

# Civil Society and Private Law

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**Abstract:** In the present article puts forward and discusses the concept of the civil society existence and development in the modern world reality. Author discusses that modern civil society is unthinkable without a complex system of social relations and without state participation (direct or indirect) which can take form of (but not limited to) making and enforcing laws. Such laws may be related to private or public spheres. Author analyze different aspects of civil society activity and its cooperation with different governmental institutes, including questions if civil society being influenced by political system whose current quality determines the development model for society. During discussion authors presents opinions of philosophers, lawyers, scientists and public activists. In the conclusion author explains why civil society can not be understood apart from the state, therefore can not be taken out of the governmental processes and only within state can exercise true freedom and implement interests.

**Keywords:** Civil Society, State, Law, Private Law, Constitution, Democracy, Globalization, Russia, Russian Federation

## Introduction

Under the Collins English Dictionary “civil society” is “the elements such as freedom of speech, an independent judiciary, etc, that make up a democratic society” (Collins, 2012).

To understand what factors influence the development of civil society, one must look not only at contemporary historical period, but also at preceding history of state and society.

Novgorodtsev (1901) correctly pointed out the necessity of remembering the difference between theory and practice when they approach each other. It is not always possible to characterize practical relations based on theoretical ideals; neither is it possible to reduce all content of those ideals to mere practical needs (Novgorodtsev, 1901).

An important task to be implemented by both state and society in a given country is to eliminate the “triangle of distrust”, where businessmen don’t trust state and society, statesmen don’t trust society and business and members of society don’t trust business and state.

## Materials and Methods

In the present article authors present summary of conducted research, where research problem was formulated, a good empirical base accumulate, an opportunity to focus on the research process and to

draw conclusions that would reflect the real situation in the best possible way using: Introduction-hypothesis, deduction-predictions, observation-nest of predictions, etc. was given.

## Results

At first glance, development of civil society unfolds exclusively within the framework of private interests, but the fact that public authorities do participate in it and the fact that public law does apply to private-law sphere (albeit indirectly), is beyond doubt.

Korshunov (2011) correctly noted that “private and public interests coincide very often, making their usage as a reliable indicator of distinguishing between private and public law very difficult indeed”.

On the one hand, many public-law regulations (as well as functions of public law) are largely directed at protecting private interests (Pokrovsky, 2001; Tikhomirov, 2009).

On the other hand, any legal regulation that establishes private norms for any public relations is public by nature because, first, it is sanctioned by state and becomes part of national legislation, second, it cannot contradict or challenge the state system and the nature of state administration, among other reasons.

Further, tenets of private and public law are implemented in close connection with socio-economic and cultural relations in a given historic period; they

can't be isolated and thus the reasoning behind their development is dependent on economic situation which, in turn, dictates vectors of development for law and legislation as well as application of laws in court and interpretation of laws.

Economic and cultural relations regulated by law don't exclusively belong to any of its spheres and are the subject of both public and private law. Neither is it appropriate to separate law into private and public based on interest or character of social relations which constitute neither the elements of a legal regulation nor the content of a legal right.

## Discussion

According to Korshunov (2011), "one should talk about-forms of combination of public-and private-law regulation of social relations, about boundaries between real public and private law". But how are these 'real' boundaries to be defined? And do they really need precise definitions?

State is indeed a multifaceted phenomenon which not only encompasses the sphere of public interests but also 'penetrates' into all layers of an individual's social life. For example, the life of a citizen in Russia will be different from the life of local people in Germany; and the difference will lie not only in social tenets, worldviews, traditions, national ideologies, but also in the essence and model of political and legal systems functioning in respective countries.

For example, Alekseyev (2006) writes that development of legal systems is proceeding in largely the same direction: Its subdivisions enrich each other and eventually integrate into such a unity where legal systems combine to create integral entities or structures.

Such convergence reflecting conformity of development of national legal systems does not lead to levelling-out of methods of legal regulation because it doesn't happen so that private law dissolves in public law, or vice versa.

We can bring up Hegel here, who viewed state as a multi-aspect phenomenon encompassing various spheres of life, not simply administrative, bureaucratic or political. One the one hand, an individual cannot exist in separation from state; on the other, it is only possible for one to be humane, or to have morals and become objectified as a citizen (for example, be constitutionally bestowed with rights) within a state (Andrianov, 2011).

Therefore, in our opinion, the very bestowing of individuals with rights and freedoms on the part of the state (through introducing respective laws), as well as charging them with duties, is in itself a manifestation of public law tenets, which at the same time doesn't rule out the private-law nature of the rights and freedoms bestowed upon the individual.

Hegel made distinction between state and civil society, drawing the line between the sphere of universal

and private interests; he insisted on their inherent unity and mutual penetration:

As related to spheres of private law and private benefit, family and civil society-state, on the one hand, is an outside necessity and holder of supreme power of whose nature their laws and their interests are subordinate and dependent; on the other hand, however, state is their immanent goal and its power is in the unity of its universal end goal and private interests of individuals; its power is in the fact that they are obliged to it to the same extent as they enjoy rights.

For a community of individuals (or, speaking more precisely, citizens; more on the role of citizenship will follow), state, on the one hand, is an outside necessity and a supreme (coordinating) power; on the other hand, it is their immanent goal and its power is in the unity of its universal end goal and private interests of individuals. They are obliged to it to the same extent as they enjoy rights.

Hegel also points to an important feature of civil society: Individuals are bestowed with rights and the state accepts respective commitments to protect them, insuring this process.

Andrianov (2011) believes that "individual rights that both protect one from ungrounded administrative intervention and offer opportunities to influence authorities must be regarded as an important element in the structure of civil society".

