

# The Political Economy of Constitution

## Introduction

The distinction between constitution (as the set of fundamental normative premises ensuring the cohesion of any given polity) and contract (as the set of formal deliberations agreed upon by the relevant stakeholders in that polity) is central to political economy. In fact, there is increasing recognition in economic analysis that institutional rules and constraints emerge and evolve on the basis of relations, dispositions and beliefs belonging to a ‘constitutional sphere’ of social connectivity that is primary to contracts and formal norms (Aoki 2001, 2010; North 2005). The recent literature on decision-making in the social sphere addresses this point to some extent by calling attention to the role of pattern recognition and framing in a context-specific and relational setting (Bacharach, 1986, 1997, 2006; Mehta, Starmer and Sugden, 1994; Turner, 2001; Drolet and Suppes, 2008; Scazzieri, 2001, 2008; Porta and Scazzieri 2003; Arena, 2003; Arena and Larrouy, 2016).<sup>1</sup> However, the discussion of the principles governing the transference of social dispositions into formal and enforceable covenants largely takes place within the framework of rational choice and theories of contract (Gauthier, 1986; Vallentyne, 1991; Gauthier and Sugden, 1993; Binmore, 1994, 1998; Skyrms, 2014). As a result, the way in which patterns of social connectivity lead to binding commitments with a *specific content* beyond formal rules and procedures remains largely unexplored.

This paper seeks to outline a *political economy of constitution* in which constitution is defined as a constellation of interests that is prior to formal arrangements and that determines the way in which formal rules and procedures operate within a specific setting. Our emphasis on substantive arrangements differs from the more formalist conception of institutions in the

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<sup>1</sup> The interdependence between framing and reciprocal social recognition has long been acknowledged in social theory, going back at least to Adam Smith’s analysis of social mirroring in the *Theory of Moral Sentiments* (Smith, 1976 [1759]). See also Scazzieri (2006), Amadae (2008).

contractualist tradition, which is governed by a ‘covenant of reason’ (Levi 1997).<sup>2</sup> By contrast, we emphasise the more substantive approach in the classic constitutionalist tradition, which can be described in terms of a ‘covenant of practice’.<sup>3</sup> More specifically, our conception of constitution accentuates the relationships that underpin the ordering of functions and relative positions within a given society (Pabst and Scazzieri 2012). Here we also draw on the work of the legal scholar Costantino Mortati who distinguishes between constitution ‘in the formal sense’ and constitution ‘in the material sense’ (Mortati, 1998). In Mortati’s view, the ‘material constitution’ is the relatively persistent structure of dispositions, interests and beliefs that turns any given ‘formal constitution’ into an effective body of socially admissible practices.<sup>4</sup>

This approach has far-reaching implications for the relationship between economics and politics. In particular, we argue that the ‘constitutional outlook’ of political economy is a domain of feasible arrangements that is prior to either markets or states. This point of view entails the *mutual embedding* of the economic and political spheres. From this perspective, individual or collective interests are not seen in binary terms as necessarily compatible or rival but rather as rooted in a relational space that points beyond the dichotomy between consensus and conflict.

Section 1 explores the conceptual links between ‘political economy’ and ‘constitution’ in terms of connectivity within and across multiple levels in society. Section 2 ties

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<sup>2</sup> This research question has points in common with, but is also significantly different from, James Buchanan’s approach to constitutions as normative frameworks to be assessed in terms of allocative efficiency (Buchanan 1990). For we are especially interested in the way in which the economic constitution of any given society allows manifold individual and/or groups to coalesce around partially overlapping interests and thus to bring about patterns of social congruence. On the other hand, our conception shares some of the concerns raised by Douglass Cecil North and other scholars as to the historical conditions rendering certain rules and procedures effective in certain contexts and ineffective in others (North 1990, 2005; North and Weingast 1989; North, Wallis and Weingast 2010).

<sup>3</sup> On this constitutionalist tradition, see MacIlwain (1939, 1958), Pocock (1987), Matteucci (1993), Pabst (2014).

<sup>4</sup> Mortati argues that any formal political settlement presupposes an “original constitution”, that is, the existence of a unifying interest that is associated with a particular social group (or constellation of groups) and is the expression of “a particular form of [normative] order” (Mortati, 1998, p. 53). The constitutional character of this normative order derives from its relative stability, even if “oscillations in the relative weights of the interests underlying it” cannot be excluded (Mortati, 1998, p. 53). However, these oscillations must be consistent with the existence of a “relative fixed [central] point” (Mortati, 1998, p. 53*n*). See also Alexander, 1998, for a different but complementary perspective on the conceptual foundations of constitutionalism.

connectivity to the configuration of individual and group interests and examines the corresponding conditions for constitutional congruence. Section 3 turns to the ‘constitution of economic policy’ and explores the implications of partially overlapping spheres of interest for feasible and effective decision-making in the economic-political domain. The final section provides some concluding reflections.

