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Abstract

There are various ways in which organizations which represent all kinds of interests can relate to state actors. Incorporating organized interest is a frequently used method to generate support in Dutch democratic decision-making. This thesis presents a normative critique of the practice of incorporation from a proceduralist point of view, meaning that the criticism mainly lies in the procedure, not the outcome. The tension between the notion of affectedness and equal access are central components of the argument. A second aspect of the argument is the decreasing power of elected officials as a result from neocorporatism. What I argue here, is that an increasing influence of organized interest at the expense of parliament could result in a disbalance in the representation of private interests over the common good.

Neocorporatism in the Netherlands

The principle of elections is perhaps the most fundamental principle of representative democracies. A democratic society requires the participation of its people to succeed. This participation is therefore highly valued in most democratic countries. Even though participation in is highly valued on the individual level, collective participation is not unconditionally tolerated. Lobbying is an example of collective participation in democratic decision-making. Even though lobbying is allowed in most democratic countries, that does not mean that it is a fait accompli. Lobbying is still subject to social and moral debates because people disagree on whether it is desirable to have external interference in democratic procedures practised by elected officials. In the end, however, it is morally complicated to deny people access to elected officials who represent them. Part of the representative duties of parliamentarians is to inform themselves about the positions of their constituents. Lobbying could be considered an organized way of conveying positions to politicians.

Lobbying is not the only way in which organizations can communicate their interest to elected officials. The Netherlands have a political culture that goes a little further than just allowing organizations or individuals to lobby. Since the 1950s the Dutch government has a tradition of incorporating organizations that represent the key interests into their decision-making process. The practice of incorporating means that politicians do not just consult organized interest to estimate whether they would support a particular policy; organized interests have a seat at the table and their consent on the policy/legislation is explicitly requested. This is something which is referred to as "neocorporatism" in academic literature (Schmitter, 1979, p. 86 – 88; Christiansen & Rommetvedt, 1999, p. 196). The rationale of including organized interests in decision-making is to generate support among relevant stakeholders for the policy or legislation at hand. Even though this seems plausible at first, it puts organized interest in a position with a lot of leverage. Because their support is required for the policy/legislation to succeed, they become some sort of co-legislator. In addition, they gain the beneficiary position to be involved in the entire negotiation and their consent is required. This, opposed to other parties such as parliament which sometimes only has the position to judge the outcome of a negotiation.

Before engaging in this moral debate, it is valuable to explain the practice of incorporation in detail and illustrate the Dutch political culture. There are various noteworthy features of the political culture in the Netherlands, but I would like to focus on the consensus-oriented tendencies. The consensus-orientedness basically means that the Netherlands are not characterized by opposition but by cooperation. These tendencies frequently result in decision-

making procedures with various actors, both political and non-political (such as organized interest). To develop a better understanding of the consensus-orientedness, I address two of its causes: political fragmentation and pillarization. The Netherlands is a parliamentary democracy with proportional representation, meaning that there is no such thing as absolute power for a political party (Bale, 2013, 330 – 331). Even though it is theoretically possible, parliamentary history shows that no party has ever come close to such absolute power yet. Of course there hardly exist democracies with parties which have gained absolute power, but a proportional representation system with a lot of fragmentation requires more cooperation than for example majoritarian systems. Since the late 20th century political parties have only shrunk in both members and seats in parliament (Koole, Van Holsteyn & Elkink, 2000). There have been some exceptions, but these have always proven to be outliers that were short-lived. These developments have resulted in a parliament which consists of increasingly more fractions that are increasingly smaller. The political arena widens with the accession of new parties, resulting in the decrease of the factual power of individual political parties. These developments provide a very practical explanation for the consensus-oriented politics.

A historical explanation lies in the pillarization. Until the late 20th century the Netherlands was divided in four 'pillars': Catholics, Protestants, Socialists and Liberals (Spiecker & Steutel, 2001, p. 293 – 300). These pillars were basically social 'bubbles' with their own institutions such as newspapers, labour unions, broadcasting channels and political parties. Because there were such strong divisions it became important to get all the different pillars on board with political decisions. This has caused the origination of the Dutch consensus-oriented model. Institutions such as the Social Economic Council and Labour Foundation have arisen for the mere sake of generating sufficient support among the different societal fractions. Even though the pillarization eventually faded away, the political culture of consensus-making remained.

Now that the backdrop is clear, it is time to shift to a thorough explanation of neocorporatism in the Netherlands. Neocorporatism exists in various ways and forms in the Netherlands. There is a variety of literature on neocorporatism available – which will be discussed later – but we now distinguish two dimensions of the practice. The first dimension is the objective of neocorporatism: What is the decision-making directed at? The Dutch variant concerns two objectives: policy and legislation. The procedure with regard to legislation is quite straightforward. The (demand to) incorporation is part of the legislative procedure. The request for incorporation could come from the executive branch of government but also from parliament, there is no formal criterium. Important to recollect is that every piece of legislation

eventually ends up in parliament, meaning that parliament has the final voice in whether it will be adopted. An example of this kind of incorporation is the legislation concerning pension policy, in which labour unions and employers' representatives were incorporated. Neocorporatism regarding policy is a little different. Shaping and implementing policy frequently falls within the competency of the executive branch of government. The decision on whether to incorporate therefore automatically falls within the jurisdiction of ministries. This makes it much more difficult to evaluate the merits of the incorporation. Why organizations are incorporated, and which organizations are incorporated is often not transparent.

The other distinction which could be made is the degree of formality. The distinction used in this argument descends from Christiansen and Rommetvedt (1999, p. 196) who describe formal neocorporatism as the opposite of lobbyism; they are both ends of a continuum. Lobbyism is very informal and neocorporatism is very formal/institutionalized. I however would like to focus on another contrast within the continuum: the one between formal and informal neocorporatism. Formal neocorporatism is the institutionally rooted neocorporatism such as the one which occurs in institutions as the Social-Economic Council I previously described. These institutions are enshrined in the Dutch law. Informal neocorporatism resembles incorporation regarding policy to the extent that both are much less transparent and frequently occur as a result of relatively high degrees of discretion on the executive level. It is important to stress that parliament is not by definition involved in informal neocorporatism. The initiative for neocorporatism lies with the executive branch of government and regularly only reaches parliament in case it requires legislation. It is very well possible that the government reaches an agreement with organized interest on a particular policy without a significant role for parliament. The present argument focuses on all four variants, but the implications are most severe regarding informal neocorporatism.

