

Liberty and Freedom. Hegel on Civil Society and the Political State

ABSTRACT: The contribution places Hegel's political philosophy, chiefly presented in *Elements of the Philosophy of Right* from 1820 but already adumbrated in *The German Constitution* from 1798-1802, into the context of the quarrel between the ancients and the moderns about the relation between the citizen and the state and the corresponding differentiation of political freedom and civil liberty. In particular, the contribution attributes to Hegel a third, conciliatory position beyond the established opposition between the ancient republican ideal of civic commitment and service and the modern emphasis on individual choice and personal self-fulfillment.

KEYWORDS: LIBERTY; FREEDOM; CIVIL SOCIETY; STATE

RESUMEN: La contribución sitúa la filosofía política de Hegel, presentada principalmente en *Elementos de la Filosofía del Derecho* de 1820, pero ya adumbrada en *La Constitución Alemana* de 1798-1802, en el contexto de la disputa entre los antiguos y los modernos sobre la relación entre el ciudadano y el Estado y la diferenciación correspondiente de la libertad política y la libertad civil. En particular, la contribución atribuye a Hegel una tercera posición conciliadora más allá de la oposición establecida entre el antiguo ideal republicano de compromiso y servicio cívico y el énfasis moderno en la elección individual y la autorrealización personal.

PALABRAS CLAVE: LIBERTAD; SOCIEDAD CIVIL; ESTADO

* The latter half of the following contribution, consisting of sections 2 and 3, is a revised version of the final section of Günter Zöller, "Forms of Freedom. Hegel on Civil and Political Liberty", in E. Sembou (Ed.), *Hegel's Political Philosophy. Themes and Interpretations*. Oxford: Peter Lang, 2022, pp. 49-78. The reuse of the material occurs with kind permission by the editor and the publisher.

“The principle of modern states has enormous strength and depth because it allows the principle of subjectivity to attain fulfillment in the self-sufficient extreme of personal particularity, while at the same time bringing it back to substantial unity and so preserving this unity in the principle of subjectivity itself.”¹

THE CONTRIBUTION PLACES Hegel’s political philosophy, chiefly presented in *Elements of the Philosophy of Right* from 1820² but already adumbrated in *The German Constitution* from 1798-1802,³ in the context of the debate between the ancients and the moderns about the relation between the citizen and the state and the corresponding differentiation between political freedom and civil liberty. In particular, the contribution attributes to Hegel a third, conciliatory position beyond the established opposition between the ancient republican ideal of civic commitment and service and the modern liberal emphasis on individual choice and personal self-fulfillment. Particular attention is paid to the historical and systematic linkage between political freedom and political representation and to the status and function of the “estates” (*Stände*) in Hegel. At the methodological level, the contribution argues for the need to

[1] G. W. F. HEGEL, *Grundlinien der Philosophie des Rechts*, id., *Gesammelte Werke*. Im Auftrag der Deutschen Forschungsgemeinschaft hrsg. v. der Rheinisch-Westfälischen Akademie der Wissenschaften, unter der Leitung v. Otto Pöggeler. Hamburg: Meiner 1968ff., 14/1, 208 (§ 260); G. W. F. HEGEL, *Elements of the Philosophy of Right*, ed. A. W. Wood and trans. H. R. Nisbet. Cambridge: Cambridge University Press, 1991, p. 282.

[2] HEGEL, GW 14/1-3; Hegel, *Elements of the Philosophy of Right*, 1-380. The critical edition of *Elements of the Philosophy of Right* in Hegel, GW 14 presents Hegel’s published text in Hegel, GW 14/1 without the supplementary material (*Zusätze*) taken from two transcripts of Hegel’s Berlin lectures on the *Philosophy of Right* dating from the winter semester 1822/23 (*Mitschrift Hotho*) and the winter semester 1824/25 (*Mitschrift v. Griesheim*), which traditionally have been included in editions and translations of *Elements of the Philosophy of Right*. The complete critical edition of the transcripts from which the *Zusätze* were taken can be found in Hegel, GW 26/2, 767-1042 (*Mitschrift Hotho*) and Hegel, GW 26/3, 1047-1486 (*Mitschrift v. Griesheim*). Hegel’s preserved handwritten additions to §§ 1-180 of the published text of *Elements of the Philosophy of Right* (*Beilagen*) are gathered in Hegel, GW 14/2. Hegel, GW 14/3 contains a detailed editorial report and the editor’s notes to Hegel’s text, which provide extensive excerpts from material cited, rather than quoted, or quoted only selectively or not exactly, in Hegel’s published text. In what follows, Hegel’s published text in Hegel, GW 14/1 is quoted and cited according that edition’s pagination, supplemented by the number or numbers of the respective of paragraph or paragraphs (indicated as “§” and “§§”, respectively), regardless of whether the word or passage referred to is in the paragraph proper or in the elucidation (*Erläuterung*) following the paragraph proper as part of Hegel’s own published text.

