

## HEGEL ON CIVIL SOCIETY

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The present paper addresses the political thought of the German philosopher Georg Wilhelm Friedrich Hegel (1770–1831). The specific focus of attention lies with the account that Hegel provided as to a subject-matter that has in recent decades gained much prominence within the social and political sciences. The subject at issue is civil society, and with this being understood, as Hegel himself thought of it, as a form of human association that is to be considered as distinct from, but albeit closely inter-connected with, the state. In the first part of the paper, there are set out the main elements of the conception of the state, as Hegel expounded this, and of the modes of human existence that he saw as presupposed by, and as having priority to, the state, and with the main emphasis being on the view that he took of the sphere of civil society. In the second part, it is explained how the conceptualization of civil society presented by Hegel was to be departed from by writers and commentators who came after him. The particular respect in which such departures are here taken to have been crucial is the dissociation of civil society from economic factors and considerations. This, it is argued, is in opposition to Hegel, who conceived of civil society in terms where it was intimately bound up with the economic activities and engagements of the individuals and organizations associated within it, and with these activities and engagements taking place in broad accordance with the basic principles of the market economic order. In this connection, the merits of Hegel and his sense of civil society are pointed to and underlined. In the discussion of Hegel that forms the substance of the argument of the paper, the work of his that is singled out for close critical examination is his best known treatise in political philosophy: the *Elements of the Philosophy of Right* (1821).<sup>1</sup>

### i. Hegel: Civil Society and the State

Hegel is notable as a political theorist in the respect that he is to be read as marking the culmination, as well as the final stage in sophistication, of the continuous process of reflection on the essential principles of the modern state that began in Europe during the sixteenth and seventeenth centuries. The line of thinkers who carried forward this process of reflecting on the state included Machiavelli, Bodin, Grotius, Hobbes, Pufendorf, Locke, Spinoza, Rousseau and Kant. The form of the state as thus theorized was, in its fundamentals, the state considered as a sovereign institutional entity and as based in a constitutional order embodying the principles of the rule of law and representative government, and through which the sovereignty belonging to the state was expressed and organized. As for Hegel, the major contribution that he made to the proper understanding of the state lay with the distinctions that he drew and developed in the *Philosophy of Right* as between the family, civil society and the state as particular forms of political association.

The starting-point for Hegel, as in his discussion of the family, civil society and the state, came with the specification that he set out in the *Philosophy of Right* of certain first-order principles of justice or right that belonged to the category of what he called abstract right. The principles of abstract right applied to individual persons thought

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1 G.W.F. Hegel, *Elements of the Philosophy of Right*, trans. H.B. Nisbet, ed. Allen W. Wood (Cambridge: Cambridge University Press, 1991). On Hegel's political thought, see: Shlomo Avineri, *Hegel's Theory of the Modern State* (Cambridge: Cambridge University Press, 1972). See also Charles Taylor, *Hegel* (Cambridge: Cambridge University Press, 1975), Part 4, and his *Hegel and Modern Society* (Cambridge: Cambridge University Press, 1979).

of as the bearers of formal, or arbitrary, freedom, and, in their aspect as normative principles so conceived, they presupposed and had reference to the body of private rights as bound up with individual personality. The private rights that Hegel treated of featured, centrally, the rights relating to the person, property and contract. In addition, there were the rights correlative with, and relating to, such basic forms of wrong as unintentional wrong, deception, coercion and crime, together with such basic principles to do with the negation of crime as justice, punishment and revenge.<sup>2</sup> Moving beyond abstract right and complementary to it, there was the category that Hegel referred to as morality. This, as he characterized it, comprehended the subjective conditions of the ordinary moral consciousness as in terms of which persons could be brought to conceive of themselves as free and responsible human agents. Among these conditions were those relating to the most fundamental of the moral concepts, such as purpose and responsibility, intention and well-being, and the good, duty, conscience and evil.<sup>3</sup>

The consideration of the specifically subjective form of the moral consciousness led Hegel to the elaboration of the principles of the family, civil society and the state, as comprising the sphere of what he termed ethical life. As Hegel explained it, the sphere of ethical life, as instantiated through the family, civil society and the state, stood as the sphere of public practices and institutions. As such, it was the sphere of the objectively self-subsisting institutional frameworks that embodied, and that gave public effect to, the principles of property, contract and wrongdoing, as pertaining to abstract right. At the same time, it was the sphere that answered to the conditions of the subjective moral consciousness, while setting the public contexts by which individual persons were enabled to realize and conform with these conditions as through their own actual conduct. As to the family, this was the first form of ethical life. As concerning the particulars of it, Hegel took the family to be an institution based in the bonds of love, and hence as being bound up with what he identified as the fundamental normative principles that underlay and structured marriage, common family property, kinship relations, children and their upbringing, divorce, and the rights of inheritance.<sup>4</sup>

