Universiteit
Leiden
The Netherlands

Generating freedom: Hegel's conception of political order

Tijsterman, S.P.

Citation
Tijsterman, S. P. (2024, April 16). *Generating freedom: Hegel's conception of political order*. Retrieved from https://hdl.handle.net/1887/3736094

Version:	Publisher's Version
License:	Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden
Downloaded from:	https://hdl.handle.net/1887/3736094

Note: To cite this publication please use the final published version (if applicable).

2. CONCEPTIONS OF POLITICAL ORDER

2.1 Introduction

Hegel's theory of political order can be positioned in relation to two opposed conceptions: one has self-government or political self-determination as its purpose and the other the protection of (individual) rights. Hegel's theory rejects the adequacy of these accounts on their own but offers a distinctive combination of both.

This chapter offers an overview of the ideational context that will guide the interpretation of his theory and show its contemporary relevance. The conflict between both conceptions of order remains unresolved and seems more urgent than ever.

The chapter starts with a discussion of Benjamin Constant's liberal theory of political order (2.2). As a contemporary of Hegel, Constant was arguing for a position very much in line with what has become the liberal democratic conception of order. To explain this, Constant employs the distinction between ancient and modern freedom, a distinction that is also helpful for understanding Hegel's approach.

Constant's opposition between ancient and modern freedom, just as Hegel's conception of political order, are chapters in a much larger and richer debate, which can be traced from Antiquity to the present age. To uncover the essence of this debate, the next section (2.3) discusses John Pocock's (1992) idea-historical distinction of two conflicting accounts of free political order, the liberal rights-based tradition and a self-governing republican tradition, which goes back to Athens. Pocock's overview puts Constant's idea of liberal democracy's superiority and the obsoleteness of self-government into perspective: both traditions are engaged in an "unfinished dialogue". Against this idea-historical overview, Hegel's theory of order can be understood as a serious and neglected attempt to bring both approaches together.

The following section (2.4) offers a systematic, ideal-typical description of the liberal-democratic understanding of political order. This section serves two purposes. First, it works out in more detail the understanding of order that is the main target of Hegel's theory. Second, it aims to show that this understanding is ingrained in modern conceptions, bringing relevance to Hegel's attempt to offer an alternative.

The final section (2.5) further underlines this relevance by showing the need for rethinking political order. The liberal-democratic order cannot fully satisfy the desire for freedom and generates a desire for political liberty that transcends and opposes the boundaries of liberal democracy. At the same time, the most prominent manifestation of this desire for an alternative order, illiberal populism, is evidently deficient in bringing about a sustainable and free political order.

2.2 Modern and Ancient Freedom: Constant's Conception of Political Order

In 1819, a French contemporary of Hegel, Benjamin Constant (1767-1830), delivered a famous lecture at the *Athenée Royal* titled 'The Liberty of the Ancients Compared with that of the Moderns'. In this lecture, Constant raised the question of how to organise a free political order, a question particularly urgent in the post-revolutionary and post-Napoleonic period. To this question, Constant offered a decisive answer: modern political order should be based on liberal principles and institutions, such as civil liberties, the rule of law, commerce (a market economy) and representative government. This lecture can be considered an early and relatively coherent articulation and foundational justification of the emergent liberal democratic order as it would develop in the nineteenth century. Even though Hegel did not respond directly to Constant, a brief discussion of Constant's position helps to identify the main target of Hegel's theory.

Ancient freedom, in Constant's conceptualisation, amounts to democratic self-government, the exercise of popular sovereignty, and can also be denoted as *political* freedom. The Greek city-states, democratic Athens in particular, exemplified this kind of freedom. Their political structure required "active and constant participation in collective power" (Constant 1988, p. 316). The practice of this political freedom corresponds negatively with the freedom of the individual. Ancient self-government went hand in hand with the complete subjection of the individual to "the authority of the community" (p. 311). The individual, "almost always sovereign in public affairs, was a slave in all his private relations" (idem). Constant describes ancient self-governing societies as deeply collectivistic; citizens were "merely machines whose gears and cog-wheels were regulated by the law" (p. 312). Citizens did not have the leeway to follow their privately chosen purposes; ancient political communities had no place outside the scope of the state and the public. The idea of individual rights was consequently absent in these city-states (p. 312); citizens, for example, had no choice but to follow customary religion. Constant, thus, portrays ancient freedom as an ideal for which a high price is to be paid.

Modern freedom corresponds with the kind of freedom which ancient freedom suppressed: the freedom of *individuals*, who are not primarily citizens but *private* beings whose *raison d'être* and value extend beyond their participation in the public realm. This modern freedom expresses the ideal of individual autonomy, according to which individuals should shape their lives as they please. According to Constant: "We are modern men, who wish each to enjoy our own rights, each to develop our own faculties as we like best, without harming anyone" (p. 323).

Constant concedes that the realisation of modern freedom, in turn, limits the scope of political liberty. "Among the moderns, (…), the individual, independent in his private life, is, even in the freest states, sovereign only in appearance" (p. 312). Due to the centrality of

private life, moderns do not want to participate in political life as actively and constantly as the ancients did. A division of labour also applies to the political domain. Modern states must have representative governments, in which only some, the representatives, are continuously involved in politics. In this system, the representatives function as 'stewards' of the rest of the citizenry, enabling them to devote their time to their private concerns (p. 325-6).

Constant emphasises the difference between modern representative government and popular self-government. He echoes Rousseau's criticism of the British system of representation when he claims that the individual in the electoral process "exercises […] sovereignty […] only to renounce it" (p. 312). Different from Rousseau, he argues that modern citizens must be willing to accept this limitation to their political freedom. The overall purpose of Constant's analysis is to convince his contemporaries of the superiority of modern freedom, even though this implies less political freedom: "Individual liberty (…) is the true modern liberty" (p. 323). He presents ancient political freedom, in contrast to this, as nostalgic and obsolete.

Constant's message must be understood in the context of the French Revolution, in which the ideal of popular self-government, inspired by Rousseau's political thought, had led to the failure of the Revolution and the crimes of the Terror. The idea of popular democracy presupposes that the people as a collective should express their will, which serves as the law to which all citizens should be bound.[20] However, this idea of a general will could not deal with social pluralism and individual rights other than by suppressing them. The Revolutionaries were easily tempted to regard dissent from the general will as hostility towards the popular will and those who expressed these views as traitors of the people. To push through the general will, the revolutionaries had taken recourse to ancient political mechanisms, such as censorship and banishment, and the not-so-ancient guillotine. In this context, Constant tries to convince his public that the desire for popular self-government in the modern age is irresponsible.

Constant bolsters his argument against popular democracy and for a liberal and representative political order by discussing the socio-economic conditions of both ancient and modern freedom.[21] First of all, he considers the relevance of size for political order. As ancient communities were relatively small compared to modern states, exercising political freedom was more rewarding. "The share which in antiquity everyone held in national sovereignty was by no means an abstract presumption as it is in our day. The will of each

[20] Rousseau (1991) claims in the Social Contract, Book I, chapter 7, that "in order that the social compact may not be an empty formula, it tacitly includes the undertaking, which alone can give force to the rest, that whoever refuses to obey the general will shall be forced to do so by the whole body."

[21] This discussion of the social conditions underlines the difference between Constant's account of both freedoms and Berlin's well-known distinction from 1958 between positive and negative freedom (Berlin 2002). Berlin's conceptions of freedom are primarily concerned with the consistency of both conceptions for which he draws out their political implications. Constant in contrast, lays out that different ages have different political ideals. Ancient freedom is not intrinsically 'wrong' but unfit for the modern age.

individual had real influence: the exercise of this will was a vivid and repeated pleasure" (p. 316). Because the large size of modern states renders participation much less gratifying, modern citizens will prioritize their private freedom over political freedom.

Additionally, Constant points out that permanent participation in political life requires leisure. Ancient societies were slave economies, which provided citizens with sufficient spare time for political participation. Modern states, however, recognise equal rights for all citizens, which does not allow for slavery. "Free men must exercise all professions, provide for all the needs of society" (p. 314), consequently leaving most citizens with little time to devote to public affairs.

