
Civil Society and Social Justice

A Prospectus

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In a recent article about the thought of Antonio Rosmini, one of two nineteenth-century Italian priests credited with coining the term *social justice*, Robert Kraynak asks

why Rosmini invented the term “social justice” when he had at his disposal similar expressions from Aristotle and Aquinas. They defined justice as the constant will of rendering to others their due, and they viewed justice as the social virtue par excellence because it deals with relations to other people, not merely to oneself. Hence, Aristotle and Aquinas had no need to speak of social justice because the phrase would be redundant. Instead, they divided justice into two kinds: (1) general or complete justice and (2) particular or partial justice. (2018, 25)

I have more to say about Aristotle and Aquinas later, but let me now propose to answer Kraynak’s question: Luigi Taparelli and Rosmini invented the new term because they had to deal with a new phenomenon uncovered by modern social and political theorists: civil society. This term, *civil society*, developed among seventeenth- and eighteenth-century thinkers in Great Britain and France to describe the commercial order that was

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emerging in Europe and was soon to encompass the entire world (Shils 1997). Entailed in this description was the recognition that the locus of production was not or was not optimally the household or the estate, but an indefinite network linked together by markets. Moreover, although states were needed to protect rights of ownership and enforce contracts of exchange, the expansion of wealth often depended on commercial relations that crossed state borders, and even within those borders state action was often more apt to suppress than to foster growth. By the time Rosmini coined the term *social justice*, this newly discovered phenomenon, civil society, already had a new science dedicated to its study: political economy.

In this brief essay, I elaborate on the relation of social justice to civil society by reference to well-known texts, specifically Aristotle's *Politics* and *Ethics* and Hegel's *Philosophy of Right*, commenting on each author's insights and errors. After this secular accounting, I discuss the Catholic Church's attempt to invoke Thomistic natural law in developing its own social teaching, noting the latter's tendency to be swallowed up by Hegelian progressivism. Finally, I sketch a prospectus for thinking about social justice in the context of the modern world.

Aristotle and Economics

Aristotle introduces the *Politics* according to his genetic method, outlining the stages of human community from the household to the village to the city (polis), which he describes as already the complete community. Although the account at first appears historical, Aristotle makes clear that his point is analytical: the city is actually prior because it is complete, the community that makes possible human happiness. He famously concludes that this priority means the city exists by nature and that man is by nature a political animal (2013, 1252a24–1253a20). The household includes the relations of the family (husband and wife, parents and children) as well as the relation of master and slave. Aristotle's discussion of the latter is notoriously difficult, raising the question of whether slavery is natural (and therefore, presumably, just) or merely conventional and concluding that it is mostly the latter but nevertheless useful, even necessary, for the heads of household to have the leisure for political action (1253b15–1255b40). A discussion of acquisition follows the discussion of slavery and is likewise ambiguous or problematic. What Aristotle calls the natural modes of acquisition are either relatively primitive (herding, hunting, fishing, and agriculture) or startling (piracy, including wars to capture slaves). He calls unnatural those modes that depend on the invention of money, such as making a profit from exchange and especially from loaning money at interest; although money itself is not natural, he concedes, it is a necessary invention (1256a1–1258b8). The Scholastic tradition read Aristotle's analysis of banking as condemnatory, but within a few lines he appears to endorse a liberal study of money making (1258b10) and to recommend that cities take note of monopoly practices as a means to secure needed funds (1259a23).

What Aristotle's translators call the "village," which might also be translated as the "neighborhood," is mentioned only briefly in the *Politics*, in contrast to the household and the city, which are treated at much greater length. Indeed, when explaining that men are political because they are rational and engage with one another in speech about the advantageous, the good, and the just, Aristotle concludes that agreement about these things characterize a household and a city, leaving the village or neighborhood out (1253a19). Is the village where the market is to be found? Perhaps, but Aristotle does not say. Acquisition is part of household management, suggesting the household is the essential locus of trade as well as production, though the city is clearly involved in regulating trade, not least with other cities. Discussing the virtue of justice in *Nicomachean Ethics*, Aristotle gives an account of justice in exchange that remains a classic treatment of the topic (2011, 1132b21–1133b29). Like punishment for crime, justice in exchange is a form of "arithmetic justice," where things of equal value change hands. Distributive justice, by contrast, is "geometric" or proportional, where the goods of the city, chiefly honors and offices, are distributed according to desert.