For Hegel, the institution of the family, while fully ethical as such, nevertheless pointed beyond itself to a further, and containing, form of social order that would comprehend the multiplicity of different families and serve to establish the conditions for the diversity of transactional relationships entered into, and obtaining, among their various members. This second form of ethical life was civil society. As Hegel understood it, civil society embodied a form of social order that was based in, and sustained through, universal self-interest. This was so in the respect that civil society was seen by him as comprising an association of individuals who were moved to act in pursuit of their own particular ends and objectives, and who, in doing so, were brought to initiate and take part in co-operative relationships one with another such as were instrumental for the realization of these multifarious ends and objectives.

In line with this, it followed that one essential expression and manifestation of civil society, as Hegel presented it, was to be found in the economic activities and engagements of its members. More precisely, the form of association among men as distinctive to civil society was expressed and made manifest through the market-based form of economic order: and with this being so as in the sense of it involving, and giving concrete reality to, the private rights of the person, as relating to property and contract, and together with the possibility of wrong-doing and crime as in violation of these, such as were contained within the concept of abstract right. The identification of civil society with the economic interests and relations of men is evident everywhere in the treatment of the subject in the *Philosophy of Right*. This is so most especially with the discussion of civil society as in relation to what Hegel called the system of needs. Thus and as to the specifics of it, civil society was here presented as the sphere where men sought for the satisfaction of their respective needs, and, in consequence of this, were led to take part in work and to establish and utilize relations of production and relations of exchange involving trade and commerce. The outcome of this was the emergence of a division of labour among workers, and, through this, the formation of distinct classes

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2 Hegel, *Philosophy of Right*, Part 1: Abstract Right, Sections 1–3.

3 *Ibid.*, Part 2: Morality, Sections 1–3.

4 *Ibid.*, Part 3: Ethical Life, Section 1: The Family, sub-sections A-C.

or estates as within the social order. These were formally identified by Hegel as the agricultural estate, the commercial estate, as directed towards trade and industry, and the administrative class as the universal estate and hence as where work was not directed to the satisfaction of private needs as such.<sup>5</sup>

In the elaboration that Hegel gave of it, the concept of civil society was not confined to the economic structures and processes within society such as were based in the system of needs. For separately from this, civil society, as a form of ethical life, was also conceived of as providing for procedures for the determination, authenticating and enforcement of the rights in property and contract, and all the other various rights of the person, such that are at issue in the relations among men within the market economic order. Thus, for Hegel, it was essential for the full realization of civil society that it should contain, as within itself, the institutional structures and processes that were bound up with law and with the administration of justice as according to law. In concrete terms, this necessitated, as Hegel explained it, the existence of properly established laws, as directed to the formal recognition of the personal rights and interests of individuals, together with the maintenance of the judicial machinery sufficient for the application of the laws and the securing of the personal rights and interests which the laws provided for. The form for the administration of justice that Hegel associated with civil society was organized around the principles of substance and procedure that are to be considered as fundamental to the rule of law and as to its actual possibility. So, for example, Hegel argued in the following terms as to the matter of law and its administration within civil society: laws were to be capable of being known by the persons subject to them, and so were required to receive formal promulgation; the courts tasked with responsibility for the administration of justice were to have the status of public authorities; members of civil society were to have the right to appear before the courts, in addition to the duty to submit to their authority; the adjudicative procedures of the courts were to be applied as in conformity with the rules of evidence and the canons of legal reasoning; the proceedings of the courts were to be open, and such as to ensure and make good the fully public character of the administration of justice as in relation to the affected parties and as to society as a whole.<sup>6</sup>