The most critical condition for the right kind of freedom concerns the means of acquisition. Ancient states, with Athens as somewhat of an exception, sustained themselves and increased their wealth in Constant's analysis not only through slavery but also through war. War requires a high level of social homogeneity, as citizen-soldiers should be willing to offer their lives for the sake of the community. As a broad scope of individual freedoms is likely to undermine the collective spirit of the community, belligerent societies must limit individual freedom. Next to this, war and political freedom dovetail, according to Constant, because war-waging activities alternated with intervals of inactivity, providing the leisure to devote to public life (p. 314).

Modern states, in contrast, have replaced war with commerce as their primary means of acquisition. Commerce requires civil liberties, such as property rights and the right to contract. Constant, like many other liberals after him, firmly believed in the benefits of commerce and trade. With the wealth generated by trade, modern societies have "infinitely multiplied and varied the means of personal happiness" (p. 316). Moreover, commerce would soften manners due to its ability to unite people with entirely different backgrounds. Likewise, commerce will replace war; Constant predicts that the divisions between European states will largely fade away (p. 313).[22]

Citizens in commercial societies develop a strong attachment to these civil liberties. With commercial capitalism providing a wide range of life options, individuals want to exercise control over their individual lives; commerce "inspires in men a vivid love of individual independence" (p. 315). Simultaneously, ancient freedom loses much of its lure. Political participation now appears as a burden which side-tracks citizens from their private life projects. Citizens are now more inclined to regard state intervention as meddling in their private lives, largely unnecessary or even oppressive (p. 315, 324). Fortunately, from Constant's perspective, modern states also have less ability to intervene in society as they please because society will only provide them with the credits they depend on if governments respect society's rights (p. 324-5).

[22] Interestingly, Constant does not discuss how commerce could also bring divisions in society. He exclusively links factions to ancient freedom, not modern.

In surprising contrast to the overall tenor of his lecture, the superiority of modern freedom, Constant claims at the end of his lecture the need to combine both freedoms: "[I]t is necessary […] to learn to combine the two together" (p. 327). A closer inspection reveals that this combination consists of incorporating some aspects of ancient freedom into the modern order. Modern states should have elections and a vivid public sphere accompanying these elections.

Constant gives two reasons for the need for these forms of participation. First, a total orientation of citizens on their private lives could lead the political class, the representatives, to overstep their role as stewards by imposing their conception of the good life on society instead of merely guaranteeing justice.

> The danger of modern liberty is that, absorbed in the enjoyment of our private independence, and the pursuit of our particular interests, we should surrender our right to share in political power too easily. The holders of authority are only too anxious to encourage us to do so. […] [L]et us ask the authorities to keep within their limits. Let them confine themselves to being just. We shall assume the responsibility of being happy for ourselves (Constant, 1988, p. 326).

To prevent political domination, citizens should keep a critical eye on the political authorities. By using their right to vote and participating in the public sphere, citizens can hold their politicians accountable.

Second, Constant is wary that the fate of modern societies could be the pursuit of banal self-interest. He juxtaposes this "happiness" to humanity's higher calling, self-development. "It is not to happiness alone, it is to self-development that our destiny calls us; and political liberty is the most powerful, the most effective means of self-development that heaven has given us" (p. 327).[23] Their participation in the public sphere, reading about and discussing politics, would enable citizens to expand the horizons of their own lives and become aware of what is at stake for society or even humanity.

Constant, thus, sees in representative government the potential to develop around voting a distinctive political culture which revitalises elements of the ideal of ancient freedom. In this system, Constant predicts, citizens will deliberate as ("intellectual") equals about political matters with their peers and (candidate) politicians. This participation will not only keep the government accountable but also contribute to citizens' moral and intellectual development.

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[23] Constant's liberal commitment to individual autonomy does not imply the absence of authoritative answers to the purpose of life. Just as within the Aristotelian tradition, political activity is part of the good life. Typical for the liberal tradition, Constant justifies the value of political activity in terms of its contribution to individual self-development, the highest value. This similar liberal perspective can be found in John Stuart Mill's *On Liberty* (1989) and the work of Wilhelm von Humboldt (Valls 1999).

> Political liberty, by submitting to all the citizens, without exception, the care and assessment of their most sacred interests, enlarges their spirit, ennobles their thoughts, and establishes among them a kind of intellectual equality which forms the glory and power of a people (Constant, 1988, p. 327).

As we will argue, Hegel challenges this liberal-democratic conception of order, particularly the idea that civil liberties, market freedom and individual political rights can be the foundation of a free social and political life. The liberal-democratic conception of order will be worked out in more detail in section 2.4. Constant's tension between modern and ancient freedom must be placed in a broader idea-historical context first.

2.3 Pocock's Unfinished Dialogue

In the years following the fall of the Berlin Wall, Constant's dream appeared to have come true at last. Liberal democracy, the kind of order that combined individual freedom rights and the rule of law, a market economy and representative democracy, had emerged as the winner of the Cold War, while its contender, communism, seemed to have compromised itself beyond repair, just as half a century earlier its nationalist and authoritarian contenders.

Amid this optimism, intellectual historian John Pocock published a lecture titled 'The Ideal of Citizenship since Classical Times' (1992). Even though the lecture resembles an idea-historical overview of liberal and republican theories of citizenship, it can be read as a correction to the reigning *zeitgeist*. In contrast to Fukuyama (2006), Pocock does not offer a progressive narrative in which the liberal-democratic conception of political order ultimately wins. Instead, a liberal rights-based order, which he refers to as liberal or Gaian citizenship, is immersed in an intricate, complex and unresolved relationship, "an unfinished dialogue", with republican citizenship based on democratic self-government (Pocock, 1992, p. 46).

Pocock's overview helps to see Constant's position, just like Hegel's project, as part of a fundamental tension which dates back to ancient times and continues up to the present. His idea-historical account thus offers corrections to Constant's conception of the conflict between ancient and modern freedom. While Constant depicts ancient freedom as a thing of past societies, Pocock emphasises its enduring appeal. In addition, Pocock's juxtaposition puts into perspective the superiority of modern freedom, shedding light on its intrinsic disadvantages. Finally, Pocock's emphasis on the fundamental tension between both conceptions of order challenges Constant's idea of the modern political order integrating the quasi-ancient democratic institutions of elections and public domain. Thus, Pocock offers a rich background to position Hegel's attempt to combine self-government and liberal rights.

The lure of Athens

Pocock explains the enduring appeal of both civic republican and liberal citizenship by going back to their origins. Civic republican citizenship, based on the ideal of democratic self-government (or ancient freedom as Constant would put it), was born in Athens with Aristotle as its main theorist. Aristotle (1988) defined democratic citizenship in the *Politics* (book 3, chapter 4) as the practice "to rule and be ruled." Citizens, joined together as equals, make laws in the assembly and, when selected by sortition, make political decisions in the city's councils or as public functionaries, while at other times, they are subject to the decisions of others. For Aristotle, active citizenship was not instrumental to some other good but an end in itself. "What mattered is the freedom to take part in public decisions, not the content of the decisions taken" (Pocock 1992, 37). Participation in self-government is not instrumental for the good life but *is* the good life; full humanity could not be reached without it.[24]

An essential feature of Athenian citizenship was the exclusion of the material basis of life from politics. "Aristotle's formulation [of the nature of politics] depended upon a rigorous separation of public from private, of *polis* from *oikos*, of persons and actions from things" (p. 36). Citizens did not discuss in the assembly the affairs of the *oikos*, the household, but only those of the *polis*, the state, such as war and peace. For this reason, Athenian citizenship

> is ideal in the strict sense that it entailed an escape from the *oikos*, the material infrastructure in which one was forever managing the instruments of action, into the polis the ideal superstructure in which one took actions, which were no means to ends but ends in themselves (Pocock, 1992, p. 37).

