



The Weimar Constitution as a Military Constitution

DOI:

<https://doi.org/10.11606/9788553062027>

Document Version

Accepted author manuscript

[Link to publication record in Manchester Research Explorer](#)

Citation for published version (APA):

Thornhill, C. (2023). The Weimar Constitution as a Military Constitution. In G. F. Fonseca , M. A. L. L. D. Barros, & L. F. Amato (Eds.), *Contemporary Social and Legal Perspectives: Empirical and Global Perspectives* (pp. 177-214). University of São Paulo Law School. <https://doi.org/10.11606/9788553062027>

Published in:

Contemporary Social and Legal Perspectives

Citing this paper

Please note that where the full-text provided on Manchester Research Explorer is the Author Accepted Manuscript or Proof version this may differ from the final Published version. If citing, it is advised that you check and use the publisher's definitive version.

General rights

Copyright and moral rights for the publications made accessible in the Research Explorer are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

Takedown policy

If you believe that this document breaches copyright please refer to the University of Manchester's Takedown Procedures [<http://man.ac.uk/04Y6Bo>] or contact uml.scholarlycommunications@manchester.ac.uk providing relevant details, so we can investigate your claim.



The Weimar Constitution as a Military Constitution

Chris Thornhill

Introduction

It has been repeatedly observed in research concerning constitutional history and theory that the form of a national constitutional order is normally determined by experiences of war and by exigencies resulting from war.¹ This view has even given rise to the claim that every constitution of state is originally a constitution of the army, and that laws intended to organize powers in the state are equally required to organize the military force of society.²

To some degree, this claim is plausible if applied to Europe in the age of feudalism. In most medieval societies, the laws and conventional arrangements determining the exercise of political authority did not form a strict corpus of constitutional law in the modern sense. Yet, such arrangements reflected a balanced apportionment of powers between different social groups, and they ensured that the use of political power was constrained by respect for mechanisms used for mobilizing military force and by regard for persons with responsibility for raising troops. The informal constitution of feudal societies was clearly dictated by the fact that regents relied on lords for military service and supply, and they could not afford to alienate persons on whom military levying depended. During the death throes of feudalism, it was often observed that the reliance of regents on the nobility for supply of troops meant that the military class was able to negotiate certain constitutional rights and privileges, usually regarding political representation and influence. Members of the nobility were then able to insist on such arrangements as preconditions for military service and provision of personnel for the army.³ This meant that a constitutional equilibrium between regents and nobility lay at the core of feudal society. In post-feudal societies, the claim that constitutional law is connected to warfare is less plausible. In fact, at key stages in the initial evolution of modern constitutional theory and practice, the public-legal norms of state were designed, not to connect, but *strategically to separate* the structure of government from pressures arising from warfare, and so to reduce the constitutional impact of war on the structure of government. This is visible, for instance, in the century prior to the period of revolutionary constitution making (1776-1795), in the twilight of the European *ancien régime* in the eighteenth century. At this time, a system of governance was established, in different countries, whose purpose was to ensure that public offices were constitutionally insulated against actors whose powers were connected to their role in the conduct and financing of war – that is, the nobility.⁴ The

¹ This Chapter is a revised version of a Chapter originally published under the same title in Portuguese in Gilberto Bercovici (ed), *Cem anos da Constituição de Weimar (1919-2019)* (São Paulo: Editora Quartier Latin do Brasil, 2019), pp. 243-272. Sections on Poland have been added to the original text and some formulations have been changed. My thanks are due to Gilberto Bercovici for allowing republication.

² Otto Hintze, *Staat und Verfassung. Gesammelte Abhandlungen zur allgemeinen Verfassungsgeschichte*, ed. Gerhard Oestreich, 2nd edition (Göttingen: Vandenhoeck & Ruprecht, 1962), p. 53; Benjamin Constant, 'De la liberté des anciens comparée à celle des modernes', in Constant, *Écrits politiques* (Paris: Gallimard, 1997 [1819]). pp. 589-619.

³ See for one example Andrew Fletcher, *A Discourse concerning Militias and Standing Armies, with relation to the past and present governments of Europe, and of England in particular* (Edinburgh, 1698).

⁴ In most parts of Europe, the basic institutional structure of the modern state was defined, first, because regents were able to create system of fiscal administration that weakened the constitutional powers of aristocratic estates, historically supported by the role of the nobility in approving taxes for war. Second, the structure of the modern state took shape because regents were able to bring military entrepreneurs, usually of aristocratic provenance, under central control, and in so doing to nationalize the foundations of military capacity. In both respects, the state took shape through the construction of administrative order in which war was internally regulated within the state and its impact on civil politics was reduced. On the second point see Fritz Redlich, *The German Military Enterpriser and his Work Force. A Study in European Economic and Social Policy, Vol. 2* (Wiesbaden:

administrative orders of European states before 1789 were strategically conceived to cement public authority in a system of office holding in which demands for taxes and personnel required for the prosecution of warfare did not create opportunities for noble estates to acquire constitutional influence on the overall direction of government. The underlying administrative structure of the modern state, in other words, can be seen as an internal system of offices whose function was to make sure that, as far as possible, the state was insulated against war.

After 1789, however, the linkage between constitutional formation and warfare became more immediate, and military impulses acquired very palpable force in shaping the form of government in much of Europe. Processes of constitution making after 1789 were often determined by the need to mobilize national armies and to create a regulatory structure for national military organizations. Moreover, many modern constitutions extracted legitimacy from principles that originated in military organization, and they gave expression to patterns of citizenship constructed in military conflict. Both in terms of their normative-legitimational content and their impact on institution building, the first modern constitutions are not easily separable from war and military exigence.

In their normative essence, quote generally, modern constitutions extract legitimacy from the principle that they place citizens in society at the centre of government, and they enable citizens, in the presumed exercise of popular sovereignty, to participate in legislative processes to define and protect their common freedoms. In most constitution-making situations, the citizen became the legitimational centre of government for military reasons, in a form very strongly determined by military requirements. In the context of revolutionary France from 1789-95, indicatively, one primary function of constitution-making processes was to create an institutional order in which, after the fiscal collapse of the *ancien régime* and the abolition of the standing armies deployed by the Bourbon monarchy, armed forces could be mobilized relatively rapidly and relatively cheaply. In revolutionary France, persons in society were transformed into subjects of constitutional government (citizens) because, once recognized as citizens, they were expected to assume military obligations, and their discharge of military duties was implicit dictated by their legal status. As they became citizens, social agents were also transformed into subjects willing to take up arms in defence of the revolutionary polity, which meant that the polity, legitimated by citizenship, immediately generated new reserves of military manpower. This dual transformation of the political subject at the heart of early constitutionalism was anticipated as early as December 1789. At this point, Dubois de Crancé outlined a programme of reform in the French army by declaring that ‘every citizen must be ready at all times to march in defence of his country’.⁵ Plans for military reform entailing mass conscription initially met with resistance, and they were not introduced. By 1793, however, the principle was established in revolutionary France that being a *citoyen* also meant being a *soldat*, and military service became an important sign and precondition of full citizenship and full popular sovereignty.⁶ The dual transformation of the person into a *citoyen* and a *soldat* that marked revolutionary Europe was particularly

Franz Steiner, 1964), p. 46; Peter Burschel, *Söldner in Nordwestdeutschland des 16. und 17. Jahrhunderts. Sozialgeschichtliche Studien* (Göttingen: Vandenhoeck und Ruprecht, 1994), p. 318. One brilliant analysis explains how the early modern state developed through the constitutional separation of the ‘civil state’ and the ‘military state’: Jörn Leonhard, *Bellizismus und Nation. Kriegsdeutung und Nationsbestimmung in Europa und den Vereinigten Staaten 1750-1914* (Munich: Oldenbourg, 2008), p. 77.

⁵ *Archives Parlementaires de 1787 à 1860*, Series 1, Volume 10 (1878), p. 520.

⁶ Thomas Hippler, *Soldats et citoyens. Naissance du service militaire en France et en Prusse* (Paris: PUF, 2006); Annie Crépin, *La conscription en débat. Ou le triple apprentissage de la nation, de la citoyenneté, de la République (1798-1889)* (Arras: Artois Presses Université, 1998).

important because it occurred, in different regions, in social contexts marked either by the recent abolition of serfdom or by the fact that revolutionary constitution making was itself intended to abolish serfdom. In such settings, the rise of constitutional law, legitimated by citizenship, meant that persons acquired constitutional subjectivity, as citizens, at the same time that they were released from involuntary labour, in serfdom. In this process, however, citizens were almost immediately incorporated in new forms of involuntary labour, as, once constructed as citizens, they were forced to perform mandatory military service. Across Europe, the endeavour to construct governmental legitimacy around ideas of national citizenship and popular sovereignty was part of a wider endeavour to create cohesively integrated national societies, with populations that were both extricated from personal servitude in rural economies and able to defend themselves, and their regents, effectively in war. In Prussia, tellingly, the semi-constitutional reforms conducted after military collapse in 1806-1807 were based in a series of plans designed to eradicate serfdom ('personal slavery'), to integrate the population in government, to solidify state institutions, and to create a 'completely new constitution' for the army.⁷ The strategic linkage between constitutional subject formation and military regimentation assumed a central position in the beginnings of modern German constitutional order.

