

### **3. Partial Organisations, Democracy, and Representation**

The concept of modern national representation constitutes the basis for our understanding of parliamentary democracy. Originally, it was developed in opposition to corporate representation and it is based to a large extent on notions derived from absorptive representation. Consequently, the existence and activity of partial interest groups which are an undeniable component of western democracies constitutes a major problem to the theory of modern democratic representation. Given the significance of European interest groups both in reality and integration theory, it is important to establish an understanding of representation that allows for both the analysis of institutional and interest group representation at European level. Accordingly, this chapter will demonstrate that democratic representation and group representation are reconcilable.

In order to gain an understanding of how deep the historical divide between the nation-state and partial associations originally was, the chapter will start by describing the abolition of the pre-modern corporate structure at the beginning of the modern period, in particular during the French Revolution (3.1.). The next section will be dedicated to the central ideas of pluralism that attempts to justify the participation of partial groups in democratic politics (3.2.). In particular, the development of American pluralism and the ideas of European pluralism will be discussed. The remaining section then will deal with the question of how to reconcile representation of partial groups with modern representation by drawing on the theory of Joseph Kaiser (3.3.).

#### ***3.1. The Abolition of Partial Organisations during the Era of the French Revolution***

The French Revolution brought about ‘two great social alterations – the end of the seigneurial regime and the abolition of the guilds’ (Schama 1989: 853). As a matter

of fact, revolutionary legislation resulted in the outright abolition of all possible types of partial associations. As has been explained in chapter 2.5., organised groups were conceived of as being irreconcilable with individualism. Thus, they were held to represent factions within the greater whole of the newly born nation which would hinder the common will from being expressed, and the individual from merging into one all encompassing national identity. From this perspective the abolition of associative autonomy was not regarded as state suppression but, on the contrary, as the implementation of public liberties which would free the individual from the chains of corporate life. In the 'Social Contract' Rousseau pronounced what was then the common contemporary attitude towards partial associations:

But when factions arise, small associations at the expense of the large association, the will of each one of these associations becomes general in relation to its members and particular in relation to the State; there can then no longer be said to be as many voters as there are men, but only as many as there are associations. [...] It is important, then, that in order to have the general will expressed well, there be no partial society in the State, and every Citizen state only his own opinion. (Rousseau 1997: 60, II,4)

Yet the commonly assumed impact of Rousseau's writings on the onslaught against associative freedom may actually be overestimated. In fact, Rousseau never explicitly called for the abolition of partial associations. One could even have inferred from his following conclusions that he wanted the state to actively promote associative life in order to establish a multitude of equal partial associations.

That if there are partial societies, their number must be multiplied, and inequality among them prevented [...]. These are the only precautions that will ensure that the general will is always enlightened, and that the people make no mistakes. (*ibid.* 60, II,4)

Rousseau's propagation of a general will based on a homogeneous community was coupled with a widespread popular belief that the corporate system was the personification of the highly arbitrary and fragmented old regime. It was Sieyès, not Rousseau, who explicated the theoretical consequences of the general will concept and

elaborated a conception of the common interest for the generation of which all partial interests had to be excluded systematically. At the same time, economic liberalism developed a similar thrust with regard to partial associations. They were regarded as central impediments to the free flows of markets and international trade. Bourgeois capitalist interests had a high stake at this point. The liberated French economy would later make them one of the main winners of the Revolution. However, individualism and economic liberalism alone do not suffice to account for revolutionary legislation as it was. Only against the background of the extremely doctrinal and excessive atmosphere of the time, could pre-existing ideas eventually turn into deadly weapons against partial associations. Revolutionary zeal made possible the eradication of associative autonomy. In the end, it would only leave intact the most limited associations that were placed under strict state control (see Weber 1960: 164).

After privileges had been abolished in principle during the night of August 4 1789, corporations, guilds, and manufactories were suppressed in March 1791 by the *d'Allarde* law on the grounds that they were privileged. As a consequence, access to craft professions was fully liberalised and placed under state control.<sup>20</sup> Taking the same approach, the chambers of commerce were abolished later in the year 1791.<sup>21</sup> Yet fixation with free trade soon produced its downsides, inasmuch as corporations had also been employers' associations. After having been freed from corporative restriction, the journeymen organised on the streets of Paris to press for minimum wages, causing a good deal of public disorder. Their intended liberation opened a Pandora's box in the eyes of the Constituent because it produced new forms of threatening particularism,

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<sup>20</sup> Décret portant suppression de tous les droits d'Aides, de toutes les Maîtrises & Jurandes, & établissement de Patentes du 2/17 mars 1791. Article 2 abolishes the privileges of all professions: '[...] les Offices de Perruquiers, Barbiers, Baigneurs-Etuvistes, ceux des Agens de Change & tous autres Offices pour l'inspection & les travaux des arts & du commerce [...] & tous privilèges de profession, sous quelque dénomination que ce soit, sont également supprimés.' Article 7 stipulates: '[...] il sera libre à toute personne de faire tel négoce, ou d'exercer telle profession, art ou métier qu'elle trouvera bon; mais elle sera tenue de se pourvoir auparavant d'une Patente [...] & de se conformer aux Règlements de Police [...].'

<sup>21</sup> Décret concernant la suppression des Chambres de Commerce du 27 septembre/16 octobre 1791.

namely strikes. According to liberal contemporary doctrine, work relationships had to be strictly individual, not collective. Only a few months later, the *Le Chapelier* law prescribed the conception of working men:

C'est aux conventions libres d'individu à individu à fixer la journée pour chaque ouvrier. C'est ensuite à l'ouvrier à maintenir la convention qu'il a faite avec celui qui l'occupe. (quoted from Clère 1989: 239)

Declared as being against the basic principles of the French constitution and the free and equal expression of the common interest, the *Le Chapelier* law suppressed all types of corporate and professional organisations and prohibited any kind of professional coalition and strike.

L'anéantissement de toute espèce de corporations des citoyens du même état & profession étant l'une des bases fondamentales de la Constitution française, il est défendu de les rétablir de fait, sous quelque prétexte & sous quelque forme que ce soit.

Les Citoyens d'un même état ou profession, les Entrepreneurs, ceux qui ont boutique ouverte, les Ouvriers & Compagnons d'un art quelconque, ne pourront, lorsqu'ils se trouveront ensemble, se nommer ni Président, ni Secrétaires, ni Syndics, tenir des registres, prendre des arrêtés ou délibérations, former des règlements sur *leurs prétendus intérêts communs*. (Décret relatif aux Assemblée de Citoyens d'un même état ou profession du 14 juin 1791, Art. 1-2, emphasis added)

A further consequence of the abolition of the guilds was the destruction of corporate social security systems. This was not an unintended legislative by-product since the national assembly went on to prohibit privately organised security systems, such as life and fire insurance companies, saving banks, and financial associations.<sup>22</sup>

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<sup>22</sup> Décret qui supprime la caisse d'escompte et différentes autres associations du 24 août 1793: 'Les associations connues sous les noms de Caisse d'escompte, de Compagnie d'assurances à vie, et généralement toutes celles dont le fonds capital repose sur des actions au porteurs [...] sont supprimées [...]' (Art.1). See also Décret sur la liquidation des compagnies connues sous le nom de Caisse d'escompte, d'assurance sur la vie et d'assurance contre les incendies du 15 septembre 1794.