[3] G. W. F. HEGEL, *Die Verfassung Deutschlands*, id., GW 5, 1-203; G. W. F. HEGEL, *Political Writings*, ed. L. Dickey and H. B. Nisbet, trans. H. B. Nisbet. Cambridge: Cambridge University Press, 1999, pp. 6-101.

systematically supplement Hegel's main published text in political philosophy, *Elements of the Philosophy of Right*, which provides but a condensed handbook version ("outline") of his mature views, with the narrower context of his earlier published and unpublished work in political philosophy and the wider context of modern political theory and practice in general and Germany's earlier and more recent political history in particular.

I. FROM THE CONSTITUTION OF GERMANY TO THE CONSTITUTION OF THE MODERN STATE

When *Elements of the Philosophy of Right* appeared in late 1820 (with "1821" listed as the year of publication on the title page), Hegel had been a professor at the University of Berlin for only two years. Unlike Hegel's subsequent controversial reception as Prussia's state philosopher might suggest, his horizon as a political philosopher was not demarcated by the relatively narrow and limited historical realities of the state in whose capital, Berlin, he taught and lived — an absolute monarchy that only recently had been emerging from its catastrophic military defeat and political annihilation through Napoleon. Instead the horizon of Hegel's politico-philosophical thinking extended in a series of widening concentric circles that stretched geographically from the German lands through Western Europe, including Switzerland, Holland, France, England and Scotland, and historically from the Enlightenment and the French Revolution all the way back through the Middle Ages to ancient Greece and Rome.

A lifelong passionate reader (and avid excerpter) of scholarly books and international newspapers alike, Hegel was thoroughly informed of and deeply interested in politics, law and economics past and present, domestic and foreign. In addition, his school and university years (in Stuttgart and Tübingen) and his teaching and writing career — first as a private tutor (in Berne and Frankfurt on the Main), then as an unsalaried lecturer (in Jena), a news paper editor (in Bamberg) and a school headmaster (in Nuremberg) and finally as a university professor (in Heidelberg and Berlin) — had exposed him to a wide array of political and civic cultures (in Württemberg, Switzerland, Hesse, Thuringia, Franconia, Baden and Prussia), forms of government (monarchies and city republics) as well as creeds (Lutheran, Calvinist and Catholic) shaped by regional traditions and local customs as much as by codes of law and rigid rules.

Considered in the wider perspective of Hegel's prior personal experience and earlier extended politico-philosophical formation, *Elements of the Philosophy of Right* reads as a summary presentation and critical assessment of the norms and forms of life in the modern commonwealth — a *summa pro*

re publica that updates and integrates the separate traditions of natural law and political science, named in the work's alternative title (*Naturrecht und Staatswissenschaft im Grundrisse*),⁴ in a unitary but complex account of modern living. In particular, Hegel's work widens the scope of previous philosophy of law (*philosophia iuris*)⁵ to include right in the narrower sense (sphere of "legality"), morals in the individualist sense (sphere of "morality") and social ethics in the broader sense (sphere of "ethicality"), the latter comprising, in addition to the private sphere ("the family"), the twin public spheres of the citizens' self-regulated sociality ("civil society") and government's sovereign political authority within and without ("the state").

In the global-historical and geo-political context in which *Elements of the Philosophy of Right* belongs and which the work also addresses in its concluding section on the stadial development of world history,⁶ the subdivision of the body politic into the separate but supplementary spheres of civil society and the governmental state constitutes the outstanding institutional achievement of modern times. By distributing civico-political agency and authority among the functionally distinct but cooperating orders of civil self-organization and political rule, Hegel's quintessentially modern state manages to balance out and bring together private right and public duty, civil responsibility and political obligation, personal liberty and universal law.

But not only does Hegel's hemispheric division of the modern polity recognize individual initiative in the socio-economic sphere ("subjectivity"), while preserving the state's sovereign functionality ("substantial unity"), as stated in the key quotation serving as this contribution's motto. Hegel's modern state also includes the individual citizens in the state's specifically modern, essentially representative government and thus provides a latter-day equivalent for the ancient Greco-Roman theory and practice of the citizens' direct involvement in political self-rule. Hegel's modern citizens, in addition to enjoying the specifically *civil* liberty *qua* entitlement to socially conditioned but largely unfettered self-development, also exercise the specifically *political* liberty *qua* freedom of ruling over themselves, even if only indirectly, through representative bodies ("estates"). In addition, Hegel links the systematically successive spheres of civil society and the state by having the latter's "representative system" replicate at the level of the legislative political power, under the guise of its upper and lower

[4] HEGEL, GW 14/1, VII; Hegel, *Elements of the Philosophy of Right*, 1.

[5] On the history of the terms *Philosophie des Rechts* and *Rechtsphilosophie* ("philosophy of right") before and up to Hegel, see D. v. d. PFORTEN, "Die Entwicklung des Begriffs 'Rechtsphilosophie' vom 17. bis zum Anfang des 19. Jahrhunderts", *Archiv für Begriffsgeschichte*, 1999, 41, pp. 151-161.

[6] HEGEL, GW 14/1, 274-282; Hegel, *Elements of the Philosophy of Right*, pp. 372-380.

chambers, the economic differentiation of civil society, under the twin shape of the agrarian and the commercial socio-economic strata of society (“estates”).