In the longer wake of 1789, most constitutional polities continued to attach their legitimational claims to constructs of citizenship integrally associated with war. Through the longer processes in which, through the nineteenth century, the patterns of representative constitutionalism initiated around 1789 were transformed into more genuinely democratic constitutionalism, constitutions projected their legitimacy around citizens in a form that was very closely defined by warfare. By the later nineteenth century, constitutions in European states were extended to incorporate larger electoral franchises, such that national citizens became more materially implicated in the actual conduct of government. This process was propelled by international military pressures, and the widening of citizenship rights at this time was closely connected with the growth of national military conscription. In most societies, deepening democratization and deepening conscription occurred as two parts of one single overarching process, and, in most polities, the extended enfranchisement of citizens was linked to, and driven, to the compulsory integration of citizens in the army.⁸ In the French Third Republic, this correlation was underlined by the fact that the enumerated political rights of citizens included the right to vote and *the right to be a soldier*, which meant that political and military roles were not fully distinct.⁹

In key respects, overall, the construction of the citizen that underpins constitutional law in modern Europe was integrally shaped by, and in turn reinforced, the intensifying militarization of society. Both at the origins of modern constitutional practice and through the slow deepening of constitutionalism as a democratic order in the later nineteenth century, most people in Europe experienced the long process of becoming a citizen under a system of constitutional law as an occurrence that was not easily separable from the experience of

⁷ Altensteins *Denkschrift* [1807], in Georg Winter (ed), *Die Reorganisation des Preussischen Staates unter Stein und Hardenberg. Erster Teil. Allgemeine Verwaltungs- und Behördenreform*, vol. I: *Vom Beginn des Kampfes gegen die Kabinettsregierung bis zum Wiedereintritt des Ministers von Stein* (Leipzig: Hirzel, 1931), pp. 364-566; 403, 431.

⁸ In France, paradigmatically, the deepening of democracy after 1870 was expressed directly in increasingly encompassing conscription laws, giving effect, by 1905, 'to a republican military programme', in which all men had equal voting rights and all men had equal military duties. See Richard D. Challener, *The French Theory of the Nation in Arms 1866-1939* (New York: Russell & Russell, 1965), pp. 47-8.

⁹ Maurice Hauriou, *Précis de droit administrative, contenant le droit public et le droit administratif* (Paris: Larose & Forcel, 1892), p. 676.

becoming a soldier. In most European societies, simply, as the political system incorporated persons as voters, the military system incorporated them as soldiers.¹⁰ The basic normative unit underpinning the structure of modern constitutional states – the sovereign citizen, as a member of a nation state in a territorially integrated society – rested on a deeply militarized process of social integration, in which the sovereign people appeared in government as a people integrated by military mobilization.

In most settings, the construction of citizenship around military obligation established the basic institutional form that defines the polities of modern societies. Through the linkage between citizens and war, European states acquired more centralized form, and the infrastructural power of state institutions was greatly augmented. This linkage can be identified as the basis for the expansion of educational and welfare policies that occurred in much of Europe in the nineteenth century. In particular, the correlation between soldier and the citizen formed the premise for the establishment of strong instruments of fiscal extraction in the modern state. The fact that modern states mobilized their populations both as soldiers and as citizens meant that states were able both to extend their military capacity and to harden their extractive capacity at the same time, as, alongside military duties, citizenship also entailed general tax-paying obligations.¹¹ The link between citizenship and recruitment was the specific precondition for the consolidation of the fiscal apparatus that forms the nervous system of the modern state. By 1900, most states approached a position in which assumed a monopoly of power in society, and they increasingly developed systems of control and extraction able to penetrate deep in to society and to coordinate activities in different social domains. In many countries, in fact, the recruitment of citizens for military purposes was a core part of the trajectory in which societies acquired territorially unified form, and citizens from different regions in society, often only recently unified, were drawn together, primarily, through military service.¹²

What these processes meant, in different respects, is that – both normatively and institutionally – modern constitutional states in Europe were constructed through violence. At a profound level, modern states took shape as they attached their legitimacy to the fact that they integrated agents in society, at one and the same time, both as voters and as soldiers. At one level, this was a straightforward process. War and preparation for war pressed societies into experiences of unified citizenship and heightened structural integrity, so that modern experiences of national citizenship flowed directly from experiences of militarization. To this degree, the dual concept of the *soldat-citoyen*, articulated in 1789, proved the core wellspring in the formation of modern political systems. At the same time, however, the construction of national states around militarized patterns of citizenship inevitably instilled high levels of violence in the modes of political interaction and integration that defined the domestic conditions of national societies – a fact which frequently unsettled experiences of citizenship. After 1789, in fact, national citizenship was shaped, not only by war with external enemies, but also, increasingly, by civil war. This was already reflected in revolutionary France, as, during the revolutionary years, the war conducted by the revolutionary government with other European powers overlapped closely with war against anti-revolutionary forces within France. Over a longer period, then, the terms of national citizenship were closely linked to increasingly entrenched class divisions in different national societies, and the militarization of

¹⁰ See Margaret Levi, 'The Institution of Conscription,' *Social Science History* 20(1) (1996): 133-167.

¹¹ General national income tax was introduced in France in 1914, in Russia in 1916 and in Germany in 1919-20. In the UK income tax introduced in 1842, but it was greatly extended in 1909.

¹² See for example Philippe Boulanger, *La France devant la conscription. Géographie historique d'une institution républicaine 1914-1922* (Paris: Economica et Institut de Stratégie comparé, 2001).

citizenship was partly reflected in the militarization of social class. The deepening of enfranchisement and the intensification of conscription that underpinned most nineteenth-century polities gave rise eventually to political orders, in which established definitions of citizenship were unable to encompass all groups in society, and distinct groups mobilized with increasing intensity against each other. By the mid- to late nineteenth century, most polities were founded in the forcible exclusion of some potential citizenship groups by rival groups, and the more powerful groups in such inter-citizen hostility were often able to mobilize military forces to defend their position.¹³ By the second half of the nineteenth century, therefore, the relation between the *soldat* and the *citoyen*, originally formative of national citizenship, had widely, although not invariably developed into an antinomy.¹⁴ Overlying this antinomy was a, increasingly powerful secondary antinomy, identified by Karl Marx – that is, namely, the growing antinomy between the *citoyen* and the *bourgeois*, which had become prominent through the articulation between social militarization and social class formation. Through the late nineteenth century, military force was increasingly required to prevent the conflict between these two figures from destabilizing national societies in their entirety, and the *soldat* was widely recruited to support the *bourgeois*, against the more universalistic implications inherent in the *citoyen*. By the later nineteenth century, in most European polities, the military had acquired a functional role in which it inculcated hostility to full citizenship into the citizens that it served to integrate. The organization that first defined national citizenship thus became responsible for its limitation. By circa 1900, the constitutional figure of citizen had fragmented into three distinct elements – the *citoyen*, the *soldat* and the *bourgeois*. These elements remained interconnected, and, as evidenced in World War I (discussed below), democracy remained inseparable from military conscription. Yet, the relation between these elements clearly obstructed the formation of inclusively legitimated constitutional orders.

The Weimar Constitution and the dialectic of the *Soldat-Citoyen*

The deep dependency between democratic citizenship and military mobilization assumed defining importance in the societal background to the writing of the Weimar Constitution. Indeed, in key respects, the Weimar Constitution can be interpreted as a constitutional text that was linked, in consciously dialectical manner, to military processes of mobilization and citizenship construction. On one hand, the Constitution replicated some aspects of military social organization, and it was designed to solidify, in a peacetime context, the integrated modes of citizenship promoted during war. In the course of World War I, a number of deeply embedded societal dynamics, which can be traced to 1789, approached a high degree of articulation. In many ways, social processes linked to nation building, citizenship formation and social integration first initiated around 1789 approached completion, in Germany as in much of Europe, after 1914. The Weimar Constitution marked an endeavour to build on these foundations, and it was designed to carry over constructs of citizenship resulting from war into the new Republic. In so doing, the Constitution was intended to give full and final expression to constitutional principles originating in the caesura between pre-modern and contemporary Europe, expressed in European society around 1789. At the same time, however, the Constitution attached nuanced significance to the configuration of citizenship through war. It clearly recognized the fragility of patterns of citizenship established through war, and it was projected as a legal framework to separate citizenship from war and to reduce the military emphasis of national sovereignty.