### **1. Why ‘political economy of constitution’?**

Political economy is typically concerned with the economic and political arrangements of a given society, whereas constitution commonly refers to juridical-legal norms, rules and regulations that govern the people within a given territory. In the contemporary literature, the relationship between the two is generally addressed by interpreting a constitutional settlement in terms of its allocative efficiency and by constructing a political-economic system in terms of the formal rules and procedures that make its working feasible. By contrast, this paper takes the view that both constitution and political economy belong to a more fundamental domain of social connectivity that pre-exist formal consent procedures, which underpins the interdependence and interactions between individuals and/or groups.

Our argument runs as follows. First, we distinguish political economy from both economics and politics. According to common conceptions, economics denotes primarily decision-making about the allocation of resources between *individuals*, whereas politics concerns collective decision-making about the distribution of resources between different *groups* in society. Both fields are seen as largely self-contained spaces governed by instrumental rationality independently of a ‘thick description’ (Geertz, 1975) of the social space.<sup>5</sup> This approach denies political economy an autonomous space of inquiry and leads either to the absorption of politics into economics (e.g. North, Wallis and Weingast 2010) or

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<sup>5</sup> We have in mind the distinction between economics and political economy after Marshall (1890) and also the distinction between politics and political economy after Auguste Comte (see Collini, Winch and Burrow 1983; Manent 2013).

to its opposite (e.g. Blyth 2013). On the contrary, we argue that the two spheres are independent of each other, even if they are mutually embedded by virtue of their joint inclusion within the same configuration of social interdependencies. Second, we argue that political economy is primarily a theory about the ordering of different functions and an arranging of different positions, which embed both the economic and the political sphere. Here we draw on the work of John Hicks who clearly distinguishes between economics as a theory of rational market behaviour, which he calls *catallactics* (following Richard Whately 1831, Francis Edgeworth 1881 and Ludwig Mises 1949), and economics as a theory of the formation and distribution of the social product, for which he reserves the term *plutology* (Hicks 1982). In the words of Hicks, analysts in the latter tradition “looked at the economic system primarily from the production angle”, whereas “the catallactists looked at it primarily from the side of exchange” (Hicks 1982: 10). Hicks’ emphasis on the ‘social product’ as the characteristic field of ‘plutology’ points to the complex structures of social interdependencies that characterise both the economy and the polity as well as their relationship.

Third, we presuppose a certain ‘constitution of interests’ – a structured space that is prior to decisions concerning the allocation and/or distribution of resources between different social groups.

Our conception of political economy is different from influential accounts in both economics and politics that seek to re-embed social relationships in either the economy or the polity (e.g. Buchanan 1990; Vanberg 2005). An example of the former is Friedrich von Hayek’s attempt to broaden the category of market exchange beyond pure commercial transactions to include all horizontal social interactions – a comprehensive field which Hayek describes as *catallaxy* (Hayek 1976). An example of the latter is Pierre Bourdieu’s account of the state as not simply an instrumental apparatus for action in the public sphere but as a comprehensive field whose influence goes beyond purely political relations to encompass a wider range of social institutions and interactions (Bourdieu 2012). Either way, both positions

– by expanding the respective fields of economics and politics – end up subsuming the social domain under either the logic of market exchange *or* the logic of formal decision-making in the circumscribed space of a polity identified with the modern nation state.

This paper shifts the emphasis to the concept of ‘association’, which we define as a set of relationships that have potential for *both* conflict and cooperation and that are not reducible to any of the above dualisms or to the binary logic that underpins them.<sup>6</sup>

Our view of association differs from (early) modern and contemporary accounts wedded to a dualistic approach. First, the Hobbesian heritage of inherently adversarial and lawless sociability in the ‘state of nature’ that gives rise to a ‘war of all against all’ which only the absolute power of the one over the many can regulate (Hobbes 1960, part I, chap. XVI, p. 107 and part II, chap. XVII-XX, pp. 109-136). Second, the Rousseauian legacy of viewing humankind as born free but constrained by human association, and the Hegelian legacy of seeing civil society as a mere extension of the state (Rousseau 1997, Book I, 6, 4; Book I, 6, 6-10; Book IV, 1, 1- 2, 5 and 7; Hegel 1991, II, 1, §§102-112, pp. 130-140, III, 2, §§180-256, pp. 220-274). Third, the Lockean and Smithian emphasis on commercial society as a set of contractually based interactions among private individuals where the particular self-interest of some is limited by the particular self-interest of others (Locke 1988, II, §6 and §135; Smith 1978, pp. 335-40, 521-527). In different ways, all three theories subordinate association either to the will of the individual or to that of the collective, thereby ignoring the relational constraints and opportunities involved in social interdependence.