Historically, both the differentiation between civil society and the state and the institution of representative political participation have their remote origin in the early Hegel’s analysis of “German freedom” (*deutsche Freiheit*) in his extended but unfinished treatise on the constitutional past and present of the soon to be dissolved Holy Roman Empire (*The German Constitution*), written in stages between 1798 and 1802.⁷ In particular, the early Hegel distinguishes between the liberty *qua* negative freedom from Imperial rule enjoyed by the largely independent constituent members (“Estates”) of the Empire and the freedom *qua* political participation in the Empire’s rule enjoyed by those very same members through their continuous involvement in Imperial deliberations and decisions (“Imperial Diets”).

Moreover, for the reform of the ailing Empire’s (unwritten) constitution the early Hegel envisions a stricter separation between the divided and distributed governmental functions on the part of the individual estates and their federation, which are to be restricted to *political* matters in the narrow, governmental sense, on the one hand, and the citizens’ largely free self-organization of the remaining, broadly *civil* matters, on the other hand. The early Hegel’s point here is not the liberal one of exempting the modern individual as much as possible from governmental strictures, but the civically minded one of fostering the creation and maintenance of a societal sphere of communication and interaction between citizens in their various and varying cultural, commercial and convivial pursuits.⁸ Some twenty years later, Hegel will turn both fundamental features from the *German Constitution* — the division between civics and politics and the system of political representation — into the core constitution of the modern state.

The specifically civil and the narrowly political senses of liberty and freedom, respectively, in the early Hegel can be traced to the twofold treatment of liberty and freedom in Montesquieu’s monumental comparative exploration of the kinds and roles of laws, along with other formative socio-political factors and functions (such as customs, *mores* and religion) throughout space and time, *The Spirit of the Laws* (1748) — a work which Hegel knew well and to which he referred approvingly throughout his own writings.⁹ In particular, Montesquieu distinguishes between “political liberty” (*liberté politique*) with

[7] HEGEL, GW 5, 1-203, esp. 149f.; Hegel, *Political Writings*, pp. 6-101, esp. p. 95.

[8] HEGEL, GW 5, 172-178; Hegel, *Political Writings*, pp. 23-26.

[9] See, e.g., G. W. F. HEGEL, “Über die wissenschaftlichen Behandlungsarten des Naturrechts”, HEGEL, GW 4, 481; HEGEL, GW 14/1, 26 (*Einleitung*), 208 (§ 261) and 227f. (§ 273); HEGEL, *Political Writings*, 175; HEGEL, *Elements of the Philosophy of Right*, p. 29, p. 283 and p. 310.

regard to a polity's constitution, which involves self-rule and is a specifically *political* form of liberty, and "political liberty" with regard to a polity's citizens, which amounts to the citizens' safety from illicit rules and unlawful forces and is a specifically *civil* form of liberty.¹⁰ Montesquieu contrasts both the broadly civil and the narrowly political senses of what he generically terms "political liberty" with liberty, or the absence thereof, pertaining to domestic and social relations, such as a household head or master dominating others, including servants and slaves.¹¹

Following Montesquieu, the Franco-Swiss literary and political writer and French statesman Benjamin Constant, Hegel's almost exact contemporary (1767-1830), employs the terms "political liberty" and "civil liberty" in a contrastive sense that maps the respective concepts onto the fundamental difference between the ancient (Greco-Roman) ideal of a (democratic or republican) polity's self-rule ("political liberty") — a liberty possessed and exercised jointly ("collective liberty") — and the modern invention of free and equal citizens leading lives that are largely unencumbered by obligations and services imposed by the government or their fellow citizens ("private independence").¹² Constant draws the distinction between essentially private "civil liberty" and essentially public "political liberty" in a public lecture on "The Liberty of the Ancients Compared With That of the Moderns" dating from 1819, the year before Hegel publishes *Elements of the Philosophy of Right*. To be sure, Constant's small text provides a founding document of incipient nineteenth-century political liberalism, along with personally perfectionist individualism, and as such seems more akin to J. St. Mill than to Montesquieu — or to Hegel, for that matter. But Montesquieu, the young Hegel and Constant agree on the substance of the distinction between civil and political liberty (or between civil *liberty* and political *freedom*, to put the matter in terms of a linguistic difference afforded by the dual vocabulary of the English language) and on the original association of political freedom with ancient civic republicanism and the exclusive association of civil liberty with modern civil society.

Moreover, the three political philosophers — including the later as much as the early Hegel — agree on the continued principal presence of a kind of political liberty *qua* political participation on the part of the modern citizens that is compatible both with the conduct of politics in the modern world of the

[10] MONTESQUIEU, *The Spirit of the Laws*, ed. A. M. Coulter and B. C. Miller, trans. H. S. Stone. Cambridge: Cambridge University Press, 1989, pp. 154-186 and pp. 187-212, respectively; Bk. 11 and Bk. 12, respectively.

[11] See MONTESQUIEU, *The Spirit of the Laws*, 246-263 and 264-277; Bk. 15 and Bk. 16.