¹³ Examples are the suppression of the revolution in Germany in 1849; the suppression of the Paris Commune in 1870; the close interdependence of government and army in Germany after 1871.

¹⁴ Brazil is an exception to this principle, as the military retained a formative role in the construction of national citizenship from the 1880s to the 1920s.

First, World War I marked the great leap forward in the development of infrastructurally robust political institutions in European society. The pathway, begun in 1789, towards the creation of states as centralized aggregates of institutions, with capacity to raise revenue through taxation, to mobilize society, and to countervail local or customary centres of authority, approached an interim completion in the period 1914-1918. In Germany, the fiscal dimension of this process of infrastructural expansion was slightly delayed, and the formation of a secure national taxation system only began after the war, marked by income tax reforms in 1920 and 1925. These reforms were partly a response to the fact that, during the war, the government had incurred enormous public debts, as, owing to the weaknesses of the national fiscal system, war financing had mainly relied on exceptional levies and loans. One recent analyst calculates that by 1920 Germany had a budgetary deficit that was as large as the entire national budget in 1913.¹⁵ Above all, the introduction of national income tax in Germany reflected the transformation of citizenship during the war. After 1918, the extractive capacity of the taxation system was progressively adapted to serve as ‘an instrument of social and societal politics’, allowing the government to increase public spending, to expand social policies, and to stabilize its social base in the citizenry.¹⁶ In different ways, European states generally emerged from World War I in a form recognizable as that of a modern state, with dramatically expanded requirements and faculties for fiscal extraction and social coordination.

Second, most national polities emerged from World War I with electoral systems marked by greatly expanded provisions for democratic enfranchisement and representation. In the course of or immediately after World War I, most belligerent polities in Europe were restructured on electoral foundations now recognizable as typical of a democracy or close to those of a democracy – or at least to those of a *male* democracy. This transformation took place in different ways. Some polities experienced democratic revolution at the end of the war; some polities underwent democratic reform during or at the end of the war; some polities were created on a democratic design *ex nihilo*, from the remnants of collapsed multi-national Empires. In most cases, however, the legitimational impulse towards full electoral inclusion, at least of male citizens, which began in 1789, was jolted towards realization before and around 1918. In most polities, this process was integrally linked to the fact that hitherto marginalized citizens, who before 1914 had not possessed full electoral rights, were seen as warranting full political inclusion because they had discharged military service. Across Europe and beyond, the war triggered a deep integrational push, in which full rights were assigned to membership groups, hitherto excluded because of socio-economic position or gender, who had reached new levels of inclusion in the course of the conflict. In some countries, this integrational push also included women, especially if women had been actively involved in mobilization for war.¹⁷

Third, in World War I, the propensity for the consolidation of modern society as a relatively uniform national order, which was first expressed in 1789, acquired deeply intensified expression. This was reflected, evidently, in the fact that the number of groups that were

¹⁵ Mark Hacker, *Gibt es "Gerechtigkeit" in der Steuerpolitik? Der politisch-philosophische Diskurs über Recht und Gerechtigkeit am Beispiel der Entstehung des modernen Einkommensteuerrechts in der Weimarer Republik*. PhD Dissertation, Freie Universität Berlin, 2013, p. 200. See general background analysis in Peter-Christian Witt, *Die Finanzpolitik des deutschen Reiches von 1903 bis 1913. Eine Studie zur Innenpolitik des Wilhelminischen Deutschlands* (Lübeck: Matthiesen, 1970).

¹⁶ Rainer Sahn, *Theorie und Ideengeschichte der Steuergerechtigkeit* (Berlin: Springer, 2019), p. 8.

¹⁷ For example, women were enfranchised in fully in Germany, Austria, Poland and the USA and partly in the UK at the end of the war. In Canada, female suffrage was established incrementally, and in the first suffrage laws women directly affected by the war were privileged.

expressly excluded from the exercise of citizenship rights was reduced, and uneven access to formal rights of political participation became less widespread. However, this was also reflected in the fact that, owing to the mobilizational effort, the power of state institutions to exercise control of society, to penetrate into different societal regions, and to shape social and economic action, increased. This was also reflected in the fact that recruitment for war occurred, to a large degree, as a national process, so that military mobilization necessarily triggered an increase in the powers of governmental penetration. As a result of this, groups from different regions of society, for whom inter-regional travel had previously been rare, were incorporated for the first time in a physically encompassing system of governmental control. Naturally, this remained an incomplete process, and it is widely recorded that regional divisions and hostilities as well as class-conditioned variations remained palpable in the course of the war.¹⁸ Nonetheless, the degree of regional mobility in European societies increased dramatically in the war, and the apparatus of mobilization drew manpower from regions in society that had historically only been very notionally incorporated in the framework of the nation state.

Overall, the years 1914-1918 marked a historical moment in which the basic disposition towards institutional centralization, structural integration and unified citizenship that began to define the form of modern societies in the late eighteenth century was materially elaborated. As in the revolutionary setting around 1789, this occurred in the context of war.

Against this general background, the Weimar Constitution can clearly be interpreted as a military constitution. In expressing this claim, an element of circumspection is needed. The Weimar Constitution did not acquire an overtly military character to the same degree as the new constitutions enforced in the post-Imperial states that were created in post-1918 Poland or Lithuania. For example, the Polish constitutional order that took shape from 1918 to 1921 was cemented during multi-polar wars, fought between Poland and Russian, Ukrainian, Czech, German and Lithuanian troops, in which, up to 1922-23, the territorial boundaries of Poland were progressively contested, redrawn and secured. In this context, the Polish constitutions that were implemented in 1919 and 1921 had very obvious military functions. These constitutions were required to impose citizenship duties on the population in order, simultaneously, to extract military force from male subjects, legally to solidify the regional space occupied by the Polish government, and to integrate the (ethnically highly complex) nation as a whole in the structure of governmental order.¹⁹ In the post-1918 Polish context, the broader link between citizenship and military mobilization acquired the most intense and paradigmatic expression. The Polish army formed the basic unit of nation building, military actors around Piłsudski were central to day-to-day government functions, and inhabitants of Polish territory were transformed into citizens of the Polish state in a process in which citizenship and military violence were identical. Importantly, the drafting of the constitutions of 1919 and 1921 was flanked by legislation providing for extraordinarily extensive military conscription.²⁰ Despite this comparison, however, the Weimar Constitution can also be seen, in key respects, as a military constitution. In its most general dimensions, the Weimar

¹⁸ See Benjamin Ziemann, *Front und Heimat. Ländliche Kriegserfahrungen im südlichen Bayern 1914-1923* (Essen: Klartext, 1997), p. 273; Nicolas Mariot, *Tous unis dans la tranchée? 1914-1918, les intellectuels rencontrent le peuple* (Paris: Le Seuil, 2013).

¹⁹ Jan Kęsik, *Naród pod bronią. Społeczeństwo w programie polskiej polityki wojskowej 1918-1939* (Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego, 1998), p. 185.

²⁰ Indicatively, concentration camps were created in Warsaw to house deserters trying to evade conscription during the Polish-Soviet War. See on this Leszek Kania, *Wyroki bez apelacji. Sądy polowe w wojsku polskim w czasie wojny z Rosją Sowiecką 1919-1921* (Zielona Góra: Uniwersytet Zielonogórski, 2019), pp. 287-88, 299. Military recruitment was also widespread amongst Polish women, who were enfranchised in 1918.

Constitution was intended to impose a system of public law on a society galvanized by war, and, in its basic design, it consciously extracted legitimacy from citizens shaped by the experience of war. In key respects, the Constitution founded its legitimacy on a sociological analysis of citizenship, showing deep awareness of how the primary expectations attached to citizenship had obtained material reality and experienced volatile transformation through war.

First, the authors of the Weimar Constitution were committed to reinforcing the processes of centralization and national integration intensified by World War I. Central to the Constitution was an attempt to promote an understanding of the German state as a structurally integrated whole, in which the entire polity was underpinned by unified principles of citizenship. It was built directly on the condition of accelerated national and political integration stimulated by war.

Generally, the nation-building commitment of the authors of the Constitution was clear in the fact that, as after 1789, all variations in citizenship were abolished. For example, class-determined differences of legal status were removed, most personal privileges were legally proscribed (Art 109), and equal access to public office was guaranteed (Art 128). Proportionate to income, equal fiscal obligations were imposed (Art 134). Importantly, traditional distinctions resulting from military affiliation were also modified, and the drafters of the Constitution took pains to ensure that members of the military were bound by oath to the Constitution. For many soldiers, this involved a traumatic release from their previous oath of loyalty to the *Kaiser*.²¹ The binding of the army to the Constitution of course reflected a long-standing dream of national Republican citizenship that had been pursued by Liberal political groups through the nineteenth century, but which had always remained elusive.