Wealth plays an important role in Aristotle's analysis of political life: it is, he suggests, a valid claim to rule because the city needs equipment, though it is hardly an exclusive claim, much less the highest claim, and the regime ruled by the wealthy, oligarchy, is after tyranny the worst of the six regimes. It is characteristic of Aristotle's realism that he thinks most cities oscillate between democracy and oligarchy, rule by the poor and by the rich, and that he thinks the most practicable political improvement would be to find a balance between them, a mixed regime he calls by the generic name "polity," made stable if fortunes are also mixed so that neither the rich nor the poor predominate, but rather the middle class. Throughout the *Politics* and the *Ethics*, Aristotle is clear that acquisition is for the sake of use, that wealth is meant to serve virtue—in other words, that securing mere life is for the sake of the good life and that the "good life" means not a life of wealth and fame but a life of virtue, the genuine source of human happiness. In fact, Abram Shulsky, who catalogs the difficulties in Aristotle's account of slavery and acquisition, concludes that Aristotle's intention in remaining obscure must have been rhetorical, to guide his readers toward virtue and away from unlimited accumulation of wealth (1991, 105–11). In short, Aristotle recognizes wealth as a good and even defines two virtues—liberality and magnificence—that involve the proper use of wealth, even great wealth in the latter case. But in his usual list of goods—external goods, goods of the body, goods of the soul—wealth is the least noble, however necessary as a condition for the others.

The Discovery of Civil Society

Fast-forward now to the nineteenth century, when it became clear to all that European society had become vastly different from society in Aristotle's time. In economic terms, this change was actually a recent development. The feudal world of manor, town, and kingdom was recognizably analogous to Aristotle's household, village, and

polis, if on a scale corresponding to the emergent political form of the nation. Then, by the growth of commerce and manufacture, a process similarly described by thinkers as disparate as Adam Smith ([1776] 1982) and Karl Marx ([1848] 1978), towns grew to be cities and achieved economic preeminence. Although the laws of the state sometimes facilitated this change in that it depended on enforcement of the rights of property and the obligations of contract, the state did not plan the transformation, and in the case of the French Revolution, of course, the new classes enriched by economic change upended the monarchy. There had developed a new way of thinking about wealth, too, encapsulated, for example, in the writings of John Locke ([1689] 1988), a view that posited the equal natural rights of individuals, that emphasized the role of human labor and ingenuity in the creation of external value, and that affirmed rights of ownership independent of state distribution. This meant that there would be no limit on the accumulation of wealth, and the state's role became the protection of property, an aspiration less ennobling than the promotion of virtue but more measurable and precise.

In *Philosophy of Right* ([1821] 1967), the German philosopher Georg Wilhelm Friedrich Hegel sought to rewrite Aristotle for this modern world. If we leave aside for now his account of the dialectic, Hegel identifies the three moments in what he calls the “ethical life”—by which he means not virtue in the soul but right order in the world—as the family, civil society, and the state. The family is not exactly the Aristotelian household: it has no slaves, nor are servants of any sort described as part of its structure, and the family itself is defined by the marriage of a man and a woman and the offspring that result—what we call today the “nuclear family,” for Hegel makes clear that the family dissolves as the grown children marry and begin families of their own (110–22). Nor is the state quite the same as the polis, for its concern is with actualizing freedom, not promoting virtue; its constitution is defined by the Crown, the executive, and the legislature, only the last of which includes the social classes or estates; and its sovereignty in relation to its peers in international law is part of its identity, as is its place in world history. The state encompasses but does not exactly include the church, Hegel remarks, for the latter is institutionally separate, appealing as it does to the religious feeling of the people, whereas the state embodies reason (155–223).