Now the nature and context of neocorporatism are clear, it is time to shift to the normative aspect: why is neocorporatism problematic? In a classic conception of democracy the key actors are parliament, the executive branch of government and the judiciary. The primacy lies with parliament and the government is concerned with the implementation. Cases such as neocorporatism are difficult to characterize within the classical conception of democracy. Democracy is built on several fundamental principles (among which fair elections and equal access and participation) to ultimately serve the interest of the people of a state/country. Neocorporatism is frequently considered an instrument to strengthen democracy; decision-making could benefit from widespread involvement and support and could ultimately improve democracy. This is the rationale behind Dutch neocorporatism as well. Support among

key stakeholders frequently contributes to additional political and societal support as well. The normative implications of the increasingly important role of organized interests are fascinating. The joining of organized interests influences the relation between the executive branch of government and parliament – one has gained power at the expense of the other. The exact way in which that relation manifests itself and what normative implication results from it is what I will discuss in this research.

Is it morally legitimate to incorporate organized interest in decision-making processes from a proceduralist position? The position I attempt to defend is that incorporating organized interest could jeopardize the legitimacy of the democratic procedure, because it undermines the position of parliament – which represents the common good as well as the interests of all citizens – and is not in accordance with the foundational principles of democracy. A potential consequence of neocorporatism is that organized interests acquire an influential position, arguably an even more influential position than some elected politicians. Even though the mandate of organized interest is much smaller than the mandate of politicians who represent the general will in a state.

Central concepts

In determining whether neocorporatism undermines the democratic legitimacy of decision-making, there are several concepts that need to be introduced. These concepts are neocorporatism, organized interest, democracy and proceduralism.

Neocorporatism

Neocorporatism is a practice that occurs in several democracies, but it may be predominantly present in the Netherlands. It is very common in the Netherlands and has been expanding in recent years. It started with involving labour unions and employers' organizations in socio-economic policies, but currently almost all sectors involve relevant stakeholders to determine the best policy with the most support.

The term 'neocorporatism' descends from 'corporatism' which Philippe Schmitter (1974, p. 86) defines as "a system of interest and/or attitude representation, a particular modal or ideal-typical institutional arrangement for linking the associationally organized interests of civil society with the decisional structures of the state". Both Christiansen and Rommetvedt (1999, p. 196 – 197) and Lijphart and Crepaz (1991, p. 235) refine the definition of Schmitter. They make a distinction between two kinds of relations between organized interests and state actors: corporatism and lobbyism. Lobbyism occurs when "relations between organized interests and public authorities are mostly informal, ad hoc based and the degree of institutionalization is low" (Christiansen & Rommetvedt, 1999, p. 196). Neocorporatism is defined as "incorporation of organized interest into the process of policy formation and implementation" (Christiansen & Rommetvedt, 1999,p. 196). This is the definition that forms the basis of my argumentation.

Christiansen and Rommetvedt (1999,p. 196) describe neocorporatism and lobbyism as "two ends of a continuum", meaning that there are fewer absolute variants of both. The present discussion mainly focuses on neocorporatism, therefore, I do not elaborate further on the concept of lobbyism. I however would like to distinguish two variants of neocorporatism: the institutionalized and structured variant and a more informal variant which resembles lobbyism somewhat. Institutionalized neocorporatism means that organized interest is represented in public bodies that influence policy, this is exactly the kind of neocorporatism Christiansen and Rommetvedt (1999,p. 196) describe. Dutch examples are the post-World War II institutions such as the Dutch Social Economic Council and the Labour Foundation. These institutions resemble the Scandinavian committees and bodies, which Christiansen and Rommetvedt (1999,

p. 196 – 198) describe as administrative corporatism. The second variant has a lower degree of institutionalization. It is not a variant Christiansen and Rommetvedt explicitly distinguish, it however fits their description of a continuum between lobbyism and corporatism. There exists a degree of incorporation in the Netherlands which is not as formal as the description provided by Christiansen and Rommetvedt, but is grounded in structures "set up by the authorities" (frequently government) and eventually results in "de facto authoritative decisions for the incorporated party as a result of negotiations with government." I would like to call this practice "informal neocorporatism". Incorporation in this case is not built on a long tradition but has more pragmatic causes; it just appears to be expedient to incorporate key stakeholders in decision-making. An example of the second variant is the incorporation of organizations regarding the Dutch Climate Agreement; lots of stakeholders have been involved in decision-making. Several organizations eventually supported the outcome, others not. Both variants are relevant for the present discussion; they have different implications, but both illustrate the phenomenon central in the present discussion.

Organized interest

To prevent confusion or lack of clarity, it is important to clearly state what I consider to be organized interest. For the lack of a better term I use "organized interest"' to address the collection of organizations of civil society that practice some sort of advocacy. To cover the entire scope of advocacy organizations, I rely on the characterization of representative organizations as illustrated in Philip Parvin's (2007) argument on the legitimacy of lobbying. According to Parvin (2007, p. 10 – 17) 'organized interest' does not only refer to NGO's or single-issue advocacy organizations. He distinguishes several categories of organizations in the advocacy business: companies, charities, interest groups, trade unions, trade associations and professional bodies. Everyone who is united to represent the collective interest of a particular group or sector will be considered organized interest in this thesis.