In promoting a nationalized ideal of citizenship, the founders of the Constitution were motivated, more specifically, by the sense that Imperial Germany had not been formed as a fully unified nation state, a fact revealed in the loosely connected administrative structure of the Empire. By contrast, the writing of the Weimar Constitution was perceived as an opportunity to create a polity on a fully nationalized basis. This nationalizing impulse was reflected in those clauses of the Constitution, especially Art 48, which permitted the Imperial executive, in cases of legal conflict, to overrule institutions located in separate regions. This impulse was tangible in Art 47, which created a fully nationalized military system. This impulse was visible in Arts 8, 83 and 84, which cemented the fiscal sovereignty of the Empire over the particular states. Most saliently, this impulse was reflected in Art 13, which established the categorical primacy of national law over law in the individual states. In key respects, this insistence on centralization was motivated by the deep-seated hatred of Prussia amongst the progressive intelligentsia in Germany, whose representatives played a leading role in creating the Constitution. This group determined to obstruct the re-emergence of Prussia as the hegemonic state within the new democratic polity, which had been a pronounced feature of the Imperial Constitution. The Weimar Constitution was intended to put an end to the Prussian-German question, in favour of a decisively and equally unified German Empire, based in the equally distributed sovereignty of all German citizens. In fact, Art 18 created a framework in which the territorial boundaries of Prussia could be redrawn, so that Prussia was warned about exceeding the limits of its constitutionally mandated powers.²² Indicatively, the Constitution contained many federal features, and it could easily

²¹ Patrick Oliver Heinemann, *Rechtsgeschichte der Reichswehr 1918-1933* (Paderborn: Schöningh, 2018), p. 134.

²² See Richard Schmidt, 'Der preußische Einheitsstaat und der deutsche Bundesstaat: Gedanken zur Revision des Artikels 18 der Reichsverfassung und des Gesetzes zur Ausführung der Neugliederungsbestimmungen.'

have been formulated as an expressly federal constitution. Yet, it deliberately avoided any commitment to federalism or to any principle that might dilute its articulation of a sovereign national order, thereby promoting Prussian autonomy.²³ One contemporary interpreter claimed that it displayed an ‘exaggeration of the unitary principle’, in which the authors of the Constitution had ‘rushed ahead of the course of history’.²⁴

Second, the 1919 Constitution promoted a fully nationalized, fully democratic concept of citizenship, which established a very democratic franchise – a franchise that was far more democratic than those that existed in the supposedly more liberal states of Great Britain, the USA and France in the same period. Leading theorists of the Constitution strategically promoted democratic citizenship in order to reinforce the institutional ties linking the population to the political system, and the basic design of citizenship was oriented toward democratic consolidation and national consolidation as two elements in the same process. Some authors of the Constitution viewed rights of democratic citizenship guaranteed under constitutional laws as concrete integrational principles, acting to bind the national population as a whole into an experiential unity with the state, establishing a model of nationhood deeply linked to the values of constitutional democracy.²⁵ This was closely linked to the typical Republican association of constitutional citizenship with education, and Art 188 made provisions for mandatory education in citizenship norms and practices. In these respects, the fathers of the Weimar Constitution clearly reflected upon their work as an attempt to realize and stabilize the social dynamics resulting from the French Revolution, using constitutional law to consolidate nationhood and popular sovereignty at the same time.

In both respects, third, the Weimar Constitution was conceived as a constitution whose objective was to reinforce the territorial integration of German society. This was reflected in provisions discussed above for the enforcement of powers vested in the central executive and the weakening of regional centrifugalism. However, the role of the army in creating an integrated nation was clearly recognized, as the constitution of the army (*Wehrverfassung des deutschen Volkes*) was placed directly under Imperial control (Art 79(1)).

In each of these respects, the Constitution was enacted to remedy the weaknesses in the dimension of structural integration that had historically affected the German polity. In particular, the Constitution appeared as a distinctive post-bellum Constitution, which was charged with the task of translating the processes of national political integration that had been intensified through the war into premises for the formation of the German people as a decisively democratic subject. In this regard, the Constitution can be seen as enunciating a profound sociological insight into the linkage between constitution making, democratic subject formation and military mobilization. In fact, World War I was specifically observed by the authors of the Constitution as an event that effected the full *politicization* of the German people, such that, during the war, Germany emerged, for the first time, as a society

Zeitschrift für Politik 16 (1927): 201-241; 211; Hans-Peter Ehni, *Bollwerk Preußen? Preußen-Regierung, Reich-Länder-Problem und Sozialdemokratie* (Bonn: Neue Gesellschaft, 1975), p. 15.

²³ One historian describes the polity created in Weimar as a ‘federal state with strong unitary features [*stark unitarisierten Bundesstaat*]’: Thomas Nipperdey, ‘Der Föderalismus in der deutschen Geschichte.’ *Bydragen en Medelingen Betreffende de Geschiedenis der Nederlanden* 94 (1979): 497-547: 526-27.

²⁴ Heinrich Triepel, ‘Der Föderalismus und die Revision der Weimarer Reichsverfassung.’ *Zeitschrift für Politik* 14 (1925): 193-230; 207.

²⁵ See Friedrich Naumann’s speech in the National Assembly on constitutional rights in *Verhandlungen der verfassunggebenden Nationalversammlung*, Vol. 329 (Berlin: Druck und Verlag der Norddeutschen Buchdruckerei und Verlags-Anstalt, 1920), p. 2190.

of national citizens, subject immediately to a national state.²⁶ The function of the democratic constitution, thus, was to channel this experience of citizenship formation into instruments of democratic representation, and to build democratic integration onto structural foundations engendered by war.

In addition to these general characteristics, the Weimar Constitution can be seen as a military constitution in some of its more specific features, and it transposed certain quite determinate aspects of military order into constitutional norms. Some of its most distinctive characteristics resulted from the fact that it translated principles used for regulating the army into principles of national governance and civil-political order. In these respects, too, the Constitution gave expression to ideas of citizenship galvanized through war.

Most obviously, it is now almost a truism to note that the structure of the presidential executive in the Weimar Constitution was based on the system of executive-led direction that had been consolidated in World War I. In particular, the emergency powers accorded to the President under Art 48 are widely viewed as residues of military experience, extending militarized patterns of exceptionalist government into conditions of civil order.²⁷ Art 48 allowed the President to avail himself of far-reaching powers and to suspend certain constraints on executive authority in cases of military threat to the government, either internal or external. Importantly, this clause made it possible for the President personally to deploy military force against individual states within the Republic that refused to comply with national legislation. This imprinted a deep executive bias in the design of the polity, and it closely linked executive functions to use of military agency. In this respect, the Weimar Constitution was not unusual, as, after 1918, belligerent polities usually developed broadened executives, built on foundations set during the war. Even polities such as those created in Poland and Lithuania after 1918 that originally had a strong parliamentary bias soon developed strong, free-standing executives, closely attached to the army.²⁸ Indeed, in wider general terms, the expanded functions of social planning and early welfare state construction that became widespread after 1918 necessitated the intensification of the executive components of the polity, and tendencies towards reinforcement of executive power that occurred in World War I were further strengthened in all polities.²⁹ In some polities, in fact, the transfer of wartime provisions for exceptional rule into the post-military context was more strongly ingrained than in Germany. In Austria, the outbreak of war in 1914 saw the implementation of a wide array of emergency laws.³⁰ Later, emergency clauses passed in

²⁶ Hugo Preuß, *Das deutsche Volk und die Politik* (Jena: Eugen Diederichs, 1915), pp. 186-87.

²⁷ Hans Boldt, 'Der Artikel 48 der Weimarer Reichsverfassung. Sein historischer Hintergrund und seine politische Funktion', in Michael Stürmer (ed), *Die Weimarer Republik. Belagerte Civitas* (Königstein: Athenäum, 1980), pp. 288-309; Ludwig Richter, 'Die Vorgeschichte des Art. 48 der Weimarer Verfassung.' *Der Staat* 37(1): 1-26.

²⁸ The Polish constitutions of 1919 and 1921 were designed to create governments with circumscribed executives. But even when these constitutions were in force some vital powers were transferred to a special military council, the Council for the Defence of the Republic. On one account, the Council was the primary government body from July to October 1920, in which it issued roughly 90 legal acts (see Piotr Krzysztof Marszałek, *Rada obrony państwa z 1920 roku. Studium prawnohistoryczne*, Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego, 1995, pp. 175-76). This implies that in this period Poland was a de facto constitutional dictatorship. Later, the constitutions of Poland and Lithuania were overthrown by military coups in 1926, and both saw the emergence of long-term military regimes, with at least partial fascist features.