By excluding the *oikos* from politics, Athenian citizenship could be radically equal, preventing any distinction between first- and second-class citizens. As citizens, they did not stand in relations of dependency towards each other, each citizen being dependent on the community. In principle, every citizen could speak first in the assembly, and all citizens who aspired could try to be selected by the lottery for filling the city's councils and the magistracies. To enable the inclusion of the less-well-to-do, citizens would get remuneration for their participation. At the same time, only a minority of the population in Athens had citizenship, so Athenian society was profoundly unequal. The inhabitants of the city who took care of the material conditions of life, namely women and slaves, did not qualify for citizenship, just like foreigners. According to Pocock, this foundation of citizenship in social inequality and exclusion was a matter of necessity. If citizenship had been fully inclusive, the

[24] Aristotle's perfectionism, the idea of political activity as fulfilling the intrinsic purpose of human life, clearly is linked to this teleological natural philosophy, which is based upon the belief that every organism has an intrinsic purpose and strives towards its realisation. According to Pocock, the appeal of the Aristotelian ideal of citizenship does not require adherence to Aristotelian metaphysics.

conflicts between groups around the production of life's material infrastructure would have entered the political domain. Politics, then, would cease to be an end in itself (but a means to organise the material foundations of life) and would no longer realise freedom.[25]

From a modern perspective, Aristotle's theory of citizenship and Athenian practice appear fundamentally flawed: its perfectionist conception of political life is disputable, its underlying social inequality reprehensible, and its disregard for underlying conditions myopic. Despite this, Pocock wants to underline that Athenian republican citizenship has become a political ideal with an enduring appeal. This ideal, "having been once articulated as an ideal, […] simply cannot be eradicated from the ideals of a Greek-derived civilisation" (p. 46).[26]

For our purposes, we can distil from Pocock's ideal-historical overview three related reasons for the enduring appeal of the Athenian ideal of self-government. First of all, Athens planted the seed of the ideal of the primacy of politics. The socio-political world is not something to accept as a given, the outflow of decisions beyond the reach of citizens. Instead, it is open for deliberation and collective decision-making, by which citizens can shape their communal life and future in line with their idea of the common good. The desire to make a change and to foster the common good could be considered heir to the Athenian ideal of citizenship.

The second feature of Athenian democracy that still speaks to us is its immediacy. Athenian democracy has become exemplary for overcoming the distance between citizens and the political domain of decision-making. Citizens could relate directly to politics because of their direct participation in decision-making and the visibility and comprehensibility of the political domain. Athenian democracy consisted of different institutions and functions, but all were filled with citizens, not civil servants or other professionals (Manin 1997, 32). Therefore, all these institutions spoke the language of ordinary citizens; citizens contributed their experiences to their deliberations. In addition to the plurality of councils and other designated institutions which made up the Athenian constitution, the general assembly constituted the platform where all could participate. As a consequence of this intimate relationship between the citizens and politics, Athens became an exemplum of a true *res publica*, a political order in which citizens were in charge of all of their common affairs. Against this ideal, the practice of representative government looks pale with its inherent distance between voter and politician, and between the ordinary citizen and the administrative professional.

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[25] This foundation of citizenship in social inequality continued formally until at least the beginning of the twentieth century, when only men (!) with sufficient income or capital for being independent were qualified as full citizens.

[26] For Pocock's purpose, the historical adequacy of this idealised account of the Athenian practice of citizenship is irrelevant.

Finally, Athens set the ideal of free and fulfilling citizenship. For this, we must not consider political participation in a narrow sense only. Citizenship also meant the experience of a specific form of equality in which social position and corresponding relations of dependence between citizens did not matter. Citizens mutually recognised each other. They experienced sympathy for their fellow citizens. Aristotle defined the bond between citizens as friendship; not one's social position but only mutual speech and action mattered. By speaking with others and acting in the city-state, citizens could show who they were. This practice of citizenship bolstered the sense of self: "he knew himself to be who and what he was" (p. 38). This ideal of being somebody in the community remains attractive in every age in which citizens feel marginalised, determined by their social position and, consequently, alienated from each other.

Each of these reasons for the enduring appeal of Athenian citizenship illuminates an aspect of what political freedom entails. First, political freedom consists of the possibility for citizens to deliberate about the common good and take the future of their shared life into their own hands. Second, the exercise of political freedom also consists of the ability of citizens to comprehend their political world and relate to it. Political freedom cannot be realised if citizens need special training to understand what is at stake politically. Third, political freedom means that citizens experience themselves as equals in the political community.

Over the centuries, different attempts have been made to revive the republican ideal of political order. For the modern age and also for the political philosophy of Hegel, Rousseau's political theory has been of crucial importance. In *The Social Contract*, Rousseau works out how a political order could realise political freedom without accepting the fundamental inequality that was part of Athenian democracy. For this, Rousseau employed the political-theoretical notions of his time, such as the state of nature, based on original equality and freedom, and the idea of sovereignty. This way, Rousseau offered a revised version of the ancient ideal of self-rule, adjusted for the modern age.

Rousseau's idea of a political community in which the citizens rule themselves by determining the general will corresponds with each of the three elements of political freedom. First, Rousseau's account of political order gives clear priority to politics, which Rousseau frames as the ideal of popular sovereignty. Popular sovereignty means that citizens make the laws they want to live by and also that the community can effectuate their democratic will and shape society accordingly.

Second, citizens of Rousseau's political community are supposed to relate directly to the law, the general will, as they have voted for it themselves. Rousseau rejects the idea of delegating political decision-making to representatives. Such a distance would undermine what, for Rousseau, was essential to political freedom: you yourself making the laws that you are subject to. Moreover, Rousseau also endeavours to make sure that all

citizens can relate to the community's political issues: communities must be relatively small and income differences limited (*CS*, II-9).

Third, Rousseau also pictures citizenship as rewarding. Citizens are political equals, connected by a strong bond. They experience the political community as their home in which they obtain their identity. Consequently, they are willing to give the good of the community prevalence over their private interest (*CS*, III-15). To prevent envy and competition among citizens, Rousseau also argues that the shared life of the community must be relatively simple, with only few luxuries.

The Gaian universe

For the opposite of the Athenian ideal of citizenship, Pocock does not, like Constant, start with a modern, liberal, non-political or private conception of freedom. Instead, he goes back to the relatively unknown Roman jurist Gaius, who lived five centuries after Aristotle. Gaius approached political order from the perspective of what the Athenian model leaves out: things (*res*), a juridical category next to persons and actions. The Athenian conception of political order considered political life (and human fulfilment) exclusively in terms of persons and actions; 'things' were left in the *oikos*. Gaius, however, placed things at the heart of political life, as most human actions were directed at taking, maintaining, or exchanging things, and persons encountered each other as possessors of things. The world of things "was the medium in which human beings lived and through which they were formed, regulated, and articulated in their relations with each other" (pp. 39-40). Slave and slaveholder do not relate as person to person but in terms of their juridical relationship, which also applies to other relations: the owner of a public bathhouse and a visitor, the owner of a plot of land and a developer who wants to buy it, and a citizen who wants to push his (rights-based) interests against those of other citizens. Because persons in the Gaian order came to regard themselves and others in terms of their things, they became a "product of 'reality'" (p. 48). (Note that the word 'real' derives from *res*, things.)

To recognise property, regulate the interaction between property holders, and adjudicate in the case of conflict, the world of things needs laws and a public authority to apply the laws and make jurisprudence. Citizenship in this conception of order is foremost a legal status; it comes close to being subject to the law (p. 43). A citizen was someone "free to act by law, free to ask and expect the law's protection, a citizen of such and such a legal community, of such and such legal standing in that community" (p. 40). Historically, St. Paul exemplifies this understanding of citizenship. Even though Paul originated from Tarsus, he

had the right as a holder of Roman citizenship to be tried in Rome according to Roman laws. Clearly, this right-based citizenship did not include participation in determining the law.[27]

This understanding of political order has turned out to be highly consequential. It did not only define politics in the feudal age, in which a differentiated network of laws and privileges structured human relations. The liberal tradition also manifests the Gaian understanding of political order through its emphasis on the foundational value of property rights.[28] Theoretically, liberalism defined from its outset with John Locke (1988, 2nd treatise, ch. 5) the person as somebody capable of appropriating land, harvest, and other goods. It regarded politics as the mechanism to turn possession into property by giving it legal status and protection. Practically, liberalism developed from the attempt by citizens and nobles to protect their rights against the ambitions of absolute kings, thus launching the idea of limited government.