According to Hegel, there were also present within civil society what he referred to as the policing agencies and the corporations. The policing agencies were public authorities, and their concern was with the maintenance of the order of penal justice, and with the efficient regulation of the social and economic order as consistent with proper and legitimate public purposes. Hence the functions of the policing agencies were directed towards the prevention of criminal wrong-doing and towards its *ex post facto* investigation and prosecution as before the courts. In addition, the policing agencies were such that they discharged certain basic functions of public administration. Among these administrative functions was the maintenance of the public infrastructure, as exemplified, for Hegel, by the provision of street lighting and the building of bridges. Another administrative function lay with the regulatory supervision of the market economic order, as to its free operation, in certain contexts such as the setting of the prices for essential goods and commodities and the establishing of fair standards for, and the general inspection of, the same. A further administrative function that Hegel saw the policing agencies as discharging, and in this to the negation of any unrestricted freedom within the market economic order, was one directed towards the provision of public welfare services in such critical areas as education, health and poor relief. This was required for the counteracting of the poverty among the less materially advantaged classes that Hegel recognized to be the inevitable outcome and feature of the economic relations and structures obtaining within civil society. As for the corporations present within civil society, these, as Hegel characterized them, were institutional bodies that he thought of as standing as intermediate as between individual persons and the state. Thus the corporations were to determine and promote the common interests and objectives as pursued by their members, while remaining subject to the state and to its authority. Prominent among the corporations so defined, as Hegel identified and discussed them, were the associations and organizations

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5 *Ibid.*, Part 3, Section 2: Civil Society, sub-section A.

6 *Ibid.*, Part 3, Section 2, sub-section B.

that arose from the formation of the agricultural, the commercial and the administrative estates, and the institutions established for rural and municipal government.<sup>7</sup>

The existence of civil society was taken by Hegel to imply the necessity of the state as the third and final form of ethical life. This necessity, as belonging to the state, he explained in terms such that civil society was to be understood to be incomplete save through its being brought into a subordinate relationship as to the state and the legal-political order specific to, and as upheld by, it. This was so even though there was no intention on the part of Hegel that the state was to be thought of as functioning to negate the integrity of civil society, as through the constraining or subverting of the autonomous structures and processes that informed and determined the social and economic practices and engagements as inherent within itself.

The crucial factor of note for Hegel, as regarding the state in its relation to civil society, was that the state, as in contrast to civil society, was based not in self-interest, but in the altruistic principles integral to citizenship. From this it followed that the state was universal, as in the respect that it comprised a comprehensive, self-complete and non-instrumental form of association among its citizen members that remained indifferent to their divergent interests. As to the particulars of it, the state was characterized by Hegel as an institution that defined, and established, the hierarchy of public interests common to all the individuals within civil society. In this way, the state transcended the diverse private rights of citizens, and the multiplicity of the various private interests that moved them to act, as well as the material conditions differentiating them one from another as individuals and as members of the separate classes that civil society brought into being. The essential form of the rule of law pertaining to the state was therefore not that of the administration of justice as focused on the enforcement of the ordinary rights and duties of individuals and associations, and such as belonged to civil society. It lay rather with the system of constitutional law.

Thus it was in accordance with the law of the constitution that Hegel saw the state as serving to maintain the public law structures and processes through which the private rights and interests of individuals, as these were engaged within the civil society sphere, received their ultimate validation. At the same time, the public law structures and processes as maintained by the state served to validate, and to co-ordinate, the public authorities that discharged the judicial and policing functions as required within civil society; and with this being in addition to their validating, as by the formal recognition and inspection of them, the various subordinate corporations through which individuals concerted their activities within civil society. It was in these respects that the state was conceived of by Hegel as standing as a fully universal form of political association, and, as consistent with its universality, as an institution bearing its own distinct legal personality and exercising the sovereign rights and powers essential to this personality. The sovereignty belonging to the state possessed both an internal and an external dimension. From the internal standpoint, the sovereignty of the state was embodied in, and organized through, the constitution of the state, as this pertained to the office of government within the state. Hence the state constitution made provision for the person and the powers of the sovereign, and as including such powers as the right of pardon and the right to appoint state officials. So too was the state constitution understood to make provision for the agencies of the executive power, and as including here the civil service, and for the formal institutional organization of the legislative power and the designation of its functions and powers. As for the standpoint external to the state, sovereignty was in this aspect to be found present and embodied in the rights and powers of the state as these concerned the waging of war and the conduct of foreign affairs.<sup>8</sup> This, in its turn, pointed to the determination of the status and situation of the state, as in its relation to other states, and with this being given and contained as within the form of normative order that was specific to international law.<sup>9</sup>

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7 *Ibid.*, Part 3, Section 2, sub-section C.

8 *Ibid.*, Part 3, Section 3: The State, sub-section A.

9 *Ibid.*, Part 3, Section 3, sub-section B.