Although there are various differences between lobbying and incorporating organized interest, both are similar in relevant respects. Both concepts describe the relation between state officials and organized interest; the relation between policymakers and those who want to influence policies. It could be debated whether the scope of organizations which qualify to be incorporated is larger or smaller than the scope of organizations which are in the lobbying-business. Lobbying frequently requires a lot of resources (both financial and personal), incorporation not necessarily because the initiative to incorporation does not lie with the

organized interest but with the government. It could therefore be argued that even less resourceful organizations could qualify to be incorporated, which would increase the scope of organizations compared to lobbying. On the other hand, it could be argued that because the involvement and influence of organizations which are incorporated is much greater, the scope of organizations which qualify is smaller. Government might put the bar for incorporation higher; only credible and trusted organizations are allowed that much influence, resulting in only allowing "insider groups" which are considered to be legitimate spokespersons for issues to be incorporated (Grant, 2004, p. 408 – 411).

Because this does not touch on the main aspect of the key argument in the present discussion, from now on it will just be assumed that the scope of the organizations that engage in both practices is similar. Organizations which attempt to influence policy will try that in as many ways possible, so it is likely that those are the organizations which are eligible to be incorporated too.

Democracy

The notion of democracy is very important in the present discussion. Even though democracy evokes many associations, there is not one uniform definition of democracy. Therefore, I base my definition of democracy on some of the most prominent accounts of democracy. This section is aimed to illustrate several aspects of democracy: the key characteristics of Dutch democracy, the relation between individuals and democratic institutions, the scope of democracy and the notion of equality.

Because the argument focuses on a practice occurring in the Netherlands, it is important to elaborate on the type of democracy the Netherlands are. The most prominent characteristic of Dutch democracy is that it is a parliamentary democracy with proportional representation (Bale, 2013, 330 – 331). Meaning, that the Netherlands are governed by a parliamentary coalition consisting of several political parties. The executive branch of government is staffed with officials from the parties the coalition consists of. There are dozens of definitions of representative democracy, but I will use a quite straightforward definition by Urbinati (2006, p. 18): "legislators (or decision-makers) who are legitimated or authorized to enact public policies, and who are subject or responsible to public control at free elections." The evaluation of neocorporatism as presented here, heavily relies on both the legitimacy of parliament and the relation between citizens and public bodies. This definition contains all these aspects and clearly illustrates the preconditions for legitimate authority of parliament.

There is however one important aspect absent in Urbinati's definition, the notion of equal participation and equal access. This is a characteristic Thomas Christiano (2008, p. 95 – 96) highlights, he states: "when these facts and interests are acknowledged we see that the only way to advance the interests of persons equally in a way that each can plausibly see to be treating him or her as an equal is to give each an equal say (within a limited scope) over how the common world is to be shaped." In essence, Christiano argues that the goal of a democracy is pursuing the common good and justice for all. However, everybody who is subject to democracy has different conceptions of how to pursue the common good, frequently driven by personal interests. The personal stakes in how the common good is shaped are equal for everyone as well, because everyone who is a citizen is affected by the rules in a particular democracy. Christiano draws the conclusion that because there is no universal view on how to pursue the common good, the only way to take the different conceptions and stakes into consideration is to grant everyone an equal degree of participation. The governing system that can secure this principle best is a representative democracy (Christiano, 2008, p. 105 – 106). He claims that there is some sort of division of tasks in a state: citizens are responsible for instructing the direction a society moves towards, while legislators are responsible for pursuing the chosen direction. Direct democracy would not be a preferable because it conflicts with this division, citizens would in that case be charged with both tasks.

With regard to the notion of common good, Christiano builds on the insights of the French philosopher Jean-Jacques Rousseau who adheres to social contract theory. He has provided some of the most fundamental insights regarding the relation between common good and private interest. In essence, Rousseau (1923, p. 15 – 17) argues that people should unite their powers to provide a foundation for a public body which prevents a state of nature from occurring and has the ability to pursue the general will: "Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity we receive each member as an indivisible part of the whole." This would result in a state in which people have liberties they would not have in a state of nature (Rousseau, 1923, p. 18). The relevance of the social contract lies in what the public body that arises from it pursues. The public body – or sovereign – only serves the common good and has no potentially conflicting particular interests, because it is "formed wholly of the individuals who compose it (Rousseau, 1923, p. 17)". However, this does not mean that the common good which is pursued is just the sum of particular interests (Rousseau, 1923, p. 15, 22). According to Rousseau (1923, p. 14 - 16), individual citizens must act on behalf of the common good too. Putting individual liberties at the service of the common good provides the foundation for the sovereign to do the same.

He even goes a step further rejecting the influence of private interest in public matters at all: "Nothing is more dangerous than the influence of private interests in public affairs. (Rousseau, 1923, p. 58)". Private interests directly contradict the obligation formulated by Rousseau to act in spirit of the common good. As soon as private interest will be the factor by which people let themselves be guided, the foundation for popular sovereignty erodes.

Proceduralism

The central concept for my account on democratic legitimacy of neocorporatism is proceduralism. From an evaluative perspective, there are two accounts on democratic legitimacy: instrumentalism and proceduralism (Christiano, 2004, p. 1 – 3; Destri, 2020, p. 1 – 4). The former focuses on the outcome of a political process; the latter focuses on the procedure that leads to a particular policy.

The debate between proceduralism and instrumentalism is one between two monistic positions on the evaluation of democratic legitimacy. Both provide a framework to determine what makes a democracy legitimate; what is required to speak about justified authority for institutions. Instrumentalists reduce the question of legitimacy to the outcome of a procedure; as long as the outcome is correct according to the appropriate criteria which are independent of the procedure, so is the procedure. Proceduralists provide a contrasting framework; they base their judgement entirely on whether the procedure meets the requirements democratic decision-making should abide by. Proceduralists emphasize that it is important to follow all the relevant rules in order to reach a legitimate outcome. Christiano (2004, p. 3) explains proceduralism as "the procedurally defined authority is grounded in a property of the decision-maker and binds all persons who come under the jurisdiction of the decision-maker".