Hegel makes clear that “the creation of civil society is the achievement of the modern world” ([1821] 1967, 266). Civil society presupposes the state, which determines its laws—Hegel treats judges when discussing civil society, not the state—but it is distinct from it. Civil society is the realm where individual subjectivity has free play, where interests and desires are pursued; it is the sum of relations of concrete persons, the person described by Hegel as being “a totality of wants and a mixture of caprice and physical necessity” (123). Like Adam Smith and others, Hegel recognizes that the multitude of individuals seeking their own ends form a kind of whole: “In the course of the actual attainment of selfish ends—an attainment conditioned in this way by universality—there is formed a system of complete interdependence, wherein the livelihood, happiness, and legal status of one man is interwoven with the livelihood,

happiness, and rights of all” (123). Human needs are dynamic, not merely natural, so they grow after the satisfaction of primitive needs and altogether replace them in an advanced society. Although individuals have equal rights, the inequality of talents and skills and the numerous contingencies of inheritance and opportunity inevitably mean that civil society is suffused with differences, which become differences of social class, described at first as agricultural, business, and civil service, with the business class subsequently divided into craftsmen, manufacturers involved in mass production, and traders. Although the young resist choosing a particular line of work, society depends on such choices, and men eventually come around to them, developing a certain esprit de corps with others who share their work and often organizing themselves into corporations, particularly insofar as civil society pulls men outside their families and weakens their personal security. Hegel supposes a general regime of “freedom of trade and commerce in civil society” (147), but he allows that activities and prices can be subject to what he calls “police” or what we might call regulation, and he notes that the public authority has a role to play in caring for the poor. Without analyzing the business cycle, he nevertheless is aware that there are times of expansion and times when the masses’ standard of living is threatened—recommending that “they might be given subsistence indirectly through being given work, i.e., the opportunity to work,” rather than handouts so as not to “violate the principle of civil society and the feeling of individual independence and self-respect in its individual members” (150). He recognizes as well the dynamic character of international trade: “This inner dialectic of civil society thus drives it—or at any rate drives a specific civil society—to push beyond its own limits and seek markets, and so its necessary means of subsistence, in other lands which are either deficient in the goods it has overproduced, or else generally backward in industry, etc.” (151).

Hegel is not a critic of civil society or of capitalism in the sense that he thinks it is fundamentally unsound and replaceable—he ridicules those who think societies and their constitutions can be designed arbitrarily—but he does think the state is clearly superior to civil society in the order of things and is capable through its laws and regulations to manage its failings. “The state is the actuality of the ethical Idea,” he writes, or, equivalently, “the actuality of concrete freedom” ([1821] 1967, 155, 160). Whereas civil society results from subjective desire, the state embodies objective, rational duty, and Hegel locates human freedom in claiming one’s duty as one’s own, not in pursuing particular desires, at least not when they conflict with the duties of citizenship. Although indeed charged with protecting rights, the state as Hegel describes it is not a limited night watchman, but an active patron of human freedom. For example, universities are established by the state, and Hegel is proud that professors are civil servants; he does not include in civil society, as we might, a host of voluntary associations, including churches and schools, that are independent of the state and more closely integrated with the world of business than with the state. It is easy to see why Hegel is the darling of advocates of the administrative state still today, not to mention why Marx was a sort of Hegelian, for all his criticisms of Hegel and his radicalization of

the Hegelian dialectic (Marx [1843] 1970). Both see civil society as a creation of the modern world, differing only as to whether it is something that can be managed or something that must be overcome. Neither Hegel nor Marx, to my knowledge, uses the term *social justice*.

Papal Encyclicals

The term *social justice*, as I mentioned at the outset, arose in Catholic social thought as it developed in the nineteenth century. In Rosmini's *Constitution under Social Justice* ([1848] 2007), a projected constitution for a unified Italian state, the term seems to refer particularly to the proper balance of social classes in the institutions of government and to reject the majoritarianism of the French Revolution. Rosmini's argument thus seems consonant with Hegel's account of the constitution in the *Philosophy of Right*, and in fact Rosmini wrote a book with the same title (Rosmini [1864] 1993). There is no mention of Hegel in the *Constitution under Social Justice*, no doubt because Hegel's anthropology, not to mention his theodicy, was at odds with Christian teaching. When the Catholic Church, influenced by Taparelli and Rosmini, writes authoritatively upon civil society in *Rerum novarum* (Leo XIII 1891), it turns instead to Thomas Aquinas, whose own authority on questions of social order is Aristotle. Not in that document but in conclusions sometimes drawn from it, the ironic consequence of ignoring Hegel has been that in practice those seeking to implement Catholic social teaching end up promoting the Hegelian state. What I mean to suggest is that by attending to the social analysis of civil society Hegel presents—which builds upon the liberal social and political thinking of the centuries that preceded him—one might more profitably develop an account of social justice that restores Thomistic and Aristotelian anthropology without succumbing to the statist trap.