## ii. Changing Perspectives on Civil Society

The conceptualization set out by Hegel of civil society as relating to and giving effect to economic structures and processes, and hence as in terms of its containing of the market economic order, was to be confirmed by Karl Marx (1818–83), and with this being so, most notably, in his Preface to *A Contribution to the Critique of Political Economy* (1859).<sup>10</sup> Here, Marx argued that Hegel had treated of civil society as pertaining to the material conditions of existence, and with the anatomy of this being something that Marx held was to be looked for and studied through reference to the political economy standpoint. The material conditions of existence that Marx saw Hegel as having identified with civil society concerned, for him, the economic structure of society, and with their comprising the relations of production that men entered into and as in accordance with the particular stages of development of the prevailing material productive forces. In the event, the economic-centred view of civil society adopted by Marx was more fundamentalist than the one that had been argued for by Hegel. For Marx took the economic viewpoint to extend to the state itself, which, as in contrast to Hegel, he presented as being non-ethical and merely instrumental in function as in respect of the economic order embodied within civil society. Thus it was that Marx asserted that it was the economic structure of society, as constituted through the totality of production relations, that stood as the real foundation for the superstructure pertaining to the law and to the political order of the state, and to the forms of social consciousness that corresponded to these: and as in line with this, the general form of the social, political and intellectual processes of life was claimed by Marx to be always determined by the underlying modes of production such as were based in the material conditions of existence.<sup>11</sup>

As it will be clear from this, Hegel and Marx stand opposed to one another as to the question of civil society in certain key respects. So and further to this, it is to be underlined that Hegel thought of the economic structures and processes embodied in civil society as being fully containable as within the state, as in the sense that these structures and processes involved, and gave rise to, no contradictions that pointed to the subverting of the state as to its integrity and authority. However, this was not the case with Marx. For Marx viewed the specifically bourgeois, or capitalist, form of production relations that he directed attention on, and that he associated with civil society, to be shot through with internal contradictions. Prominent among these contradictions was the conflict among the classes that Marx famously saw as looking forward to the inevitable revolutionary overthrow of the capitalist economic system and the legal-political order of the state that he took to preserve it. Despite the differences as between Hegel and Marx as running along such lines, it remains the case that they were nevertheless united in their determination to describe and explain civil society in economic terms. It is on account of this that Hegel and Marx are to be set at odds with the thrust of much of the discussion of the concept of civil society that is to be found in the relevant critical literature as belonging to the social and political sciences of the past three or four decades.<sup>12</sup>

Thus it is that with the theoretical reflections of the recent writers and commentators, there has been a tendency to conceive of civil society as something that subsists apart from, and even in opposition to, the substance of the

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10 Karl Marx, Preface to *A Contribution to the Critique of Political Economy*, in Preface and Introduction to *A Contribution to the Critique of Political Economy* (Peking: Foreign Languages Press, 1976; as prepared for the Internet by David J. Romagnolo, 1997), pp. 1–7.

11 *Ibid.*, p. 3.

12 For an indication of the concerns of social and political scientists with the concept of civil society as in recent times, see for example: *Civil Society: Theory, History, Comparison*, ed. John A. Hall (Cambridge: Polity Press, 1995); Brian O'Connell, *Civil Society: The Underpinnings of American Democracy* (Hanover, New Hampshire: University Press of New England, 1999); *Civil Society and Government*, ed. Nancy C. Rosenblum and Robert C. Post (Princeton, New Jersey: Princeton University Press, 2001); *The Civil Society Reader*, ed. Virginia A. Hodgkinson and Michael W. Foley (Hanover, New Hampshire: University Press of New England, 2003); *The State of Civil Society in Japan*, ed. Frank J. Schwartz and Susan J. Pharr (Cambridge: Cambridge University Press, 2003); Bruce R. Sievers, *Civil Society, Philanthropy, and the Fate of the Commons* (Lebanon, New Hampshire: University Press of New England, 2010); John Ehrenberg, *Civil Society: The Critical History of the Idea* (1999), 2nd edition (New York: New York University Press, 2017); Michael Edwards, *Civil Society* (2004), 4th edition (Cambridge: Polity Press, 2019).

economic structures and processes that are bound up with social existence. In a more particular sense, the strong trend has been to present civil society as being formally distinct from the market economic order as where individuals and organizations act from self-regarding motivations, and so as to secure their own interests and to generate profits and wealth for themselves. Accordingly, civil society is now widely thought of, and pointed to, as being a social sphere that does not pertain as such to individuals and organizations considered in respect of their private interest-governed transactions and engagements. Rather, civil society is the sphere of social order that is identified with, and epitomized by, the associations formed among individuals that are understood to act in furtherance of collectively defined ends and objectives that are other-regarding, or altruistic, in character, and as distinct from their being based in, and directed towards, factors of material self-interest. Hence there has been a focusing of attention, as among the civil society theorists, on what is taken by them to be the central role that is played in modern society by the non-profit or not-for-profit organizations, or more generally the so-called civil society organizations, such as cultural organizations and welfare and charitable organizations, as in the formation, constitution and functioning of the civil society sphere proper.<sup>13</sup>