Against neocorporatism

As mentioned in the first section, the thesis statement I aim to defend is that incorporating organizations which represent key interests could harm democratic legitimacy from a proceduralist' point of view. Before I elaborate on the moral debate, I first outline the key principles my argument is grounded on. My account starts with the basic idea that democracy ought to serve the common good. This builds on Rousseau's (1923, p. 15 – 17) conception of the social contract: an agreement between all people in a state to combine their forces to provide a foundation for the sovereign to act in the spirit of the common good, guided by the general will. Only this contract is able to pursue the common good and "force people to be free" (Rousseau, 1923, p. 18). Rousseau is however not famous for advocating in favour of representative democracies, this is a point that is addressed later on. Partly because of this criticism on parliamentary democracies, the present argument is also built on a more contemporary definition of democracy. Nadia Urbinati connects the pursuit for the common good (as a result of the social contract) with representative democracy very well. Urbinati (2006, p. 18) defines democracy as: "legislators (or decision-makers) who are legitimated or authorized to enact public policies, and who are subject or responsible to public control at free elections."

This definition serves as the foundation for the present argument because it contains almost all relevant factors for the normative question at hand. By defining democracy in this manner, Urbinati implicitly illustrates democracy in proceduralists' terms. The definition almost exclusively contains aspects with regard to the decision-making-procedure, completely in accordance with the proceduralist tradition. Urbinati defines the actors, what legitimates them and what their competencies are. She does not engage in their duties or in what a democracy should result in. This fits the proceduralist account which regards the set of rules and procedures in a democracy intrinsically valuable (Destri, 2020, p. 3 – 4; Christiano, 2004, p. 11 – 12). Abiding by the rules is valuable not because of the nature of the rules but because of how they came about: as a result of a democratic process.

This illustrates the value of proceduralism and popular sovereignty for the present argument, the only aspect that needs to be added is equal access. Christiano (2004, p. 4) clearly described the value of equal access and its relation to the common good. He builds on the notion of common good as established by Rousseau ea. By explaining that even though pursuing the common good is in everyone's interest, the views on how to advance the common good are not unambiguously. He argues that the only way to bridge these differences is to grant everyone an equal opportunity to participate because all citizens are eventually subject to the state. Which

governing structure suits these values best is widely debated. Rousseau famously claims the common good is best secured by direct democracy while Christiano (2008, p. 105 – 106) argues that representative democracies are the best fit.

The present argument will not rely on this aspect of Rousseau's thoughts, Christiano's position fits the argument a lot better. Christiano (2008, p. 105 – 106) claims that citizens have different responsibilities towards society than legislators. Christiano distinguishes "defining the aims the society is to pursue" and the implementation of legislation. These are recognizable aspects of a democracy, they even resemble the division of powers as described by Montesquieu. Rousseau's argument for direct democracy seems in contradiction with his remarks on the interference of private interests in the common good. Direct democracy as described by Rousseau would assume that individual citizens would act in the spirit of the common good as well. This is however an aspect of Rousseau's beliefs I find implausible. The mere existence of organizations trying to influence public policy seems to prove that people occasionally are guided by private interests instead of the common good. Organized interest consist of individual citizens (and therefore private interests) as well. A direct democracy would result in a situation in which these citizens would be tasked with both instructing the direction of government policy as implementing it. A situation which could be considered questionable at least. It would cause a situation Rousseau (1923, p. 58) himself disapproves because "Nothing is more dangerous than the influence of private interests in public affairs".

Given these notions of democracy, I argue that every major democratic decision should have some democratic foundation, ensuring that both the common good and the principle of equal access will be taken into account. It is therefore inevitable to involve parliament in every major democratic decision. Otherwise, decision-making could be guided by private interests instead of the common good.

This brings me to the core of the argument: my critique of neocorporatism. My objection against neocorporatism from a proceduralist perspective is based on threefold grounds: it undermines the position of parliament, it generates an unequal playing field and creates a false sense of support.

Undermining parliament

The first argument builds on the principles I just illustrated. As I outlined in the previous section, the initiative to practice neocorporatism frequently lies with the executive branch of government. Christiansen and Rommetvedt (1999, p. 196 – 198) distinguish two different variants of neocorporatism: formal and informal neocorporatism. Even though both versions

have different normative implications, they both fit within the critical evaluation of neocorporatism as presented. The foremost version of neocorporatism in the Netherlands is the formalized and institutionalized variant. Institutions such as the Social Economic Council of the Netherlands (which consist of labour unions, employers' representatives and independent experts) or the Labour Foundation are closely involved in shaping almost every piece of socioeconomic legislation, because they have a legally enshrined competence. The second variant is what I referred to as "informal neocorporatism" in the literature review; incorporating organized interest without a formal foundation. Incorporation is considered to be valuable to enlarge support for a piece of legislation/policy among key stakeholders because it affects them more, this also increases the chance that the policy will be complied with.

The rationale of this practice could be characterized by the principle of affected interest as described by Robert Dahl (1990, p. 49 – 50). The essence of Dahl's (1990, p. 49 – 50) principle is: "Everyone who is affected by the decisions of a government should have the right to participate in that government." The principle goes back to the core of democracy: an exchange between participation (in decision-making) and acknowledging the legitimacy of the public body with the competence to interfere in your liberties. It even resembles the social contract as described by Rousseau (1923, p. 15 – 17); surrender individual powers to a sovereign which in exchange governs on behalf of all. Dahl questions to which extends this principle is applicable and whether it results in particular entitlements. He argues that the principle has limits, not everyone is for example equally affected by a decision. Even though the principle seems straightforward, Dahl (1990, p. 50-51) emphasizes that "[what affects] interest depends on subjective factors", meaning that it is hardly impossible to objectively determine who should be granted access based on the Principle of Affected Interest.