²⁹ See for discussion Marc Allen Eisner, *From Warfare State to Welfare State. World War I, Compensatory State Building and the Limits of Modern Order* (University Park, PA.: Pennsylvania State University Press).

³⁰ Gernot Hasiba, *Das Notverordnungsrecht in Österreich (1848-1917). Notwendigkeit und Mißbrauch eines „staatserhaltenden Instrumentes“* (Vienna: Verlag der österreichischen Akademie der Wissenschaften, 1985), p. 157.

1917 remained in force under the 1920 Constitution of the First Republic, and they were used as a basis for reactionary constitutional revision in the early 1930s.³¹ However, the bones of a military state remained prominently visible beneath the Weimar Constitution. Importantly, in allowing the President to use military resources to override resistance from the individual states, provisions in Art 48 expressed the principle that the will of the German nation was concentrated in the Imperial executive, embodied by the President, and that, under specified conditions, this will could be applied by military means. In this respect, the Constitution promoted a model of citizenship, whose origins lay in the military domain, which viewed executive acts as the ultimate expression of national sovereignty. This emphasis placed on the presidential executive as an instrument of national construction was largely the result of Max Weber's role in drafting the Constitution, reflecting a predilection for plebiscitary presidentialism that he shared with constitutionalists on the far right.³² This emphasis sat uneasily alongside the more organic, associational patterns of citizenship and national integration also included in the Constitution.³³

The provisions for a strong executive expressed in the Weimar Constitution were flanked by provisions for corporatistic models of economic representation, in which bodies representing organized labour were to be integrated in legislative procedures. In this respect, the Constitution expressed the presupposition that the existence of a delegatory apparatus for resolving economic antagonisms was a precondition of democratic rule. Initially, it was envisaged that a separate chamber, placed next to the parliamentary legislature, would be created to deliberate questions of economic policy and to introduce legislation to regulate the economy. The Constitution itself contained clauses that created a legal basis for the expropriation of large-scale enterprises and the socialization of key national industries (Arts 153, 156). These provisions were never put into effect. However, the Constitution provided for representation of economic interests at the level of the workplace (Art 165), and it institutionalized corporatistic mechanisms for aggregating economic interests. It eventually led to the establishment, in 1923, of instruments for compulsory arbitration in industrial disputes, in which the Ministry of Labour became the final point of appeal in inter-group conflicts of an economic nature.³⁴

Through these provisions, the Weimar Constitution created the legal framework for a very distinctive public-economic order. In this order, on one hand, directive power in economic matters was concentrated in the hands of the Imperial President. Indeed, it soon became a matter of controversy that the emergency powers accorded to the President were used, frequently, for the introduction of economic legislation, and – above all – for the passing of fiscal budgets and yearly plans, a function hardly foreseen in the conception of emergency

³¹ Norbert Gürke, 'Die österreichische „Verfassung 1934“,' *Archiv des öffentlichen Rechts* 25(2): 178-255; Gernot Hasiba, 'Das kriegswirtschaftliche Ermächtigungsgesetz (KWEG) von 1917. Seine Entstehung und seine Anwendung vor 1933', in *Aus Österreichs Rechtsleben in Geschichte und Gegenwart. Festschrift für Ernst C. Helbling*, edited by the Rechtswissenschaftliche Fakultät der Universität Salzburg. Berlin: Duncker und Humblot, 1981), pp. 543-565; 544.

³² See Christian F. Trippe, *Konservative Verfassungspolitik 1918-1923. Die DNVP als Opposition in Reich und Ländern* (Düsseldorf: Droste, 1995), p. 70.

³³ Wolfgang Elben, *Das Problem der Kontinuität in der deutschen Revolution. Die Politik der Staatssekretäre und der militärischen Führung von November 1918 bis Februar 1919* (Düsseldorf: Droste, 1965), p. 134; Siegfried Grassmann, *Hugo Preuß und die deutsche Selbstverwaltung* (Lübeck: Matthiesen Verlag, 1965), p. 11.

³⁴ Josef Englberger, *Tarifautonomie im Deutschen Reich. Entwicklung des Tarifvertragswesens in Deutschland von 1870/71 bis 1945* (Berlin: Duncker und Humblot, 1995), pp. 153, 183; Karsten Steiger, *Kooperation, Konfrontation, Untergang. Das Weimarer Tarif- und Schlichtungswesen während der Weltwirtschaftskrise und seine Vorbedingungen* (Stuttgart: Franz Steiner, 1998), p. 133.

situations in relation to which Art 48 was originally formulated.³⁵ At the same time, however, the directive authority of the President was exercised in a situation that was marked by the close articulation between government and industrial organizations, on both sides of the production process. This meant that, beneath the executive level of presidential authority, parliamentary actors were expected to share some of their legislative force with non-elected representatives of business and labour. Together, these arrangements created a constitutional system of *strong-executive corporatism*, or even *strong-executive pluralism*, in which the powers classically ascribed to the elected legislature were relativized on two fronts. Through the 1920s, aspects of this system were further consolidated. Through the course of the decade, the Presidency assumed increased power through the use of emergency legislation, and the *Reichstag* lost some of its authority in economic legislation; the *Reichstag* was partly delegitimized after by 1923 by the fact that key economic budgets were passed under emergency laws that prorogued parliament.³⁶ At the same time, leading economic bodies, increasing those representing industrial lobbies, acquired entrenched positions at the perimeters of government. Both components in the system of executive-led corporatism were thus reinforced, in both cases to the detriment of parliament.

In many ways, these arrangements had discernible origins in the mechanisms for politico-economic coordination established in the World War I. After 1914, most national governments in Europe pioneered informal systems of executive-led corporatism, in which, on one hand, the military leadership and the governmental executive acquired consolidated authority, and, on the other hand, organized labour was strongly co-opted into the war effort.³⁷ In Germany, this model of social organization was strongly developed. In 1916, the military command implemented legislation, the *Hilfsdienstgesetz*, which was designed, primarily, to increase military mobilization, yet which also underpinned its strategies for intensifying recruitment of soldiers with provisions to co-opt trade unions into the war effort, to give heightened legal recognition to trade unions, and to create arbitration panels in large firms.³⁸ Central to this law was the understanding that, in a modern society, effective mobilization for war presupposes at least partial pacification of socio-economic divisions, and wars are best prosecuted by nations with solid levels of cross-class integration. From 1916, the authority of the military command was sustained by the fact that, at sub-executive level, societal organizations were closely integrated into the planning structures of the public economy and the state acquired mediatory functions in the interactions between economic bodies. In this respect, the Weimar Constitution appears as a document that immediately transposed the legal framework for coordinating the militarized public economy created in the years 1914-1918 into the formal order of a peace-time state.

In addition to this, the transposition of war-time principles of political order into constitutional law is visible in the fact that the Weimar Constitution reflected patterns of personal attachment and inter-fractional consensualism that developed in the war. The

³⁵ See Gerald D. Feldman, *The Great Disorder. Politics, Economics and Society in the German Inflation 1914-1924*. New York: Oxford University Press, 1997).

³⁶ See *ibid.*

³⁷ Franklin Hugh Adler, *Italian Industrialists from Liberalism to Fascism. The Political Development of the Industrial Bourgeoisie, 1906-1934* (Cambridge University Press, 1995).

³⁸ See August Löhr, 'Die Entwicklung des Schlichtungswesens' in Rüdiger Hönigschmid-Grossich, Emanuel Leidig and August Löhr, *Zwangsschiedsspruch und Schlichtungswesen. Drei Abhandlungen* (Jena: Fischer, 1929), pp. 215-320; 237-40; Jürgen Kocka, *Klassengesellschaft im Krieg. Deutsche Sozialgeschichte 1914-1918* (Göttingen: Vandenhoeck und Ruprecht, 1973), p. 115; Gerald D. Feldmann and Irmgard Steinisch, *Industrie und Gewerkschaften 1918-1924. Die überforderte Zentralarbeitsgemeinschaft* (Stuttgart: Deutsche Verlags-Anstalt, 1985).

Constitution eventually constructed a normative order that reflected strategies of cross-class collaboration and encompassing citizenship formation that first took shape under conditions of military adversity.