The most envisaged target of revolutionary zeal, however, was the Catholic church and its organisations. Traditional corporate church government was abolished on July 12 1790. The civil constitution of the clergy practically turned the church into a department of state. From then on the clergy was supposed to be elected like any other public officer. The accompanying expropriation of church property took several years, up to the point where church bells were taken to be melted into canon balls which, in turn, would bring the revolutionary message to the rest of Europe. Not less thorough was the eradication of all sorts of religious organisational forms. Revolutionary legislation prohibited all types of religious bodies, brotherhoods, and institutions which were managed by religious personnel. As a consequence the mutual security systems of the brotherhoods (the forerunners of today's mutual security organisations (Clère 1989: 975)), most of France's schools, hospitals, and charity associations vanished. They left a vacuum in the organisation of social needs that would take a long time to be filled again.

Similar to the justification for the *Le Chapelier* law, religious congregations and brotherhoods, it was argued, were seriously threatening the liberty of the state. This was why all types of religious ways of life - monastic life, pilgrimage and hermitage – were prohibited. In addition, even the memory of their everyday representation was banned, such as religious clothing.

L'Assemblée nationale [...] considérant qu'un état vraiment libre, ne doit souffrir dans son sein aucune corporation, pas même celles qui, vouées à l'enseignement public, ont bien mérité de la patrie; et que le moment où le Corps législatif achève d'anéantir les corporations religieuses, est aussi celui où il doit faire disparaître à jamais tout les costumes qui leur étoient propres, et dont l'effet nécessaires seroit d'en rappeler le souvenir, d'en retracer l'image,

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For the financial associations: Décret contenant une nouvelle rédaction de celui qui supprime les compagnies financières du 15/18 avril 1794 (26/29 germinal an 2): 'Les compagnies financières sont et demeurent supprimées. Il est défendu à tous banquiers, négocians et autres personnes quelconques, de former aucun établissement de ce genre, sous aucun prétexte et sous quelque dénomination que ce soit. (Art. 1). See also: Décret qui supprime toutes les compagnies financières du 8 octobre 1793 (17 vendémiaire an 2) and Loi du 21 novembre 1795 (30 brumaire an 4) supprimant les compagnies financières.

ou de faire penser qu'elles subsistent encore [...]. (Décret relatif à la Suppression des congrégations séculières et des confréries du 18 août 1792, considérant)<sup>23</sup>

Finally, academic life did not go unchanged by the Revolution. The state-licensed academies and literary societies were abolished, expropriated, and re-organised under state tutelage.<sup>24</sup> On the grounds that universities were intermediaries and therefore hindered the direct relationship between individual and state, their property was expropriated together with that of the church. The abolition of the universities' status as independent public bodies was achieved by way of omission, insofar as universities were not granted a legal status in the new nation (Olivier-Martin 1937: 162).

In general, omission is a means of modern public law to circumvent certain types of organisation. The latter can only exist if the state puts particular rights at their disposal (Weber 1960: 134). Hence, the French Revolution not only eradicated the corporate structure of the old regime but it prevented free partial associations from taking its place. Intentionally, freedom of association was omitted in both the French constitution of 1791 and the Declaration of Rights of Men and Citizens of 1793. Moreover, the subsequent *Code Civil* did not provide legal personality for groups and, as a consequence, excluded the formation of groups outside the state (*ibid.* 164).

In France, it took a long time to firmly anchor associative freedom. Again and again, it was at the mercy of changing political systems. Eventually, trade unions were

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<sup>23</sup> Title I stipulates the abolition of secular congregations and brotherhoods: 'Les corporations connues en France sous le nom de congrégation séculières ecclésiastiques [...] les congrégations laïques [...]; les congrégations des filles [...], et généralement toutes les corporations religieuses et congrégation séculières d'hommes et de femmes, ecclésiastiques ou laïques, même celles uniquement vouées au service des hôpitaux et au soulagement des malades [...] ensemble les familiarités, confréries, les pénitens de toutes couleurs, les pèlerins, et toutes autres associations de piété ou de charité, sont éteintes et supprimées [...]. Title II goes on to decree the expropriation of all associations concerned.

For the entire legislation concerning the church and religious corporations from 1790-1830 see Bulletin annoté 1839: 212ff.

<sup>24</sup> Décret portant suppression de toutes les académies et sociétés littéraires patentées ou dotées par la nation du 14 août 1793, regarding the Académie Française, Académie des Belles-Lettres, Académie des Sciences, and the Société Royale de Médecine. Also see Décret du 20 août/5 septembre 1790, Décret du 24 juillet 1794, Loi du 25 octobre 1795, Ordonnance du 21/28 mars 1816.

legalised in 1868. In 1901, the law of July 1<sup>st</sup> instituted the right to free formation of partial associations. This law, however, had a different purpose to that of establishing freedom of association. First and foremost, it was directed against religious congregations that were excluded by the law. Only in 1971 did France's Constitutional Court make freedom of association a basic constitutional principle (Bourdon and Debbasch 1985: 18ff.). Hostile political practice towards partial associations, however, is still alive and well. A public discourse persists according to which private interests are held to be dangerous to the common interest. This is also reflected in France's institutional structure wherein the elites who have been trained by the state's *Grandes Ecoles* claim to speak on behalf of the common interest (Mény 1999: 349-50). Not surprisingly, the term lobbying has a strong pejorative connotation.

The suppression of intermediaries and the prohibition of workers' coalitions was a general phenomenon in the aftermath of the Revolution. In 1799, the British parliament adopted the General Combination Act to prevent coalition and strikes. In 1834, the Portuguese *câmara* were abolished, and in 1801 the old corporations of the Papal States (Kaiser 1978: 33ff.). The German *Vormärz* was characterised by conservative opposition, defending the monarchical principle against liberal thinking that favoured representative Estate and/or parliamentary assemblies whose participation in government had been agreed upon in the post-war order of 1815 (see Podlech 1984: 531ff.). The German debate had two lasting repercussions. On the one hand, liberals used the category of representation in order to advance their various political claims. Hence, representation became a 'Sammelname für politisch geforderte Rechte und Vertretungseinrichtungen' (Hartmann 1979: 123). As a consequence, the term representation lost a theoretically satisfying meaning. On the other hand, the influential theory of legal positivism was established by conservatives who made representation vanish altogether as a political category (*ibid.* 167-71). In addition, corporate interests went on to use the notion of representation in order to claim participation in

government. Yet, in the altered post-revolutionary environment, they became sandwiched between the interests of liberals and those of centralising monarchical states. Soon they were branded as being backward and reproached for defending partial privileges that were deemed detrimental to the common good. In Germany too, this period marked the end of corporate intermediaries as influential political players.

The onslaught against partial associations during the French Revolution could not have had such an impact had it not previously been on the agenda of absolutist states. These had started to centralise state administration and to de-regulate the economy in order to enable free trade. Corporations constituted the main obstacles to the achievement of these two objectives. Tocqueville's *L'ancien régime et la Révolution* demonstrates how much in terms of administrative centralisation the Revolution managed to achieve that the old regime had no longer been capable of doing. At the same time, state theory claimed that the absolutist ruler represented the body politic alone, leaving no place for intermediaries. On the verge of the modern period, absolutist state theory was combined with the doctrines of popular sovereignty, modern national representation, individualism, and economic liberalism. It is this combination, together with prodigious historical circumstances, that accounts for the lasting and widespread hostility towards partial associations and intermediaries.