What the different variants of neocorporatism have in common, is that the initiative does not lie with parliament. Neocorporatism by definition entails that the government and organized interest cooperate to construct policy or legislation (Schmitter, 1979, p. 86 – 88; Christiansen & Rommetvedt, 1999, p. 196). "Government" in the Dutch case almost always means executive government; parliament frequently does not really have a say in the procedure. The procedure regularly looks like this: ministers incorporate organized interest in decision-making. As soon as consensus with the stakeholder is reached, the matter moves to parliament for approval – in case legislation is required. This occasionally results in a difficult position for parliament because they are not involved in the majority of the decision-making process between the executive branch of government and organized interest. Meaning that parliament in fact does not really have the opportunity to practice their co-legislative responsibility. Parliament is only

able to judge the consensus which is reached as a result of an intensive negotiation with broad support one cannot really oversee. Rejecting extensively negotiated compromises is not easy for parliament, therefore absolute rejections by parliament in the recent past are rare. An interview with Klaas Dijkhoff (Telegraaf, 2018) – the leader of the Dutch conservative party in parliament – illustrated the tension between the procedure and the mandate of parliament very well. After the government presented a climate agreement which had been negotiated with more than 100 parties to parliament, Dijkhoff argued that he had no obligation to respect the agreement because parliament was not involved in the agreement. This caused a lot of indignation because it contrasted with Dutch political tradition. Even these remarks have not yet led to absolute rejection of the climate agreement by parliament.

This role of parliament causes doubt from a moral perspective. We however have to differentiate between the two variants of neocorporatism because the normative implications are not the same. The most prominent critique applies to informal neocorporatism. The formal variant has a legally enshrined basis, meaning that parliament previously agreed with the decision-making procedure. Parliament is equally able to interfere legislatively as soon as they judge that the method no longer serves the initial goal. There however occurs some sort of tension with regard to informal neocorporatism. There is of course the obvious criticism from the proceduralist' corner, that such practices entail a deviation from the appropriate procedures because of the informal character.

A more fundamental objection is grounded in the value of popular sovereignty. As Rousseau (1923, p. 14 – 15) stated, a social contract exists to provide the foundation for a public body advocating for the common good, guided by the general will. Urbinati (2006, p. 18) subsequently argued that the public body which is tasked with advocating for the common good is parliament. The common good is not what the incorporated organized interests are guided by. These organizations focus on advocating for the interests of their constituencies. As previously mentioned, these are regularly partial interests, for example: the interests of the agriculture sector, employers or the fossil fuel-sector. That does not mean that those interests are irrelevant, they are just not aimed at pursuing the common good. A democratic decision-making-procedure should therefore always ensure a prominent place for parliament. Informal neocorporatism however leaves too much discretion to the government, resulting in a weakened position of parliament, because of the informal character. This could jeopardizes the primacy of parliament because it lacks adequate representation of the common good in decision-making.

Generate an unequal playing field

The second critique on incorporating organized interest deals with the principle of equal access to participation in democratic decision-making. This argument builds on the premise that a healthy democracy values the principle of equal access. The principle as described by Christiano (2008, p. 4 – 5) is pretty straightforward. He argues that everyone has an interest in how a state advances the common good because everyone within a state is subject to the decision-making of the state. Because the conceptions on how the common good should be achieved differ, everyone should be entitled to participate in the decision-making equally. By the incorporation of some or single organized interest other organized interest is automatically excluded. This appears to contradict the principle of equal access as described by Christiano.

The debate on what legitimates privileges for organizations from an equal access-perspective is actually similar to the moral debate on lobbying. Basically all the critique on lobbying – which is partly applicable to neocorporatism – could be reduced to just one question: who gets a seat at the table and why? This does not mean that incorporating organized interest has the same moral status as lobbying. What both practices have in common is a lack of transparency on why organizations get a seat at the table – which is often highly beneficial. That said, there are differences in the level of transparency and the carefulness of the selection of organizations. An important factor which contributes to the decision which organizations will be incorporated is the institutional environment of the policy.

There are Dutch departments who frequently work with the same organizations and have solid and institutional reasons for the incorporation. Examples of organizations with these 'safe seats' are the organizations which are part of the formal/institutional neocorporatism, such as the previously mentioned Social Economic Council of the Netherlands and Labour Foundation (Christiansen & Rommetvedt, 1999, p. 196 – 198; Parvin, 2007, p. 31). The labour unions and employers' representatives are almost always invited to contribute to the shaping of policies. The strong position originates from a historical development; labour unions and employers' representatives were very important in Dutch civil society during the pillarization[1]. These organizations could be considered "insider groups", as defined by Wyn Grant (2004, p. 408 – 411): "legitimate spokespersons for particular interests or causes".

There however are numerous examples of Dutch neocorporatism without institutional

[1]A divided society (liberals, social democrats, Catholics and protestants) resulted in a huge fragmented civil society as well. To reach a politically valuable agreement in this fragmented society, consent of the civil society was required. Therefore the influence of labour unions and representatives of the Dutch industry has increased and remained.

roots. Examples are more day-to-day issues such as constructing policy with regards to nitrogen emission. Organizations which are largely responsible for – or affected by – the emission such as the construction, infrastructure or aviation sector are in such cases incorporated. Sometimes the selection of incorporated organizations is obvious, but it could be much less transparent in case it happens ad hoc. Therefore it is difficult to reconstruct/understand how organizations get a seat at the table. Even though it depends on various aspects, what can be noted is that there seem to be differences between the frequency of incorporation in ministries. With regards to the interests and positions of the various incorporated organizations there seem to be great differences. Organizations which fiercely opposed government positions have as well been incorporated as organizations which supported the government. Based on the previous description, we need to establish if there are grounds on which organizations are legitimately entitled to a privileged position in a particular decision-making procedure. For the present discussion we will explore two potential grounds: the degree of affectedness and the nature of the organizations.