The common title of Pope Leo XIII's encyclical, *Rerum novarum*, comes, as is traditional in papal documents, from the encyclical's first words, carefully chosen to convey the subject matter that follows. The "new things" (rendered in the English version as "revolutionary change") it focuses on are found "in the vast expansion of industrial pursuits and the marvelous discoveries of science; in the changed relations between masters and workmen; in the enormous fortunes of some few individuals, and the utter poverty of the masses; the increased self-reliance and closer mutual combination of the working classes," to which Pope Leo appends "the prevailing moral degeneracy," which was, of course, hardly new (1891, 1).¹ The four elements listed clearly belong to modern civil society as Hegel describes it, and the balance of the encyclical exhorts reform, particularly by encouraging the formation of Catholic workers' unions and by reminding owners of their duties to those they employ. From the beginning, socialism is denounced because private property is said—going beyond Aristotle and Aquinas, by the way (Stoner 1998)—to follow from natural law. The

1. Parenthetical citations to the papal encyclicals refer to paragraphs, not to pages.

family is treated as natural, too, and in fact natural law ensures the right to property in the head of the family so that he can provide their material sustenance. The state is described as responsible for the protection of the rights of all classes (or both classes, for Leo writes principally of the rich and the workers) and therefore in particular the rights of the working class, rights that include the “natural right” of association as well as the rights of the family. The thrust of the encyclical is to see that the state protects workers in their right to unionize and bargain with their employers for fair wages and decent working conditions, not to insist that the state take these matters into its own hands. Moreover, there is of course much about the Catholic Church’s work for the poor and its role in facilitating workers’ associations.

Leo does use the term *civil society*, writing at one point that “[c]ivil society exists for the common good, and hence is concerned with the interests of all in general, albeit with individual interests also in their due place and degree” (1891, 51). But he does not seem to treat it as something new, as Smith and Hegel do, much less as something different in kind from the state, in fact writing in the sentence after the one just quoted that civil society is a “public society” and quoting Aquinas on the “commonwealth.” And although Leo writes of justice throughout, he does not use the term *social justice*, which apparently first appears forty years later in a papal encyclical, *Quadragesimo anno* (Pius XI 1931), issued to commemorate and elaborate upon *Rerum novarum* (see also Fortin 1996). Civil society in the sense that I have been using the term begins to receive attention in Pope John Paul II’s encyclical *Centesimus annus* (1991), which praises “initiative and entrepreneurial ability,” notes that “the modern business economy has positive aspects,” and acknowledges that “the free market is the most efficient instrument for utilizing resources and effectively responding to needs” (32, 34). John Paul proposes “a society of free work, of enterprise, and of participation” not as an alternative to market society, but as its perfection, “the market be[ing] appropriately controlled by the forces of society and by the State, so as to guarantee that the basic needs of the whole of society are satisfied” (35). Whether this appreciation of market society remains regnant in Catholic circles might be doubted in light of the recent encyclical prompted by environmentalist concerns (Francis 2015; Whaples 2017).

On the one hand, it is not surprising that the Catholic Church looked askance at the emergent theory of civil society. The theory’s first analysts were often its advocates, and they seemed to elevate self-interest over charity on the scale of virtues—or, rather, to subordinate virtue in all its forms to self-interest understood as an anthropological fact. Explaining human obligation solely in terms of individual rights seemed likewise to undercut human communities and the bonds of family, faith, and nation that placed duties before rights in the moral life and placed what was given before what could be chosen. On the other hand, rights adhere to persons, and the elevation of the person was now seen—indeed, was seen even by Hegel—to be a distinctive contribution to human civilization of Christianity or of Judaism and Christianity, these religions understanding every person to be made in the image of God and destined to be judged for all eternity. Moreover, the community of the faith, for both Christians and Jews, transcends the

boundaries of states and makes possible relations of trust that are independent of political enforcement, critical to the expansion of commerce in the face of hostile state action. My point, though, is not to ask whether, were there a choice, civil or commercial society ought to be established by a regnant state, but to consider whether this society, having emerged, ought to be recognized as a natural development and as a good. My hypothesis is that this is so: as the polis emerged naturally and later was accepted by the Catholic Church as a good—even though it was sometimes perverted, its essence was to be just—so civil society should be recognized as a valuable human development, separate in principle from the state but essential for the satisfaction of human needs and desires. And if this hypothesis is correct, then the next step is to ask how we ought to think about social justice as the specific virtue of this specific order of human affairs.