This trend was alleviated as the reasons which had accounted for it changed. Once a general common civic equality was established – at least in legal terms with regard to the affluent male population – partial associations were seen less and less as a threat to the nation-state (Müller 1965: 84). In addition, the imperatives of capitalism gradually helped the trade unions to become accepted. Finally, the interests propagated by political parties together with a growing functional and cultural differentiation within societies helped to bring back partial associations as political and social players.

Erst die ökonomischen Bedürfnisse des Kapitalismus und, für die nicht-kapitalistischen Schichten, der Marktwirtschaft einerseits, die politischen Agitationsbedürfnisse der Parteien andererseits, und endlich die steigende sachliche Differenzierung der Kulturansprüche in Verbindung mit der



persönlichen Differenzierung der Kulturinteressen unter den Individuen haben diese Entwicklung wieder rückwärts revidiert. (Weber 1960: 164)

Today, the old corporations, orders, and Estates have completely vanished. They were replaced, instead, by voluntary associations and political parties. The thrust of criticism, however, continues to remain almost unchanged. The idea of a general interest generated by a homogenous society still accounts for complaints about 'lobbying' and party discipline, both of which are held to sway the common will. As a reaction against the ideology of modern national representation, pluralism reconciles partial associations with democracy.

### ***3.2. Making Partial Associations Fruitful for Democracy***

'Voluntary association is the hallmark of Western civilization' begins an article typical of U.S. American pluralism (Chapman 1969: 87). This approach to partial associations is not merely a product of scholarly sophistication but is firmly anchored in the very heart of U.S. American understanding of government and society. Whilst in Europe associations were regarded as a threat to national representation, the later American president Madison made a case in favour of them which had a long-lasting impact on Western thinking. He held that partial groups were an unalterable factor of politics. If democracy wanted to be successful it had to prevent the tyranny of a group majority, not at the expense of associations in general but by controlling their negative effects on democratic government. Later, Tocqueville heralded voluntary associations as the breeding ground for democracy in America and laid the foundation for a lasting tradition of seeing them as an important component of democracy. This was the starting point for American pluralism.

### 3.2.1. The Federalist Papers

After the American constitution had been adopted by the Constitutional Convention in Philadelphia in September 1787 and was due to be ratified by the states of the future union, Alexander Hamilton decided to write a series of newspaper essays to argue in favour for its ratification. His tactic consisted of opening up a public discussion on the constitution because he wanted the American people to establish ‘good government from reflection and choice’, and not ‘to depend for their political constitutions on accident and force’ (Hamilton 1999: 1). Cunningly, he named his series ‘The Federalist’ in order to blame his adversaries as being anti-federalist - a label which should stick to them until today. Soon, James Madison and John Jay joined him in his effort. The result consisted of 85 newspaper articles, published under the pen-name Publius, and edited together shortly afterwards as a book. The Federalist became the most important commentary on the American constitution, or even, according to some, ‘the most important work in political science that has ever been written, or is likely ever to be written, in the United States’ (Rossiter 1961, quoted from Kesler 1999: ix).

In the Federalists Nos. 10 and 51 Madison discussed the problem of partial associations in relation to the common good in a republican form of government.<sup>25</sup> Natural inequality, Madison argued, accounted for differing interests within society. The desire to form partial groups and to become organised along the lines of naturally differing interests was inherent to the human nature. Like Rousseau, Sieyès and most of his contemporaries, Madison recognised the potential danger emanating from partial organisations. Yet he did not believe that all organised groups were perilous. Only factions were dangerous to the society, but they were inevitable because their ‘latent causes’ were ‘sown in the nature of man’ (Madison 1999: 47). Madison defined factions as:

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<sup>25</sup> Madison’s main goal was to discredit the principle of direct democracy in favour of a federal republic. In order to establish free and stable government, he argued, the republican form offered two vital advantages unknown to direct democracy, namely representation and size.

[...] a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, *adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.*' (*ibid.* 46, emphasis added)

Madison held that the fight against partial interest groups was against the values of liberty and freedom. The first possibility for eradicating the roots of factions, he argued, would consist in destroying liberty because it was vital to group formation. This would evidently be 'worse than the disease':

Liberty is to faction what air is to fire, alimnt without which it instantly expires. But it could not be a less folly to abolish liberty, which is essential to political life, because it nourishes faction than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency. (*ibid.* 46)

A second possible remedy, Madison went on, would consist in a totalitarian approach of aiming to make all men totally equal in all their individual aspects. It would mean to 'giv[e] to every citizen the same opinions, the same passions, and the same interests' (*ibid.* 46). As much as the destruction of liberty, this approach would not constitute an adequate solution to the problem of factions. Rather, it would be contrary to the ends of republican government that are to protect the different faculties of men and to enable their self-realisation. Hence, Madison proposed a remedy that consisted of 'curing the mischiefs of faction [...] by controlling its effects' (*ibid.* 46). He held that the multiplication of partial associations would prevent the formation of majority factions. The sole means to assure this was to found a republic of sufficient size.

Extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have the common motive to invade the rights of other citizens. (*ibid.* 51)

A greater size of the republic, however, necessitated representation. At this point, Madison's reasoning is similar to Sieyès', insofar as he believed that

representation bore an important functional advantage compared to direct democracy.<sup>26</sup> Thus representation did not appear to be a necessary evil of republicanism but the best form of government. A large representative republican state would allow for better representatives and was able to tackle the problem of factions efficiently.

It would be misleading to infer from Madison's argument that groups would account for a republican common good. The crucial point is that the danger emanating from partial groups was integrated into the idea of republicanism. Associations were not yet seen as having a positive role in the formulation of a common interest, but, provided they existed in great numbers they had no negative role either. The fruitful impact of the Federalist Papers can hardly be underestimated. They demonstrated how the idea of a homogenous society was opposed to the principles of individual and collective freedom and they highlighted pluralism's possibility and necessity. It has to be borne in mind, however, that Publius wrote from a very different background than that of France or Europe. America had not lived through a period of absolutism, neither did it know the detrimental forces of corporations that deeply interfered with the rights of individuals. The short history of settlement had created a very different notion of state, particularly, a much more cautious attitude towards its powers. Partial groups had been crucial to the achievements of the American people. In particular, the Puritan world view helped to 'foster contractual conceptions of political organization' and 'of a pluralistic society' (Chapman 1969: 90). It was not static corporations but dynamic associations moulded the self-understanding of American society from its very beginning.

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<sup>26</sup> According to Madison, the higher number of potential representatives increased the number of qualified and fit candidates 'and consequently [...] [the] probability of a fit choice' (Madison 1999: 50). Even more so because a representative had to be convincing in the eyes of a larger number of voters. The so chosen representatives were more likely to have 'enlightened views and virtuous sentiments' which 'render them superior to local prejudices and to schemes of injustice' (*ibid.* 51-2).

### 3.2.2. Alexis de Tocqueville's Democracy in America

The case that secondary associations constituted a necessary social pre-condition for democracy was made by Alexis de Tocqueville. After a nine months research trip to the United States in 1831-2, he published two volumes on 'Democracy in America', the first on the general political system in 1835, the second on the social pre-conditions in 1840. Without doubt, Tocqueville had directed his work towards the French public, using the case of the United States in order to point at alternatives for organising political and social life. Whilst his first volume was a success at home, the second was met with harsh disapproval, supposedly because it contained too much criticism of the French political system. Yet, unintentionally, Tocqueville found many admirers in the United States and his analysis shaped American pluralism to a large extent.