That this is so serves to bring out and to explain that, for the social and political scientists now concerned with civil society, the decisively influential conceptualizations to do with it have not been those of Hegel and Marx. They are instead the conceptualizations that are to be found present and suggested in the writings of the French political theorist Alexis de Tocqueville (1805–59), as so with his seminal work *Democracy in America* (1835; 1840),<sup>14</sup> and in the writings of the Italian social theorist and cultural critic Antonio Gramsci (1891–1937), as so with the posthumously published *Prison Notebooks* (1929–35).<sup>15</sup>

Tocqueville did not address the subject of civil society as such in *Democracy in America*, and it is to be observed that the term itself does not feature in the argument of the work. The concern of Tocqueville was more general, and it lay with what he perceived to be the conditions favourable for the emergence and sustaining of democracy in America, and with what he identified as the factors making for the prevention of majoritarian tyranny and the preservation of individual liberty. It was with the working through of this concern that Tocqueville is considered to have made his notable contribution to the determination of the civil society concept. For he argued, among much else, that the form of democratic order, as distinctive to America, was not such that it depended only on the basic institutions of representative government. It depended also, he emphasized, on the willing involvement of the people in diverse forms of association that stood intermediate as between the state and themselves as in their status as private citizens.

The voluntary associations on which Tocqueville focused included those that he characterized as political associations, and particularly so the formal political parties. The political associations, as he explained them, were based in the right of association, and with this right being closely bound up with the freedom of the press and the right of assembly. In addition to the political associations, there were the so-called civil associations. These were associations that had no political object as such, and that, for Tocqueville, were exemplified by the commercial and industrial associations as well as by the religious and moral associations. The category of civil associations that Tocqueville identified correspond broadly to those that are now designated as civil society organizations proper, and they were thought of by him as being crucial for democracy for the reasons, among others, that they countered the power of the state and the state government and that they promoted self-reliance and the civilized virtues as among the citizen-body. The vital role played by the civil associations in relation to the democratic order in America was confirmed further, as by Tocqueville, with his sense of how political associations and civil associations stood to one

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13 So, for example, Susan J. Pharr writes of contemporary scholars on civil society matters taking the view that, as she puts it, ‘civil society consists of sustained, organized social activity that occurs in groups that are formed outside the state, the market, and the family.’ Schwartz and Pharr (eds.), *The State of Civil Society in Japan*, Preface, p. xiii.

14 Alexis de Tocqueville, *Democracy in America*, trans. Arthur Goldhammer (New York: Library of America, 2004).

15 For a sense of the full range and scope of the themes addressed by Gramsci in his work, and including his own particular position as to the civil society issue, see: *The Antonio Gramsci Reader: Selected Writings 1916–1935*, trans. Quintin Hoare and Geoffrey Nowell-Smith, ed. David Forgacs (New York: New York University Press, 2000).

another in a relationship of interdependence. Thus the presence of civil associations led to the formation of political associations, whereas the arts involved in associating for political ends served to develop and enhance the techniques necessary for association among men as entered into for specifically civil objectives.<sup>16</sup>

The tradition in political thought with which Tocqueville is aligned is that of Western liberal constitutionalism. As for Gramsci, he belongs to the tradition of European Marxist political thought. This holds true even though it is to be underlined that Gramsci did depart from Marx as in the respect that he insisted that the legal and political order of the state was not reducible to, or fully explicable in terms of, the underlying material economic conditions as to do with the forces and relations of production. The opposition of Gramsci to the economic model of social explanation, such as runs through classical Marxism, is central to the proper understanding of the view that he took of the issue of civil society and that of the state as in relation to it.