The Principle of Affected Interest as introduced by Dahl (1990, p. 49 – 51) is frequently cited as a ground for incorporation. The principle briefly entails: "Everyone who is affected by the decisions of a government should have the right to participate in that government." This would mean that incorporation could be legitimized because of excessive affect. The weakness of this theory however is that there are no real objective factors to determine affectedness (Dahl, 1990, p. 51; Goodin, 2007, p 41 – 43). With regard to the scope of decision-making – the demos – Robert Goodin (2007, p. 43 – 45) lays out his own normative account. He states that it is hardly impossible to determine the 'original demos' because democratic-decision-making would be required to determine the exact demos. That would cause a circular argument because it would be impossible to determine the demos of who is entitled to participate in the decision-making on the demos. One of the central notions of Goodin's (2007, p. 48 – 49) account is that the demos should be constructed by people whose behaviour affects each other. *This however still doesn't solve the issue of the subjective character of affectedness*, affectedness could still be interpreted in various ways. Ultimately, Goodin (2007, p. 53 – 54) presents the "all possibly affected interest-principle". By utilizing a broader scope of the demos than usual, Goodin (2007, p. 53) prevents that the demos "implicitly takes the status quo as a baseline, and supposes that your interests are affected by a decision if and only if the decision alters your position from that."

A similar argument could be applied to the question of incorporation. It is impossible to establish which organizations are really affected by particular decision-making and which are

not. Some organizations might be clearly affected but what about more distant affectedness? Is it realistic to vary in degrees of affectedness and what would that mean? Based on the argumentation of Goodin, a widened demos is the solution but that would result in the incorporation of every organization which is even distantly related to particular decision-making.

It has remained unclear what disproportionate affectedness really entails, or which rights can be derived from it. Incorporation is a far-reaching tool in justifying affectedness. It is far-reaching because it also interferes in the liberties of other organized interests because they are being surpassed. Putting organizations in a position to give consent is so far-reaching that it can hardly be legitimized for private interests. This touches on the competence of elected officials representing the common good, not for private interests which have other aims. There however is one exception conceivable – incorporation could be legitimized when parliament decides to formally enshrine a decision-making procedure containing incorporation. In this case the incorporation would be evaluated with the common good taken into account. For all other cases there should be various ways for affected parties to be involved in decision-making without transforming private advocacy groups to co-legislators. Consultation is an example to ensure equal access. It could also be debated in which phase of the decision-making equal access should be granted. In his account on (the division of labour in) representative democracy Christiano (2004, p. 104 – 105) distinguishes between defining the aims of a democracy and the implementation. It could very well be questioned why equal access should be granted with regard to the implementation. The implementation should logically follow from the defined aims. Perhaps advocacy organizations should focus their efforts on parliament instead of government.

Create a false sense of support

The third moral risk with regard to neocorporatism I would like to raise, is the notion of a false sense of support. The reason for ministries to incorporate organizations is simple: involving key stakeholders in shaping policy or legislation could result in more support both within and outside the base of the incorporated organizations. What I would like to question is whether incorporating particular organized interest really provides additional support. It is seriously questionable whether these organizations provide support which is additional to the parliamentary support. Even though these organizations have quite some members, there is a public institution available which could provide more support than any interest group could provide: parliament. The mandate elected representatives gain is much larger and should not be

underestimated or set aside too quickly. As I emphasized in the previous paragraphs, parliament should not be surpassed too easily because it is the sole (public) body representing the common good.

Then what is the additional value of incorporation? This brings us to the subject of the composition of the constituencies of incorporated organized interest. Organizations could have an impressively large base, it is however important to zoom in on these bases for a moment. A remarkable observation is that constituencies of organized interest frequently do not cover the entire population the policy affects. The clearest examples are labour unions. Even though they in total have approximately a million members in the Netherlands, the majority of the members is over 50 and has very clear interests in particular policies (such as pension policy). These interests however differ from the interests of the entire population. It must be stressed that all organized interest as defined by Parvin (2007, p. 10 – 31) to some degree represents private interests. Meaning that no exclusive rights can be derived from that perspective. Even if organizations have large bases, they ultimately serve their constituencies, not the public in a broader sense. This makes organized interests nothing more than the private interests which Rousseau (1923, p. 58) considers to be dangerous for the common good. This is what makes the incorporation an example of a false sense of support. Particular organizations appear to represent the whole population, but in fact do not. Therefore, the decision on whether – and which – organized interest should be involved must be thoroughly weighted against the extent to which their constituents reflect the population. The common good must not be clouded by the interference of private interest. This is where a tension occurs between the principle of affected interest and the conception of democracy as an equally accessible system; if the constituents of organized interests do not reflect the population as well as elected representatives, is it rightful for them to be incorporated because they are affected more? The dilemma lies in what principle should prevail, the pursuing of the common good and equality of access or the notion of affectedness.

This dilemma with regard to affectedness is an example of what Dahl (1990, p. 49) calls the subjectiveness of the Principle of Affected Interest. It is very probable that these organizations have bases which are clearly affected by the policy, but they are not the only ones affected. As Goodin (2007, p 41 – 43) points out, affectedness is very subjective. If we for example assume that everyone over 50 is a member of a labour union (which is not the case), that still does not entitle labour unions to act as co-legislators with regard to pension policy. Goodin (2007, 53 – 54) emphasizes that the scope of the "demos" frequently is perceived to be too narrow. People who are more indirectly involved are commonly overlooked. If we apply

that observation to the example, all the younger people are overlooked, even though they are definitely affected by pension policy, maybe less immediate but still affected. This actually fits the distinction Rousseau (1923, p. 15 – 18) makes between common good and private interest very well.

If labour unions imaginarily would represent all citizens in a state, they would measure up to Goodin's (2007, 53 – 54) everyone potentially affected-principle. In that case it might have been justifiable to put labour unions in a powerful position because they no longer represent just a private interest, they would then represent the common interest regarding pension policy. Currently, they however are just advocates for private interests, meaning that there are other private interests which just as well deserve similar representation because they have a comparable entitlement because they too are part of the demos. Incorporation however would infringe with this notion of equality grounded in the demos because it favours certain private interests under the illusion that they represent the common good for a particular group. Even though "Nothing is more dangerous than the influence of private interests in public affairs …" according to Rousseau (1923, p. 58). Ultimately, neocorporatism could attenuate the position of parliament on behalf of organized interest. This shift could harm the aim of democracy, serving the common good as good as possible.