At the same time, liberalism revolutionised the Gaian universe by extending ownership to immaterial property. Liberalism defined persons as holders of natural rights, which the law of nature had equally bestowed on all. This way, liberalism introduced the idea of a natural and universal equality among humans next to the inequality that resulted from recognising material property. The liberal tradition paradoxically turned the *real* basis of the Gaian conception of order into the *ideal*, taking the original human rights as foundational for the organisation of political life (pp. 49-50).

This conception of political order in terms of the protection of rights and interests by the law stands, according to Pocock, in contrast to the idea of politics as self-government.

> [T]he person defined himself as a proprietor before he claimed to be a citizen, and thus set up a world of relations with things and persons, which he did not leave behind in an Aristotelian *oikos* when he entered politics and became a citizen, but (…) carried with him into politics as the pre-condition of his citizenship (p. 48).

Politics tends to be considered in the Gaian universe as a juridical device to regulate citizens' pre-political possessions and rights, not the realm to shape common life and to show who one (really) is. In this approach, active citizenship as participation in communal decision-making does not define the person, but the pre-political person defines citizenship.

The Gaian ideal of a free order has, according to Pocock, also a profound appeal to us. It meets the desire of individuals to have their belongings recognised and protected, while self-government contains the risk of violating these rights for the sake of a political

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[27] This same understanding of citizenship developed in the medieval cities, the *bourges*. A *bourgeois* was somebody that stood under the jurisprudence of the laws of the city and did not imply – contrary to the designation *citoyen* – the practice of self-government.

[28] The term liberalism is employed in a broad sense here, referring to the political philosophy that approaches government in terms of the defence of individual rights. The next section defines the liberal-democratic conception of order in more detail.

conception of the common good. The Gaian organisation of political order promises a transcendence from the vagaries of political life, because the world of things, materialised in jurisprudence, can discipline political power to recognise and protect citizens' material and immaterial properties (p. 46). It was precisely this danger of popular rule which led Constant to reject ancient liberty.

For the elaboration of the Gaian idea of order in the modern age, *The Federalist Papers* (Madison, Hamilton, and Jay 1987) are the *locus classicus*. Its authors endeavour to design a political order whose institutions must enable the peaceful coexistence of different, partially opposed factions or interest groups. From this perspective, the Rousseauan notion of self-government, in which the members of society formulate the general will, the law by which they want to be ruled, would inevitably result in the suppression by the majority of the legitimate interests and rights of minority groups, in particular the rich. Consequently, the key motive of the *Federalists* was to design institutional devices, such as the system of checks and balances, to prevent the exercise of popular rule and unaccountable state power. In their account, representative government was explicitly meant as an alternative to popular rule.

Even though the authors of *The Federalist Papers* aim to protect established interests and rights, the Gaian conception of political order is flexible enough to develop a more progressive orientation. The Gaian project is Janus-faced: on the one hand, the protection of established rights; on the other, a tendency towards emancipation. Within this progressive orientation, social problems come into view as problems of rights (conflict between rights, or the failure to recognise rights), which require solutions in terms of rights. Due to liberalism's turn towards the ideal, the political order could be reimagined by extending the catalogue of human rights (together with extending the idea of natural rights): civil rights in the 18th, political rights in the 19th, social rights in the 20th and identity-related rights in the 21st century.[29] Emancipation often speaks the Gaian language.

Despite these assets, Gaian politics has, according to Pocock, intrinsic limitations. The Gaian order "could never satisfy the hunger of individuals […] to be free of the world of things, free to interact with other persons as free as themselves in a community of pure action and personal freedom, in a political community good in itself and an end in itself" (p. 45). The Gaian universe generates and protects rights and adjudicates conflicts between right-holders but does not allow citizens to shape their common life directly, because the social world now consists of citizens who relate to each other *and* themselves as right-holders, claiming their rights against others. Such a rights regime brings distance and alienation among and within citizens and the consequent loss of Athenian citizenship's fulfilling character:

> [T]he point is that [the medium of things] constantly mediates, deflects and conditions the personality we seek to assert in thought and through action.

[29] This schematic overview, which can be found in Bovens (1999), can be traced back to T.H. Marshall (1950).

> […] [W]e can exist as persons […] only by submitting to the innumerable deflections, fragmentations, specialisations, and redefinitions of personality which action in the world of things imposes upon us. […] [W]e are all foxes, never lions or hedgehogs, but we desire to be all (p. 46).

Pocock's belief in the incompatibility of self-rule with (pre-political) individual right goes against Constant's idea of a system integrating the protection of individual rights with democratic self-determination. With the introduction of full suffrage at the beginning of the 20th century, which added political rights to the gamut of rights, Western societies endeavoured, in line with Constant's idea of a combination, to further transform the predominantly legal order into one both legal *and* political. In this constellation, citizens were supposed to be both subject to and, as electors, authors of the law.

According to Constant, this complementation of the liberal order with political rights and representation would make it possible to approximate the experience of ancient freedom. Elections would be complemented with a political culture, which would enable citizens to relate to the domain of political decision-making. Moreover, by offering political rights to all, there would also be a kind of political equality between voters and representatives and between citizens themselves.

Constant, however, seems to have underestimated how modern liberty entails both social and political fragmentation: people will choose different ways of life and have different levels of success. Moreover, these differences will also organise themselves politically to foster their group interests. This undermines the ability of citizens to identify with the political domain and their fellow citizens directly. Remarkably, Constant does not consider the idea of social factions at all, nor the fact that commerce also leads to the marginalisation of some groups.[30] Likewise, to deal with such a plural society and to prevent majority rule, the power of the legislative assembly should be limited by countervailing institutions, as the authors of the Federalist papers argued. The power of government should be limited. This limitation affects the priority of politics. In hindsight, Constant seems to have been too optimistic about the possibility of combining modern and ancient freedom.

In contrast to Constant, Pocock is much more sceptical about the possibilities of combining popular self-government and the protection of rights. He ultimately offers a tragic picture in which there is no option to progress, or even finish, the dialogue. However, we must not infer from their opposition and tensions that it is fundamentally impossible to bring together both accounts. Remarkably, Pocock does not include Hegel in his idea-historical overview. It was precisely Hegel's project to develop a theory of political order that combines self-government with the protection of rights and the presence of social plurality. Pocock's history of two ideals needs to include this chapter as well.

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[30] Bellamy (2012) works out this deficiency of Constant's conception of a liberal-democratic order.

2.4 The liberal conception of political order

Hegel wants to combine self-government with the liberal protection of rights. However, his critical discussion is mainly targeted at the liberal conception of order, an idea of order based on civil liberties, a market, an instrumental state and representative government, though he also criticises popular democracy. This focus of criticism must not be taken as one-sided. Hegel saw the liberal mode of conceiving political order as gaining dominance in his age and, as such, the object of his investigation. The democratic republican model, in contrast, had to a substantial degree compromised itself by the failure of the French Revolution.

This section offers an ideal-typical account of the liberal democratic account of political order. This account aims to include the order that Hegel puts under criticism when he discusses the limitations of civil society [*Bürgerliche Gesellschaft*], which Chapters 4 and 5 will work out in more detail. At the same time, this account seeks to correspond to the liberal-democratic order that has gained ascendancy in the Western world.

It is not easy to offer an ideal-typical description of the liberal-democratic conception of order. As Western political culture and reflection largely take liberal-democratic thinking for granted, distinguishing its key features proves difficult. Moreover, the liberal-democratic tradition is broad and consists of many apparently opposed practices and ideas.[31] A description of the liberal-democratic conception of order, therefore, runs the risk of missing the unity underneath those manifold manifestations, overemphasising the differences, or giving a lopsided account.

Despite these difficulties, it is possible to give a general description of liberal democracy's key assumptions: its understanding of society, its central values, and how political institutions can realise these values and reproduce order. Such an ideal-typical description works out this conception of order as a logic in which all key assumptions cohere. For this, we distinguish a liberal vision (and practice) of society, the state (government) and democracy.