[12] B. CONSTANT, *Political Writings*, ed. B. Fontana. Cambridge: Cambridge University Press 1988, pp. 308-328, esp. pp. 315f..

territorially extended sovereign state and with the modern citizens' cherished civil liberty *qua* personal independence. The novel kind of political, participatory liberty is participation by representation, typically by (quasi-)parliamentary bodies and often under the guise of corporate representation ("estates"). Historically, Montesquieu traces the invention of representative government in general and of legislation by representation in particular to the differential participation of the monarch, the nobles and the populace ("free men") alike in the government of the realm developed in the early middle ages ("gothic government") — a "the mixture of aristocracy and monarchy [... together with] the civil liberty of the people" that, according to Montesquieu, formed "the best kind of government men have been able to devise".¹³

Following Montesquieu and anticipating his own later philosophy of history, the early Hegel considers government by representation ("system of representation"),¹⁴ as exemplified by the status and function of the Imperial Estates (including the Estate of independent, "free" Imperial cities) in Germany's constitution, the "third universal shape of the world spirit" after the despotic form of government in the "oriental world" and the republican form of government in the "Roman world".¹⁵ On the early Hegel's historically informed but forward looking assessment, "[w]ithout such a representing body, freedom is no longer conceivable".¹⁶

The wider context of *Elements of the Philosophy of Right*, as defined by Hegel's extensive and intensive political and legal learning and his substantial earlier work in law and politics,¹⁷ including the *German Constitution*, with its focus on political liberty and representation, is lost in the standard reception of Hegel as the philosopher of the Prussian state in the post-Napoleonic Restoration era. Systematically speaking, the purview of Hegel's comprehensive and

[13] MONTESQUIEU, *Spirit of the Laws*, p. 168; Bk. 11, Ch. 8. On the prehistory, the contemporary context and the subsequent influence of Montesquieu's account of gothic government, see G. ZÖLLER, "Participation of the People Through Its Deputies. Montesquieu, Kant and Hegel on German Freedom", *Graduate Faculty Philosophy Journal. New School for Social Research*, 2021, 42, pp. 181-209.

[14] HEGEL, GW 5, 111; Hegel, *Political Writings*, p. 63.

[15] HEGEL, GW 5, 111; Hegel, *Political Writings*, p. 63 (translation modified).

[16] HEGEL, GW 5, 149; Hegel, *Political Writings*, p. 94 (translation modified).

[17] In addition to the *German Constitution* and other early unpublished fragmentary writings from his Berne and Frankfurt years, the following works constitute Hegel's *corpus juridico-politicum* prior to the publication of *Elements of the Philosophy of Right: System of Ethical Life* (1802/3); *On the Scientific Ways of Treating Natural Law* (1802/03); *Commentary on the Published Proceedings of the Estates Assembly in the Kingdom of Württemberg 1815-1816* (1817). For some of Hegel's smaller works in political philosophy of an occasional nature, see HEGEL, *Political Writings*.

integrated “philosophy of right” is modern society in all its main manifestations. Moreover, according to Hegel, the work as a whole represents the socially manifest reality of the actual world’s inner nature as self-reverting, “free” thinking (“objective spirit”).¹⁸ Historically speaking, the horizon of *Elements of the Philosophy of Right* is not circumscribed by the time of its publication (or that of its writing) but by the long-term development of modern society and modern statehood between the German Reformation and the French Revolution along with the latter’s aftermath — between Luther and Napoleon, so to speak.¹⁹ Philosophically, *Elements of the Philosophy of Right* is positioned between arid conceptual argument and culturally steeped reflection — between Kant and Montesquieu, *pour ainsi dire*.

A short-sighted reduction of *Elements of the Philosophy of Right* to specifically Prussian- or generally Restoration-inclined state apologetics not only distorts the mature Hegel’s politico-philosophical agenda. It also obscures the complex self-positioning that Hegel undertakes in this work with regard to the established and emerging alternatives in modern political thinking. The same holds for the opposite, progressivist interpretation of *Elements of the Philosophy of Right* as a clandestine defense and promotion of liberal reforms meant to democratize the existing reactionary European state of the early nineteenth century. In particular, anti-liberal and liberal readings of *Elements of the Philosophy of Right* alike seriously underestimate and generally overlook the complex blending of positions and perspectives that Hegel undertakes in his main work in juridido-ethico-socio-economico-civico-political philosophy, which is neither right-Hegelian nor left-Hegelian in orientation and intent. Rather Hegel’s pre-post-Hegelian project aims at synthesizing statist and antistatist, proto-liberal and proto-communal, paleo-individualist and paleo-collectivist orientations and dimensions — with the result that it equally satisfies all those dual descriptions at once, as it satisfies neither of them at all.

[18] On the material identity of *Elements of the Philosophy of Right* with the philosophy of objective spirit in Hegel, see G. ZÖLLER, “Vom Geist der Gesetze zu den Gesetzen des Geistes. Hegel über Sittlichkeit und Geschichtlichkeit”, in Th. Oehl and A. Kok (Ed.), *Objektiver und absoluter Geist nach Hegel. Kunst, Religion und Philosophie innerhalb und außerhalb von Gesellschaft und Geschichte*. Leiden and Boston: Brill, 2018, pp. 720-739. See also J.-F. KERVÉGAN, *The Actual and the Rational. Hegel and Objective Spirit*, trans. Daniela Ginsburg and Martin Shuster. Chicago/London: The University of Chicago Press, 2018.