Cohen and Arato (1994) think that Hegel listed 'abstract rights of a legal entity and the principle of subjective freedom of a moral subject whose intents and will must be taken into consideration in any judgment on his actions' among principal achievements of civil society.

So, for the purpose of our analysis, the first important thing to remember is the Hegelian view of civil society as the sphere of private, elementary interests which under certain circumstances becomes important in itself as related to the sphere of public (or general) interests.

Secondly, of interest is the conclusion saying that differentiation between civil society and state (as the sphere of political power and bureaucratic machine) secures citizens' individual rights which safeguards them from arbitrary administrative interventions and offers opportunities to influence bodies of authority (and therefore individual rights must be considered an important element in the structure of civil society).

Thirdly, it is indicated that the opportunity for an individual's goals to be attained arises only "in correlation with others", i.e., when solidarity is present, which is an integral part of civil society. Thus, according to Hegel's theory, such categories as the sphere of individual interests, right and solidarity are necessary to describe civil society.

Seemingly, the most solid experience in creating systematic theory of modern civil society belongs to

American researchers Cohen and Arato (1994) who dedicated to it a fundamental monograph *Civil Society and Political Theory*. It is also rather important that many ideas of these two authors are widely (and actively) put to use in nation-building and 'spin' campaigns both in East European countries and on post-Soviet space.

The authors define civil society as "the sphere of social interaction between economy and state which consists primarily of the spheres of the most intimate communication (family), associations (including voluntary ones), social movements and various form of public communication".

According to the authors, "modern civil society is created by means of certain forms of self-constitution and self-mobilization; it is institutionalized and generalized by means of laws and, particularly, subjective rights which stabilize social differentiation" (Cohen and Arat, 1994).

To define the boundaries of modern civil society (in social life), the authors suggest the following methodological approach.

First of all, they assume that the very concept of civil society is about the sphere of life in modern Western countries where the logic of bureaucratic and even economic mechanisms creates the most danger.

Second of all, they insist that Hegel-suggested society-state dichotomy (which was suitable for 19th-century social dynamics) isn't appropriate for studies of modern Western civil society.

Third of all, they resort to three-part model well-known in scientific circles (Gramsci, 1999), also used it (Parsons, 1971); it distinguishes not only between civil society and state, but also between civil society and economy.

Authors acknowledge Gramsci's priority in suggesting the three-part model but attach special importance to the conclusion that market economy and state integrate via mechanisms organised by money and power and that civil society, on the contrary, coordinates through communicative means of building accord.

Noting that state-society dichotomy is still used by "some Marxists and, especially, neo-liberals, neo-conservatives and today's successors of utopian socialism", Cohen and Arato (1994) stress that the fundamental tenet of their concept is the superiority of the three-part model of civil society.

However, they make the three-part model still more complex. In their opinion, civil society must be distinguished from political society which serves as the habitat for parties and other political organizations and organs of public politics (including parliaments) and from the economic society which consists of organizations engaged in making and distributing goods and services.

The actors, or subjects, of political and economic society are immediate participants of the exercise of governmental power and economic production; their task is to control the respective spheres and govern them.

They cannot afford to make strategic and instrumental criteria dependent on types of normative (value-oriented) integration and open communication characteristic for civil society.

Even in its parliamentary embodiment, public sphere of political society implies important formal and temporal limitations imposed on communication. These temporal limitations are absent from civil society.

In turn, political component of civil society is directly connected not with control or seizure of power but with influence mediated through democratic associations and free discussions in intellectual circles. Such a role, however, will inevitably be scattered and inefficient.

In Cohen and Arato (1994) view, political and economic communities act as mediators through which civil society must influence administrative and economic dynamics. They, however, warn against positioning civil society as opponent to state and economy.

Their relationship becomes antagonistic only when institutes of economic and political societies begin to isolate decision-making and decision-makers from the influence of social organizations, initiatives and public debate.

Cohen and Arato (1994) don't just draw a line between civil society and political and economic societies. They insist on strict differentiation between civil society and society in general.

According to their definition, for example, civil society acts as an integrative subsystem of society, or as the society's sphere which consists of regulatory components and association principles. It is this particular sphere that the authors dub the most relevant reconstruction of the concept of civil society.

"Some other researchers, for example, believe that civil society is a sphere of free, autonomous activity in which person and group pursuing their private and collective aims and interests act and that relations between them aren't mediated by public powers.

Some other researchers, for example, state that civil society is a society in which everyone become equally free, possess natural and inalienable rights; thus, civil society is a difficult system which should assuming interaction of people, groups, associations, companies, communities, etc. and such interaction means association of people based on different principles, such as: Culture, religion, nationality, work, education and other" (Grudtsina and Galushkin, 2013).

## Conclusion

Individuals draw true ideas of morality from life within state. Only within state can they exercise their true freedom and implement their interests (or satisfy their needs), for it is only within the state where, according to Hegel, unity of objective freedom (that is,

everyone's will) and subjective freedom of a separate personality guiding their actions by laws and universally important moral tenets is achieved.

"In modern world of informatization and computerization state plays an essential role in the field of information security. This role may be expressed in the complex organizational and legal instruments to ensure safety of important information, appropriate mode of access to it, obstruction of unauthorized transfer, modify, delete, protect the legitimate rights and freedoms, as well as providing efficiency of the national segment of the Internet and etc." (Galushkin, 2014).

Therefore to achieve desired integration of civil society and the state it is critically important for both of them to use Internet and other information mechanisms to appropriately inform each other and themselves.

### **Ethics**

This article is original and contains unpublished material. The corresponding author confirms that all of the other authors have read and approved the manuscript and no ethical issues involved.

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