at once from political mass representation, expansive guarantees over economic security and material legislation, and deeply structured, highly volatile processes of economic bargaining. The First World War, in fact, created a situation in which most European states were forced to undergo a transition towards a system of material mass-democracy at a point in their construction at which they were not yet reliably formed as

[36] For Kelsen's reflections on the constitutional court as a subsidiary source of political statutes, see Kelsen (1942: 187).

democratic, or even – fully – as constitutional, states. Indeed, it is arguable that most of these states underwent a transition to material mass-democracy at a point in their construction at which they were in fact not yet conclusively formed as states *tout court*. Of the greatest importance in this was the fact that after 1918 many European states obtained semi-corporate constitutions and were compelled to legitimize themselves through the objective inclusion of private/volitional or collective actors before they had adequately developed and tested a fully autonomous public legal order. Many states passed, between 1914 and 1918, from half-dualistic constitutions to neo-privatistic constitutions, and the intermediary condition of relatively balanced and extracted public/legal order was not comprehensively elaborated. Above all, most states consolidated in the First World War were states that assumed fullness of state power at a point where that power was subject to extreme inclusionary expansion, and they were forced to legitimize themselves through sporadic techniques of material inclusion before they had effectively legitimized themselves and abstracted their functions through regular patterns of legal – usually, rights-based – inclusion. The autonomous abstraction of political power, which had integrally marked the entire history of state formation in European societies, began to dissolve at the point of its final realization.

The failure of expansive democracy

The first consequence of this expedited constitutional formation after the First World War was that, owing to their semi-corporate and collective voluntaristic structure, many post-1918 European states began immediately to internalize and directly to *politicize* an extraordinarily high volume of social controversies, for which their inclusionary structures were ill-prepared. This meant that conflicts through society that had conventionally been articulated in functionally or regionally discrete fashion now migrated towards and were conducted through the state. Naturally, this was particularly the case in questions of economic regulation: the inclusion of enforceable programmatic rights in many European constitutions meant that states were forced to bind their legitimacy to uniformly satisfactory standards of material provision and arbitration, and all economic antagonisms assumed an immediate relevance for state power or state legitimacy. In many cases, moreover, problems caused by the escalation of claims addressed to the state were exacerbated by the fact that many European states were demonstrably

uncertain in their hold on the monopoly of social violence. In post-1918 Italy, for instance, conflict between economic rivals was only secondarily expressed through state institutions, and industrial conflict was routinely enacted outside the parliamentary arena. Moreover, many military units refused to disband after 1918, and the paramilitary *arditi* and *fasci di combattimento* openly contested the power of the state through the widespread use of concerted private violence and attacks on the institutions of left-leaning political parties. In Germany, likewise, in the first months of its existence the central democratic state was imperilled both by radical leftist forces of the council-communist movement, who sought to create a political order based in local and workers' councils, and semi-demobilized, ultra-reactionary military units (*Freikorps*) (which the government ultimately deployed to suppress the council communists). In many settings, further, the ongoing demand for high levels of material integration and distribution was imposed on states whose fiscal systems were based on antiquated models of limited or loosely unified statehood, and which were already afflicted by highly inflationary public economies. These states were often forced to entertain unmanageable levels of public spending and inflation, and their inclusionary requirements forced them to pursue increasingly desperate measures to stabilize public finances and revenue, which diminished their monopolistic hold on power still further.[37]

As a result of these factors, many new post-1918 constitutional states almost immediately began to suffer a *crisis of inclusion*. That is to say, these states struggled to generate legitimating resources to address and resolve all the societal conflicts that they had internalized, and they were unable to stabilize their unitary functions in the face of highly volatile and multi-causal social conflicts. In the extended wake of the constitutional transition after 1918, therefore, many European states responded to their position at the epicentre of different realms of societal expectation and antagonism by entering a condition of rapid institutional fragmentation. Indeed, many states soon began to respond to their material/democratic and socio-conflictual inclusivity by selectively relieving themselves of the functions imputed to them under their new constitutions, they began to dismantle their constitutionally integrated structure, and, under pressure from potent societal interests, they

[37] On Italy see Forsyth (1993: 101). For a brilliant account of Germany's fiscal problems as caused in part by weak unification, see Hefeker (2001: 127). For classical background see Witt (1970).