Generating freedom: Hegel's conception of political order

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5. THE LIMITS OF LIBERAL ORDER: POLITICAL PATHOLOGIES

5.1 Introduction

The previous chapter reconstructed Hegel's argument of why a liberal social order, modelled after civil society, cannot be free and rational. This conclusion, however, might be premature as it has only considered civil society as a *social* order. For Hegel, civil society is also a quasi-political order, as it contains – or generates from Hegel's organic perspective – governmental institutions. The interactions of civil society provoke the need of state institutions for the protection of the law. Moreover, civil society also develops the need for a public authority to help its members realise their ends and provide welfare. The state, which comes up in civil society, is understood as an instrument to realise the ends of its members.

This chapter reconstructs Hegel's argument that also the liberal political order that includes state institutions must fail to bring freedom. From the perspective of objective freedom, the political institutions of a liberal order are unable to guarantee the satisfaction of ends. The interventions of the liberal state cannot bring rationality back into civil society's social relations. From the perspective of subjective freedom, the instrumental state fails to resolve the alienation inherent in civil society. Rather, the presence of an intervening state now adds another dimension to the alienation members of civil society experience, as civil society by necessity breeds a kind of state hostility.

This chapter begins with a description of the nature of the political institutions of civil society (5.2). The following two sections reconstruct Hegel's argument for why an instrumental state does not suffice to realise freedom. First, I trace Hegel's argument for the failure of the state to guarantee well-being for its members, i.e. objective freedom (5.3). Then, I will unpack Hegel's argument for why a liberal political order does not succeed in enabling its members to overcome alienation, but adds a new, political dimension to this alienation (5.4).

5.2 The "external" state

Hegel refers to the government of civil society as the "external state" (for instance, *PR*, §183). The external state should be distinguished from the ethical state, the all-encompassing political order, of which civil society is only a part. Besides this, the external state must also be differentiated from the "political state". This political state refers to the ensemble of political institutions (the executive, legislative and monarchical branches of government) which make political decisions within the ethical state. This political state could also be

referred to as the internal state. The state as political order and its political institutions, the political state, will be discussed in chapter 6.

The external state is Hegel's construction of what the political institutions would look like if they were to be fully grounded on the principles of civil society. It is the state which follows the logic of civil society. Consequently, this external state is entirely instrumental in meeting the needs of individual particularity, the central principle of civil society. It is the executive or administrative apparatus of civil society. In practice, it consists of two institutions, the administration of justice and the police (to be explained below).

The institutions of the external state are also part of the political state of the ethical state, though their meaning and functioning undergoes a transformation there. In the political state, the executive stands in a broader political context, which includes relations to the monarchical and legislative branches of government. Moreover, the executive then acts within a political community made up of citizens who identify with their political order, not within a society made up of self-interested individuals.[103] In that setting, citizens do not regard government as an external device but as a part of their order to which they have an internal relation.

In his account of the external state, Hegel, therefore, has stripped the government of all the aspects by which it is embedded in a concrete ethical order. What is left is a purely instrumental account which fits the structure of civil society's ethical life. Members of civil society have learned to see themselves as separate beings that set their own ends or, put differently, they have unlearned to see themselves within the sphere of politics as part of larger social institutions. Its conception of political life has discarded all similarities with the ethical life of the family. Consequently, they conceive the political institutions as something outside of themselves.

Besides the external state, Hegel uses two other labels for the socio-political order of civil society: "a state of necessity and of the understanding" [*Not-und Verstandesstaat*] (*PR*, §183), which have a similar meaning. The epithet "state of the understanding" refers to civil society's dominant mode of cognition, which I have discussed in the previous chapter. Members of civil society take their particularity as absolute, i.e. as both its starting point and end. From this perspective, they cannot see or experience that the community and its political institutions are constitutive of who they are and to which they have an internal relation.

The label "state of necessity" refers to the motive of its members to turn to the state. The members of civil society, generally, do not want to be concerned with the state and politics; their focus is their own ends. However, in a case of necessity, such as the inability

[103] Hegel's approach is subtle. He discusses the police as part of civil society, but the civil service, the universal class, as part of the state. The police clearly presupposes a civil service, but in the setting of civil society, the civil service has not obtained yet the ethical meaning which it has as part of the ethical state.

to meet one's needs or being subject to crime, they will turn to the state.[104] Just as in the liberal account of order, the state is a necessary evil, both a threat to individual freedom and necessary to protect and foster this freedom.