This ideal-typical description aspires to empirical adequacy.[32] It purports to describe the general pattern which underlies all varieties of liberal democracy, including Hegel's idea of civil society. At some time, we will also touch on varieties within this general pattern, such as the distinction between a social-liberal and classical liberal conception of the state. Clearly, Hegel, who wrote at the commencement of the liberal conception of order, did not distinguish all of these varieties.

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[31] Pappas (2019, 42) speaks of liberalisms.

[32] The construction of this ideal-typical description is based on a wide spectrum of sources, which will be referred to in this section. Even though some other authors have endeavoured to do the same thing, e.g. Geuss (2003), I have preferred not to follow any, but give my own account of the liberal-democratic tradition.

SOCIETY

The liberal-democratic conception of political order has two major assumptions regarding the nature of society. In the first place, the central principle or value which guides and should guide society is individual autonomy, or, as Constant calls it, modern freedom. The liberal conception of order takes individuals as holders of equal civil, political, and, eventually, social rights. These rights enable individuals to lead their lives in correspondence with their self-determined purposes.[33]

Society in the liberal conception of order is not conceived as a body in which individuals exist as part of a larger whole, but as a space in which individuals on the basis of their rights interact freely. Hegel refers to this sphere of social interaction as civil society [*Bürgerliche Gesellschaft*] (*cf*. chapter 4). This form of social interaction is taken to be the original condition as rights are supposed to inhere in the individual.[34] The political community with citizenship are conceived as secondary, and have to respect and cater for these pre-political rights. Likewise, this understanding of order regards social relations as primarily non-political, taking place between individual right-holders and not between citizens who share a community. Citizens are in the first place private persons with the right to pursue their own conception of the good life outside of the moral ends of the community and governmental monitoring. The only legitimate limit on their activities is violating the rights of others.[35]

The other major assumption of the liberal democratic conception of political order holds that society, understood as the free interplay of individuals, is mostly beneficial and, consequently, able to reproduce itself. Rights-based interactions are considered largely harmonious, contributing to the overall thriving and progress of society.[36] Liberal conceptions of order assume, often implicitly, that these interactions are internally directed to a balance or social optimum. Two versions of this belief in the inherently benevolent nature of free social interplay can be distinguished: the one regards society as a market, while the other abstracts from the economy and market relations and regards the sphere of free interactions as what is currently called "civil society" (Putnam, 1994), a network of voluntary

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[33] Crucial is that political order is understood by reference to the freedom of the individual. It does not make much difference for our purposes whether this individual freedom should be understood as non-interference or as non-domination (for this discussion, see Pettit (1997)), nor whether individual freedom amounts to the freedom of choice. This central value of autonomy in the liberal conception of order does not imply that liberal citizens (should) hold autonomy as their highest value. This would be a fallacy of composition. Autonomy is the highest value of the political order, which enables citizens to pursue whatever values they are committed to.

[34] See for instance John Stuart Mill, who asserted in *On Liberty* (1989, 13): "Over himself, over his own body and mind, the individual is sovereign."

[35] This idea is known as the harm principle and was formulated by Mill (1989, 13) as follows: "[T]he only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others."

[36] Even though the liberal conception of order generally justifies individual rights deontologically, this consequential assumption offers further justification. Markets, for instance, can be justified for respecting the original right of property (deontological) but also for creating positive outcomes (Newey 2012).

associations wherein individuals gather to realise their purposes. Hegel's philosophy does not make this distinction. His notion of civil society refers to both market interactions and other associations individuals freely enter.

To start with the non-market relations, liberals regard the non-coerced interactions, which the protection of individuals' rights enables, as beneficial. They go against their communitarian critics who claim that liberalism's emphasis on individual freedom and the protection of individual rights would result in an individualistic, atomistic dystopia (for a discussion of this, *cf.* Kymlicka 2002, 245). In contrast to this view, liberals think that protecting individual freedom does not stifle social impulses but promotes social behaviour. They expect individuals to use their freedoms, such as the freedom of conscience and association, to build friendships and mutual understanding, and to participate in the voluntary associations of civil society, such as churches, sports clubs, and educational and cultural institutions. Free individuals, thus, will contribute to the purposes of others and, as such, to the overall quality of (civil) society. In accordance with this, John Rawls defines society as a "cooperative venture for mutual advantage" (1973, 4). This propensity to cooperate does not imply that society becomes homogenous. Liberals accept and cherish societal plurality. Tolerance of diversity is for them a matter of principle, as individuals and groups have the right to follow their conceptions of the good. On a more consequentialist plane, they generally think that diversity, in particular the opposition of ideas, has the potential to contribute to society's moral, social, scientific, and cultural progress.[37] Overall, Kymlicka's designation of the liberal position as the "glorification of society" (2002, 296) summarises it aptly.

The version which regards society as a market also considers the free interaction of individuals as inherently beneficial and a source of social progress. Market transactions, at least in theory, are consensual. They would not take place if they were not profitable for each actor involved. In economic parlance, markets result in Pareto-efficiency as they tend towards outcomes in which no other transactions improve the position of at least two actors. However, markets are not just advantageous to those directly involved. Liberals in this tradition generally accept Adam Smith's idea of an 'invisible hand.'[38] According to Brennan (2012, 77), markets are extended systems of cooperation in which self-interested choices result in "positive externalities." For example, the fabrication of a simple pencil requires the collaboration of many people, of whom only a few consciously intend to produce a pencil

[37] Mill (1989, 65–68) typically argues for the societal value of individuality and eccentricity.

[38] Smith (1999, Book IV, Ch.II , §IX) expressed the idea of an invisible hand famously as follows: "By preferring the support of domestic to that of foreign industry, he intends only his own security; and by directing that industry in such a manner as its produce may be of the greatest value, he intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. […] By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it."

(this example come from: Read 2008). Contributors intend to promote their private interests; others come into view as competitors or as a means for further fostering their self-interests. Nevertheless, each contributes to the widespread and cheap availability of pencils, a good which enhances the quality of life of many. Markets, therefore, make societies more prosperous. Beyond this, market interactions have, for some liberals, such as Constant, the potential to civilise social life because people involved in a trade relationship are more likely to accept differences, such as religious differences.[39]

In the political landscape, both understandings of society stand against each other. Right-wing positions tend to regard society, first of all, as a free market and argue for the protection of property rights and limit state infringement, assuming the capacity of the market to organise itself and optimize outcomes. The understanding of society as a civil society is more prominent on the left, which argues for extending the rights of individuals to enable autonomy. At the same time, both understandings of society seem to have a close affinity with each other, as both are based on the ultimate value of the individual to make choices. Moreover, they often presuppose each other. At least, it seems difficult to conceive of autonomy, the freedom to set one's ends in life, without market freedoms, such as the liberty to produce, buy, sell, invest, and trade. The other way round, market freedom seems to require other civil liberties, such as the right to move, the freedom of expression and the freedom to choose your profession.[40]

The state

The liberal-democratic conception of political order also contains a distinctive conception of the state, by which I mean the sphere of political rule and to which I also refer as government or the state apparatus. Its key assumption is that the state is an instrument of society; its function is to sustain the logic of society. Hegel also refers in his conception of liberal order to this conception of the state, which he calls the *Not- und Verstandesstaat* (chapter 5).

The state in the liberal conception of order is, due to its instrumental understanding, inherently ambiguous. On the one hand, the liberal conception of order prescribes a policy of *laissez-faire* or benign neglect; the state should be kept out of society as individuals have the right to shape their own lives. Crucial for the liberal conception of order is to create "a sphere beyond the rightful reach of government in which individuals can enjoy independence and privacy" (Galston 2017, chap. 2). The liberal conception of order, therefore, rejects both state intervention in citizens' moral life – against paternalism – and economic life – against

[39] This idea could be considered as a precursor of modernisation theory, according to which the wealth which markets create leads to the substitution of traditional values for modern, post-materialist values, such as democracy and tolerance (Inglehart and Welzel 2005).

[40] At the same time, the modern world shows that, against earlier expectations, advanced capitalistic markets do not automatically go together with civil liberties.

market intervention. Moreover, society left to itself can do without much state intervention, as liberals consider it a relatively harmonious, self-sustaining, and progress-generating interactive system. From this perspective, the state threatens to violate the freedom of society and exercise domination over it. At the same time, society needs political institutions to protect individuals' rights, or to intervene when society's free interactions do not turn out to be benign for all involved. The state must enforce respect for private property and other civil rights, while it must also guarantee social rights. In short, the state is necessary to prevent domination among the members of society.