[19] On Hegel’s systematic linkage of church reformation and the political revolution in German and French history, see G. ZÖLLER, “Keine Revolution ohne Reformation. Staat und Religion in Hegels *Enzyklopädie der philosophischen Wissenschaften*”, *Revista Opinião Filosófica*, 2017, 8/2. Special issue “Hegel-Marx e a contradição que move a história”, pp. 21-46.

II. FROM CIVIL LIBERTY TO POLITICAL FREEDOM

The historically imbued and systematically inclined character of Hegel's project in *Elements of the Philosophy of Right* shows especially clearly in the work's treatment of the intrinsically interconnected issues of political representation and political liberty. While *Elements of the Philosophy of Right* in its entirety could be considered a philosophy of freedom,²⁰ the work culminates in the linkage of political freedom to political representation and in the twofold articulation of liberty/freedom in accordance with the major dual differentiations of modern civico-political life. In particular, the mature Hegel distinguishes and relates civil liberty and political freedom, just as he differentiates and connects civil incorporation and political representation — in both cases by recourse to the innovative, original and far reaching distinction between “civil society” (*bürgerliche Gesellschaft*) and the “state” (*Staat*),²¹ more precisely, the “political state” (*politischer Staat*).²² It is also in this civico-political double perspective on liberty/freedom and representation that the relation of Hegel's typology of liberty/freedom (*Freiheit*) to Constant's two kinds of liberty (*liberté*) becomes apparent.

In *Elements of the Philosophy of Right* — but also in the preserved student transcripts of Hegel's lectures on the topic, first given in Heidelberg and then in Berlin, and in the corresponding parts of the three versions of *Encyclopedia of the Philosophical Sciences* (1817, 1827, 1830) — Hegel distinguishes two types of body politic, differentially labeled “civil society” and “state”. The German term for the former is *bürgerliche Gesellschaft*, with the adjective *bürgerlich* deriving from the German noun *Bürger* designating the dweller of a city, a state, or a city state, and alternatively rendered in English with the Germanic word “burgher” or its Latin-based counterpart “citizen” (*civis*). As used by Hegel in a juridico-political context, *bürgerliche Gesellschaft* is the German translation for “civil society” in the Lockean sense of a body politic considered from the perspective of its constituent members, rather than from that of their government. A Marxist reading that renders *bürgerliche Gesellschaft* in narrowly socio-economic terms as “bourgeois society”, meaning a society run and ruled

[20] For a revisionist reading of the entire Hegel as a philosopher of modern freedom, see K. VIEWEG, *Hegel. Der Philosoph der Freiheit*. Munich: C. H. Beck, 2020. For a more modest interpretation of Hegel's foremost formal conception of freedom as ever attempted but never completely achieved absolute self-identity, see G. ZÖLLER, *Hegels Philosophie. Eine Einführung*. Munich: C. H. Beck, 2020.

[21] HEGEL, GW 14/1, 160 (§§ 182f.); HEGEL, *Elements of the Philosophy of Right*, p. 220.

[22] HEGEL, GW 14/1, 230 (§ 276); HEGEL, *Elements of the Philosophy of Right*, p. 314.

by its capital-owning burghers, loses sight of the primarily civico-political, rather than solely socio-economic, dimension of Hegel's innovative concept.²³

The novelty that lies in Hegel's idea of "civil society" does not reside in the concept itself, which already had an established use for designating the body politic in a citizens perspective. Rather the innovation resides in Hegel's contrastive pairing of the civil conception of the body politic with an alternative, statist conception of it — and this within the same, supposedly consistent account of things political. By dividing the body politic into its specifically civil and its narrowly political sphere, Hegel manages to allocate the different but complementary functions of the body politic to the two forms of civico-political organization so distinguished. In particular, Hegel is able to assign to "civil society" the citizens' freely chosen actions and interactions in the public sphere and to attribute to the "state" the main, manifestly political functions of government.

While affording the citizens a significant extent of liberty in their individual and social self-development and -realization, the civil sphere for Hegel essentially includes, in addition to the economic sub-spheres of the free market ("system of needs") and the self-organization of the professions and trades ("corporation"), the lawful regulation of private and public life through the executive organs ("police") and the justice system ("administration of justice").²⁴ Accordingly, the public sphere of "civil society" in Hegel is neither reducible to an economic community of trade and exchange, nor is it altogether devoid of governmental rules and regulations. On the contrary, "civil society" is the state itself, in the latter's guise as the minimal state that is an instrumental institution ("external state") or a "state of [mere] need and [finite] understanding" (*Not- und Verstandesstaat*)²⁵, designed and intended to guarantee the secure exercise and enjoyment of the liberty of its citizens.

Viewed in a historical perspective, Hegel's "civil society" satisfies the (proto-)liberal program of the limited state, arising out of Locke and introduced into the German late Enlightenment discourse by W. v. Humboldt's "Ideas for an Attempt to Determine the Boundaries of the Effectiveness of the State" (*Ideen zu einem Versuch die Grenzen der Wirksamkeit des Staats zu bestimmen*) from

[23] On Marx' appropriation of Hegel's "civil society", see G. ZÖLLER, "'The Communal Being, the Communist Being,' Hegel and Marx on Civil Society and the Political State", in *Proceedings Hegel and Marx*. Beijing: Center for Marx-Engels Literature Research, Tsinghua University, 2017, pp. 32-38 (Chinese version) and pp. 39-48 (English version).