In Hegel's analysis, the members of civil society, despite their concern with their particular ends, already develop some sense for 'the universal' and the need for political institutions that foster this universal. Both political institutions of civil society, the administration of justice and the administration of public welfare (the police), thus respond to a need experienced in civil society. The previous chapter briefly discussed how individuals in civil society, who look for means to satisfy their needs, come to recognise personhood and the right of property and regard it as a central organising principle of social life. As a consequence, the members of civil society also want these rights to be codified, just as they want an authority that, in the case of crime, applies the law and restores justice. "Through the administration of justice, infringements of property or personality are annulled" (*PR*, §230). This way, "the universal (…) has to be extended over the whole field of particularity. Justice is a major factor in civil society: good laws will cause the state to flourish, and free ownership is a fundamental condition of its success" (*PR*, §229A).

The members of civil society do not only want the protection of their property rights but also welfare: individuals in civil society want to live in a social (and political) structure which enables them to satisfy their particular needs.

> But the right which is actually present in particularity means not only that contingencies which interfere with this or that end should be cancelled and that the undisturbed security of persons and property should be guaranteed, but also that the livelihood and welfare of individuals should be *secured* – i.e. that *particular welfare* should be *treated as a right* and duly *actualized*. (*PR*, §230; emphasis in original)

And:

> [S]ince I am completely involved in particularity, I have a right to demand that, within this context, my particular welfare should also be promoted. Account should also be taken of my welfare, of my particularity, and this is the task of the police and the corporation. (*PR*, §229A)

The free interactions of civil society do not guarantee welfare, as explained in the previous chapter. Whether individuals can realise their particular ends depends partly on their own choices and abilities but also on the system as a whole.

> In the system of needs, the livelihood and welfare of each individual are a possibility, whose actualisation is conditioned by the individual's own

[104] The corporations are not part of the external state. Unlike both other institutions, they do not have public authority over society as a whole. Moreover, the corporations have a mode of interaction that has moved beyond the instrumental reasoning of civil society.

> arbitrary will and particular nature, as well as by the objective system of needs. (*PR*, §230)

Members of civil society, as they experience failure to satisfy their needs, come to realise that the political organisation of their social life partially conditions the fulfilment of their ends. This experience could be interpreted as a first, though still underdeveloped, acknowledgement of the existence of a *bonum commune*, that structuration of social relations that enables the realisation of particularity. This insight also brings about the need for a public power [*die (…) Macht des Algemeinen* (*PR*, §231)] to realise this common good by regulating and intervening in society life. This power is the universal or public authority, which Hegel refers to as the police [*Polizei*]. As Hegel's use of the concept 'police' is much broader than our current understanding, I will also use the concept 'public authority' (which is close to Hegel's own use of 'universal authority' or 'administration of welfare').

This public authority has three functions. First of all, it has a function which more or less corresponds to the modern conception of the police: preventing the actions of some to bring harm to others, impairing the satisfaction of their needs. In civil society, there is always a possibility of individuals bringing harm to each other (*PR*, §233). Therefore, the public authority must surveil social life to prevent crime and other forms of harm (for instance, the risk of having large masses in a small space). Hegel also includes the necessity of market surveillance; to prevent cheating, market goods must be inspected. To perform this function well, the police must have the right to impose penalties on violators or to arrest them and hand them over to legal authorities for trial.

The second function of the public authority is to check, regulate and intervene in the system of needs, the market. The market dynamic enables the satisfaction of a wide range of needs, though not necessarily the needs of all (*PR*, §232; see also section 4.3). The equilibria towards which markets tend are, from Hegel's ethical perspective, not necessarily rational in the sense of doing justice to all particular needs. Hegel, thus, rejects a complete *laissez-faire* perspective on the economy. The public authority must supervise market relations and intervene when the welfare of some groups is under threat. "The freedom of trade should not be such as to prejudice the common good" (§236A). In the case of grain shortage, for instance, the police should not leave it to the market to set the price for grain but impose reasonable tariffs. "The differing interests of producers and consumers may come into collision with each other, and even if, on the whole, their correct relationship establishes itself automatically, its adjustment also needs to be regulated by an agency which stands above both sides" (*PR*, §236).

This role of the state in the economy does not imply that Hegel favours a state-run economy. He is also wary of stifling the free economic life of society because of the advantage of a free economy (the relative rationality as discussed in the previous chapter) and the central role of the right to property and contract in civil society. But if markets are too much

left to themselves by the public authority, they are bound to come to crisis and in need of state intervention.