The belief that state domination should be prevented entails an interrelated set of liberal doctrines about the state. First, the state should remain 'neutral' vis-à-vis society. Paternalism, the prescription of how citizens should live, is in the liberal framework a violation of citizens' autonomy, their right to pursue their conception of the good life. The state should respect their (moral) choices as long as they do not violate the rights of others. This doctrine of state neutrality is sometimes framed as the priority of the just (or the right) over the good.[41] In this doctrine, the state should occupy itself with justice, which is not a comprehensive conception of the good life but a political framework which offers citizens the opportunity to "live autonomous lives in pursuit of (what they take to be) objective values" (Christman 2002, 212). Constant also expressed this idea when he calls the governing bodies to "confine themselves to being just" (Constant, 1988, p. 326).

Closely related is the liberal doctrine of the separation of state and society.[42] The state should respect the freedom of society, while society should respect the neutrality of the state. A further specification of this doctrine is the separation of church and state. According to this doctrine, the church should not interfere in politics, which prevents the state from imposing church dogmas on its citizens. The other side of the coin is that the state should not meddle in church teachings and rituals (freedom of religion).

Liberal democratic orders have several constitutional mechanisms to 'limit' government vis-à-vis society. For instance, the system of checks and balances divides government into different branches, such as the executive (the president) and the legislative (the Senate and House of Representatives), which reciprocally limit each other. Similarly, the independence of the judiciary power, and the practice of judicial review, should guarantee that laws and executive decisions do not undermine society's fundamental rights. Finally, elections constitute a mechanism by which citizens can keep their government accountable and prevent abuse of power.[43]

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[41] See for instance Rawls (1988). This principle of liberalism has attracted most criticism from communitarians (e.g. Sandel 1996, 290).

[42] Pierre Manent (2006, Chapter 1) works out the liberal idea of separations

[43] The next sub-section further works out the role of elections in liberal democracy.

At the same time, the liberal-democratic understanding of order acknowledges society's need for government, which is instrumental to its ends. Four functions can be distinguished. In the first place, the state must protect the rights of citizens. The state must prevent violations of these liberties if possible, and otherwise, it must restore justice by punishing the transgressor. In short, the liberal rights regime needs an impartial and powerful defender.

In the second place, the state should adjudicate different rights claims. Rights tend to conflict with each other, for example, the property right of the one and the rights of the other to move freely. To solve such conflicts, a public authority must speak justice and further develop the rights regime by specifying rights (Spicer 2001). Even though the state is an instrument of social life, in this function, just as in the previous one, its impartiality implies that the state must be independent vis-à-vis societal forces. In Hegel's conception of the liberal order, the *Not- und Verstandestaat* consists in the first place of an administration of justice, which has to perform these two functions.

In the third place, the state has to regulate social relations. It has to promulgate rules and laws which concretise the fundamental rights for different domains of social life. For instance, markets have to regulated to guarantee fairness. In the fourth place, the state should realise public goods, such as bridges, schools, or an army. The liberal conception of government is not necessarily committed to the belief that the free interactions of society would provide for all goods. Society's free exchanges do not entail the coordination necessary to procure these goods. In those cases, the state should step in. Moreover, the state also has a function to take care of citizens' basic needs, for instance, offering education and taking care of orphans or more extended versions of a welfare state.[44] Hegel's *Not- und Verstandesstaat* also performs the latter function of a proto-welfare state, which he refers to as the 'Police' or 'Adminstration of Welfare (*cf.* Chapter 5).

In the liberal conception, the state should not pursue the common good, understood as a good for society as a whole, which stands as a moral standard against individual preferences. As explained above, this idea of a collective purpose does not fit the liberal idea of state neutrality; the function of the state is to uphold the rights regime. The state could be said to pursue the public interest, which, in contrast to the idea of the common good, can be understood by reference to individuals' (private) rights and interests.[45] A bridge to cross a river, for instance, is in the public interest as it corresponds to the (private) interest of the members of society. This reduction of the public to the private brings up the question, typical for the liberal order, which mechanism can infer the public interest from the

[44] According to the social-liberal variant of liberal order, the state has an obligation to guarantee social rights, which relates to this and the first function of the state. This will be further explained below.

[45] For this distinction between the public interest and the common good, see Douglass (1980).

preferences of the members of society, for example, a utilitarian calculus (or some other method of public choice), elections, or public debate (Bozeman 2007; Cochran 1974).

This liberal conception of the state corresponds with a wide array of political ideologies as they would develop in the course of the 19th and 20th century. These positions correspond with the different conceptions of society (as market or as civil society) and the place of social rights in the political order. These positions could be placed on a continuum from left to right, of which I will, for the sake of clarity, only discuss the extremes. Together, they should show the degree to which the liberal conception of order has become ingrained in political reflection.

The one end of the spectrum consists of classical liberals and libertarians. As heirs of John Locke, they consider the right of property as absolute.[46] This position, thus, rejects the extension of civil liberties with social rights as social rights do not, like civil rights, express the reciprocal relations between *individual* citizens but between the state and the individual members of society. To enable autonomy, the state must for all citizens guarantee, for instance, a minimum income. Libertarians such as Nozick (1974) and, more recently, Huemer (2012) question these social rights, as they require taxation, which infringes on their property rights. Only a minimal state, which has no function other than protecting property and security, meets the libertarians' principles.

A variation of this position is the neoliberal conception of the state, which prescribes an extension of the domain of the market by privatising and commodifying, for instance, health care, public transport, and education. The reasons for such an order are not a principled adherence to civil rights, as with the libertarians, but consequentialist: markets are supposed to produce superior outcomes. The state's role in this perspective is "merely to lay low the hills in the way of the market and smooth the paths for its operation" (Pettit 2014, 23).[47]

The other side of the spectrum is the home of social liberals, which, since the 1990's, includes a large part of the social-democratic movement.[48] They also conceive individuals as right-holders but extend the rights inventory and, as such, the scope of equality in society. First, they add to the economic freedoms of property and contract other civil rights, for instance, the right not to be discriminated against for gender or sexual orientation. Next to this, they espouse the idea of citizens' social rights. Social liberals would claim, for instance, that all citizens have an equal right to a basic standard of living and particular goods, such as

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[46] Locke (1988, 2nd Treatise, §27) took property to be deducible from the self-ownership of one's body and labor.

[47] The neoliberal state can be taken as somewhat paradoxical since it claims that the state should retreat but in fact actively intervenes and reorders society by establishing new property relations. Even though neoliberal policies react against big government, the neoliberal order turns out to require a relatively sizeable state to regulate market relations (Plant 2010).

[48] For a critical overview of the movement of social-democratic parties in Europe and the Democratic Party in USA to a more social liberal position: see Robert Kuttner (2018, Ch. 6).

education and to live in a clean and sustainable environment. Citizens in the social-liberal conception own these rights, as they cannot be imagined to lead free and autonomous lives without them. Clearly, this extension of rights gives the state a much more prominent role. It has to prevent violations of a broader spectrum of civil rights and organise capacity, such as a welfare state, to realise citizens' social rights.[49]

Despite significant differences between both extremes and their opposition in daily politics, both understandings of government are ultimately liberal: both take individuals' rights as the basic units of social and political life. The social-liberal position extends the number of rights but also respects property rights and the resulting market relations. Typically, Rawls's 'basic structure of society' is not an alternative to the free market but takes it for granted and reflects on how to compensate outcomes that violate (the right to) social justice (Herzog 2013, 3).