[24] HEGEL, GW 14/1, 164 (§ 188); HEGEL, *Elements of the Philosophy of Right*, p. 226.

[25] HEGEL, GW 14/1, 160 (§ 183); HEGEL, *Elements of the Philosophy of Right*, p. 221 (translation modified).

1792,²⁶ which was only partially published at the time and first made available in its entirety in the middle of the nineteenth century, just in time to inspire emerging political liberals like J. St. Mill. To be sure, less liberally and more idealistically inclined contemporaries of the young Hegel derided the minimal state as a “nightwatchman state” and opposed its lean lines with the ample vision of a utopian polity (“aesthetic state”) that was to offer the alienated modern individual spiritual redemption through quasi-artistic creativity (“free play”).²⁷

Hegel for his part seeks to supplement the (quasi-)liberal state of “civil society” with the manifestly “political state” as the seat of sovereign power over the internal and external affairs of the body politic. Moreover, rather than replicating the bottom-up self-organization of liberally natured “civil society”, the authoritative “political state” in Hegel exhibits a top-down constitution with a dynastic ruler (“monarch”) exercising “princely power” by appointing a professionally staffed governmental apparatus wielding executive and judiciary powers, while the legislative power resides in a bicameral body of delegates representing the country’s landed interests, on the one side, and those of commercial civil society, on the other side.²⁸ On Hegel’s analysis, each of the three political powers in the “constitutional monarchy” so defined contributes an essential feature (“moment”) derived from the three classical constitutional types, with the result that the modern state’s constitution resembles a “mixed constitution” composed of a monarchical, an aristocratic and a democratic element within the framework of a modernized, moderate monarchy.²⁹

Its ancient borrowings notwithstanding, Hegel’s modern mixed-constitutional state differs considerably from the political constitutions of antiquity, just as the liberty it affords differs from the kind of liberty known to the ancients, so perceptively portrayed by Constant. Yet rather than stressing the exclusive disjunction of ancient and modern liberty, Hegel seeks to vindicate to the modern polity a twofold conception of liberty/freedom. On the one hand, Hegel recognizes modern, individual liberty as the hallmark of liberal living in the state *qua* civil society and labels that liberty “subjective freedom”.³⁰ On the other hand, he recognizes the need for a form of freedom that reaches beyond the individual liberty available in civil society. On Hegel’s historically informed but modern-minded account, the latter liberty is akin — not in form,

[26] W. v. HUMBOLDT, *The Limits of State Action*, ed. J. W. Burrow. Cambridge: Cambridge University Press, 1969.

[27] See F. SCHILLER, *On the Aesthetic Education of Man. In a Series of Letters*, ed. and trans. E. M. Wilkinson and L. A. Willoughby. Oxford: Clarendon Press, 1968.

[28] HEGEL, GW 14/1, 226 (§ 273); HEGEL, *Elements of the Philosophy of Right*, p. 308.

[29] HEGEL, GW 14/1, 226 (§ 273); HEGEL, *Elements of the Philosophy of Right*, p. 309.

[30] HEGEL, GW 14/1, 202 (§ 258); HEGEL, *Elements of the Philosophy of Right*, p. 276.

but in function — to the specifically political, essentially public liberty *qua* freedom known to and cherished by the ancients, while not being exclusive of the other, specifically civil, essentially private liberty sought by the moderns and provided by civil society. Hegel names this freedom “objective” or “substantial freedom”.³¹ For Hegel it is the hallmark of the modern polity to integrate civil liberty *qua* “subjective freedom” and political liberty *qua* “objective freedom” into a complex hierarchy of liberties which he terms “concrete freedom”³² and which constitutes the “concrete state”³³ of modern, civil as well as political liberty and freedom, respectively.³⁴

Further features that recall and retrieve, in suitably modified form, the classical precedent of supra-individual, “objective” civico-political institutions and practices in general and the customs and codes of ancient republicanism in particular, to be found in Hegel’s specifically modern, yet neither simply liberal nor outright illiberal political state, include the social binding function of “patriotism”,³⁵ the motivating role of “political virtue”³⁶ and the civil founding force of social ethics (“ethical life”, *Sittlichkeit*) and publicly practiced religion *qua* cultus.³⁷ To be sure, in Hegel’s modern state-*cum*-civil-society these formerly demanding devices of committed citizenship have taken on a less virile, less sacrificial and altogether less strenuous shape — as dutiful taxpaying, ceremonial loyalty to king and country, law abiding daily life and assiduous weekly church attendance.

[31] HEGEL, GW 14/1, 201f. (§§ 257f.); HEGEL, *Elements of the Philosophy of Right*, pp. 275f..

[32] HEGEL, GW 14/1, 208 (§ 260); HEGEL, *Elements of the Philosophy of Right*, p. 282.

[33] HEGEL, GW 14/1, 254 (§ 308); HEGEL, *Elements of the Philosophy of Right*, p. 347.