This is evident in the fact that the Constitution was drafted by lawyers and theorists who had assumed political importance in the war, and who had begun to collaborate after 1914, across historically obdurate party-political divisions, because of pressures of war. Notably, although primarily drafted by Hugo Preuß, the Constitution shows the clear influence of a number of theorists, attached to different political parties. The corporatistic provisions in the Constitution bear the primary hallmark of the Social Democrats (SPD), especially Hugo Sinzheimer. However, provisions for economic organization based on norms regarding collectively beneficial use of property (Arts 151, 153) display a commitment to the solidaristic ideals modern Roman Catholicism, reflecting the interventions of politicians in the Zentrum, for example Konrad Beyerle. As discussed, the clauses regarding the Presidency are usually traced to the involvement of Max Weber – attached, like Preuß, to the Left Liberals – in drafting the Constitution. Prior to 1914, collaboration between politicians from the Left Liberals, the SPD and the Zentrum was rare, and, intermittently, it was even outside the realm of ideological possibility.³⁹ Notably, however, representatives of these parties entered a new constellation during the war, such that co-operation between them became more commonplace. This was largely due to the fact that, during the war, representatives of these parties were invited to assume consultative roles regarding planned revisions to the Imperial Constitution and to the Prussian Constitution.⁴⁰ Members of these parties formed the core of the cross-party committee that assumed responsibility for planning democratic constitutional reform. Parties that had collaborated on constitutional reform in the war then, in 1919, became, for a short period, constituent members of the elected Weimar Coalition, which assumed responsibility for ushering in the new Republic. Collaboration between members of these parties thus continued under the auspices of the Constitution. As a result, the writing of the Constitution was deeply linked to the fact that, during the war, inter-fractional divisions became less unbridgeable, and political society as a whole was rendered more unified owing to common exposure to external adversaries. The content of the Constitution in turn gave expression to a fusion of diverse ideological outlooks that would historically have appeared irreconcilable.

More pronouncedly, the tendency in the Constitution to reflect elements of a war-time consensus is observable in the fact that it was strategically designed to appease and mediate differences between rival social classes, reflected in different political parties. In this respect, the Constitution carried over aspects of inter-class and inter-party cooperation promoted after 1914 into the post-war era. During the war, importantly, the term *Burgfrieden*, which echoed a medieval legal term referring to the prohibition of feuding, was used to describe the relations between political parties. This term characterized the situation, beginning in August 1914, in which rival parties abandoned their historical animosities, and all parties collaborated, at least temporarily, in supporting the German war effort. Central to this process was the fact that the SPD declared willingness to sanction levying of war credits for the

³⁹ For accounts of earlier difficulties in establishing cross-party reformist coalitions see Dieter Langewiesche, *Liberalismus in Deutschland* (Frankfurt am Main: Suhrkamp, 1988), pp. 226-27; Dieter Grosser, *Vom monarchischen Konstitutionalismus zur parlamentarischen Demokratie. Die Verfassungspolitik der deutschen Parteien im letzten Jahrzehnt des Kaiserreichs* (Den Haag: Martinus Nijhoff, 1970), pp. 62, 67.

⁴⁰ Udo Bermbach, *Vorformen parlamentarischer Kabinettsbildung in Deutschland. Der interfraktionelle Ausschuß 1917/18 und die Parlamentarisierung der Reichsregierung* (Cologne: Westdeutscher Verlag, 1967).

army.⁴¹ In some respects, the idea of *Burgfrieden* became the premise for the construction of the social agreements that underpinned the German polity after 1918.

A clear reflection of the *Burgfrieden* is discernible in the composition of the Weimar Coalition itself, whose members, from diverse party-political backgrounds, drafted the Constitution. However, the legacy of the *Burgfrieden* is most strongly apparent in the fact that the Constitution as a whole was conceived, in some respects, as an inter-class contract, able to mediate ideals of citizenship endorsed by different parties and the distinct citizenship groups represented by them. In this regard, the Constitution gave sociological voice to Marx's original claim that national constitutions are typically based in imbalanced concepts of citizenship, and they can only obtain full legitimacy if material inequalities between constructs of the citizen reflecting particular class interests are factually limited, or even eradicated.⁴² Following Marx's vocabulary, thus, the Constitution was designed to establish a principle of democratic *citoyenneté* not reducible to the historical liberal ideals of the bourgeoisie, and it was expected to construct governmental legitimacy around a vision of the citizen able to integrate all social groups. In this regard, the Constitution mirrored Weber's sociological vision, which was decisively shaped by experiences of war.⁴³ Weber understood political activities, even when framed by constitutional norms, as the incompletely pacified expression of violent social antagonisms. He advocated a model of constitutional order able to unify citizens at a level of visceral experience, placing them above their customary class positions, and limiting inter-group because of its unifying force.⁴⁴ Central to the Weimar Constitution, ultimately, was the assumption that it must form a broad integrational compact: it could only create a legitimate state if it also created a fully nationalized, fully political citizenship, distilling principles of order and citizenship shared and internalized between otherwise hostile social groups. In this compact, different socio-economic groups, attached historically to different political parties, were expressly requested to abandon strongly entrenched ideological positions, and to commit to a constitutional order driven by trans-societal prerogatives and interests. Friedrich Naumann made this point quite clear in presenting his drafts for the catalogue of basic rights in the Constitution. He declared the intention to consolidate a series of rights that transcended individual class interests, that established social obligations for persons in more privileged economic positions, and that clearly relativized classical liberal constructions of rights as simple private entitlements.⁴⁵ On this basis, Naumann understood the Constitution as a whole as an integrational text, whose realization both foresaw and presupposed the emergence of patterns of citizenship not bound or limited by class fissures. Preuß expressed this goal in more paradigmatic terms in 1920, declaring that democracy presupposes the 'synthesis' of 'political equality and unified citizenship', which is required to counter the 'antithesis of capitalists and proletarians'.⁴⁶

In these respects, the experience of cross-class compromise instilled in society by the war became the moving spirit of the Constitution. As discussed, the Constitution was built on social foundations created through wartime militarization. At the same time, it reflected the

⁴¹ Susanne Miller, *Burgfrieden und Klassenkampf. Die deutsche Sozialdemokratie im Ersten Weltkrieg* (Düsseldorf: Droste, 1974), p. 57.

⁴² Karl Marx, *Zur Judenfrage* [1844], pp. 347-377 in Marx and Engels, *Werke*, in 43 vols. (Berlin: Dietz Karl 1958-68), Vol. I. pp. 347-377.

⁴³ On the impact of World War I on Weber's late sociology see Christian von Ferber, *Die Gewalt in der Politik. Eine Auseinandersetzung mit Max Weber* (Stuttgart: Kohlhammer, 1970), p. 53

⁴⁴ See Max Weber, 'Parlament und Regierung im neugeordneten Deutschland', in Weber, *Gesammelte politische Schriften* (Tübingen: J.C.B. Mohr, 1988), pp. 306-443; 424.

⁴⁵ See note 23 above.

⁴⁶ Hugo Preuß, *Gesammelte Schriften*, edited by Detlef Lehnert (Tübingen: Mohr Siebeck, 2008), Vol. 4; 147.

impulse, also expressed during the war, that real citizenship presupposed not only outer militarization, but also the internal demilitarization of society: the Constitution as a whole was intended to promote an experience of national unity that reduced the potential for military violence in relations between social classes. Indicatively, the term *Burgfrieden* was intended to project an alternative to inter-class hostility, and it forms an implied counterpoint to the German term for class struggle (*Klassenkampf*). But, etymologically, the term *Burgfrieden* is also the counterpart to the German term for civil war: *Bürgerkrieg*. The clear objective of the main authors of the Constitution was to extend and solidify the *Burgfrieden*, after 1918, and, in so doing, to avoid civil war or conditions of unmanageable inter-class antagonism. Their purpose was to create a political constitution positioned categorically ‘jenseits des Bürgerkrieges’ [beyond civil war]. This was to be achieved through the allocation of constitutional roles to a range of economic organizations, on both sides of the industrial divide, who were expected to promote the relative pacification of class relations and the relative solidification of citizenship as a fully political experience.⁴⁷

The ethic of class transcendence expressed through the Weimar Constitution assumed accentuated significance after 1918, as the drafting of the Constitution coincided with the onset of the profound process of global ideological polarization that was stimulated by the Russian Revolution, in 1917. Central to the emphasis placed on class compromise in the Constitution was the assumption that some economic aspects of Marxism could be constitutionally remodelled as a pattern of radical Republican citizenship, and that the doctrine of class conflict in classical Marxism, already weakened by the revisionist controversies in the SPD around 1900, could be consigned to ideological history. The effective demilitarization of Marxism was clearly implied as a precondition for the success of the Constitution. Owing to the Russian Revolution, this plan was articulated in circumstances defined by acute global hostility, in which Marxist doctrine moved unprecedentedly close to military doctrine.⁴⁸ The Constitution was intended to establish conditions for broad socio-economic consensus in Germany at a time when class conflicts were exposed to an incubated process of global remilitarization. In this respect, the Constitution was marked by background conditions close to global ideological war, and it expressly articulated a concept of citizenship that was intended to mediate – simultaneously – between rival patterns of citizenship in the domestic domain and rival external patterns of citizenship in the global domain.