> This [particular] interest invokes the freedom of trade and commerce against regulation from above; but the more blindly it immerses itself in its selfish ends, the more it requires such regulation to bring it back to the universal, and to moderate and shorten those dangerous convulsions to which its collisions give rise (*PR*, §236A).

The imperative for the public authority, therefore, is to steer a middle course between too much and too little intervention.

From this perspective, Hegel also argues for the need of the public authority to keep an eye on essential branches of industry within society. Their well-functioning often involves different actors, all dependent on each other and the conditions in which each of them operates. This complex cooperation can make industries vulnerable as no one takes responsibility for how this impacts society's welfare. "But the main reason for universal provision and direction is that large branches of industry are dependent on external circumstances and remote combinations, whose full implications cannot be grasped by the individuals who are tied to these spheres of their occupation" (*PR*, §236). For this reason, the state should also keep oversight of the economy.

The third function of the state is to provide public goods that meet the needs of citizens, for example street-lightning, bridge-building and education (*PR*, §236A). Even though citizens desire these goods, the free market does not provide them. Consequently, the state has to step in and, based on tax revenues, provide them for all. In addition to public goods for everyone, the state must also organise provisions for the needy who cannot meet their own needs. "Civil society is obliged to feed its members" (*PR*, §240A). The state in civil society also obtains features of a welfare state.

Hegel argues for this responsibility of the state to provide for its citizens, in particular people in need, by pointing out how civil society's emerging capitalistic relations have fundamentally transformed traditional life forms. These capitalistic relations constitute "an immense power which draws people to itself and requires them to work for it, to owe everything to it, and to do everything by its means" (*PR*, §238A). In this setting, families themselves do not have sufficient capacity to guarantee welfare for all its members. "[I]n civil society, the family is subordinate and merely lays the foundation; its effectiveness is no longer comprehensive" (idem). In the modern world, "the individual becomes a son of civil society" (*PR*, §238).

The full entanglement of individuals in the market relations of civil society – like their entanglement in their family – implies that they can claim rights against it. In civil society, the individual "has as many claims upon him as he has rights in relation to it" (*PR*,

§238).[105] This includes provision for the poor so they can meet their basic needs. Similarly, the public authority should take responsibility for public health, for example building hospitals (*PR*, §239). The image of civil society as a family also implies to Hegel that the state can take a paternalistic stance towards the poor. "For the poor, the universal authority takes over the role of the family with regard not only to their immediate deficiencies, but also to the disposition of laziness, viciousness, and the other vices to which their predicament and sense of wrong gives rise" (*PR*, §241).

At the same time, civil society's purpose is to lessen its members' immediate dependence on the public authority. They should learn to stand on their own feet – be self-reliant – and provide for themselves a stake in the public wealth (*PR*, §237). "[T]he wider viewpoint is the need to prevent a rabble from emerging" (*PR*, §240A). To realise this, civil society must organise public education (*PR*, §239) and encourage citizens to overcome their dependence on welfare. "[C]ivil society (…) also has the right to urge them to provide for their own livelihood" (*PR*, §240A). However, Hegel does not place the responsibility exclusively on the poor. The state should also reform the economy to prevent the emergence of poverty. "[S]ociety endeavors to make [private charity] less necessary by identifying the universal aspects of want and taking steps to remedy them" (*PR*, §242).

By prevention, oversight, regulations and the provision of public goods, the public authority attempts to counter contingency in the realisation of welfare. "[T]he aim of oversight and provisions on the part of the police is to mediate between the individual and the universal possibility which is available for the attainment of individual ends" (*PR*, §236A). This mediation has a direction opposite to that of the administration of justice, the other institution of the external state, which annuls crime by imposing punishment. This way, it forces the particular ends of the members of society to abide by the universal rules of the law. The administration of welfare, in contrast, takes the particular needs and ends as given and adapts the overall structure of social life (the universal) – by making regulations, taking preventive measures, and providing public goods – to enable the members of society to satisfy their needs.

At this point, it must be clear how Hegel's conception of the external state corresponds with the liberal state, as we have defined it in chapter two. Both understand society as the interaction of free individuals who hold freedom rights and the state as an instrument of this society: it must protect these rights and enable individuals to realise their self-chosen ends, which should include welfare provisions. The question is to what degree

[105] Hegel assumes that the claims of the rabble against society are not ungrounded. "No one can assert a right against nature, but within the conditions of society hardship at once assumes the form of a wrong inflicted on this or that class" (*PR*, §244A).

this external state can, as it intends, render civil society objectively and subjectively free. Answering this question amounts to assessing the potential of a liberal political order.[106]

5.3 State failure in the liberal order

As addressed in the previous chapter, the interactions of civil society turn out to be relatively irrational as a substantial part of society cannot satisfy its needs. Hence, the need for an interventionist state emerges, which should enable the members of civil society to meet their ends, which would render the social order rational. This section reconstructs Hegel's analysis of why an interventionist state fails to bring back rationality.