Legitimizing neocorporatism

There are certainly several objections to the thesis that incorporating interest groups decreases the legitimacy of the decision-making procedure. In this section, I will distinguish three sorts of objections: the support argument, the specialization argument and a theoretical argument on political legitimacy.

Support and affectedness

The most obvious objection to my critical evaluation of neocorporatism is that it is justifiable to incorporate key stakeholders because their constituencies could increase the support among parties which are affected by the policy. In essence, this objection is the underlying argument for the Dutch government to practice neocorporatism. The Netherlands with their proportional representation-system are a fragmented country politically. As previously addressed, this fragmentation is partly caused by the pillarization in the 20th century. These divisions have caused the emergence of numerous advocacy organizations for all sorts of interest. To bridge these differences a tendency toward cooperation and consensus has occurred in Dutch political decision-making. The support for policy or legislation increases by incorporating the relevant organized interests. Because particular organized interests could be considered "legitimate spokespersons" for particular interests, their support could contribute to both societal and political support for the policy/legislation (Grant, 2004, p. 408 – 411). In addition, organized interest could have a role in implementing the policy as well, this makes support even more desirable. This argument touches on what Robert Dahl (1990, p. 49 – 51) calls "The Principle of Affected Interests". Meaning, that "Everyone who is affected by the decisions of a government should have the right to participate in that government (decision-making) (Dahl, 1990, p. 49)." It is one of the most fundamental exchanges in democracies: the one between the right to participate and recognizing the state to exercise its authority against you. This exchange would legitimize the incorporation from a support perspective because these organizations eventually are subject

My rebuttal to this argument consists of three components: questioning the premise, questioning the scope of affectedness and rebutting the entitlement. The weakness of the premise of the objection is that it assumes that approval from the constituencies of organized interest in fact enlarges the legitimacy of the policy. It is however doubtful whether organizations representing particular interests in fact provide additional support. Even though a lot of these organizations have large constituencies, it is seriously questionable whether these

constituencies also reflect the (diversity of the) population in their sector as well as parliament does. Lots of representative organizations have a base with an overrepresentation of people who have an interest that differs from the interest of the population. I already mentioned the relatively old constituents of labour unions, but the same goes for representatives in the agricultural sector, only companies with a particular interest support such organizations. That raises the question whether the support for legislation would in fact increase by incorporating various organizations instead of just gaining the support of the majority of parliament?

In addition, there is the question on the scope of affectedness. If the degree of affectedness is crucial in determining which organizations are incorporated, it raises the question of how affectedness could be established. One of the most important notions with regard to affectedness is that it is not absolute. Dahl (1990, p. 49) introduces this notion by describing that no immediate rights can be derived from indirect affectedness. Meaning that the mere sake that something is financed with taxpayers' money does not immediately mean that everyone who pays taxes is affected by it. This still does not really provide an insight in the scope of affectedness. Goodin (2007, p. 44 – 45) provides an interesting argument with regards to debate on whether the demos could cross borders. He argues that it is very difficult to constitute the demos for particular decision-making. The only way to do just in this case would be to constitute the demos based on democratic decision-making as well. This however raises a problem because the same issue occurs in determining the demos in the decision-making on the demos. To prevent this, Goodin (2007, p. 50 – 53) argues that everyone potentially affected should be part of the demos to avoid favouring the status quo. This is an interesting point which is to some extent applicable to incorporation as well. Goodin basically argues to widen the demos because potentially affected parties should be taken into consideration as well. Incorporation however uses an opposing logic: very affected parties are incorporated while less affected parties are neglected. This overlooks the interests of less prominent (affected) organized interests, even though it could be argued that these interests are just as important, both are affected, and both represent private interests.

Perhaps the most prominent rebuttal to be made considers the rights that can be derived from affectedness. Throughout the present discussion, the notion of affectedness has been used to justify incorporation. What is frequently overlooked is what this entitlement is based on. Both Goodin (2007 p. 51) and Dahl (1990, p. 51) acknowledge that the issue with the notion of affectedness is that it justifies it for organizations to participate but does not set out the nature of the participation. Sure, incorporation is a form of participation, but it is the most severe one. As previously mentioned, there are less far-reaching forms of participation such as consultation,

lobbying or even focussing on non-implementing parts of government such as parliament. Incorporation is a too heavy instrument when weighting affectedness against equal access given the nature of the organizations. None of the organized interests incorporated represent the common good, they all are advocates of the private interests of their constituents. The amount of incorporated organizations is frequently limited, meaning that the incorporation of some organizations often results in the exclusion of other organizations just as well affected. Incorporation is not an entitlement resulting from being affected and in addition is undesirable from an equality of access-perspective as well.

Better policy because of neocorporatism?

A second objection to my argument might be that including relevant stakeholders in policy processes does not just generate additional support, it could also contribute to better policy. This is the most basic version of the debate on democratic legitimacy between proceduralism and instrumentalism. Because I explicitly side with the proceduralist' account of democratic legitimacy, an obvious objection could be made from an instrumentalist perspective. Instrumentalists would question what is wrong with the incorporation of organizations which provide some sort of relevant specialism with regard to the policy and therefore are able to contribute to better policy. It is fairly possible that the perspective of people who experience the consequences of a policy has additional value. There could be aspects of a certain policy that do not appear obvious to someone who does not find him- or herself in the practice. Therefore, the experience and expertise of the key stakeholders could contribute to better quality of legislation.