By contrast with the above approaches, we argue that association and the constitution of interests are plural and hybrid. This point of view distances itself from the contractualist tradition primarily because of a different approach to individuality and agency. The legal historian Paolo Grossi describes the contrast as one between “the unitary subject of natural

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<sup>6</sup> Our conception of association draws on the tradition stretching back to classical sources like Plato, Aristotle and Cicero that was developed by medieval, Renaissance and modern thinkers as diverse as Justus Lipsius, Ralph Cudworth, Giambattista Vico and Alexis de Tocqueville. However, in the present paper we do not explore the history of ideas that has shaped this account of association.

law, an a-historical and thus merely virtual subject, a model of human being, and nothing more” and “an intrinsically relational entity, fully embedded in a cultural, social and economic context, seen in conjunction with the other, the others, and connected to them by necessary and close-fitting bonds” (Grossi, 2009, pp. 9-10). One possible objection to this view is that the internal structure of society is so diverse as to produce ‘parallel societies’ within a given territory and its people. Indeed, there has been much discussion about the growing plurality of late modern societies, including the pervasiveness of fundamental disagreements (political, economic, social and ethical) and the inability to resolve such disagreements rationally (e.g. Hirschman 1977; MacIntyre 1981). This has led contemporary thinkers such as Isaiah Berlin and John Rawls to argue that substantive values are incommensurable and that therefore it is only possible to agree on certain procedural mechanisms such as contractual arrangements backed by the rule of law (Berlin 1969; Rawls 1971). Our conception of association seeks to overcome this opposition in the direction of a multi-layered social space in which there can be both disagreement on some substantive choices as well as agreement on others. In short, even an entrenched diversity of interests is not necessarily incompatible with a stable constitutional order provided that diversity allows for political economies arranged along a plurality of interdependent but self-governing spheres.<sup>7</sup>

The conception of constitution developed in this essay has implications for the theory of political economy itself. Building on Hicks, we move beyond his conception of political economy as a theory of the social product formation and distribution by emphasising the relative positions of individuals and groups and the ordering of economic functions that characterise any given society (Quesnay 1758; Romagnosi 1827 and 1835; Stein 1879).

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<sup>7</sup> In his analysis of pre-modern constitutionalism Paolo Grossi has emphasized the role of “plastic legal forms that are inherently history-laden”, and in which “law relates to the systemic and complex configuration of society and not to an encumbering political structure, or to a strong power apparatus” (Grossi, 2002: 49; see also Grossi 2007). This point raises the issue of the social embeddedness of the declarative speech acts in which normative legal statements are expressed (see Ruiter, 1993, 2001).

Classical political economy, both in its original formulations (Smith 1976 [1776]); Ricardo 1951 [1817]) and in its modern appraisals and systematizations (Leontief 1991 [1928], 1941; Sraffa 1960; Quadrio Curzio 1967; Lowe 1976; Pasinetti 1977), provides a vantage point from which to assess the implications of Hicks's conception for the constitutional arrangement of any given society. For classical political economy focuses on the formation and distribution of the social product through a system of interdependencies among productive sectors, while also presupposing a system of interdependencies between socio-economic groups (such as workers, capitalists and rentiers). The former set of interdependencies highlights complementarities between productive sectors that may be at odds with the macroeconomic distribution of the social product among groups. That is because the relative shares of the social product accruing to certain groups may be inversely related to the shares of other groups, even if there may be a positive relation with the shares going to yet other groups (see, in particular, Quadrio Curzio 1990; Quadrio Curzio and Pellizzari 1999).

This perspective highlights the existence of distinct but interlocking conditions (respectively, in the technological and in the socio-institutional domains) that allow the formation of the social product and the persistence of the economic system's productive potential over time. In particular, the technological conditions ensuring the material viability of the productive system ought to be distinguished from the institutional conditions governing the distribution of the social product between groups. Indeed the 'economic functions' of groups taking part in the distribution of the social product may or may not be compatible with given technological conditions for viability, and/or with macroeconomic conditions for the persistence of a given socio-economic structure. In the former case, the distribution of the social product may be such as to generate relative prices incompatible with the input requirements of each productive sector for commodities produced in other sectors of the

economy.<sup>8</sup> In the latter case, the distribution of the social product may be associated with an accumulation process making the persistence of certain social classes dynamically unfeasible in the long run (Baranzini 1991; Baranzini and Scazzieri 1997).

Our focus on relational structures of interests and on systemic functions binds together ‘political economy’ with ‘constitution’. The ‘political economy of constitution’ we are outlining is a structured space of social relationships wherein human action is motivated by multiple objectives that can give rise to both conflict and cooperation between individuals and/or groups, and in which different configurations of interests may or may not be compatible with the systemic requirements of economic organisation. Sections 2 and 3 develop this conception of constitution by focusing on the configuration of interests and their mapping according to different constitutional arrangements.

## **2. Constitution and the structure of interests: pathways to political economy**

Within the domain of political economy, constitution is the sphere of *admissible* but *partially realised* connections between individuals and/or groups. Different constitutional arrangements allow for diverse ways of defining and defending the interests of individuals and groups. A *heuristic of interests*, which are shaped within a given social domain, is therefore a key conceptual building block for developing the political economy of constitution. The aim of this section is to provide a set of analytical tools for this type of heuristic.