In the second volume, Tocqueville started out with the observation that the old regime based on privilege and aristocratic rule had definitely crumbled as a consequence of absolutism. The new regimes were all principled by equality. This irreversible switch from privilege to equality constituted an unprecedented situation in European history (Tocqueville 1996: 451ff.). Yet equality alone did not suffice to fully characterise a political system since it allowed for both democracy and despotism.

Les nations de nos jours ne sauraient faire que dans leur sein les conditions ne soient pas égales; mais il dépend d'elles que l'égalité les conduise à la servitude ou à la liberté, aux lumières ou à la barbarie, à la prospérité ou aux misères. (*ibid.* 455)

To many contemporaries, equality represented the source of many evils. It was argued that in the absence of a leading aristocrat the individual would be isolated and weak. Consequently, the common people would no longer be capable of settling their own affairs. A society of equal men would lack the capacity for social progress. Individualism as an aspect of equality was taking away from society the old forms of corporate solidarity and diminished its problem-solving capacity. Individuals who were no longer be embedded in a corporate society would only be preoccupied with their

personal affairs and take no interest in the common good. Only a strong central state could replace the former aristocratic functions by regulating the citizen's daily life. Following this approach, the worst case would constitute the combination of equality with liberty, since this would inevitably lead to either the tyranny of a purely self-interested majority, or anarchy.

Tocqueville held that the case of America proved these arguments to be wrong. On the contrary, if one wanted to tackle the problems emanating from equality, it had to be remedied by liberty. The United States constituted a unique case. Americans had never suffered from aristocratic rule, nor had they ever had a democratic revolution which had left the former hatred of the privileged inside the body politic. Moreover, Americans had never developed the habit of calling for public authorities in order to allow them to settle the details of their affairs (*ibid.* 147, 408-10). On the contrary, America disposed of an impressive civic culture of self-government which was largely based on associations.

Les Américains de tous les âges, de toutes les conditions, de tous les esprits, s'unissent sans cesse. Non seulement ils ont des associations commerciales et industrielles auxquelles tous prennent part, mais ils en ont encore mille autres espèces: de religieuses, de morales, de graves, de futiles, de fort générales et de très particulières, d'immenses et de fort petites [...]. S'agit il enfin de mettre en lumière une vérité ou de développer un sentiment par l'appui d'un grand exemple, ils s'associent. Partout où, à la tête d'une entreprise nouvelle, vous voyez en France le gouvernement et en Angleterre un grand seigneur, comptez que vous apercevrez aux Etats-Unis une association. (*ibid.* 154-5)

Tocqueville saw three mechanisms at work in America which accounted for her sustainable success of combining equality with liberty. First, he argued that federalism was a suitable means to further and enable participation of the masses (*ibid.* 150-1). At the same time, he rejected the idea that a strong central state should replace the function of social solidarity. He held that the state would never be able to do so because that would imply state interference in an uncountable multitude of petty enterprises (*ibid.* 157). Against the background of the failed old regime in France this seemed indeed to

be evident. Second, America tackled the problem of individualism with the help of a genuine American doctrine of general interest which was not defined as a Rousseauian *volonté générale* opposed to a *volonté particulière* but, on the contrary, as the direct result of even the most personal interests. This so-defined general interest would not form virtuous men. Yet it would create a general habit of public-mindedness based on the necessity to act in favour of the common good because this was the best way to further one's own personal interests (*ibid.* 173ff).

On s'occupe d'abord de l'intérêt général par nécessité, et puis par choix; ce qui était calcul devient instinct; et, à force de travailler au bien de ses concitoyens, on prend enfin l'habitude et le goût de les servir. (*ibid.* 153)

Third, Tocqueville was convinced that secondary associations accounted for the functioning of American democracy. Tocqueville claimed that under the conditions of general equality only associative freedom and activities would make a civilised world possible.

Pour que les hommes restent civilisés ou le deviennent, il faut que parmi eux l'art de s'associer se développe et se perfectionne dans le même rapport que l'égalité des conditions s'accroît. (*ibid.* 160)

Tocqueville ascribed to associations, civic as well as political, three main functions. Citizens learned how to solve their problems without having to refer to public authorities; they were socialised in a spirit of solidarity without needing the disciplinary effects of corporations; in sum, associations functioned as schools for democracy (*ibid.* 168-71).

Tocqueville concluded 'Democracy in America' with a look at his own country. In France, he complained, the abolition of corporate partial associations had not led to a democratic restructuring of the associative landscape. Instead, the revolution had produced an even more powerful state which regulated an increasing amount of the personal affairs of its citizens (*ibid.* 416). Tocqueville's closing remark points to the danger he saw arising in France, namely that of despotism. He warned against a

political regime which would come in a more subtle disguise than that of preceding despotic reigns. By cautiously controlling its citizens it would reduce them to ‘un troupeau d’animaux timides et industrieux, dont le gouvernement est le berger’ (*ibid.* 435).

In sum, Tocqueville’s work is a fervent plea in favour of democracy which, he was firmly convinced, would only function if based on the rich breeding ground of associative life. In order to avoid despotism, the positive effects of equality had to be freed by liberty. The pre-condition for making such a combination fruitful, however, was the establishment of freedom of association without which the richness of associative life would never flourish.

### **3.2.3. American Pluralism: David Truman and Arthur Bentley**

American pluralism has been developing since the beginning of the 20<sup>th</sup> century. It is as much informed by Madison’s and Tocqueville’s arguments as by the fact that a multitude of groups has been playing a significant role in American politics. From the important body of pluralist literature suffice it to pinpoint two authors who have been central to the development of pluralism in the United States. The first and most pioneering work is Arthur F. Bentley’s ‘The Process of Government’, published in 1908. Drawing on Bentley, David B. Truman wrote ‘The Governmental Process’ fifty years later. Together they made the case for a view of American politics which is based on the idea of groups.

Groups, Bentley and Truman held, were the essence of social life (Bentley 1908: 204, Truman 1958: 14ff.). Ideas and interests did not exist on their own account but only through a group that represented them (Bentley 1908: 206, 211). Since society was composed of groups, government would be no more than a group process in which the different groups struggled for dominance and their interests were adjusted and harmonised (*ibid.* 269). Hence, in order to analyse the governmental process, one had to



look at the ways and techniques with which interests worked through the governmental organs (*ibid.* 305), and at the internal functioning of groups and their tactics for influencing society and government (Truman 1958: x).

To Truman the existence of a great multitude and variety of groups reflected the high degree of complexity and interdependence of society. Groups would emerge if changes and disturbances within modern society occurred. They functioned as channels for mitigating and eventually solving problems in order to maintain a (fragile) state of equilibrium (*ibid.* 44). Both authors stressed that pluralism was a central factor in a system's stability. The group struggle as it can be witnessed in the United States, they argued, would prevent the conflict inherent to each society from spilling over into physical violence (Bentley 1908: 301, 453).