In each respect, the Weimar Constitution was distinct from earlier, more conventional liberal constitutions as it was centred on an understanding of the nation, and of the national citizen within the nation, as a subject that cannot, in simply static legal form, project legitimacy for the constitutional order. On the contrary, the Constitution reflected a construction of citizenship in which national unity required constant reinforcement, and the function of the Constitution, programmatically, was to pull together diverse, residually conflictual sectors of society into a shared system of national collaboration. The nation and the citizen, thus, appeared between the lines of the Constitution, not, in the liberal sense, as simple, normatively constructed legal persons, but as complex socio-material phenomena, which could not be simply presupposed as objective realities, and which could only form the bedrock of legitimacy for the state if conflicts inherent in them were at least partially resolved.

⁴⁷ Andreas Voßkuhle, ‘Hugo Preuß als Vordenker einer Verfassungstheorie des Pluralismus.’ *Der Staat* 50(2): 251-267; 255.

⁴⁸ See Panajotis Kondylis, *Theorie des Krieges. Clausewitz – Marx – Engels – Lenin* (Stuttgart: Klett-Cotta, 1988).

Indicatively, Art 157 placed productive labour under national protection, such that labour was posited as an integrational substructure for society as a whole. Art 157 foresaw the eventual construction (never fully realized) of a unified code of labour law. These clauses implied a sense of national citizenship as a reality, founded in labour, which demanded intense construction and protection, to be brought into life through governmental administration of the economy.

In these features, the Weimar Constitution was formulated in essentially militarized terms. On one hand, it eschewed the thin liberal concept of the sovereign citizen as a simple norm, and it posited citizenship as the result, not as the precondition, of a legitimate constitution. In so doing, it constitutionally committed the state to a deep labour of social mediation and pacification, which required a strong commitment to the resolution of material conflicts. On the other hand, it expressed the expectation that the state demonstrates legitimacy by avoiding civil war, and by ensuring that powerful constituencies in society were separated from the simple protection of entrenched prerogatives. Notably, the Constitution did not give recognition to political parties as organizations under constitutional law, and it clearly sought to avoid institutionalizing public-legal protection for factional interests. At the centre of these aspects of the Weimar Constitution was the fact that, unlike earlier liberal constitutions, it observed the citizens, from which its legitimacy emanated, as citizens formed through war. As discussed, it constructed citizenship as a condition that obtains its supreme expression in the unifying acts of powerful executive bodies, defined by external adversity. In this regard, it implied that the most irreducible source of legitimacy in the polity is expressed through a primal military bond between executive and citizens, in exceptional, war-like situations. However, it also reflected the perception that the formation of citizenship was always precariously linked to civil war, and unified experiences of citizenship, arising paradigmatically from war, could not paper over the fact that national society was always doubly militarized – both along lines created by external enemies and along lines between hostile social classes. The primary function of the Constitution, therefore, was, at one and the same time, to extend and solidify the lines of citizenship construction promoted in war and to prevent the dissolution of citizenship through civil war. In other words, the Constitution was expected to reinforce citizenship created through war and, in the same process, to detach citizenship from war, dialectically both separating and reintegrating the *citoyen* and the *soldat*. The form of citizenship required to obviate the constantly threatened collapse of the polity into civil war was proposed by the Constitution, expressly, as a form of active citizenship, reconciling, in Marx's terms, the *citoyen* both with the *soldat* and with the *bourgeois* at the same time. In this polity, energies of citizenship were to be focused on establishing modes of social coexistence above material fault-lines in society and, by these means, on reducing the threat of civil war that is always at the core of the modern polity.

The return of the *soldat*

It is evident that the dialectical objective of the Weimar Constitution was not successful, and it did not stabilize a model of national citizenship strong enough to overarch the societal fissures in post-1918 Germany or to soften tendencies towards civil war. On the contrary, in different ways, the Constitution exposed German society to an emphatic and profoundly unsettling militarization of citizenship, which the Constitution itself was not able to control and which critically eroded its legitimacy.

At a most obvious level, the militarization of German society under the Weimar Constitution was reflected in the fact that the regular army was not brought fully under civil control, and the army was able, in part, to operate in semi-autonomous fashion. After 1920, the army was

instrumental in deciding the overall direction of the Republic. This was partly because, as an actor in domestic politics, the regular army could only be selectively deployed against anti-Republican insurrection, and its own political preferences determined how, and against which opponents, the Republic could be defended. Indicatively, insurgencies led by the Communists in the early 1920s were suppressed either by or with the assistance of the army. In 1923, as one example, the military was used to remove the government of Saxony and to impose a state of emergency under Art 48. During the Kapp Putsch, by contrast, rightist insurgents found extensive military support, and, in some areas, the army shot at and killed demonstrators who mobilized to defend the Republic against the Putsch.⁴⁹ The unwillingness of the military to defend the Republic against threats from the far right naturally meant that the emergency clauses in Art 48, originally designed to harden the Republic against all acts of political sabotage, were only useful against factions on the political left. By the end of the Republic, Art 48 provided the basis for permanent rule by emergency government. In this government, the military cooperated closely with ultra-reactionary groups, and the political system moved very close to military dictatorship, giving strategic prominence to military goals.⁵⁰ In view of the composition of the final presidential cabinets before Hitler's *Machtergreifung*, it appears highly likely that, without Hitler, the Republic would have ended in rule by military junta. Hitler's government itself was strongly supported by the *Reichswehr*, and it had some features of a military dictatorship.

At a less immediate level, the militarization of German society under the Weimar Constitution was connected to the construction of citizenship under the Constitution. In particular, the fact that the Constitution foresaw the institution of mechanisms for the mediation of economic conflicts meant that hostilities between different social groups, closely linked to distinct class memberships, were translated into overtly political form. As the Constitution was intended to moderate social conflicts, the instruments used by the state to resolve class adversity became integrally politicized, and inter-party hostilities necessarily focused on the legitimacy of the state itself, which was progressively diminished in proportion to the degree to which social conflicts escalated. In fact, the policies that were expressly designed to establish social peace – cross-class corporatism, welfare arrangements – were transformed through the 1920s into objects of extreme animosity between social groups, and mechanisms for placating conflict gave heightened articulation to rival constructs of citizenship. Indeed, the fact that corporatist provisions moved different economic organizations close to the centre of government meant that policy making was susceptible to influence by non-elected organizations, and powerful economic actors acquired influential roles at the periphery of the governmental system. Ultimately, after the beginning of the economic crisis in 1929, organizations linked to big business were able to occupy positions from which they acquired a powerful role in defining public policy, effecting a rapid reduction in the social provisions established under the corporatistic framework that first supported the Republic. Eventually, therefore, the mechanisms for constructing a cross-class model of citizenship proved susceptible to manipulation by particular economic groups, and they made it possible for the political system to be directed by actors and organizations clearly hostile to inter-class collaboration. In aiming to create a broad societal basis for the political system, the Constitution softened the margins of the political system, and permitted its colonization, in quasi-patrimonial fashion, by groups that expressly rejected the material

⁴⁹ Donald B. Pryce, 'The Reich Government versus Saxony, 1923: The Decision to Intervene.' *Central European History* 10(2): 112-147; 114.

⁵⁰ See the analysis of Schleicher's policies in Axel Schildt, *Militärdiktatur mit Massenbasis?: Die Querfrontkonzeption der Reichswehrführung um General von Schleicher am Ende der Weimarer Republik* (Frankfurt am Main: Campus, 1981), p. 61.

foundations of the Constitution. Overall, the attempt to craft a new model of citizenship through policies of state-led social mediation merely re-articulated social conflicts in systemically internal, politically intensified form, and it created a situation in which the state and powers within the state became the primary object and goal of social conflict. In view of the political preferences of the army, the Constitution was always tied to the defence of the more reactionary positions in the class conflicts that it politicized, and, despite its literal claim to promote trans-sectoral stability, it buttressed the Republic more strongly against the left than against the right.