### *2.1 The constitutionalist vs. the contractualist tradition*

The above argument suggests a fundamental difference between *constitution* and *contract*. The former can be construed as a system of admissible actions reflecting societal interests,

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<sup>8</sup> A case in point is that of the Russian ‘scissor crisis’ of the mid-1920s, which may be seen as resulting from the failure of relative prices of agricultural versus industrial products to meet the material viability conditions associated with technology in use (see Seton, 1992, 2000).

dispositions and beliefs (constitution ‘in the material sense’) that may or may not be associated with a corresponding system of formal norms and procedures (constitution ‘in the formal sense’). The latter can be defined as a legal commitment generated by deliberation and choice. Constitutional settlements may sometimes result from confrontation and deliberation that involve interested parties, therefore resembling contracts, while contracts may sometimes lead to the introduction of charters in the public sphere, therefore resembling constitutions. However, from the point of view of institutional dynamics, constitutions are not contracts. They could be described as arrangements emerging from within a structured social space and expressing the patterns of connectivity existing within that space (see McIlwain 1939; Matteucci 1976, 1993; Hicks 1981; Sen 2008; Pabst 2014 for a criticism of the subordination of constitution to contract). The concept of *congruence* is fundamental from a constitutional point of view. It expresses patterns of ‘mutual fitting’ between the constituent elements of any given social system that define the conditions for cooperation and/or conflict within and across social groups (see also Polanyi, 2001). These patterns are not captured by contractualist theories insofar as the latter emphasise the ‘covenant of reason’ (Levi 1997) as the foundation for agreement or disagreement within the economic and political fields. The contractualist approach ends up neglecting pre-existing social bonds. By contrast, the constitutional approach draws attention to the multiplicity of bonds that enhance the overall potential for cooperation and/or conflict within any given society.<sup>9</sup>

This notion of ‘congruence’ underscores the multi-layered, and often hierarchical, configuration of interests in ‘highly stratified social systems’ (Hodgson 2009). Any given constitutional arrangement provides a ‘circumscription’ of interests and their ordering according to certain priorities. Identifying which interests are relevant and which ones are not is a core function of constitution in relation to political economy. In other words, describing the relative positions and overlaps between interests is central to conceptualising political

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<sup>9</sup> The implications of the distinction for constitutional dynamics are discussed in Runst and Wagner, 2011.

economy and evaluating which patterns of conflict and/or cooperation it may give rise to. Without such a ‘constitutional identity’, it would be arbitrary to posit mutually fitting interests and to determine feasible policy options.

Our conception of political economy highlights the relational nature of ‘interest’ in two ways. First, the interests of individuals and groups are expressed in view of their relative position vis-à-vis the interests of other individuals and groups. Second, individual and group interests are embedded within a set of relationships that are irreducible to purely contractual arrangements because the relative *initial* positions are not a matter of choice. Indeed, the very etymology of the term ‘interest’ (*inter-esse*) suggests the inherent ‘in-betweenness’ of social actors (Ornaghi 1990). This conception relates ‘interest’ to the reciprocal constraints and opportunities that characterise the membership of any given individual or group in a specific social sphere. The constitution of any given political economy is therefore inherently associated with the relatively persistent configuration of multi-layered and partially overlapping interests compatible with the existing social structure (see also Pagano, 2011).

Our account of constitution presupposes a multiplicity of partially overlapping connections at different levels. This is to say that constitution allows individuals and/or groups to relate to other individuals and/or groups at a certain level while relating yet other individuals and/or groups at another level. Here the *proximity model* of civil society provides a relevant interpretive framework insofar as in this model “individuals or groups derive their identity from a variety of attributes” such that “some of those attributes are central in a given relational domain but secondary in another domain” (Pabst and Scazzieri 2012: 345). In a social domain whose structuring follows the above pattern, sociability is linked to multiple forms of connectivity in two different ways. First, the distance between individuals or groups is characterised by a significant variety across society (individuals and groups may be distant from each other to a greater or lesser degree within the same constitutional structure). Second, the notion of distance is itself relative to the nature of interdependence in question, which may

impinge on profession, location or cultural affinity (any two individuals or groups may be close or distant depending on the dimension of distance under consideration).<sup>10</sup> This notion of proximity shifts the emphasis away from a single set of standards towards a multi-dimensional, inclusive space of dispositions and connections. An important feature of the structure described above is that social congruence may be achieved through “the existence of a congruence class including all subjects sharing a common attribute (which can be primary to certain subjects and secondary to others, or even secondary to all)” (Pabst and Scazzieri 2012: 345; see also Scazzieri 1999). This structure of connections “allows selective closure of local domains but is open to congruence *across* those domains” (Pabst and Scazzieri 2012: 345; added emphasis).