However, Bentley and Truman made two qualifications. Overlapping membership was the first pre-condition for a functioning pluralism. Only if the diverse groups were not organised along the lines of dividing class, or other social lines, could the stabilising component of pluralism develop its effects. Second, there had to be 'vitality of widespread unorganized interests' (Truman 1958: 524) in order to guarantee that all existing interests within society came to make an impact. Truman defined these only indirectly represented interest as those which were 'widely held' and 'reflected in the major institutions of the society, including the political' (*ibid.* 513-4). The influence of unorganised interests would be particularly secured by freedom of speech, press and association as pre-conditions for a free sphere for the articulation of public opinion. Only on this basis should organised groups attempt to exert influence upon the widely held and unorganised interests, in particular, by trying to sway public opinion in their favour (*ibid.* 213ff., 508ff.).

Overall, Bentley and Truman aimed at disproving the widespread criticism against pressure groups according to which they were regarded as an anomaly in a system of representative democracy. They argued that in reality this common view was completely irreconcilable with the group process of government. Against the

background of differing attitudes and group affiliations within society, they were convinced that a common interest did not exist.

In developing a group interpretation of politics, therefore, we do not need to account for a totally inclusive interest, because one does not exist. (Truman 1958: 51)

Therefore the best political solution could not result from 'clear, cold reasoning' and a 'maximum of detachment on the part of the legislator', neither could it be exclusively grounded on 'the facts' (Bentley 1908: 447, Truman 1958: 50).

Overall, American pluralism provides a different interpretation of representative democracy. It rejects the classical assumption of an exclusive direct relationship between the individual and the state. Pluralism understood that groups were closely related to the human nature and formed the substance of society. Therefore, their appearance in politics should not be regarded as a pathological development of democratic politics. On the contrary, pluralism is desirable, the argument goes, because it is a means to channel social conflict. Hence, in the first place, pluralism does not ascribe to groups an intrinsic normative value of furthering democracy, but stresses the functional necessity of a working group process for a political system's stability and legitimacy.

For two reasons pluralism first gained popularity in American political and social science in the late 1950s and 1960s. First, it provided a useful approach to the understanding of American politics as they were and continue to be. Second, at the acme of the Cold War, pluralism functioned as a bulwark against communist thought. The explosive power of class cleavages was neutralised by the idea of overlapping membership. According to pluralism, economic interests may matter to some extent but they are not at the heart of the group process. Pluralist politics were meant to enable peaceful social change by conjuring away the problems of the unequal distribution of wealth under capitalism. Yet critics of the dominant pluralist assumptions soon found

that interest group activities were strongly biased toward the most wealthy part of the American population.<sup>27</sup>

The vice of the groupist theory is that it conceals the most significant aspects of the system. The flaw in the pluralist heaven is that the heavenly chorus sings with a strong upperclass accent. Probably about 90 per cent of the people cannot get into the pressure system. (Schattschneider 1960: 35)

At the same time, the Civil Rights Movement revealed the persisting racial cleavage in American society. It became evident that the ideal construction of potential interest groups being represented by the national institutions and elites included neither the poor and disadvantaged nor the black population (McConnell 1966). On the contrary, the political system seemed to systematically deny them access. It turned out that interest group politics had the proclivity to reinforce, rather than change, the already existing power structures.

Despite the problems deriving from economic and racial cleavages, the main approach of pluralism remained dominant in American political science. From there ideas developed such as that of political culture (Almond and Verba 1965) and social capital (Putnam 1993) as pre-conditions for a functioning democracy. The theory of pluralism and democracy came to be closely intertwined (Dahl 1956, 1967, 1982). Today, it seems hardly conceivable to American political science that any non-pluralist system could be democratic in character.

A country is a pluralist democracy if (a) it is a democracy in the sense of polyarchy<sup>28</sup> and (b) important organizations are relatively autonomous. *Hence all democratic countries are pluralist democracies.* (Dahl 1982: 5, emphasis added)

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<sup>27</sup> For an overview see Chapman 1969, Ehrenberg 1999: 199ff., Kateb 1969: 138. For a defense and detailed discussion of American pluralism see Kelso 1978.

<sup>28</sup> On Dahl's definition of democratic polyarchy see Dahl 1956: 63ff., 84.

### 3.2.4. European Pluralism: Ernst Fraenkel

The reflection on the importance of groups in politics was not confined to the United States. Simultaneous to the rise of American pluralism in the 1950s and 1960s, the German political scientist Ernst Fraenkel developed a theory of pluralism which may be considered as the European counterpart to American pluralism.

Fraenkel knew and valued the American political system from his emigration period due to Nazi rule (see Fraenkel 1960). The examination of totalitarianism which he was confronted with in Germany up until 1938 (see Fraenkel 1941) and again, after his return to Berlin, during the Cold War, was central to his academic and personal life. More than any other scholar he conceived of pluralism as the sole means to overcome totalitarianism, be it fascist or communist (Fraenkel 1991d: 323; 1991e: 349).

Fraenkel's theory was premised on two ideal types of modern democracies: an autonomously legitimised, heterogeneously organised, pluralist state and a heteronomously legitimised, homogeneously organised, totalitarian state (Fraenkel 1991d: 325, 1991e: 326-7). According to Fraenkel, pluralist and totalitarian regimes both claim to be democratic because they are based on the rule of the people. However, they differ substantially in their definitions of what constitutes 'the people', and, as a consequence, of how the common good is generated. In a totalitarian state, society is seen as an amorphous mass of individuals which is regarded to dispose of a genuine and encompassing common will. In a pluralist state, society is understood as a differentiated collective that is composed of different organised groups - such as political parties, interest groups, and associations - and that has to negotiate the content of what is then regarded as the common good (Fraenkel 1991c: 290, 1991e: 345). While totalitarian regimes are legitimised by a pre-existing common good which is identical with the individual subjective wills, pluralist regimes have to derive their legitimacy from a reflected *consensus* that has to be established and renewed constantly among the groups of society (Fraenkel 1991e: 330ff.).

Rousseau was to Fraenkel the ‘apostle of anti-pluralism’ (Fraenkel 1991d: 307). Mostly drawing on Rousseau’s ‘Social Contract’, Fraenkel described the idea of identity democracy as the source of totalitarian rule. The common good was imagined as being the ‘true’ will of the people. It was assumed that, in practice, its realisation was hindered by either unequal economic conditions or erroneous human nature. Further, the theory of identity democracy presupposed that there was one, or some, leaders who would be able to recognise the exact content of the common will with the help of providence. ‘Enlightenment’ and education should make the people acknowledge its own and ‘true’ interests. If need be, those who would insist on their partial interests should be forced to accept the general interest, that is they should be ‘forced to be free’, as Rousseau had put it (Rousseau 1997: 53; I, 8). Consequently, all factors which would potentially deviate the common will should be eliminated over time, and that was, according to Fraenkel, the crucial problem with identity democracy (Fraenkel 1991e: 337). In short, totalitarian regimes aim at establishing homogenous societies. Therefore they are opposed to the formation of independent groups and their participation in the political process because free associations are deemed to deviate the common good.

In contrast, autonomously legitimised democracies are heterogeneously organised. Pluralist states need to be based on groups in order to give expression to the diversity and differentiation within society. To Fraenkel, the existence and activity of interest groups were the main criteria for distinguishing pluralist from totalitarian democracies (Fraenkel 1991a: 63). In particular, partial associations were the sole means of preventing the people from being turned into an amorphous mass which would then become subjected to totalitarian rule. Moreover, the continued participation of groups in the governmental process served to integrate and unite differentiated societies (Fraenkel 1991e: 346).