THE CHALLENGE OF POVERTY

Hegel investigates this most prominently with regard to the question which "agitates and torments modern societies especially" (*PR*, §244A): the rise of poverty and emergence of a rabble, the demoralised underclass.[107] From the start, Hegel makes it clear in a somewhat paradoxical formulation that the public authority of the external state is not competent to solve this problem that accompanies the proliferation of market relations.

> "[D]espite an excess of wealth, civil society is not wealthy enough – i.e. its own resources are not sufficient – to prevent an excess of poverty and the formation of a rabble." (*PR*, §245)

Hegel comes to this defeatist conclusion after considering the options the public authority has at its disposal. First, Hegel discusses public welfare to ensure the "increasingly impoverished mass" their livelihood (*PR*, §245). This welfare is to be paid for by the funds that public institutions might have or by taxing the wealthier class. Hegel concedes that welfare could lessen the most grinding effects of poverty. However, he rejects it as a structural solution because receiving welfare, not working for your livelihood, is problematic in civil society. "[T]his would be contrary to the principle of civil society and the feeling of self-sufficiency and honor among its individual members" (idem). This dependence on the state would underline their incapacity to care for themselves, as a consequence of which they would not fully count.

To overcome this problem, Hegel discusses the creation of work for the unemployed as an alternative approach. This way, the unemployed would meet civil society's standard of

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[106] Again, we must not forget that Hegel offers a stylised, ideal-typical account of the liberal state here. In this account, he excludes the institution of representation in civil society, while real-existing liberal states also contain democratic representative institutions. Hegel discusses representation as part of the ethical, non-instrumental state. In chapter 7, I will argue that representative institutions can also follow the logic of civil society, in which case they fail to contribute to the existence of a free political community.

[107] As explained in the previous chapter, the rabble also extends to the depraved rich, who have lost contact with the inner structure of society. However, the challenge of the state is, first of all, to prevent poverty.

self-sufficiency and would be able to gain a sense of honour. This solution, however, would not work either. The creation of work would increase the volume of production, which only exacerbates the problem. One of the reasons for widespread unemployment and low wages for simple work is the lack of demand for employees. The workforce already produces (more than enough) for the demand (*PR*, §245). The growth of output thus would further disrupt the economy.

Besides this, Hegel also discusses more global solutions. The dynamic of civil society propels it outside of its borders in search of new market outlets for its products. This solution could counter unemployment caused by overproduction (*PR*, §§246-7). In this light, Hegel also discusses the foundation of colonies, as this would create new markets for its products and be an outlet for those workers redundant in the national labour market. However, Hegel does not regard these solutions as structural either: at a certain point, the new market might produce the goods themselves, while colonies will become independent after some time. The fundamental problem, therefore, would re-emerge at a certain point.

Hegel acknowledges the powerlessness of the external state in the face of its most pressing problem. This brings up the crucial question of how to interpret this position. According to Avineri (1974, 154), Hegel basically admits that poverty is a problem of the modern world for which there is no solution; consequently, we have to live with it. Whitt (2013), in contrast, interprets Hegel's position as critical, intended to uncover how modern political order depends on the presence of an underclass as an internal other. Different as they are, both interpretations have in common that they question Hegel's claim that the modern state could realise freedom fully.

This reconstruction, in contrast, reads Hegel's account of civil society as an inquiry into the possibility of civil society as an overarching (liberal) order. From this perspective, the inability to solve poverty points towards the need to understand and organise political order on a different footing. If political order is organised as civil society, poverty and demoralisation will remain endemic because the liberal state lacks the tools to counter this logic, itself being based on it. The political order organised as an ethical state, in contrast, can prevent the material and moral degradation typical of civil society. Chapter 6 works out Hegel's conception of the ethical state, while section 8.2 comes back to the question of whether and how the ethical state solves the problem of poverty. At this point, I will investigate in more detail why, according to Hegel, the state apparatus within the liberal order is impotent to solve civil society's problems.