There are two ways to counter this objection: one is acknowledging the underlying premise, the other is denying the premise. I start with the former, because I partly agree that it is a possibility that the expertise of incorporated organizations could result in better policy. Even if that is the case, it does not immediately legitimize the incorporation of organized interest. What should be kept in mind is that the aim of organized interest is not the same as the aim of democracy: the former serves the private interest of its constituents, the latter serves the public interest. The different aims do not by definition mean that it is impossible to improve decision-making. It could be argued that advocates of a particular private interest could still improve the common good in case that particular interest has so far been overlooked in the decision-making. What should be kept in mind, is that organized interests are not interested in weighting private interests with the common good. It is however crucial for a well-functioning

democracy to prevent the common good to be clouded by private interests. If it is really the case that private interests could in fact contribute to the common good, the appropriate body (representing the common good) should weigh against each other (Christiano, 2008, p. 105 – 106). Incorporation – in particular on imitative of the executive branch of government – is too rigorous because the judgement on whether a private interest could contribute to the common good frequently depends on the entire decision-making procedure, not just the nature of the organization. It is hardly impossible to predict the behaviour of organized interests – just as any actor – in a decision-making procedure, as soon as the decision to incorporate has been taken, there is no way back.

The rebuttal without acknowledging the premise is a lot more uncluttered. From a proceduralist' account, the moral judgement on outcome and procedure need to be separated. The purest interpretation of proceduralism would entail that the outcome has no relevance at all. Even if the outcome of a flawed democratic procedure is remarkable, proceduralists would still disapprove. A thorough procedure is the highest achievable from a democratic legitimacy-perspective for a proceduralist, the consequences for the outcome are not really important. From a procedural perspective neocorporatism could at least be considered flawed. It both undermines the primacy of elected officials in parliament and without a democratic basis. As previously explained, it is hardly impossible for parliament to control, oversee and possibly intervene in the process of neocorporatism, in particular with regard to informal neocorporatism (about policy). This is an aspect which is less problematic in the case of formal neocorporatism because it ultimately requires the approval of parliament (Christiansen & Rommedtveld, 1999, p. 196).

The final judgement on the decision-making should remain with those advocating the common good. Incorporation – disguised co-legislation – would make organized interest equally responsible for the common good, even though that is not their objective. From a proceduralist perspective the case for neocorporatism is still not clear. If improving the quality of legislation is the aim – which is not proceduralists' concern – then what is the necessity of the incorporation of organized interest? As previously mentioned, there are other ways to improve legislation compromising the political equality of citizens. Non-committing consultation of organized interests is from a proceduralist account a lot less problematic because it does not put organized interest in a disproportionately powerful position and has a much smaller impact on the relationship between parliament and government.

A contrary solution would be to institutionalize the incorporation of organized interest, this would mean that informal neocorporatism totally vanishes. Institutionalization requires a

parliamentary mandate, meaning that parliament has the opportunity to dictate the terms for all variants of incorporation. This makes it harder to surpass parliament easily and if this occurs, it is a result from the terms dictated by parliament itself. Formal embeddedness in democratic structures would increase the legitimacy of neocorporatism. The legitimacy would increase because parliament – the body representing the common good (Christiano, 2008, p. 105 – 106) – has the ability to legally enshrine their own position in neocorporatistic decision-making. Even when the legally enshrined competence is not perfect or flawed, parliament still has approved neocorporatism. This would prevent the current situation regarding neocorporatism in which the only interest which is not advocated for is the common interest .

Conclusion

There are a few concluding remarks that need to be made. Democracy is the institution which is perfectly fit to structure modern society and pursue the common good. Thomas Christiano (2008, p. 105 – 106) has described the relation between the idea of common good – as introduced by Rousseau – and representative democracy very well. In a parliamentary democracy such as the Netherlands, the common good is being pursued by the body representing all citizens, parliament. Throughout this article I defended the proceduralist account of democratic legitimacy as illustrated by Christiano (2004, p. 1 – 3); democratic procedures are sacred and should always be abided by. Exceptions could only occur when the democratic procedures are respected.

Neocorporatism – the incorporation of organized interest in political decision-making – is a procedure predominantly present in Dutch political culture. In a historically fragmented country as the Netherlands, the existence of neocorporatism descends from the desire to generate support of organizations which are particularly affected by political decision-making. From a procedural point of view, neocorporatism could harm democratic legitimacy. Obviously, because the degree of formality of the procedure differs a lot, but perhaps even more because the involvement of parliament is limited, and the discretion of executive government is high. This results in a disrupted power balance; the power of parliament decreases, the power of executive government increases and the power of organized interests skyrockets.

Morally, the tension lies in the conflict between the Principle of Affected Interest and the principle of equal access to democracy. Incorporation seems to be justified by a version of the principle of affectedness (Dahl, 1990, p. 51; Goodin, 2007, p 41 – 43). The rationale of this principle is that those who are affected disproportionately deserve to participate additionally in decision-making. Gaining support from organized interests affected most, could enlarge the support for decision-making because organizations which are considered to be legitimate spokespersons agree (Grant, 2004, p. 408 – 411). This logic causes two fundamental objections. It can be seriously questioned whether incorporation is justifiable from an equal access-perspective. There are numerous organizations affected by decision-making on different levels. Incorporation however regularly means including some of these organizations and excluding others, even though the principle of affected interests does not engage in the entitlement of affected parties. This seems to contradict the principle of equal access.

A second objection goes back to the aim of a democracy: serving the common good, the guideline of all political actions. The common good can almost exclusively be represented by a public body emerging as a result from a social contract (Rousseau, 1923, p. 15). Parliament is the sole body which has that competence in the Netherlands (Christiano, 2008, p. 105 – 106). Organized interests regardless of their nature always represent another interest, the interest of their constituents. The common good may be harmed when such advocates of private interests are put in a position as disguised co-legislators. The only body which is able to weigh whether particular private interests are able to contribute to pursuing the common good is parliament, incorporation however prevents this thorough consideration.

There are two solutions to enlarge the legitimacy of the current neocorporatism. Institutionalize all neocorporatism and let parliament clearly dictate the terms of the decision-making procedure and its own position. The alternative would be to abolish all incorporation and use less far-reaching measures of involvement such as consultation in which all organized interest are provided with the same degree of access. Everything in between just muddies the water.

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