In analysing this point, it is important to note that, in its promotion of inner-societal pacification, the constitutional order of the Weimar Republic was supplemented by policies for economic redistribution whose specific aim was to separate socio-economic rights from military formation. This is evident in the policies for the administration of social welfare introduced after 1918. It is widely noted that in most societies the creation of welfare states was originally driven by war. In fact, in most polities, welfare systems were first designed to provide care for persons injured in war and for the dependants of soldiers fallen in combat.⁵¹ In most polities, therefore, systems of welfare administration gave privileged recognition for soldiers as a social class. Implicit in such arrangements is the principle that public order is underpinned by recognition of military duties and sacrifices. In such arrangements, elevated citizenship rights are accorded to the soldiers, and the deep dependency of the polity on the soldier is expressed: the link between the *citoyen* and the *soldat* is strongly articulated. In some European polities after 1918, the privileging of soldiers as distinct citizenship groups extended beyond the allocation of welfare rights, and it included allocation of enhanced political and electoral rights to ex-combatants.⁵² The Weimar Republic expressed this legitimational sense of military debt in unusual fashion. In the first years after 1918, the convention of ascribing elevated welfare rights to ex-combatants was continued in Germany, and early welfare laws were intended to alleviate hardships suffered by former soldiers and their families. This was reflected in the first landmark welfare law after 1918, the *Gesetz über die Versorgung der Militärpersonen und ihrer Hinterbliebenen bei Dienstbeschädigung* (1920). Increasingly, however, a more formal system of general welfare provision was created. By 1927, legislation for compulsory unemployment insurance was introduced, which provided social security and social compensation to all groups, without regard for citizenship status or the causes of material deprivation. This policy meant that the distinctions attached to the soldiering class were reduced: the legitimacy of the state was defined in relation to a simple construction of the citizen, with no emphasis on corporate status or affiliation. Most importantly, symbolically, this meant that the basic integrational structure of citizenship was transferred from the military to material aspect of society, so that citizens were unified, in essence, by affiliation, not to a military community, but to a community of persons marked by reciprocal material obligations. In this respect, the welfare system of the Weimar Republic again marked an attempt to build national citizenship onto the integrational foundations constructed by war, yet also to separate the primary unit of the citizen from its military origins.

⁵¹ Theda Skocpol, 'America's First Social Security System: The Expansion of Benefits for Civil War Veterans.' *Political Science Quarterly* 108(1) (1993): 85-116; Michael Geyer, 'Ein Vorbote des Wohlfahrtsstaates. Die Kriegsoferversorgung in Frankreich, Deutschland und Großbritannien nach dem Ersten Weltkrieg.' *Geschichte und Gesellschaft* 9(2) (1983): 230-277.

⁵² See for one example the Representation of the People Act (1918) in the UK, which gave soldiers privileged access to the ballot box.

Indicatively, the attempt to transform welfare provision into an integrational focus in German society misfired catastrophically. Ultimately, controversies over welfare provision proved resistant to consensual mediation, and a stable and generalized system of welfare support was not consolidated. In fact, the unemployment insurance law of 1927 triggered divisions in the coalition that was placed in government in 1928, and this mortally destabilized the Republic: welfare itself became the focus of deep and extremely unsettling polarization.⁵³ By 1930, elite factions in the Republic turned against the underlying consensual principles that had first motivated the creation of a welfare state. The presidential cabinets led by Brüning and later by Schleicher und Papen were marked by the deep backlash against welfare provision and economic redistribution as a source of legitimacy,⁵⁴ and, progressively, this led to the reinstatement of the military as a privileged political class.

In these features, the fate of the Weimar Republic was decided, at the deepest level, by the fact that the internal construction of a relatively pluralistic system of conflict mediation became interlocked, almost immediately after its institutionalization, with the acute ideological conflicts that appeared, after 1917, in the global domain. After the formation of the Weimar Republic, different groups within society, linked to political parties, internalized the lines of global ideological polarization created by the Russian Revolution, and this severely restricted the possibility of consensual collaboration between different groups. On one hand, groups on the far left attached themselves to international Bolshevism. Important in this regard is the fact that, in its mobilizational dimensions, Bolshevism was itself a doctrine of civil war,⁵⁵ and leading ideologues in Moscow observed civil war as a necessary prelude to the assumption of power by the proletariat. At the same time, groups on the far right, already complicit in the murder of the leading Spartakists in 1918-19, understood themselves as part of an armed international vanguard against Bolshevism. As a result, the global civil war that began in 1917 was refracted, acutely, in German domestic politics, and rival political organizations in Germany, already marked by intense hostility, were militarized by their attitudes to Russia and to the implications of the Russian Revolution for interests in German society. Carl Schmitt of course recognized this very directly, as he observed German politics *tout court* as a set of deliberations conducted *sous l'oeil des russes*.⁵⁶ This constellation was exacerbated by the fact that, after 1918, many German soldiers had refused fully to demobilize, and rival military units, not subject to fixed administration, proliferated in society,⁵⁷ especially in the territories to the east of Germany where war continued after 1918. Most political parties then either provided cover for, or openly incorporated, paramilitary units that had not disbanded after armistice. Within a short period of time, in consequence, it became apparent that the construction of civil peace that supported the Constitution of 1919 was only figurative. The capacity of the Constitution factually to reconcile armed factions, attached to different positions in the system of domestic social stratification and global ideological rivalry, was insufficiently solidified. Most German political organizations became

⁵³ Jens Alber, 'Germany' in Peter Flora (ed), *Growth to Limits. The Western European Welfare States since World War II, vol. 2: Germany, United Kingdom, Ireland, Italy* (Berlin: de Gruyter, 1986), pp. 1-154; 9; Helga Timm, *Die deutsche Sozialpolitik und der Bruch der großen Koalition im März 1930* (Düsseldorf: Droste, 1952), p. 188.

⁵⁴ Hans-Hermann Hartwich, *Arbeitsmarkt, Verbände und Staat. Die öffentliche Bindung unternehmerischer Funktionen in der Weimarer Republik* (Berlin: de Gruyter, 1967), p. 162.

⁵⁵ See Andreas Wirsching, *Vom Weltkrieg zum Bürgerkrieg? Politischer Extremismus in Deutschland und Frankreich 1918-1933/39. Berlin und Paris im Vergleich* (Munich: Oldenbourg, 1999), p. 27.

⁵⁶ Carl Schmitt, *Der Begriff des Politischen* (Berlin: Duncker und Humblot, 1932), p. 79.

⁵⁷ Peter Keller, »Die Wehrmacht der Deutschen Republik ist die Reichswehr«. *Die Deutsche Armee 1918-1921* (Paderborn: Schöningh, 2014), p. 84; Dirk Schumann, *Politische Gewalt in der Weimarer Republik 1918-1933. Kampf um die Straße und Furcht vor dem Bürgerkrieg* (Essen: Klartext, 2001), p. 204

linked to positions, tying national hostilities to global hostilities, which could not be constitutionally reconciled.

In each of these respects, the Weimar Constitution can be seen as a political compact that was designed, in a broad sense, to regulate the military dimensions of society. It was expressly conceived as an instrument to reconstruct modes of citizenship practice created through war as the premise for a durable civil-political order, implicating all groups – including the army – in the commitment to solidify an overarching construct of citizenship. In this regard, the Constitution proposed as its legitimational unit a fusion of the *citoyen*, the *soldat* and the *bourgeois*. However, the overt politicization of citizenship and the clear recognition of the fact that citizenship cannot be projected as neutral norm created conditions in which the legitimational premises of the Republic were subject to intense militarization, both normatively and factually. Central to this was the fact that, in the classical style of a military constitution, the Weimar Constitution connected domestic citizenship groups to global polarities, such that domestic conflicts, which the Constitution was expected to resolve, became inseparable from positions in a global civil war. Quite literally, the construction of citizenship through the mediation class conflicts, which was intended to insulate the polity against social conflict, became a vector in which the polity was opened to acutely unsettling conflicts, exacerbated by international hostilities.

Conclusion

The Weimar Constitution can be read, at a literal level, as a military constitution. It can also be read, at a reflexive level, as a sociological analysis of the relation between war, national integration, democracy and citizenship, drawing on the related ideas of Marx and Weber to establish fully national legitimational norms for functions of state. As such, the Weimar Constitution was designed to express the outcome of a long cognitive process, reaching back to 1789. It was intended to construct the basis of governmental legitimacy both by extending and pacifying processes of integration and subject formation expressed in war, and by distilling patterns of citizenship construction shaped by war as the foundations for a stable, pacified polity. Paradoxically, however, the result of this reflexive process was that the Constitution was immediately locked into a system of global conflict, and it transmitted this conflict, in intensified manner, into national political institutions. Conceived as a Constitution for national pacification, it was not able to operate in the conditions of global civil war in which it acquired force. Ultimately, it was not until after 1945 that the cognitive process begun in 1789 began to approach completion. At this point, national constitutions remained connected, perhaps more immediately than in the 1920s, to global lines of political-ideological polarization. However, constitutions created after 1945 tended to devise instruments to insulate domestic political interactions against pressures in the global domain: they did this by promoting patterns of citizenship, founded, not in collective mobilization, but in single rights of particular persons and universal obligations of state organs. The long path towards the pacification of inner-societal conflicts, which eventually became the precondition for democracy, depended above all on the increasing global propensity, manifest after 1945, towards the demilitarization of political legitimacy per se. This propensity depended on the global rise of human rights law, which, uniquely, created a normative system able to bring legitimacy to national polities without the articulation of deeply embedded conflicts between citizens. The second democratic constitution in Germany, drafted hastily in 1948-49, played a pioneering role in using globally defined rights to separate legitimacy from inner-societal conflicts. To this degree, the Weimar Constitution formed a key cognitive step in a global learning process.