[34] On the republican heritage in classical German philosophy in general, especially in Kant and Hegel, see G. ZÖLLER, *Res Publica. Plato’s “Republic” in Classical German Philosophy*. Hong Kong: Chinese University Press and Albany: State University of New York Press, 2015, and G. ZÖLLER, “Republicanism Without Republic. Kant’s Political Philosophy in Its Historico-Systematic Context”, *Studia Kantiana*, 2020, 18/3, pp. 11-44.

[35] HEGEL, GW 14/1, 211 (§ 268); HEGEL, *Elements of the Philosophy of Right*, p. 288.

[36] HEGEL, GW 14/1, 201 (§ 257); HEGEL, *Elements of the Philosophy of Right*, p. 275.

[37] HEGEL, GW 14/1, 213-223 (§ 270); HEGEL, *Elements of the Philosophy of Right*, pp. 291-304. At the systematic level, religion *qua* civil religion links the state’s sphere of historically limited, “objective” spirit to the sphere of religion, art and philosophy pertaining to historically comprehensive, “absolute” spirit. In *Elements of the Philosophy of Right* this transition is mediated by the sphere of “universal” or “world history”. See HEGEL, GW 14/1, 274-282 (§§ 341-360); Hegel, *Elements of the Philosophy of Right*, pp. 372-380. On the various forms of transition involved, see also Zöller, “Vom Geist der Gesetze”.

III. FROM THE ESTATES OF CIVIL SOCIETY TO THE ESTATES OF THE POLITICAL STATE

More significant than the ancient, quasi-republican relics, transfigured as they appear in Hegel's "political state", is the integration of the modern (in fact proto-modern and even medieval) political institution of representation into Hegel's polity, in which it serves as the latter-day substitute for the ancient device of (direct) political participation and is virtually coextensive with the modern version of political freedom. While Hegel does not locate political representation in the operations of civil society as such, which functions in the specifically civil rather than the properly political sphere, he explicitly bases the institution and function of representation to be found in the political sphere ("political state") on the concrete composition of civil society.

In essence, for Hegel political representation as a key constitutional feature of the modern polity involves the introduction, by way of delegation, of the structure and stratification of civil society into the political sphere of legislation. While, on Hegel's assessment, the political state systematically and substantially surpasses civil society by adding an entirely different, genuinely political dimension to the familial and civil forms of social existence, the political sphere, with regard to its core political power of legislation, is essentially formed through the transformative integration of civil society's socio-economic differentiation into the state's legislative power structure.

In particular, Hegel's system of civico-politically integrated representation maps the macro-economic stratification of civil society ("estates") onto the bicameral disposition of the legislative power. To be sure, the estates (with a small "e") recognized by Hegel — as composing civil society ("estates of civil society")³⁸ before undergoing differential transformation into politically representative estates ("estates in the political sense")³⁹ — are not akin to the largely independent member states (and member cities) of the former German constitution ("Estates", with a capital "e"), as previously analyzed by Hegel. Still Hegel's treatment of the matter in *Elements of the Philosophy of Right* follows the general representative principle that the full, "free" members constituting the body politic (whether principalities and cities or socio-economic classes, whether "Estates" or "estates") are to be involved, however indirectly and in a mediated manner, in the government of that body.

A further formative influence stemming from the treatment of the traditional Estates in the *German Constitution* and shaping the double account of civil society and the state in *Elements of the Philosophy of Right* is the inter-

[38] HEGEL, GW 14/1, 252 (§ 303); HEGEL, *Elements of the Philosophy of Right*, p. 344.

[39] HEGEL, GW 14/1, 252 (§ 303); HEGEL, *Elements of the Philosophy of Right*, p. 344.

mediary position and connective function of the “estate element”⁴⁰ between the state *qua* government and the infinitely varied interests of the population. According to Hegel, the estates serve as organizational schemes for channeling and promoting the main, essentially class-specific orientations and interests among the polity’s complex constituency. Rather than being an outdated remnant from Germany’s pre- and early-modern past, the modernized estates in *Elements of the Philosophy of Right* constitute the venue for the political representation of plural positions and competing interests — of “factions”, as they were termed in the American constitutional debate of the late 1780s, decades before the formation of political parties in mid-nineteenth century Europe.⁴¹

Hegel distinguishes three main socio-economic kinds of grouping (“class”)⁴² that make up civil society and thereby pre-delineate the composition of the state’s legislative power. In line with the logical structure of nested triads that constitutes the inner organization of *Elements of the Philosophy of Right*,⁴³ the three estates receive material, historically specific as well formal, logically cast characterizations. In particular, Hegel identifies the “agricultural estate” occupied with the cultivation of arable land that is held in private property as the “substantial or immediate estate”, the estate of trade and industry engaged in the formation of products and the trading of goods as the “reflecting or formal estate” and the estate comprised of trained professionals and civil servants that lend their training to others and to the civico-political whole, respectively, as the “universal estate”.⁴⁴

Hegel’s politically progressive point in developing the functional stratification of civil society is the latter’s specifically modern trait of not letting tradition, chance or circumstance alone determine membership in any one of the estates and their subdivisions. Instead talent and merit are to figure significantly in an individual’s life choices and career path.⁴⁵ Historically speaking, this modern move was epitomized by the socially and civically revolutionary Napoleon, who recalled in a recorded conversation on St. Helena in 1817 — just three years before the publication of *Elements of the Philosophy of Right* — the

[40] HEGEL, GW 14/1, 248 (§ 301); Hegel, *Elements of the Philosophy of Right*, p. 339 (translation modified).