Accordingly and as to the details of it, Gramsci saw the state and civil society as inter-connected in substantial organic terms both as one with each other and in combination as in regard to the economic order: and as to the latter in the relation of political superstructure to its material base, but with this being subject to the qualification that the state and civil society were to be treated as separate and distinguishable for the methodological purposes as to do with the procedure of explanation. The state, or what Gramsci called political society, comprised the political-judicial order of government, and with this comprehending the institutional apparatus of coercive domination maintained by the state as with the executive power, the army and police, and the legal system. In contrast to the state, there was civil society. This, for Gramsci, comprised the sphere of the multiplicity of private associations as entered into by individuals, such as political parties, trades unions, religious and educational organizations and cultural associations, and with this sphere being sustained not by coercive power, but through consent. At the same time, civil society was presented as the sphere of culture in and of itself, and hence crucially as the sphere of the cultural conflicts obtaining among the political classes. The crucial form of cultural conflict, as Gramsci envisaged it, was occasioned where the dominant political class under capitalism went beyond its narrow economic interests to command the resources of culture as present within civil society, and with the purpose to establish and maintain its hegemony both as there and as through the state and its machinery of government. In response to this, the disadvantaged political classes would be brought to act to counter the dominant capitalist class through creating and promoting a distinctive consensual culture of their own, in order thereby to challenge, as from within civil society, the prevailing modes of cultural hegemony and forms of state coercive power.<sup>17</sup>

The general influence of Tocqueville and Gramsci has been considerable with much of the present-day critical discussion of the civil society concept. This is evident from the themes that have been central to the relevant literature: civil society as separate from economic factors and conditions, and hence as subsisting apart from the market economic order; civil society as something defined through the altruistic and other-regarding associational activities and engagements of individuals and through the presence of a pluralism of functioning associations; civil society associations as based not in material interests but in normative values, whether moral, political, religious, cultural or whatever; civil society as the guarantor of democracy and the rule of law and hence as the guarantor of the rights of individual citizens, and with this as including their human rights; and civil society as held to be distinct from, and even in opposition to, the state, and so thereby to be thought of as a check and counterweight to the powers monopolized and exercised by the state as through the formal institutions of government.<sup>18</sup>

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16 Concerning Tocqueville as to his discussion of the different aspects of the political and civil forms of association, and their place and function in American democracy, see: *Democracy in America*, Volume 1, Part 2, Chapters 2-4, and Volume 2, Part 2, Chapters 4-7.

17 For the relevant parts of the *Prison Notebooks* as setting out the views of Gramsci on civil society, the state-civil society relationship and the question of culture and hegemony, see: *The Antonio Gramsci Reader*, Part 2, Chapters 6-7, 10.

18 So, for example, these themes were to be given prominence in some of the leading contributions to the civil society literature of the last decade of the twentieth century: Jean L. Cohen and Andrew Arato, *Civil Society and Political Theory* (Cambridge, Massachusetts: MIT Press, 1992); Robert D. Putnam, with Robert Leonardi and Raffaella Y. Nanetti, *Making Democracy Work: Civil Traditions in*

In the event, it is to be emphasized, as it is here in the present paper, that the arguments of the current commentators on civil society are not such as to defeat Hegel, or to prompt a decisive movement away from the account that he provided of civil society and towards positions on the subject more akin to those of Tocqueville and Gramsci. On the contrary, the substantive positions that form the agenda of the civil society theorizing of recent times are positions to which Hegel gave full recognition, and endorsement, as within the terms of his own conceptualization of civil society. To begin with, it is to be observed that it was Hegel himself who distinguished between the state and civil society, as particular forms of human association. To be sure, the force of this distinction, for Hegel, was such that civil society was to be thought of as being prior and subordinate to the state, as in the sense that the state was essential in order to bring civil society to its full and complete realization. However, the distinction was also such that it presupposed the relative autonomy of civil society as in regard to the state, and with this meaning that the structures and processes present in civil society were generated and sustained as from within itself, rather than brought into being and maintained as at the instigation and direction of the state and through its official agencies of government. In the respect that Hegel thus saw civil society as autonomous as relative to the state, then it is surely the case that he would have accepted that civil society would, and that it should, serve to establish and impose institutional constraints and limitations on the state and government as to the exercise of the powers belonging to them.