## 2.2 *Social cleavages and cooperation thresholds*

An important question arising in this framework is whether the existence of multiple and partially overlapping spheres of interest is a hindrance or a help towards social congruence. Connected with this is the question of whether plural interests are conducive to cooperation or conflict. Clearly, there can be a potentially constructive role of non-coinciding spheres of interest in society. The fact that individual or group *A* may be opposed to individual or group *B* on issue *x*, but also closely allied to group *B* on issue *y*, may provide an important condition for congruence in a fragmented, heterogeneous social domain (see, for instance, Rae and Taylor 1970; Mutz 2002 and 2006). This point of view has been applied, for instance, by the political scientist Arend Lijphart in his analysis of the reasons for congruence in Dutch society (Lijphart 1975 and 1977). Some of the founding fathers of the American Republic argued in the same direction (Hamilton *et al.* 2003). On the other hand, fragmentation of interests may also lead to the opposite outcome. Cleavages, even if not coinciding, may still

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<sup>10</sup> This metric of social distance presupposes a multi-dimensional approach to the identity of individuals and groups. (See Gardenfors, 2000; Warglien and Gardenfors, 2013 for the analysis of the cognitive foundations of this metric.)

make congruence more difficult. This can happen when the social domain is so completely fractured that spheres of shared interest become very hard, if not altogether impossible, to detect. Recent theoretical and empirical work on failed states calls attention to this dark side of social differentiation (Acemoglu and Robinson 2005 and 2012).

If the latter situation arises, group  $A$  may be separated from individual or group  $B$  on issue  $x$ , and yet potentially allied to  $B$  on issue  $y$ . In addition, it may be that individual or group  $B$  is separated from group  $C$  on issue  $w$  and yet allied to individual or group  $D$  on issue  $z$ . Here the plurality of issues *may or may not* help social congruence. For each individual or group, awareness that issues  $x$ ,  $y$ ,  $w$  and  $z$  may provide room for cooperation *or* conflict within the social space is not necessarily a condition favouring cooperative solutions. In this complex and highly fragmented social space, fear of being sidelined may prevail over the disposition to look for cooperative solutions. In other words, there may be conditions in which multiple cleavages, even if not fully overlapping, make congruence more difficult to achieve. Formally, let,  $i = 1, 2, \dots, k$  denote the number of issues on which individuals or groups may clash over, or cooperate with, each other. It is reasonable to assume that different individuals or groups will weigh in different ways their gains or losses for the different issues at stake. For example, certain issues may take lexicographic precedence over other issues for certain individuals or groups and not for others. Let  $f_j(P)$  be the preference ranking over social outcomes for individual or group  $j$  ( $j = 1, \dots, n$ ) and let  $f_j(P)$  be a linear convex combination of the different partial objectives that individual or group  $j$  may be assumed to have on the different relevant issues:  $f_j(P) = \lambda_1 f_{i1}(P) + \lambda_2 f_{i2}(P) + \dots + \lambda_k f_{ik}(P)$ , with  $\sum \lambda_k = 1$ .<sup>11</sup> We may conjecture that potential compromise prevails over potential conflict if the two following

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<sup>11</sup> We owe to the economist and probability theorist Bruno de Finetti (1975) the view that human practical goals can generally be construed as the outcome of a weighing procedure starting from the recognition of the variety of objectives that any individual or social group is likely to pursue. In de Finetti's words, this entails avoiding "to immediately fix a global preference relation, that is, a function  $f(P)$  directly including in a final synthesis all components of judgement", by considering instead "different components or features of judgement, or partial objectives. Formally, this means to introduce, firstly, different functions  $f_1(P)$ ,  $f_2(P)$ , ...,  $f_n(P)$ , and only subsequently [...] to derive the final function  $f(P)$ , which would obviously be an increasing function of all the  $f_h(P)$ " (de Finetti 1975: 645).

conditions hold: (a) the number of divisive issues  $i$  is less or equal to  $\varepsilon$ ; (b) for each individual or group  $j$ , the distance between the maximum weight  $\lambda_j \max$  and the minimum weight  $\lambda_j \min$  is greater than  $\sigma$ . This conjecture suggests that compromise is likely to prevail over open conflict when the number of divisive issues is not too great and provided individuals or groups weigh social outcomes in a sufficiently differentiated way across possible social situations. The two conditions taken together denote what we may call the *coordination threshold* for the polity under consideration.<sup>12</sup>

The above configuration of interests suggests possible ways in which plurality may be compatible with social congruence. The political economy of constitution is essential in making visible the reasons for membership in any given body politic and in highlighting the way in which partial conflicts may be compatible with overall congruence. A properly configured constitutional heuristics highlights the conditions for identifying a realistic cooperation threshold. In particular, any given constitution presupposes a mapping from the full set of relevant interests in the social domain to the subset of those interests that are directly relevant to social congruence.<sup>13</sup>

The constitutional mapping of interests emphasises ‘circumscription’ as a critical step in identifying conditions for social congruence (Scazzieri 2006). This means that congruence is seldom achieved in a uniform way across the different spheres of the social domain. Rather, overall congruence often results from the existence of partial, although not mutually exclusive, patterns of congruence in a variety of different social spheres. A mapping of interests through constitutional settlement highlights certain possibilities of social congruence

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<sup>12</sup> The coordination threshold characterizes any given social situation, which may be described as “the precise specification of the alternatives that are available to the individuals [or groups]” (Greenberg, 1990, p. 2). A focus on social situations “specifies the opportunities that are available to coalitions, but does not require that an explicit and rigid “process” be given concerning the exact way in which coalitions can form” (Greenberg, 1990, p. 5).