[41] A. HAMILTON, J. MADISON and J. JAY, *The Federalist With Letters of “Brutus”*, ed. T. Ball. Cambridge: Cambridge University Press, 2004, p. 41.

[42] HEGEL, GW 14/1, 194 (§ 245); HEGEL, *Elements of the Philosophy of Right*, p. 267.

[43] For a sustained “logical” reading of *Elements of the Philosophy of Right*, see K. VIEWEG, *Das Denken der Freiheit. Hegels “Grundlinien der Philosophie des Rechts”*. Munich: Wilhelm Fink, 2012.

[44] HEGEL, GW 14/1, 170-172 (§§ 202-205); HEGEL, *Elements of the Philosophy of Right*, pp. 234-237.

[45] HEGEL, GW 14/1, 172f. (§ 206); HEGEL, *Elements of the Philosophy of Right*, pp. 237f..

civico-political principle (“maxim”) he had sought to maintain throughout in his fight against the established rule of social privilege and class prejudice: *La carrière ouverte aux talents*.⁴⁶

Moving from the original role of the estates in civil society to their political function in state legislation,⁴⁷ Hegel stresses the cooperative, rather than antagonistic, relation between the “political estate element”⁴⁸ and the two other political powers involved in legislation, viz., the monarch as (largely symbolic) sovereign and the government in the narrow sense as the state’s executive power and its organs.⁴⁹ By making the estates as differentiated in civil society — rather than the undifferentiated populace at large or the additive sum of “atomistic”⁵⁰ individuals — the basis and medium of political representation, Hegel seeks to balance society’s need for the effective representation of its main but varied interests with the state’s constitutive concern for the common good, thus assuring the meaningful integration of civil and political life — of civil liberty and political freedom.

In view of the heterogeneity of the estates composing civil society, Hegel specifies a two-partite division for the estates’ political representation — along the lines of the essentially different collective interests involved — into separate legislative “chambers”⁵¹ for the landowning estate (practically speaking, the landed nobility and other large-scale landlords) and for the two estates essentially owning “movable” goods (including technical skills and professional qualifications).⁵² With regard to the latter chamber, the comprehensive representation of the second and third civil estate under the guise of a single political estate (“third estate”) is to track the formers’ internal division into associations, communities and corporations of all sorts, thus mirroring civil society’s diverse but structured composition at the political, legislative level. The delegates are to be chosen as representatives from among civil society’s various but well-defined collective interests and are to serve the socio-economically

[46] B. E. O’MEARA, *Napoleon in Exile. Or, A Voice from St. Helena*, 5th ed., vol. 1. London: Simpkin and Marshall 1822, p. 405.

[47] HEGEL, GW 14/1, 248-258 (§§ 300-314); HEGEL, *Elements of the Philosophy of Right*, pp. 339-352.

[48] HEGEL, GW 14/1, 252 (§ 304); HEGEL, *Elements of the Philosophy of Right*, p. 344 (translation modified).

[49] HEGEL, GW 14/1, 249 (§ 300); HEGEL, *Elements of the Philosophy of Right*, p. 339.

[50] HEGEL, GW 14/1, 252 (§ 303); HEGEL, *Elements of the Philosophy of Right*, p. 343.

[51] HEGEL, GW 14/1, 257 (§§ 312f.); HEGEL, *Elements of the Philosophy of Right*, p. 351 (translation modified).

[52] HEGEL, GW 14/1, 253-255 (§§ 305-308); HEGEL, *Elements of the Philosophy of Right*, pp. 345-348.

differentiated common good in the political arena of legislative deliberation and decision.

In spirit as well as letter (with the very term “estate” commanding a complex civico-political spectrum of meaning and use), the collective composition of modern political representation in *Elements of the Philosophy of Right* follows the precedent of pre- and early-modern forms of representation in general and those of the German Imperial constitution, as previously analyzed by Hegel himself, in particular. Historically speaking, the former “third estate” has morphed into the core of the state’s legislative body. Systematically speaking, the politically entitled estates introduce an element of broad, popular representation into the state’s legislative power. While not satisfying later liberal and democratic demands for generally elective parliamentary representation,⁵³ the principle of political representation by estates, rather than by popular individual vote, can be seen to reflect the seemingly diverse, but actually quite structured complexity and heterogeneity of modern society — a predictable plurality that finds expression in the partisan politics of liberal democracy today with its essentially socio-economically defined political parties, interest groups and other formations for the self-organization of civico-political life. As Hegel knew, in the modern world the political state tracks civil society and political freedom follows civil liberty.

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[53] On Hegel’s critique of the “democratic element” in legislative representation, see Hegel, GW 14/1, 254f. (§ 308); Hegel, *Elements of the Philosophy of Right*, pp. 347f..

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