State impotence

This section will further unpack Hegel's analysis of the necessary failure of the external 'liberal' state. The inability to solve poverty constitutes the most prominent manifestation of

this failure, but this is not the whole story. Hegel wants to establish the fundamental incapacity of the external state to intervene in a liberal society appropriately.

To understand this failure, we first have to have a clear picture of what a liberal state is supposed to do. The state should intervene in society to ensure that all members of civil society can realise their ends. As discussed in the previous section, this involves the prevention of harm, intervention in the market and the provision of public goods. To fulfil this function, the state must have a grounded, i.e. non-arbitrary, conception of the general interest that covers the realisation of all particularities. Hegel refers to this common good as "the universal which is contained within the particularity of civil society" (*PR*, §249). We could also refer to this common good as the 'throughline', a universal which goes through, and is implicated by, all particularities (see relational organicism, 3.3). The common good, thus understood, is, for Hegel, the rational norm which inheres in a social structure.

In a political order organised as civil society, such a conception of the general interest can be nothing more than a mere *desideratum*, impossible to disclose. This is the consequence of both the structure of the social relations in civil society and its typical mode of cognition: understanding. The members of civil society are not united by a common bond. They all pursue their own ends for which they both cooperate and compete with each other. In this process, civil society falls into different professions, classes, and modes of living. Some turn out to be successful, while others experience material want.

To succeed, the interventionist state must discern within society's differentiation and opposition the general interest, a rational purpose that goes through and unites all parts. This is possible in organicist ethical structures. There, the universal does not stand opposed to the end of the parts but has integrated them, just as these parts, despite and in their differences, are orientated on the common good (see also chapter 3.3 on relational organicism and the next chapter). In Hegel's analysis of civil society, especially if we leave the corporations out of consideration, it does not have such a rational, organic structure. Ultimately, the ends of the parts are and remain absolute. Neither the mechanism of the invisible hand nor the disciplining power it exercises over its members changes this fundamental fact. Consequently, civil society cannot have a conception of the good, which could give a direction on how to foster the totality of the differentiated needs of society.[108]

The practical question the liberal state stands for is how to intervene in, or even reform, the economy to make it work for all. It cannot answer this question, because, within the logic of the market, the ends of all individuals are equally valid. Weighing these ends from the perspective of the common good would presuppose a political viewpoint, an account of the well-being of the community as a whole. Such a unified, political perspective does not fit the conditions of civil society, which does not recognise the value of the community in itself.

[108] Hegel does not discuss the general interest as an abstract, aggregative standard common to current liberal political orders, such as economic growth or the realisation of maximum of utility.

Every formulation of the common good would, therefore, be arbitrary from the perspective of some parts of civil society.

This failure of the state in the liberal order can also be approached from its mode of cognition, the Understanding. Understanding cannot penetrate the totality as an organic interdependent whole and see a unity underneath the differentiation. It starts with the particular, individual ends, which it takes as given, and tries to regulate the market to meet these ends, but it is unable to grasp the interdependent whole and inner coherence other than as a conflict between different particularities.[109] From the perspective of the Understanding, the reasonable can only amount to treating all individual parts in the same way (abstract equality).

> To oppose this right [of particularity] with a demand for equality is characteristic of the empty understanding, which mistakes this abstraction [and *obligation* of its own] for the real and rational. (*PR*, §200R)

So far, I have investigated the failure of the liberal state only with regard to the police function of the state to intervene in the market. With regard to the provision of public goods, the third function, the state is likely to fail as well. The function has an economic rationale: the market does not provide certain goods for which there is a need. If it were possible to determine unequivocally what the universal basic needs are, the state would have a clear orientation for the kind of public goods it should provide. However, this is the case in civil society only to a limited degree.

Due to its competitive structure and desire for distinction, civil society engenders a multiplication of needs, whereby it is difficult to pin down which needs are basic or objective. As explained in the previous chapter, individuals want to be similar to each other, which entails needs which are no longer purely natural but also have a significant social or 'spiritual' component. However, any equality achieved would immediately evoke new forms of distinction, which, in turn, would stir up new needs to restore equality again, and thus demands on government, and so on infinitely. To make this concrete, education could be said to be a basic need, but it is impossible to determine from the perspective of civil society what level of education. The provision of a public good is, to a large degree, a political question, to be answered from the perspective of the needs of the community as a whole. Civil society, consisting of self-interested individuals without a shared conception of the good (except the respect for personhood), does not have the means to answer this political question.