Fraenkel rejected the idea that a common good that encompassed all aspects of a given problem could exist in pluralist societies (Fraenkel 1991b: 245-6). Pluralist states had to generate the common good via a complex group process. In contrast to identity

democracy where the common good was claimed to exist *a priori*, pluralist democracy had to bring about political solutions which could be regarded *with hindsight* as the common good, or a common good *a posteriori*. The pre-condition, however, was that the political process was based on due process and oriented toward the common good. Fraenkel defined the common good as a set of shared abstract norms which served as regulative device.

Der Pluralismus beruht vielmehr auf der Hypothese, in einer differenzierten Gesellschaft könne im Bereich der Politik das Gemeinwohl lediglich *a posteriori* als das Ergebnis eines delikaten Prozesses der divergierenden Ideen und Interessen der Gruppen und Parteien erreicht werden, stets vorausgesetzt, [...] daß bei deren Zusammen- und Widerspiel die generell akzeptierten, mehr oder weniger abstrakten regulativen Ideen sozialen Verhaltens respektiert und die rechtlich normierten Verfahrensvorschriften und die gesellschaftlich sanktionierten Regeln eines fair play ausreichend beachtet werden. (Fraenkel 1991d: 300)

Fraenkel distinguished between a non-controversial and a controversial sector of public affairs. Like the American pluralist Dahl, he understood that constitutional factors alone did not suffice to make a pluralist democracy work. Rather, there had to be widespread consensus on non-constitutional norms which were abstract enough to guide the process of policy formulation (Dahl 1956: 135ff., Fraenkel 1991d: 300-1). If the social prerequisites rooted in political culture were too weak and, as a consequence, the non-controversial sector too small, society faced disintegration. At the same time, Fraenkel stressed that a sufficiently large non-controversial sector was vital for a pluralist democracy. Open conflict was desirable. Pluralism did not function despite, but thanks to, public conflicts on controversial issues under the condition that they were based on the rules of the game. If there were too little controversies, society became apathetic and had to face the Tocquevillean kind of despotism (Fraenkel 1991a: 66, 1991c: 291-2).

Unlike Bentley and Truman, Fraenkel did not count on an invisible hand to guide the group process of government. Instead, he argued that the state had to

guarantee the due process of the formulation of politics. Moreover, the state should empower the masses and prevent itself from becoming the sole expression of the most mighty and influential. Overall, the state should promote the organisation and expression of interests and ultimately represent those interests that were not being able to become, or remain, organised (Fraenkel 1991e: 351-9).

In sum, Fraenkel prescribed a number of conditions for a free and democratic political system. He was a German social democrat, and therefore did not want to rely on the forces of a free and unregulated 'market' of interests. The strength of the normative part of his theory is that he ascribed a duty to both the state and the intermediary groups to bring about and maintain the common good. He may, however, have focused too much on totalitarianism in his analysis. Fraenkel thought that only the interpretation of Rousseau's thinking accounted for the widespread hostility toward partial associations. He did not see the complex set of reasons which would have made him understand why interest groups constituted an important component of Western democracies without having a theoretically justified place in them. As a consequence, he could not fully tackle the theoretical problem that modern national representation was remaining irreconcilable with the representation of partial interest groups.

### ***3.3. Representation by Organised Interests: Joseph Kaiser***

At the same time Fraenkel was writing his essays, Joseph Kaiser published a book on the 'Representation of Organised Interests' in Germany,<sup>29</sup> a work which eventually settles the representational patterns of pluralism. Kaiser's theory is based on the idea that representation serves the function of social and political integration. Kaiser aims at adapting the representational patterns which had been developed against the background of a (seemingly) homogenous bourgeois society to that of a heterogeneous mass society. Compared to homogeneous and well-integrated societies, suitable patterns

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<sup>29</sup> 'Die Repräsentation organisierter Interessen' by Joseph H. Kaiser was first published in 1956.

of representation are even more central to states which are based on fragmented mass societies. These cannot exist without a working basis for the integration of society and state through representation (Kaiser 1978: 352-3).

Modern societies, Kaiser states, are principled by interests. The notion of interest constitutes their central constitutional characteristic. Society's fragmentation and differentiation manifest themselves in a wide range of interest groups. Interest groups make explicit the diversity of interests within society (*ibid.* 339-47, 363). Kaiser draws on Tocqueville and argues, similarly to Fraenkel, that the absence of autonomous groups would turn the people into an amorphous mass which would potentially be exposed to totalitarian rule (*ibid.* 18-9, 338). Hence, interest groups protect the individual against the state. Due to the competition among interest groups, they also protect the individual against single interest groups which might otherwise become too influential. However, first of all the state has the task of forestalling a Madisonian tyranny of factions (*ibid.* 338).

Kaiser identifies an inconsistency in modern constitutions, inasmuch as they ignore the existence of interest groups as intermediary powers and their participation in the political process (*ibid.* 349). Yet he understands that the representational patterns of parliamentary representation cannot simply be transferred to the idea of interest group representation. First, the patterns of parliamentary representation are based on the assumption of a homogeneous society and are, therefore, not suited to giving expression to the social heterogeneity that interest groups represent (*ibid.* 353). Second, modern national representation is based on the principle of the sovereignty of the people, an idea that cannot be adapted to group-based representation. As we know since Sieyès, the principle of equality among citizens is irreconcilable with that of group society.

Volkssouveränität und Gruppensherrschaft sind [...] nicht identisch und grundsätzlich auch nicht mit einander vereinbar. (*ibid.* 360)

Therefore, Kaiser concludes that the conception of interest group representation needs to be different from that of modern national representation.



According to Kaiser's model, two basic forms of representation exist in modern mass societies which correspond to two different ways of integration. Parliamentary representation is institutionalised and represents the *unity* of the people in the state. It is based on the idea of the sovereignty of the people and principled by *equality*. Since the sovereignty of the people is the basic principle of state legitimacy, Kaiser claims parliamentary representation to be the supreme form of representation. Here, political parties are the motors of integration of the *political* entity.

Interest groups, on the other hand, represent the *diversity* of the society. The underlying principle is *inequality*. They are the motors of integration of the *social* plurality. Parliamentary representation can no longer be said to be absorptive because it takes place in a heterogeneous mass society. Therefore, interest groups compete with the scheme of modern national representation. It makes no sense to Kaiser to institutionalise interest group representation. He argues that the representation of organised interests is *factual*, as opposed to *institutional* parliamentary representation. Yet it is not less real than parliamentary representation. Representation, Kaiser holds, is not an accidental attribute of interest groups but one of their characteristics (*ibid.* 353-60).

Ihr [der Instanz des Parlaments] und den anderen, politische Herrschaft (Hoheitsgewalt) ausübenden Staatsorganen gegenüber ist das Kaleidoskop der in Verbänden organisierten Interessen eine *wahre* und *echte* Repräsentation. (*ibid.* 360-1, emphasis added)

A single interest group, however, does not represent the diversity of society. Kaiser argues that only the social whole can be represented as such, therefore only the totality of interest groups is qualified to represent. Moreover, the factual representation of organised interests is substantiated by the interaction, competition, and balance among interest groups.