<sup>13</sup> The concept of ‘systemic interest’ within a complex web of political-economic interdependencies describes the condition making partial conflicts compatible with overall social congruence (Cardinale 2015: 202). Constitutional heuristic provides analytical tools for the identification of systemic interest and of the way it may be embedded in the institutional framework of any given political-economic system.

in lieu of others.<sup>14</sup> In particular considering two groups with seemingly incompatible interests, circumscription may be conducive to social congruence in one of two ways. First, circumscription allows shifting from a lower-order conflictual representation of the social domain to a higher-order representation of the same domain in which commonalities rather than conflicts of interest are in view. Second (and conversely), circumscription may also enable two groups to identify lower-order patterns of congruence in spite of higher-order conflicts that may be variously related to ideological commitments or sectional interests.

It is worth noting that the mapping of interests through constitutional settlements requires a close look at the specific interests of individuals and groups, but does not presuppose congruence devices based on interpersonal standpoints of the ‘impartial spectator’ type (Smith, 1976 [1759], Darwall, 2006, Sen, 2010). In other words, there is no attempt at redefining interests so as to make them compatible with systemic congruence, but there is open acknowledgement that interests may indeed be sharply different within any given social sphere. However, it is also acknowledged that stakeholders may have conflicting interests in some spheres and coinciding interests in other spheres. A constitutional settlement in the material sense takes stock of this differentiated plurality of interests *across* social spheres and makes differences compatible with systemic congruence (see above).

### *2.3 Circumscription of interests by constitution or by contract*

‘Circumscription by contractual arrangement’ and ‘circumscription by constitutional settlement’ point to the possibility of two radically different routes to social congruence. The former is conducive to adjustment of conflicts of interests by contract: recognition of differences may be a condition for a partial reconfiguration of interests so as to make differences compatible with congruence (the Rawlsian ‘veil of ignorance’ argument being a

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<sup>14</sup> This feature introduces one important difference with respect to the types of social congruence that may be achieved via a ‘moral circumscription’ of interests of the ‘impartial spectator’ type. For, in the latter case, the interests of individuals and groups must be assessed both on their own terms and from a general (universal and impartial) standpoint.

special case of this situation [Rawls, 1971]). On the other hand, the latter also presupposes differences, but does not presume that differences can either ultimately be assumed away or thought to be absolute. In this case, a differentiated and multi-layered configuration of interests persists after the constitutional settlement and is indeed a necessary condition for its survival.<sup>15</sup>

However, interests are not simply given but they also derive from specific representations of the relative position of any group within the social domain. Such representations presuppose vantage points that give structure to individual and collective perceptions and provide guidance for social action. In other words, particular interests can only be defined and acted upon in relation to a distinct set of weights (*values*).

Identification of values as ‘specificators’ of interest is a critical device in order to identify practicable ways in which consider and implement constitutional settlements. The process of circumscribing different interests requires the consideration of values because values (as weights) are a way of attaching priority to certain interests over others.

At this juncture the issue of conflicting or even incommensurable values arises. Here one can maintain that plurality of values is analogous to plurality of interests. It is true that there are rival, incompatible, and even incommensurable values (Berlin 1969; Sen 2010). However, this plurality of values does not necessarily imply that individuals and/or groups in any given society may not *also* have shared interests and goals. Bearing in mind that values are multi-layered and that they can be distinguished in terms of first-, second- and further-order values, the circumscription may take place through an interplay of interest specification and the ordering of values vis-à-vis each other.

A case in point would be if circumscription from a lower- to a higher-order constellation of interests would end up in a conflict between seemingly incommensurable objectives, which may in turn be solved by identifying an appropriate system of weights

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<sup>15</sup> Our focus on material constitutional settlement suggests conditions for the endurance of formal constitutions that go beyond the voting rules of self-stable constitutions as discussed in Barbera and Jackson 2004.

across different objectives (such as the relative balance between freedom and equality).<sup>16</sup> Similarly, the circumscription from a higher- to a lower-order constellation of interests may help to solve seemingly foundational value conflicts by discovering shared objectives that had hitherto been ignored or neglected (for example by moving from high-level political allegiance to a regard for fundamental conditions of human survival).

This argument has far-reaching implications for the political economy of constitution. Constitutional arrangements, and the institutional set-up which they shape, are not reducible either to a fixed set of values or to formal, procedural mechanisms. Rather, constitutions reflect and, at the same time, structure the pre-existing social ties that characterise societies. Circumscription of interests is key to identifying relative positions and functions of different groups within any given social sphere, which concerns both the reality and the representation of interests and the weights attached to them. Since constitutions relate to both interests and weights, constitutional settlements exceed the domain of legal-judicial norms and encompass the ‘material’ configuration of weighted interests in the social domain. This has significant consequences for the analysis of markets and states. In particular, markets should weight buyers and sellers differently in different trades, thus reflecting the distribution of market influence within and across trades, and states should be seen as encompassing a multiplicity of micro-domains with their distinct functions and roles as well as specific policy objectives. (See, in this connection, McCormick’s concept of ‘Sektoralstaat’, McCormick, 2007a, and b). The central purpose of constitution is therefore to uphold this plurality of domains and to ensure conditions for social congruence within and across those domains.