The desideratum of subjecting the state to constraints and limitations as to its powers relates to the principles of the rule of law and the rights as secured to individual citizens under it. In consequence of this, the possibility of the rule of law has come to be seen as depending on the presence of a properly ordered civil society that is viable sufficient to provide a meaningful bulwark against the state and the agencies of state government. In this connection, it is to be underlined that Hegel the exponent of civil society also stands out as a defender, and theorist, of the rule of law. It is true that Hegel addressed the question of the rule of law in part as a matter of the constitutional law as pertaining to the state, and that, in doing so, he endorsed the ideal of constitutional government in terms as where the powers of government were understood to be concentrated in, and exercised through, specific designated offices of state. However, the powers of government that Hegel discussed in the context of the state were limited to the executive power and the legislative power. As for the judicial power, this Hegel assigned to civil society, in which sphere of ethical life the courts were presented as serving to provide for the administration of justice. Thus it was here, as within civil society, that Hegel saw the rule of law as having its primary and immediate form of embodiment, and, as such, as being rendered operational as through independent courts that functioned to apply the laws, and so thereby enforce the ordinary rights and duties of citizens as in respect of one another and in reference to such matters as the rights of the person and the rights to do with property and contractual relations. The assignment of the administration of justice to the civil society sphere is telling. For with this Hegel has to be read as conceiving of civil society as establishing, and organizing, its own structures and processes of internal legal regulation as subsisting apart from the direct control and intervention of the state agencies, and hence as sustaining a form of the rule of law that underwrote, and made substantial, the relative autonomy of civil society as in relation to the state.

The feature of civil society that has come to be most attended to, in order to bring out the relative autonomy of its situation as to the state, is the presence within it of a multiplicity of associations as formed through the voluntary participation of its individual members. As explained, Tocqueville pointed to the political associations, such as political parties, and the civil associations, such as commercial, industrial, religious and moral associations, as standing between the state and private citizens and as thereby guaranteeing the integrity of American democratic politics. Gramsci saw civil society as the sphere of associations, including political parties and organizations such as labour unions and religious, educational and cultural associations, and with this civil society sphere being in opposition to state institutions and the cultural arena within which conflicts among the political classes would be

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*Modern Italy* (Princeton, New Jersey: Princeton University Press, 1993); Larry Diamond, *Developing Democracy: Toward Consolidation* (Baltimore: Johns Hopkins University Press, 1999); Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York: Simon and Schuster, 2000).

engaged in and acted out. And as of now the main emphasis among commentators is on the altruistic, and non-commercial, voluntary associations as being paradigmatic of civil society activities and engagements, and thus as establishing that civil society organizations proper are distinct from the forms of association specific to family relations, the market and the state. It is doubtful that Hegel would have had any theoretical or practical difficulties with the identification of civil society as the sphere of associations. Certainly it may be supposed that he would have accepted the necessity for charitable, and hence non-commercial, organizations, such as religious and educational foundations, in order to ensure the general welfare of citizens, their health and their relief from poverty. He would also have concurred with Tocqueville and Gramsci as to the central position within the social and political order of associations dedicated to commerce and industry and to the organization of workers. For civil society, as Hegel characterized it, comprehended the corporations, and with these being the associations that corresponded, in organizational terms, to what he identified as the agricultural, the commercial and the administrative estates. Beyond this, it is to be observed that the civil society associations, for Hegel, were normative-laden, as in the respect that they pertained to ethical life and hence were eligible to possess a moral, religious and political significance for their members: and doubtless a cultural significance as well, albeit not necessarily in the conflict-orientated sense of this that was to be intended by Gramsci.

The critical consideration with Hegel in regard to the matter of civil society associations is that, in contrast to the current orthodoxies in the social and political sciences, he wrote in acceptance that associations based in self-interest, rather than altruism, pertained properly to the civil society sphere. The consideration here goes straight to the central truth about what marks Hegel off from the greater part of the contemporary civil society commentators. This is that Hegel saw civil society as comprehending the economic activities and engagements of citizens, and that he characterized civil society such that it was to be thought of as being bound up with, and as depending on, the market economic order. So it was that Hegel presented civil society as based in the personal and property rights of citizens, and as involving economic structures and processes that served to secure and to give effect to their rights in such matters as property and contractual relations. At the same time, civil society was directed towards economic activities and engagements in the respect that it was based in the system of needs, and as where this involved work, and relations of production and exchange within the market, in addition to the formation of social classes as pertaining to the agricultural, commercial and administrative sectors. As for the administration of justice, as a part of civil society, the courts served to protect and enforce the rights of ordinary citizens, and as including their economic-focused rights as with property and contract, and with the courts, in this endeavour, giving legal effect to the economic structures and processes as present within civil society. Finally, there is the associational component of civil society. With this, of course, Hegel focused on the corporations, and with his here emphasizing the corporations that gave organizational form to the social classes that emerged in consequence of the operations of the system of needs.