The other function of the police is the prevention of harm. This function could be the prevention of crime, but also an intervention in market relations when they threaten to do damage to the welfare of some groups. Grain sellers, for instance, could raise their prices

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[109] "In addition, that reason which is immanent in the system of human needs and their movement articulates this system into an organic whole composed of different elements" (*PR*, §200R).

dramatically after a bad harvest. The question of whether the public interest, now understood as the prevention of harm, requires intervention is impossible to answer unequivocally by a non-political public authority, i.e. an authority not embedded in a political community. Capitalistic relations are characterised by competition, in which members want to conquer market share. States of affairs detrimental for some are conducive to others – and *vice versa*. It is not always clear how participants suffer or profit from particular market relations.

A public authority that intends to prevent some actors damaging others has difficulties in providing objective determinations within civil society.

> [N]o boundary is present in itself between what is harmful and what is harmless (even with regard to crime), between what is suspicious and what is not suspicious, or between what should be prohibited or kept under surveillance and what should be exempted from prohibitions, surveillance and suspicion, inquiry and accountability (*PR*, §234).

In the end, determinations in civil society always have a large subjective, arbitrary component due to the failure of a political, comprehensive perspective. "No fixed determinations are possible here, and no absolute boundaries can be drawn. Everything here is personal; subjective opinion comes into play" (*PR*, §234A).

Again, this difficulty in determining precisely (potential) harm can be linked to the Understanding. "[R]elations of external existence fall within the infinite of understanding" (*PR*, §234). The Understanding regards harm, just as society as a whole, from the perspective of the (individual) parts (and not the whole). It thus dissects social life in its causal relations, identifying (the potential for) harm everywhere. As a consequence, the state tends to see an increasing role for itself in preventing harm.

> When reflection is highly developed, the police may tend to draw everything it can into its sphere of influence, for it is possible to discover some potentially harmful aspect in everything (*PR*, §234A).

To conclude, this section has reconstructed Hegel's argument of why the public authority is unable to bring civil society to rationality or objective freedom. This is not primarily due to deficiencies in the state apparatus, for instance a lack of power or other capacities, but a consequence of the social structure of society, in which it is impossible to identify a general interest which unites all particularities. In civil society the need emerges for an impartial public authority, but it is structurally incapable of realising this. Instead, the state in civil society runs the risk of becoming entangled in the logic of civil society in which individuals and groups endeavour to use the government for their own interests. Chapter 7 will return to this issue when it discusses the problems of democracy based on the principles of civil society.

This interpretation of Hegel's analysis of the possibility of the external state to render society more rational could, as explained before, also be used to assess the

possibilities of a liberal political order, which regards the state as an instrument of civil society. Hegel's analysis shows that a technocratic, instrumental state, whose function is limited to fostering the interests and rights of abstract individual, is ultimately incapable of restoring objective freedom. Reasonable politics must be based on another footing.

5.4 Political alienation

Hegel's account of civil society can be read as an analysis of why the liberal state brings about experiences of alienation. The previous chapter discussed the lack of subjective freedom that its social interactions entail: the full alienation of the rabble but also the lack of stable social identities for other groups. According to the previous section, the external state, unable to change its fundamental dynamic, cannot render civil society more reasonable. Consequently, it is equally incapable of solving these experiences of alienation. This section seeks to establish that in Hegel's analysis, the external state, and, by implication, the liberal instrumental state, adds to these forms of alienation also a specific kind of political alienation.

From a political perspective, the members of civil society are (private) subjects, not citizens; they do not participate in political decision-making but expect the state institutions to protect and foster their particular ends. Political subjects would experience freedom if they could recognise and identify with the regulations and interventions of these political institutions and hold them to be legitimate.[110] For Hegel, subjective freedom means integrating otherness into one's own will. Free political subjects, consequently, do not experience an opposition between themselves and the state, but regard the state as in line with their own ends.[111] Such a favourable attitude of political subjects to their political institutions is also crucial for political stability. "The whole, the state, only achieves inner stability when what is universal, what is explicit, is being recognised as universal" (*LNR*, §121R).

In civil society, just as in the liberal order, individuals relate to the state instrumentally. Hegel's terms 'external state', and 'the state of necessity and understanding' expresses this attitude. Political subjects do not recognise a priori the government as the set of institutions fostering the common good of society. Because they do not see themselves as participants in a social whole, they do not recognise the existence of the common good, which inheres in this community as a whole and needs the government, which is also part of this whole, to protect and foster it.[112] In this respect, civil society differs fundamentally from the ethical life of the family. There, members see themselves as part of a whole and,

[110] Hegel has a system-internal approach to legitimacy. He does not offer general precepts. See chapter 3, in particular 3.5.