[...] Einzelakte sind für sich genommen noch keine Repräsentation [...]. Nur das soziale Ganze kann repräsentiert werden; darum ist nicht schon die

Vertretung eines einzelnen Interesses, sondern das Zusammenspiel, die Konkurrenz und die Balance der organisierten Interessen Repräsentation. Erst das gesamte Spektrum organisierter Interessen ergibt also ein Ganzes, das der Repräsentation fähig ist [...]. (*ibid.* 357)

Whilst parliamentary representation stands for itself because it is supreme, interest group representation is related to the state authorities and the public opinion (*ibid.* 355, 360). The factual representation of interest groups takes place *vis-à-vis* state authorities and the public opinion.

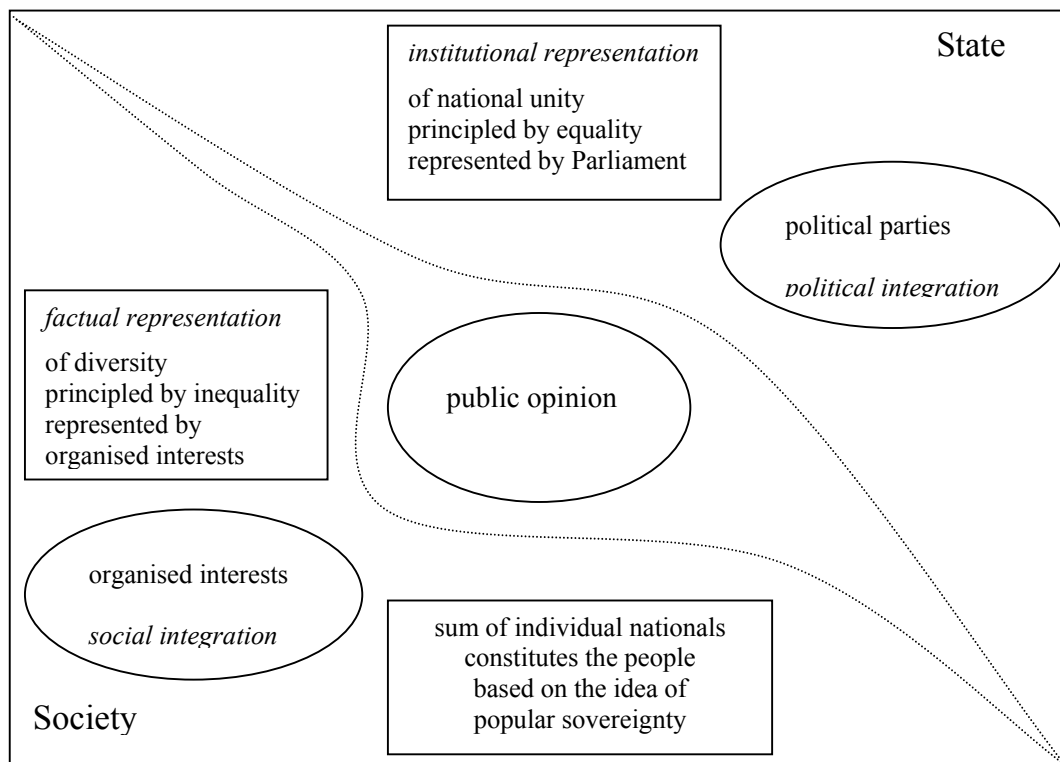


Figure 3.1. Institutional parliamentary representation and factual representation through organised interests

The notion of public opinion as the fourth branch of power (*ibid.* 212) is pivotal to Kaiser's model. The public sphere is a non-institutionalised area which is located in between state and society. It functions as an intersection where state and society are no longer opposed and become integrated entities (*ibid.* 355). Originally, Kaiser explains,

the notions of public sphere and public opinion were rooted in Rousseau's theory of identity democracy. At the beginning of the 20<sup>th</sup> century, Carl Schmitt enlarged the concept and depicted the public sphere as the realm for democratic acclamation in modern societies. Since society has become highly fragmented, Kaiser argues, the public sphere itself has become fragmented and no longer encompasses the society as a whole. In mass societies the public sphere no longer equals the totality of citizens, neither is it fully represented by parliament. Against this background, acclamation can no longer refer to an encompassing general will of the people but means the acclamation of an interested, partial public. Kaiser defines the public sphere as being based on the attention which a given issue attracts, and public opinion as the result of the articulation of different interests with regard to a given issue (*ibid.* 218-25).

Öffentlichkeit in konkretem Sinn entsteht durch Kenntnisnahme; *Öffentliche Meinung entsteht durch Interessenahme.* (*ibid.* 221, emphasis original)

Kaiser rejects the idea that the creation of the public sphere originates within the mass of the people. Rather, a (partial) public sphere comes into being when members of organisations and institutions take an active interest in an issue. The public discussion then establishes a 'qualified public sphere' where partial groups represent their interests (*ibid.* 224-5).

Kaiser describes the relationship between interest groups and public opinion as twofold. On the one hand, interest groups are a component of public opinion. On the other hand, they represent the diversity of society *vis-à-vis* public opinion. In order to exert influence, interest groups have to sway public opinion. They do so with leaflets, press conferences, public manifestations... Public opinion functions as corrective to the influence of partial interests. Each group that wants to be successful has to create a positive public opinion with regard to its overall goals. Conversely, if a group is not able to win the public over it will not achieve its objectives in the long run. The orientation toward public opinion is for Kaiser a *conditio sine qua non* to the representation of partial interests. He states that one cannot conceive of representation

of partial interests as long as interest groups negotiate with governmental agencies behind closed doors. As much as parliamentary representation does, the representation of organised interests needs publicity in order to claim democratic legitimacy (*ibid.* 225-32).

Kaiser made a sharp distinction between political parties and interest groups. Over time, political parties did not remain independent from the state and came to be the transmission belt of the integrative functions of parliamentary representation. What distinguishes them from autonomous interest groups is their preparedness to assume political responsibility in order to realise their objectives. The changeover from political parties as social forces to state-like agencies left a vacuum which was filled by organised interests. The new intermediary power is constituted by partial groups. These are positioned *vis-à-vis* the three classical governmental branches, and, in addition, *vis-à-vis* political parties (*ibid.* 232-55, 348).

Even just the title of Kaiser's work must have irritated many of his contemporaries. By claiming that organised interests could *represent*, he had to argue against an important body of German literature which had been dominated by an ontological approach. The 'essence' of representation had been conceived of as being something morally high-standing and of metaphysical value (Schmitt 1970, Leibholz 1966),<sup>30</sup> or as a means to achieve higher levels of national self-improvement where the 'true' common will finds expression (Krüger 1966).<sup>31</sup> Linguistic differentiation made it

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<sup>30</sup> 'Repräsentation ist kein normativer Vorgang, kein Verfahren und keine Prozedur, sondern etwas *Existentielles*. [...] Das ist nicht mit irgendwelchen beliebigen Arten des Seins möglich, sondern setzt eine besondere Art Sein voraus' (Schmitt 1970: 209-10, emphasis original), first published 1928.

'Eine Repräsentation ist vielmehr nur in einer ganz bestimmten Wertsphäre möglich. [...] Nur dort, wo die Träger des Repräsentationsgedankens einen besonderen Wert, eine spezifische Würde und Autorität für sich in Anspruch nehmen, kann man in Wirklichkeit von Repräsentation sprechen.' (Leibholz 1966: 32), first published 1929.