A Prospectus for Defining Social Justice

Here are my initial suggestions. First, social justice includes recognizing the basic rights of individuals out of which civil society developed: the rights to life, to personal liberty, and to property, including rights of exchange and communication. Because I am accounting civil society as one moment in the order of things, not as a replacement for the state but as its companion, so to speak, it should be acknowledged that the protection of these rights will depend upon the state, and so it should be supposed that their definition will vary from state to state. Because I also noted at the outset that civil society and certainly the commercial economy cross state boundaries, it would be appropriate that there be internationally recognized human rights—though, to be just, an international order of human rights ought to respect not only civil society but also the claims of the family and the state. The rights would be equal rights, granted as they are to persons as such, but it is an obvious empirical fact that the free exercise of rights typically leads to unequal outcomes, if only because people value different goods differently. Inequality of wealth is not a concern of that aspect of social justice focused on rights, unless such inequality of wealth hinders others' rights (Walzer 1990, 315). Regarding rights to opportunity, of course, it sometimes does, so there is room for judgment in different states as to how to ensure genuine opportunity to the less advantaged without crushing enterprise and initiative with administrative burdens.

Second, social justice would include just arrangements within the various associations and institutions of civil society. As these associations and institutions vary in scope and purpose, so the principles of justice within them would vary: authority and reward within a firm are different from authority and reward within a school, and they are in turn different within a club. Because these associations are voluntary—the characteristic fact of civil society is that its relations are chosen and terminable—the general presumption ought to be that each association or institution establishes its own pattern, though I suppose social norms might emerge that confine the range of possibilities. There might also be circumstances—for example, the lingering effects of caste oppression—where the state might intervene to override institutional or

associational autonomy, as in laws against racial discrimination in the United States. Like regulation for the sake of equal rights, regulation for the sake of institutional justice ought to be occasional, not comprehensive. The market has a way of punishing those who ignore social norms but can also provide room for those whose views are unpopular at a certain point in time.

Finally, social justice ought to include limits on the reach of its own principles, on the one hand in the name of the family, on the other in the name of the state. As the sovereign that makes and enforces law and provides protection against foreign danger, invasion of rights, and material desperation, the state encompasses all citizens and demands of them certain duties—established by majoritarian consent if the government is democratic but enforceable even against dissenters. A just state is a limited state, to be sure—it ought, naturally, to provide sufficient liberty for civil society—and it ought to establish a constitutional government, but it is a different kind of association from the voluntary associations of civil society and operates under different principles. Likewise, the family, as a natural unit that has a purpose independent of the state and of civil society, needs to be understood and protected on its own terms, which, rooted in biology, are different from those of either civil society or the state. To force it to conform to the principles of civil society is as mistaken and unjust as to force civil society to be subject to the family, as was the great injustice of feudal times.

Although I have adopted Hegel's tripartite division—family, civil society, and the state—I have not subordinated one to the other as he did with his dialectical logic, issuing in the dominance of the state. Nor have I followed Aristotle in asserting the priority of the city to the village and the household, not least because what he incorporated in the polis has been divided between civil society and the state and because the household, too, was changed by the abolition of personal slavery. As for the church, in keeping with the argument that the question of human order is a question that needs first to be addressed in human terms or, in other words, that the family, civil society, and the state can be defined as natural goods, I have intentionally not subordinated it either to the state (as in Hegel) or to civil society, as in those theorists who treat churches simply as forms of civil association. Is not the church's calling to be, so to speak, orthogonal to the whole arrangement, forming and transforming the persons who inhabit families, who live in society, and who govern the state, while offering its guidance concerning justice and its example concerning love in each realm?

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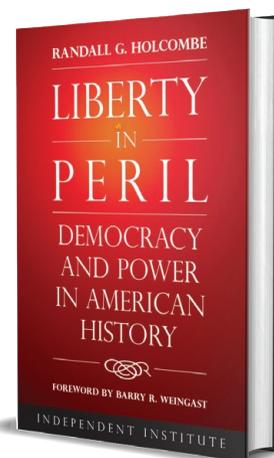
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