[111] From the liberal perspective on legitimacy, this affirmative relation could be glossed as a form of implicit consent.

[112] Insofar as liberal orders have a common good, it does not concern the life of the community as a whole but only its individual members, such as the protection of individual rights.

consequently, take the existence of (implicit) a common good for granted, just as the parents' authority to intervene to foster this good.

In contrast to the family, the interventions of the external state can only have legitimacy if they are derived from the ends of the (individual) parts. Individuals recognise the state insofar as they can link it to their personal concerns. In other words, the general interest must be in line with their particular interests. Therefore, the common in the common good must be represented as an overlap of the interests of all parts. Another way of linking the state's interventions to the particular will is by conceiving them as a reciprocal relationship. Citizens are willing to accept their obligations towards the political structure to the degree that they match the rights they hold against the state.

The Administration of Justice seems to align most easily with the members of civil society, as its function directly addresses their essential identity: personhood. The protection of individual rights and their cancellation in the case of crime are fundamental preconditions of the exercise of agency. As a consequence, members of civil society can easily affirm a state which intervenes to protect the principle of personhood. This function can easily be interpreted as a form of direct reciprocity. Respect for personhood expresses the reciprocity between the individual members of civil society: one does not infringe on the freedom of others, while others should respect your freedom. The Administration of Justice is a device to guarantee this mutuality. It is based on a similar reciprocity, now between the individual and the state. The state must protect the subjects' rights of personhood, while these subjects have the duty not to seek retribution in person but to recognise the state's monopoly of violence and right to speak justice.

Respect for abstract rights is not rooted in a universal moral requirement to which people in all circumstances should and would feel committed to by virtue of their reason. Respecting personhood does not result from the imagination of a state of nature (or a Kantian duty) but from certain practices in which individuals come to experience and, consequently, acknowledge this value. The recognition of the universal of abstract rights and a government that protects these rights requires a kind of virtuous circle. Interactions in civil society, in particular in the market where individuals pursue their end by buying, selling, and contracting, should result in experiencing these rights as beneficial. On this basis, they can come to be acknowledged as a universal good.

This analysis also brings to awareness the inner fragility of liberal society's commitment to liberal rights and the state which is supposed to protect them. As expressed in the previous chapter, the social interactions of civil society easily entail experiences of alienation, rejection and marginalisation or the idea that one's success is exclusively the result of one's own efforts and not of a system which protects personhood. These experiences could also frustrate civil society's virtuous circle. Instead of recognising these rights as inherently good, a universal which applies to all based on their humanity, those

groups fall back onto a more tribal identity (recognising these rights only for those they identify with directly) or have a purely instrumental and opportunistic relation to these rights, only acknowledging them as long as they are advantageous. In particular, this latter danger also applies to the rich, as explained in the previous chapter. Hegel thus offers a picture, in which the protection of individual freedom rights, the rule of law and the legal institutions that have to guarantee this, i.e. the most essential element of the liberal conception of order, are at risk in a society organised on a liberal footing. Civil society might fail to generate its own legitimacy.

Hegel's analysis seeks to establish that the recognition of the state as provider of public welfare is, in a liberal order, even more fragile. The relation of citizens to this state is, from the beginning, more instrumental than to the state as protector of rights, as rights should, if citizens' formation goes well, be considered as a good in itself. In the previous section, governments' difficulty in fostering the public interest, that is, to provide public goods and regulate society, has been addressed. Civil society entails social differentiation: different members have different needs and interests. Due to this inner structure, specific government measures will serve the particular welfare of some, not others. Governmental interventions, therefore, will be necessarily contested. The claim of government to act from a universal, impartial perspective is not likely to hold.

As a consequence, the police can even evoke a feeling of hostility. In particular, when intervention directly touches citizens' lives – as is the case in the preventive function of the police – government is likely to be experienced as a nuisance, an obstacle, which undermines civil society's basic principle: autonomy or the freedom to pursue one's own ends. "Because of these aspects of contingency and arbitrary personality, the police takes on a certain character of maliciousness" (*PR*, §234A). As addressed in the previous section, there are no clear boundaries where its involvement in society should end. The police could enter into domains which individuals regard private. "On such occasions, the police may proceed very pedantically and disrupt the ordinary life of individuals" (*PR*, §234A).