For a detailed criticism of Schmitt and Leibholz see Hofmann 1974: in particular 98ff.

<sup>31</sup> Krüger describes representation as a 'aufsteigende Prozeß der Selbstverbesserung einer Nation' which creates '*echtes* Gemeinwesen' and '*richtigen* Gemeinwillen' (Krüger 1966: 242, emphasis added).

possible to deny that any partial and normatively not valuable interest could be represented *strictu sensu* (Schmitt 1970: 210, Leibholz 1966: 32, Scheuner 1965: 580). The English verb 'to represent' can be translated in German as *darstellen* (to depict, to stand for), *vertreten* (to act for as an agent or delegate), or *repräsentieren*. The activity of organised interests was depicted as delegation, whereas 'real' representation was reserved for the higher moral spheres of national unity - a distinction which caused particular problems for German representation theory (Hofmann 1974: 28). According to Schmitt, only categories such as 'grandeur', 'highness', 'majesty', 'glory', and 'honour' are elevated enough to constitute the basis for representation (Schmitt 1970: 210). This conception is derived less from the idea of forming a unity as defined by corporate and absorptive representation, than from the idea of representing status via role-play as we know it from symbolical representation (see 2.1.1.) (Hofmann 1974: 187).

Kaiser's model was particularly original and adapted German representation theory to the actual constitutional reality as he recognised that the heterogeneity of interest groups cannot be expressed through a type of representation that is based on the image of unity. Kaiser, nonetheless, remains embedded in 'classical' German representation theory when he argues that only the totality of interest groups is able to represent. Arguably because the idea that only a unity can be represented was central to German scholars (Schmitt 1970: 212, Leibholz 1966: 46ff) Kaiser attempts to construe some sort of unity by claiming that only the social whole can be represented through interest groups. This is not only an inherent contradiction in Kaiser's thinking. Bentley and Truman had already understood that the sum total of *organised* interest groups cannot represent the sum total of interests in a heterogeneous society. This is why, according to pluralist thought, general, diffuse, and unorganised interests should be represented by the state.

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For a criticism of Krüger see Hofmann 1974: 401.

As a consequence, it seems useful to reduce Kaiser's model to the central idea that the factual representation of organised interests is substantiated by the interaction, competition, and formation of a balance among interest groups. If we accept that in heterogeneous mass societies neither parliamentary representation is perfectly absorptive, nor that the factual representation of organised interests represents the totality of society as a whole, it is possible to reconcile in theoretical terms what, for Sieyès, had seemed irreconcilable: the principle of the sovereignty of the people with that of interest group participation in the governmental process.

### **3.4. Conclusion**

Pluralism's anthropological premise is to accept the human nature as it is. Accordingly, it is inherent to the human nature that individuals who share the same interest form groups. While Sieyès understood that individual interests do exist within society he conceived of groups as irreconcilable with citizenship. He argued that those who belong to a group cannot, at the same time, be citizens (see 2.5). In a first step, pluralists came to understand that the existence of groups does not necessarily have to constitute a threat to democracy (Madison), and, in a second step, that groups do not constitute a deviation but, rather, a necessary element of democratic government (Tocqueville). It has to be borne in mind, however, that the groups to which Sieyès referred were medieval-type corporations, whilst Madison and Tocqueville were writing about free associations that could only be formed on the grounds of a society composed of free and equal individuals. Therefore, we have to concede that Sieyès was right, insofar as corporations that are based on privilege instead of modern law indeed interfere with citizenship. Only free associations, such as they were first observed and studied in the United States, are reconcilable with democracy.

Types of representation are always related to social structures. Medieval society was premised by a godly given order in which everyone had a predetermined place. Accordingly, social and political representation was based on the imagery of *corpus*.

From a pluralist perspective, modern societies are composed of both individual citizens and groups. So two different types of representation give expression to modern democratic societies. Political-institutional representation gives expression to a society which is conceived of as being composed of equal citizens. The unity of the sovereign people is represented in the political realm. Modern political representation creates a community *and* enables the political community to act as such. In other words, it brings about political integration and a political community's capacity to act. Factual interest group representation works differently. It is based on the group aspect of society. It makes visible interests that exist within the social realm. Factual group representation gives expression to the heterogeneity of interests. Therefore the articulation of *one* particular interest cannot be said to be representation. Rather representation comes into being by way of interaction between interest groups and between interest groups and the state. Thereby factual interest group representation cannot be seen as the representation of individuals, such as the members of interest groups. Rather *categories of interests* are represented, such as those of consumers, producers, taxpayers, labour, transport businesses, women etc.

By way of analogy to corporate representation, factual group representation may be imagined in terms of a representative body (see 2.3.). Accordingly, the sum total of interest groups that is active within a polity can be imagined as forming a body that gives expression to the diversity of categories of interests within society. By forming a representative body, factual group representation brings about social integration that is related to the group aspect of society. Like early forms of medieval corporate representation, the emphasis of factual group representation lies on the *creation* of a body. However, this type of representative body cannot act as such because it cannot create a unity from the multitude of interests. Herein lies a significant difference between factual group representation and both modern political-institutional and later forms of medieval corporate representation. Medieval corporate representation came to create a unity from the different components of a static, God-defined order. Modern

political-institutional representation creates a unity from, for example, a multitude of equal citizens, or a multitude of equal member states. In contrast, factual interest group representation is neither based on something which can be imagined as a unity, nor does it create a unity by way of representation. Thus, factual group representation cannot transcend the sum of the represented categories of interests. Moreover, as Kaiser explains, factual group representation is related and subordinated to political-institutional representation. It cannot come into being on its own right. Factual group representation has to be related to state authorities, and, at the same time, to the public sphere. Only when it is exposed to the public a representative body can be formed that is composed of the various categories of interests. And only here can it unfold its integrative effects. Finally, the state has to secure that the workings of interest groups are made fruitful for democracy and do not undermine a society of equal citizens. In particular Fraenkel recognised the ‘flaw in the pluralist heaven’ (see Schattschneider quote above), stemming from the unequal distribution of resources among groups and the difficulty in organising diffuse or general interests. Fraenkel underscored the necessity for that the state assure due procedure of the group process, grant open and equal access for interest groups, enable both conflict and consensus within the governmental process, empower the unorganised masses and take account of those interests that are not represented through a group.

Whilst the concept of representation as such can be adapted to different political and social settings, the concepts of modern national representation and factual group representation within pluralist democracy have been developed against the background of a nation-state. Hence the questions remain as to how, and to what extent, these concepts can be applied to the analysis of institutional and interest group representation in the European Union. As regards institutional representation, an important reservation has to be made. The Union is not built on the notion of a single sovereign people the unity of which is represented. Consequently, the European political system is not



centred on a parliament comparable to national parliaments. Rather, a number of different forms of institutional representation account for political integration at the European level and the Union's capacity to act. In contrast, the concept of factual group representation can be fully applied to the European Union. In this case it does not relate to a national but the European polity and gives expression to the fragmentation and diversity of European societies. At European level too, the 'state' has to guarantee that factual group representation is made fruitful for democratic government. In concrete terms, this means that this task falls under the remit of the institutions that are involved in authoritative European decision-making. Finally, a pluralist perspective can be applied according to which the European common good is a result of both institutional and factual interest representation.