Representative Democracy

The dominant conception of political order is explicitly liberal-*democratic*. A free political order does not only require a state which protects individuals' civil and social rights. Citizens also have the political rights to elect representatives (or to run for office). Constant's embrace of representative democracy exemplifies the liberal conception of order.[50]

We can distinguish two functions of electoral democracy, which neatly cohere with the liberal order's underlying principles. First, elections are a powerful means to protect freedom. In the liberal imagery, rights reside in the individual; politicians are merely stewards of the citizens. Liberalism is deeply aware that the agent could become the principal: political power could intrude on citizens' rights and interests. In this line, Constant feared that governments could overstep their prerogatives and become a dominating force. Rosanvallon (2008, 6) calls this typical attitude "liberal distrust." Because good intentions of the government are insufficient to preclude this danger, citizens need "guarantees" (Constant 1988, 326). Elections offer citizens the means to keep officeholders accountable and discipline them when they have forfeited the trust put in them. In the liberal order, representatives must ultimately be subject to "the verdict of the people" (Manin 1997).

Protecting freedom in the liberal democratic conception of political order requires civic-mindedness among its citizens, as Constant already hinted at. It is crucial that some citizens scrutinise the dealings of government, while a substantial part must be sufficiently informed to cast their votes responsibly, both of which require critical journalism. This

[49] The philosophy of John Rawls epitomises the social-liberal position. He regards the equal enjoyment of civic and political freedoms as the first principle for a just state, while the second principle is to distribute goods according to the maximin principle (Rawls, 1973).

[50] This conception can, therefore, also be described as liberal democratic. Confusingly, the post-war order, which is also generally described as liberal democratic, also contained elements which go beyond the liberal conception of order (see 1.2).

attitude of vigilance can be self-interested, motivated by a concern to protect one's rights and interests. However, citizens can also keep a critical eye on their government, or even governments abroad, for the sake of others. Advocates for human rights and social justice exemplify this practice of liberal citizenship.

Second, elections are a means to organise popular influence on the outcome of political decision-making regarding what public goods or regulations are in the public interest. The liberal democratic conception of political order rejects the idea that the state knows what is in citizens' best interest. Rather, the public interest must be derived from their preferences. Representative democracy is a means to aggregate preferences and unveil their relative strength. The liberal democratic tradition generally accepts the propensity of individuals to promote their self-interest. Liberal citizenship, thus, typically combines a preoccupation with private interests with a more public-minded concern to prevent domination.

At the same time, this second function of democracy entails the risk that majorities or the most powerful interests will hold sway over political outcomes and suppress more minor factions' rights and legitimate interests. As discussed in the previous section, the liberal tradition has invented all kinds of constitutional devices to prevent unalloyed majority rule. The classical pluralistic interpretation of (American) democracy, however, downplays this danger. According to this, a free society consists of a plurality of distinctive interest groups (the input), each of which will have, on the whole and in the long run, a fair share in the collective decisions of the political system (the output).[51] This position, thus, involves the typical liberal assumption that free societies have some kind of natural balance and that the political system, as a consequence of this, can be considered as a neutral mechanism to aggregate preferences.

The popular influence that the liberal-democratic conception of order allows does not amount to popular self-government. According to this idea, political communities have a unified will, the general will, and majorities have the right to determine this will, even if it goes against the rights of minorities. The liberal conception of order, in contrast, takes rights to inhere in the individual. Neither the state nor the will of majorities ('the general will') has the right to upend these individual rights. Similarly, just as the state should abstain from paternalism, so must majorities steer clear of prescribing how their fellow citizens should live. The constitutional devices which limit the state, such as the system of checks and balances and judicial review, should, therefore, also frustrate the effectuation of the majority will. Liberal democracy protects citizens as rights-holders against citizens as co-authors of the law.

[51] A classic contribution to American pluralism is Dahl's *Who governs?* (1961). Easton (1965) understood the political process in terms of input, the political system which makes public decisions, the output. For a critical reaction to pluralism: Lukes (2005).

Liberal-democratic citizens should be disciplined to respect these limits on their political rights (or the institutions should be strong enough to break majority rule). Their concern with the well-being of the community should respect society's pluralism. They should not try to impose a vision of society against the rights and convictions of others. The liberal-democratic conception of political order assumes that the protection of their rights and other benefits of the rights regime will incite citizen-voters to use their political rights responsibly, and abstain from expressing political desires which undermine the fundamental rights of others.

2.5 The need to rethink political order

It is safe to claim that in line with Pocock the debate between the two conceptions of political order, the one based on (liberal) rights, the other on popular self-government, has not finished yet. The ascendancy of liberal democracy, "*the* current political norm" (Pappas 2019, 9), has provoked the emergence of challengers, of which this section will discuss briefly the republican democratic innovations and, somewhat more extensively, the rise of populism. Both of these challengers are orientated towards the ideal of democratic self-government but fail to fully develop a convincing and realistic alternative conception of a free political order. In this predicament, it is more than ever necessary to rethink the political order.

The first manifestation of liberal democracy's insufficiency is the growing theoretical and practical interest in republican citizenship and democratic innovations beyond electoral democracy. Republican authors typically desire to render citizenship more meaningful and argue for extending the range of citizen participation. Their central value is participation in self-government; government must be "a public matter to be directed by the members of the public themselves" (Dagger 2006, 153). More direct participation, for instance, citizens' councils, participatory budgeting or mini-publics, eventually in combination with sortition, could bring politics closer to citizens, including marginalised groups (for an overview: Smith (2009)). Next to this, deliberations could also foster more reasonable decision-making compared to the polarisation typical of electoral democracy (*e.g.* Van Reybrouck (2016)).

Often, arguments for more or different participation do not amount to developing a full-fledged alternative to the liberal order. They add non-electoral democratic elements to the liberal order, similar to the inclusion of representative democracy within the liberal order which Constant proposed. Though local experiments give some credence to the idea that these innovations improve the functioning of democracy, it remains to be seen that this deepening of democracy could solve the fundamental weaknesses of liberal democracy.

Some so-called civic republicans, however, advocate a reimagination and corresponding reform of the political community beyond the liberal, rights-based model.[52] Instead of starting from rights, which inhere in the individual, civic republicans underline the deep bond between citizens and their community. Thriving communities require citizens' active involvement in their shared life and commitment to the common good, for which citizen education is of crucial importance (Peterson 2011). This way, they substitute liberalism's prioritisation of private life for that of public life. In this line, civic republicans are generally critical of market freedom, as it undermines the bond between the citizen and the community (Dagger 2006; MacGilvray 2011). The practical relevance of this civic republicanism, however, is limited. It argues for reconsidering our normative commitments and behaviour as citizens, but dodges the question of which aspects of the liberal order must be transformed and how. Should the state be given the power to enforce civic duties or a substantial conception of the common good? Without clear answers to these questions, civic republicanism runs the risk of being no more than an expression of nostalgia.[53]

The other manifestation of the desire for self-government, the emergence of populism, has been much more consequential for the practice of democratic orders in the twenty-first century. Moreover, populism presents itself much more explicitly as an alternative to the dominant liberal-democratic order, claiming to be fully democratic, for which it is willing to abstain from liberal features.

Populism can be interpreted as a desire for the (Athenian) ideal of democratic self-government in the three aspects which I derived from Pocock. First, populism seems to attempt to restore the priority of politics. Populism expresses a firm belief in the power of politics to shape society. The central value of populism is popular sovereignty. The people, taken as a unity, have a shared political (or general) will. This popular will should be in charge, shaping communal life as it sees fit. Populism has a deep faith in the potential of politics to transform life. It does not let society's juridical and economic infrastructure discipline its imagination of how the political community should be. Canovan (1999) refers to this understanding of politics as 'redemptive', which she contrasts with a pragmatic understanding of politics. From a liberal perspective, populism often appears unhinged and irrational. For effectuating the primacy of politics, populists cherish parliamentary majority rule in combination with a strong executive power, which can implement its visions, eventually against constitutional checks and the rights and interests of minorities.[54]

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[52] Civic republicans can be contrasted with neo-Roman republicans, who define freedom not so much as self-government of a community but as non-domination (Pettit 1997). Neo-Roman republicanism is very close to liberalism.

[53] There are attempts to further civic republican thinking along these lines, for instance Dagger (2006), but they have not developed very far.

[54] Note the differences between populism and civic republicanism. The latter is aware of the dangers of central power. Dagger (2002), for example, regards a division of power as central the civic republican tradition.