### **3. The constitution of economic policy**

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<sup>16</sup> In terms of the formal argument above, seemingly incommensurable objectives may be compatible with social congruence provided different groups associate different weights to those objectives. For example, a constitutional compromise is possible between two groups associated with significantly different levels of per capita income provided the worse off group attaches more importance to freedom than the better off group.

The argument of the two previous sections of this paper has important implications for the identification of the appropriate contexts of economic policy decisions. In fact, the two ideas of ‘society’ as a multi-layered configuration of interests, and of ‘constitution’ as a mapping from this configuration of interests to a core set of interests compatible with systemic congruence, suggests that the framing of economic policy should be seen neither as a simple exercise in majority rule, nor as the top-down implementation of directives from some central authority. Rather, any working constitutional settlement should be viewed as a device ‘filtering’ the configuration of interests in society and making visible the systemic interests of that particular society.

From this point of view, there is a close connection between policy-making and constitutional arrangements. Insofar as policies cannot simply be matters of contingent decision-making, they presume a framing exercise that is itself grounded in the constitutional mapping of interests as defined above. This perspective suggests that any given constitutional mapping of interests is also an instrument for identifying problem spaces in which policy issues may be addressed in ways that are compatible with the existing conditions for social congruence. In particular, different policy domains could presuppose different spheres of interest and be conducive to different conditions for congruence.

Constitutional settlements presuppose a *de facto* fragmentation of the policy space, so that no effective assessment of policy measures is conceivable independently of the specific circumscription of interests characterizing the political economy in view. Any political economy entails a specific set of admissible policies, which may in turn be ‘decomposed’ in terms of a hierarchy of policy principles (which over time may be subject to change). This means that the effectiveness of any given policy tool cannot be properly assessed unless the assessment exceeds the issue of instrumental value (an end that justifies the means) and encompasses questions about the desirability of alternative policy tools. In practice, this involves assigning a given admissible value, or threshold, to a certain set of policy variables

(such as the ‘acceptable’ level of unemployment, or the macroeconomic rate of inflation) and then following a maximizing or satisficing procedure to determine the values of other policy instruments (see Tinbergen 1952; see also Marzetti Dall’Aste Brandolini 2011: 318-20). This procedure highlights the sequential character of policy decision-making and the need to weigh the consistency of its different steps with the existing circumscription of interests in the political economy under consideration.

To frame policy discussion in these terms entails moving beyond the micro-macro dichotomy and to assess policy options in terms of complex constellations of socio-economic interests they are likely to affect. The implications of this type of constitutional heuristic are far-reaching. For example, the political economy of the Eurozone is likely to appear in a different light if attention is focussed on the sectoral, national, or European level, seeing as conflicts and overlaps of interests are likely to be different at different levels of aggregation (Cardinale, Coffman, and Scazzieri 2017). Similarly, the same stakeholders may assess differently the same trade policy options, such as degrees of free trade *versus* degrees of protection, depending on which political-economic units they belong, say a continental economic area or a small trading country (Reinert and Røge, 2013).

To identify the appropriate unit of analysis may be the most critical step in assessing the feasibility of policy options, since constellations of interests supporting that option may exist at certain levels of aggregation but not at others. This may be achieved by dividing the overall policy domain into a multiplicity of sub-domains and by focussing on the sub-domain in which the supporting constellation of interests is most clearly in view.<sup>17</sup> An effective constitution should be able to express the multi-layered configuration of interests in society by mapping plural interests into different core sets compatible first with local and ultimately with overall social congruence (Cardinale and Coffman 2014). What we have in mind is a representation of different interests in such a way that they can come together for certain

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<sup>17</sup>This multi-layered structuring of interests may also be a response to Olson’s free rider problem (Olson, 1971).

shared solutions by properly identifying the areas of compromise and the level at which compromise can be attained – even when overall agreement is impossible.

This framework does not rule out disagreement, divergence or even a clash of rival interests. But divisive conflict should not be the default position upon which to base the framing of economic policy (see also Testa, Hibbing and Ritchie 2014). The political economy of ‘material constitution’ seeks to provide a heuristic for recognition of multiple and partially overlapping spheres of interest in society. It is in fact the existence of partial overlaps between spheres of interest that provides room for accommodation both directly within spheres where conflict seems *prima facie* dominant and indirectly by suggesting devices for accommodation through spheres of interest seemingly distant from the original ones. These overlaps intimate connections in the social domain and are much more likely to be found if sociability itself is seen as built upon a multiplicity of partially overlapping connections between individuals or social groups (Pabst and Scazzieri 2012). This argument suggests moving beyond the consideration of one-off contractual arrangements and allowing transactions to take place repeatedly and as part of a larger web of social connections.<sup>18</sup>