The conceptualization of civil society, as Hegel set this out, did not only give recognition to the pervasiveness of economic factors and to the internal linkages as between civil society and the market economic order. In a stronger sense, this conceptualization is to be considered as meritorious in explanatory terms precisely by reason of it allowing for the economic and market-based dimensions of civil society. Among the merits of Hegel and his view of civil society, there are two that stand out. The first is that in his account of the economic elements of civil society, Hegel provided positive support and vindication for what are maintained to be its virtues as a form of human association. So, for example, it is claimed that civil society is distinct from the state, and distinct such that an active civil society stands as a bulwark against state power. Here, it may well be argued that the assignment of economic-focused rights to individual citizens with such things as property and contract must work to strengthen civil society as in relation to the state. For the possession and exercise of these rights under market conditions will take place within relatively autonomous economic structures and processes that are not, as such, subject to state control and direction. To take another example, there is the claim that a functioning civil society will serve to constrain and limit state power as through its promoting and buttressing the rule of law, and hence strengthen the rights that this secures to individual

citizens. In regard to this, it is surely the case that the recognition of economic rights, as possessing legal status and effect, must work to enlarge the range of rights that citizens hold as eligible to be asserted against the state and its agencies. So likewise is it the case that the cause of the rule of law must certainly be advanced within civil society as where the administration of justice by the courts involves not only the application of state legislation, but also, and primarily, the adjudication of disputes concerning the rights of individual citizens as occasioned through the operations of civil society itself. Finally, there is the matter of civil society as comprising a diversity of associations situated between individual citizens and the state. In response to this, it is necessary to say only, and with all reference to Hegel, that the associational diversity of civil society stands only to be increased if the category of civil society organizations is understood to include corporations that are dedicated to economic enterprise and the material profit of their members: and especially so with all that this means for the supporting of civil society as relative to the state being understood.

The second principal merit of Hegel and his conceptualization of civil society is that it accepts the inevitability of the market economic order, while also pointing to how the market economic order could and should be made subject to institutional qualification and correction, as to its operations, in the name of values that are not reducible to economic factors and considerations. Thus Hegel recognized that civil society was to provide for public services in the sectors of education, health and poverty relief. And his sense of the state-civil society relationship was such that it was accepted that all aspects of the economic activities and engagements of citizens were, in principle, subject, for regulatory purposes, to the ultimate authority of the state. In this connection, it may be noted, as a concluding observation, that Hegel is particularly suggestive and illuminating as to the still on-going debate about the proper relationship between state, society and the market economic order. Among those who set the terms of this debate in the twentieth-century, there is, for example, F.A. Hayek, who argued, among much else, that the market economic order had been bound up with, and carried forward by, the courts adjudicating disputes centred on private law rights to do with property, and that the integrity of the market economic order, and the freedoms that it provided for, stood to be subverted if the state assumed powers of ownership and managerial direction over society and economy.<sup>19</sup> There is also Michael Oakeshott, who, following Hegel, distinguished between the form of non-instrumental association, as obtaining among the subjects of the state, and the forms of association as based in contractual relationships and common enterprises that pertained to their economic activities and engagements. So too did Oakeshott follow Hegel in presenting the state, in its modern European embodiment, as a universal and inherently moral form of association, which was by definition debarred from exercising proprietorial rights of ownership and management as to the economic order, but which, through the exercise of its sovereign powers, was nevertheless competent to regulate the economic order through legislation and executive supervision.<sup>20</sup> As a final example, there is Michael J. Sandel, whose distinction it has been to call for a new form of political order, and politics, that will give concrete effect to such normative ideas as the common good, civic virtue and the moral engagement of citizens. This position Sandel has worked through in relation to the principles of democracy and justice, and also in relation to the market economic order, as where the thrust and direction of the argument have been to point to the presence of compelling moral limits to its operations. To the extent that Sandel has a deserved current prominence in public deliberation about the market economic order, and as to its social, legal and political contexts and implications, then this may be taken to confirm the truth of Hegel and his recognition that the market economic order, as with the family, civil society and the state, belongs, first and foremost, to the domain of ethical life.<sup>21</sup>

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19 F.A. Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy* (1973–1979) (London: Routledge and Kegan Paul, 1982).

20 Michael Oakeshott, *On Human Conduct* (Oxford: Clarendon Press, 1975).

21 Michael J. Sandel: *Democracy's Discontent: America in Search of a Public Philosophy* (Cambridge, Massachusetts: Harvard University Press, 1996); *Justice: What's the Right Thing to Do?* (2009) (London and New York: Penguin, 2010); *What Money Can't Buy: The Moral Limits of Markets* (New York: Farrar, Straus and Giroux, 2012).