Second, populism also promises to overcome the alienation and distance typical of liberal democracy. In populist analysis, citizens and the state, the domain of political decision-making, can only be reconnected if politicians respect and execute the popular will. Unlike civic republicans, populists do not consider citizens' direct participation in deliberative venues essential for this. Elections, eventually in combination with referendums, are mechanisms to express and unveil the (majority) will of the people directly. In the populist perspective, political alienation results from the ruling parties, the establishment, in combination with mediating institutions, such as courts, higher houses in parliament, experts or the media, which structurally disrespect, dilute, criticize, and consequently override the will of the people. Populists, therefore, often employ an opposition between 'the pure people' and 'the corrupt elite' (Mudde and Kaltwasser 2012, 8). Populist parties claim the monopoly of representing the will of the people (Müller 2017).

Finally, populism can be interpreted as a manifestation of the desire for a more fulfilling community that recognises and protects citizens' identity. A key issue of right-wing populism is protecting the national community against perceived threats, particularly immigration. The liberal conception of order conceives society as pluralistic, held together by giving each citizen equal universal rights. Populism offers an image of a much more cohesive society, held together by a shared culture and sense of belonging. Populists assume that citizens can only be themselves and find meaning in such a community. As a consequence, populists carefully guard the entrance of new citizens to the state and question the rights of citizenship of groups that do not fit their idea of the people.

Populism can be portrayed as an alternative to the critical features of the liberal-democratic order, as discussed in the previous section. Against the pluralistic image of society as being made up of the interactions of individual rights-holders, it has an account of society as a much more cohesive unity, a nation or quasi-homogeneous *demos*. Against the idea of a limited state, instrumental for the rights of individuals, it argues for a government which has the capacity to protect the unity of the nation and effectuate the popular will. Against the liberal idea of democracy, focused on accountability and the promotion of (group) interests, it understands democracy as a mechanism to the determine the people's will, which ultimately should rule.

At the same time, the populist model provokes the suspicion that it will turn out to be, once in government, a travesty of democratic self-determination. In practice, the promise of following the will of the people as expressed in elections can only be kept on specific, highly divisive symbolic issues, such as immigration, which must show the government's vigour. Populist governments hide the impossibility of popular self-government by elections in the modern world by manipulating the media to conjure the image of governmental

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Moreover, the release of political imagination does not fit the civic republican conception of the primacy of politics, which would require deliberations by participants who responsibly take different positions into account.

responsiveness on these issues. Free and fair elections and the freedom of the press constitute the conditions for generating the popular will, but they are also the means to criticize the popular will or the policies which are claimed to follow the will of the people. Populist leaders, who have concentrated political power, are, therefore, tempted and often willing, as the current trend of democratic backsliding shows, to curb the freedom of the media and to manipulate the electoral system (Müller 2017). For these reasons, a popular or illiberal democracy tends to become authoritarian, being both illiberal and undemocratic (Pappas 2019, 33, 34).

To conclude, populism is, just like the interest in civic republicanism, a manifestation of dissatisfaction with the liberal democratic order and a renewed orientation to the ideal of democratic self-government. Still, it does not offer a convincing alternative. As Pocock frames this: "[T]he road back to the heroic simplicities of the polis may be too long to be traversed" (p. 44). For Pocock, the question of political order is ultimately tragic: we desire both ideals of citizenship, which are fundamentally incompatible. Apparently, we have to choose between a relatively coherent and stable liberal order which does not meet our desire for freedom and its self-destructive contender.

This conclusion, however, might be premature, resulting from a false dichotomy in which ancient or modern freedom, self-government or the protection of rights are the only options for realising a free political life. The following chapters will investigate whether Hegel's conception of political order constitutes an alternative to both liberal-democratic and popular-democratic order. As a contemporary of Constant, Hegel also identified both ancient and modern freedoms. However, he did not choose sides but explored the space between them to formulate an alternative that transcends both. Such an investigation is now urgent as never before.

2.6 Conclusion

This chapter has positioned Hegel's theory of political order within the tension between the ideal of self-government and the protection of rights. It has explained this tension by going back to its origins in ancient times: Athens, which expresses the ideal of self-government and the person of Gaius, who, according to Pocock, stands at the basis of understanding politics in terms of the management of rights and possessions (*cf.* 2.3).

In the 18th century, this tension acquired a form that has turned out to be highly consequential for both Hegel's age and also ours. For the ideal of self-government, Rousseau's reinvention of this ideal has been crucial. In line with the social contract tradition, Rousseau took the original freedom of the state of nature as a point of departure. From this perspective, self-government appeared as the kind of order which would maintain natural freedom in the political order. For this, all citizens should participate in determining the

general will, the law which is to shape social life. By doing so, citizens would exercise popular sovereignty. Rousseau, thus, separates freedom as self-government from a comprehensive account of the good and the rational. The only criterion for laws to be good and free is the determination of the general will.

The Gaian universe also underwent a transformation due to the social contract approach. The issue was not merely to protect society's actual legal arrangements but also the fundamental natural rights citizens as equals hold. For Locke, these concerned the right to freedom, life and private property. This approach also opened the door for expanding the range of natural rights the individual could claim.

The emergence of the ideal of popular rule caused a further development of the Gaian perspective. To protect property against majority rule, the authors of the *Federalist* proposed a conception of a free political order that was not based on the idea of the general will. Instead, a free political order would consist of the coexistence of different factions, whereby none of the groups could impose their will on others. Crucial for this programme were the constitutional devices such as federalism, representation, and checks and balances. Due to the latter, the people's will would not be concentrated in one branch of government, while none of the branches would be able to impose its will unilaterally.

The danger of popular rule also provoked Constant's contribution to the elaboration of the Gaian universe. Like *The Federalist Papers*, Constant argued for a system of representation and the acceptance of commerce. However, unlike *The Federalist Papers*, Constant did not primarily offer institutional proposals. His importance lies in drawing the allure of a political order centred on the ideal of individual autonomy ('modern freedom'), together with his argument for the obsolescence of the ideal of political freedom as popular rule ('ancient freedom') (2.2).

All in all, the Gaian universe has crystallised in this period into a distinctive conception of political order, which I have referred to as liberal and which has come to dominate reflection on political order in the twentieth century. I have offered an ideal-historical account of this conception (2.4). This conception understands political order by reference to the interactions of rights-holding *individuals* who pursue their self-chosen ends. It regards the state's political institutions as an instrument of the rights-based free interactions of society. Democracy appears primarily as a means to keep government accountable, not a mode of self-government.

Hegel's theory of political order must be read and interpreted against this background. Hegel rejects, just as Constant and the authors of *The Federalists Papers* do, popular democracy. For him, the problem of majority rule is not only the suppression of parts of society but also its irrationality, as we will set out in Chapter 7. Hegel, however, does not reject the ideal of self-government. His theory of political order aspires to show how self-

government can be realised under modern circumstances. This requires reconsidering the nature of freedom and the nature of society.

Similarly, Hegel's position towards the liberal conception of order is ambiguous. On the one hand, Hegel does not accept the liberal conception of order as an all-encompassing account of political order. Our freedom is not exclusively modern. A political order based on the liberal assumption will, in Hegel's analysis, turn out to be unfree (*cf.* Chapters 4 and 5). At the same time, Hegel integrates features of the liberal order in his free order, such as the possibility of individuals to set their own ends and the market.

Finally, this chapter has also laid the foundation for our claim of the continuous relevance of Hegel's theory of order. In line with Pocock, the current crisis of political order can be read as another chapter in the tension between the two ideals of citizenship. The liberal conception, which largely determines our theory and practice of the current political order, has generated at the same time experiences of powerlessness, meaninglessness and political alienation. The rise of populism, fateful as it might appear, could be regarded as manifestation of the continuous appeal of the republican ideal.

In this predicament, Hegel's attempt to reconcile both accounts could be helpful for considering political freedom. Hegel's criticism of the liberal order still applies as the object of his criticism overlaps to a large degree with the dominant liberal order in our age. (The ideal-typical account of the liberal order of 2.4 covers both). Moreover, both the liberal order (centred on individual rights) and the populist challenge (based on an idea of popular sovereignty) are heirs to the social contract tradition. By criticising this tradition and its underlying ontology and offering an organic alternative, Hegel can help us reimagine what it means to have a free political order which can regenerate itself.