The dichotomy between consensus and conflict is not just a matter of individual policy choices but goes back to the fundamental structure of constitutional arrangements. From our political economy perspective, what is at stake is the plurality of economic interests, the conditions for their effective representation, and the actual participation of key stakeholders in both deliberation and decision-making. In this connection, it is customary to distinguish between majoritarian and consociational models of constitution (Lijphart 1977 and 2012). Even though these two models deal differently with actual conflict, both nevertheless tend to assume that the underlying interests are rival and that any solution would be of the zero-sum game type (which involves at least temporary winners and losers). By contrast, the constitutional heuristic outlined in this paper emphasises constitutional congruence as explicit

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<sup>18</sup> Here our argument builds on the notion of relational contract theory (McNeil 2003) and cognate concepts that emphasise the underlying sociability that is more primary than short-term interests.

recognition of differentiated but partially overlapping interests and an acknowledgement that effective policy-making requires the involvement of relevant stakeholders across *different* levels of the policy domain.

To sum up: effective policy-making presupposes consistency with a ‘material’ constitutional settlement that reflects a balance of sectoral and geographic interests. It also presupposes a highly differentiated participation in deliberative and decision-making processes depending on the interests involved across different policy domains. This condition is necessary to allow the building of multiple coalitions of interests on separate policy issues, thus privileging multi-dimensional congruence over one-dimensional conflict or consensus at the different levels of aggregation of the policy domain.<sup>19</sup> Neither exclusively top-down, unitary structures nor purely bottom-up fragmented arrangements are adequate to this task. Our argument points to the central relevance of a ‘mixed constitution’ with plural sources of sovereignty translating into hybrid institutions, overlapping jurisdictions and multi-level governance. Such a mixed constitution would reflect the multi-layered nature of interests in society and would point to the ways in which this configuration of interests might lead to social congruence.

### **Concluding remarks**

This paper has outlined a conceptual framework for the analysis of ‘material’ constitutions as the fundamental organisation of political economies. It has explored the view that the economic constitution of any given society takes shape at a level of connectivity at which multiple interests may coexist, clash and/or coalesce within the same social sphere. Constitutional settlements can be seen as the relatively persistent arrangement of differentiated interests vis-à-vis each other in a given society. The political economy of constitutions highlights the context-dependence of constitutional settlements and points to the

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<sup>19</sup> For a recent discussion of multi-dimensional policy formulation in relation to constitutional settlements, see Xefteris (2011).

congruence between those settlements and the historical conditions under which they were attained.

By the same means, the political economy of constitution, without being intrinsically normative, provides a benchmark that allows assessment of any given constitutional settlement relative to its own formative period and fundamental architecture. A given constitution may express a past constellation of interests that is still dominant in the present, or it may reflect a system of weights between social interests that has become obsolete under present conditions. The political economy of constitution may be conceived as a heuristic to detect the configuration of interests inherent to any given constitutional settlement and to assess its continuing or declining relevance as the economic-political system evolves through time.

Our argument emphasises the constitutive congruence of the social domain with the political and economic spheres and is thus different from the idea of the contractualist covenant in terms of formal rights and duties. The social domain denotes those sets of relationships that underpin the ordering of functions and relative positions within any given society. These functions and positions are thus more primary than both rights and contracts on the one hand, and of formal positions of authority on the other hand.

Our analysis rests upon the distinction between the ‘covenant of reason’ (Levi 1997) that underlies the contractualist paradigm and the ‘covenant of practice’ that underpins the constitutionalist paradigm. The latter broadens the domain of political economy beyond the allocation of given resources between competing individuals or groups and extends it to the organisation of interdependencies between those individuals or groups. In line with Hicks’ view of ‘plutology’ as the study of the societal organisation of the functions by means of which the production and distribution of resources take place, we highlighted the organisation of interests in society, the mapping of these interests into constitutional settlements, and the economic-political nature of any such arrangement. We also stress the implications of

constitutional settlements for economic policy-making. Constitutions, as defined in our analysis, circumscribe the relevant spheres of interest and their interdependence under given historical conditions. In this way, they are central in circumscribing the domains for policy making and in determining the conditions under which policy decisions can be effective.

In conclusion, this paper has focused upon *constitutional heuristic* as a means to identify the ways in which existing constellations of interest are circumscribed and mapped into a specific constitutional settlement. Constitutional heuristic calls attention to the manifold overlap of interests in society and highlights the role of weights in making different objectives mutually compatible within the same social sphere, or within distinct but mutually connected spheres. This approach has significant implications for the definition of policy domains and the identification of conditions for successful policy making. In particular, our conception of constitutional heuristic calls attention to substantive arrangements between stakeholders, and correspondingly emphasizes the existence of substantive policy domains in which decisions match the existing structure of weights. In particular, such a constitutional heuristic discloses the feasibility of substantive arrangements between individuals or groups, and correspondingly emphasises the existence of policy domains in which decisions congruent with the existing constitutional mapping can be taken and implemented.

The political economy of ‘material’ constitution grounds the configuration of economic-political conditions in the structured connectivity of society. Such a political economy highlights the prerequisites for the viability of normative arrangements in any given context and the specificity of the policy options that are feasible in some contexts and not feasible in others.

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