Within the conditions of civil society, the relationship between state and society is paradoxical. On the one hand, the social interactions of civil society entail a continuous pressure on the government to intervene in society. Individuals blame deficiencies in the structure of civil society for their inability to realise their wants and turn to the government to counter this by prevention, regulation, or provision of goods. On the other hand, governmental interventions are experienced by another part of society not only as disadvantageous but also intrusive, undermining the realisation of their ends. Members of civil society, therefore, endeavour to free themselves from these interventions. Thus, the state in the liberal order is always doing both too much and too little. It should foster my interests more (but not those of others) and not meddle in my affairs (but in those of others who undermine my interests).

This antagonism between the individual and the state constitutes a logical outcome of the inner structure of civil society. In civil society, the individual and its ends and interests are absolute. The point of government is to respond to these interests. Civil society does not have a mechanism to constitute a more substantial conception of the common good based on the inner relation and integration of the will of different groups of individuals with each other; it lacks the deeper integrations and mediations, typical of the ethical state as the next chapter will discuss, by which the universal and the particular, state and civil society, become connected. Instead, it conceives the state as directly deducible from the individual will. Due to this absolute status of the particular, the universal must appear as its opposite.

> "[E]ach [the particular or the universal] appears to do precisely the opposite of the other and imagines that it can exist only by keeping the other at a distance. Thus, most people regard the payment of taxes, for example, as an infringement of their particularity, as a hostile element prejudicial to their own ends" (§184A).

In Hegel's analysis, the liberal order necessarily entails an antagonism between the individual and the state. Its attempt to overcome this antagonism by regarding the government as an external, largely opportunistic instrument must, by necessity, fail. A government conceived in this way is always on the brink of losing its legitimacy.

Hegel's analysis of the external state thus sheds light on the predicament of the state in a liberal order, which continuously wavers between a demand for and rejection of state intervention. From Hegel's perspective, it is logical that liberal order vacillates between a more classical-liberal and a welfare-orientated account of the state. On the one hand, the liberal society provokes the state towards being more interventionist and provide welfare. The market is unable to bring forth public goods or ends up in suboptimal equilibriums. When citizens cannot find recognition, they will turn their eye to government. On the other hand, an interventionist welfare state evokes its own opposition. The arbitrary nature of governmental intervention renders it harder for members of civil society to regard the state as fostering their interests. Its benefits do not seem to compensate for its costs. The state's interventions, regulations and preventive measures and the taxes that must be paid for all this seem to infringe on civil society's fundamental principle of autonomy: individuals should set their own ends. Consequently, social forces also pressure the government to cut back its role in society.

5.5 Conclusion

This chapter has reconstructed Hegel's analysis of the liberal *political* order. The free social interactions of civil society evoke the need for a state that protects the rights of citizens and fosters their welfare by means of prevention, market regulation and provision of public goods and welfare.

The external state, however, does not succeed in rendering social relations more reasonable. In the first place, I have traced why the state cannot solve the problem of poverty in civil society. Besides the specific problem, the external state, more generally, is unable to intervene effectively as it cannot identify the common good. Because civil society is not reasonable, it government cannot be reasonable either; its actions must turn out to be contingent. The previous chapter has worked out how individual agents in civil society are only to a limited degree rational, as this social organisation does not allow the development of conceptions of the good that consider social reality adequately, a lack of rationality which, in turn, renders this social reality less reasonable. This diagnosis also applies to the state apparatus.

As a consequence of fundamental incapacity, the instrumental state also turns out to be unable to counter the experiences of alienation and rejection typical of civil society. I have argued that Hegel's account of civil society establishes that the state worsens the situation, adding the experience of political alienation. Within civil society, political subjects relate to the state from the perspective of their subjective particular ends. The state is supposed to empower them, to help them protect their rights and meet their ends. In practice, the external state, even when intervening in society on al large scale, cannot steadily meet the needs of its subjects. Consequently, they are like to experience the state as opposed and even as hostile to them.

Taking the last two chapters together, it can be concluded that Hegel offers a sophisticated account of the fundamental impossibility of realising a free political order when this order is understood and organised as civil society. On the one hand, such an order does not sufficiently cater for the good of its parts (objective freedom). On the other hand, individual subjects must experience how they do not match well with this order and feel alienated (subjective freedom). Hegel's account, therefore, shows the fundamental fragility of the liberal order, as it is always on the brink of losing its legitimacy (of which the rabble is the most extreme manifestation). From this, Hegel draws the conclusion that a free political order should (be understood to) be based on an alternative foundation. The final two chapters investigate the institutional nature of the ethical sphere of the state and how this order can realise freedom.