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Civil Society in the Shadow of the Neoliberal State
Corporations as the Primary Subjects of (Neoliberal) Civil Society

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Abstract

In this article, I outline an approach to civil society that is in contradistinction to the dominant liberal conception of civil society as a sphere or sector distinct from the state with inherently positive values. Instead, I argue, civil society always exists in the shadow of the state. I propose to advance a conception of civil society through the combination of two thinkers who are not often combined: G.W.F. Hegel and Michel Foucault. From Hegel, I take the conception of the state's regulation of civil society to direct the particular interests towards the universal of the state through the police and, especially, the corporation. By incorporating a specific type of civil society, the state attempts to shape a civil society that advances its own interests. From Foucault, I take the conception of civil society as a transactional reality, as well as the conception of neoliberalism as a form of statecraft and the production of subjects. I argue that neoliberalism can be understood as the promotion of the corporate form to all areas of social life. In neoliberalism, the central wealth-producing subject is the corporation, and as a result, the state privileges the corporation by granting it extensive powers, privileges, and exemptions from law. This happens to the detriment of both individual and other collective subjects, making it the primary subject of neoliberal civil society.

Keywords: Civil Society; State; Neoliberalism; G.W.F. Hegel; Michel Foucault; Corporation

Introduction

In the 1980s, civil society became the center of massive attention in politics, academia, and public debate. Civil society (re-)emerged as a societal force fighting for democracy, human rights, and civil liberties in the face of authoritarian regimes in especially Eastern Europe and Latin and South America (Keane, 1998; Kocka, 2004; Kumar, 1993). Throughout the 1990s, the notion of civil society was increasingly incorporated into political theories in the West. Here it was predominantly understood as a normatively privileged sphere with values such as communication, voluntarism, social cohesion, democratization processes, and contestation and critique, which required protection from the encroaching and colonizing logics of the state and market (Cohen & Arato, 1999). In this line of thinking, civil society often came to be represented as a specific “sphere” or “sector” outside the state and market, with inherently good and progressive values essential to a vibrant democracy.

At the same time, civil society was increasingly seen by many Western European policy makers as a potential provider of welfare services for welfare states, which were increasingly challenged by the pressures of globalization (Brandsen et al., 2014; Dean & Villadsen, 2016). Under a number of ideas and buzzwords—such as (social) responsibility, (active) citizenship, big society, participation, activation, horizontalization, co-production, co-creation, (private-public) partnerships, (social) cohesion, social capital, and many more—governments in the West have been increasingly shifting responsibility for public-sector social service delivery to civil society (Brandsen et al., 2014; 2017). This development has in many ways intensified after the Financial Crisis of 2007-8 with increased austerity, public-sector cutbacks, welfare retrenchment, and increased privatization. Even more, especially in Eastern Europe, the place where civil society had originally shown the promises of anti-authoritarian struggles, the collapse of the Eastern Bloc led to a massive wave of privatization, marketization, poverty, and inequality. Perhaps it is not a coincidence that civil society re-emerges in the West at the same time that the political rationality of neoliberalism begins to sweep the Western world.

This article takes aim at the dominant, liberal conception of civil society as a distinct sphere of society, as the basic (normative and/or factual) foundation of society, as something distinct from the state, and as the basic processes of society that the state is, supposedly, only instituted to protect and advance in the most adequate way. Instead, it argues, civil society only exists in the shadow of the state. Only under the protective aegis, administration, legislation, and funding of the state

can something like civil society exist. However, this existence also constitutes a specific production of civil society. The article argues that the state always attempts to carve out a type of civil society that is concurrent with its given state-project—or at least not too critical of or in opposition to it. In this way, there always exists a struggle or contestation over what civil society is, what it should do, and to what degree. Here, the state is a central (although obviously not the only) producer of civil society through law, administration, financing, and political discourse. As James C. Scott has argued in his *Seeing like a State*, the state will always attempt to make society legible, to simplify the complex processes of society to make it governable (Scott, 2008).

I will approach civil society through two thinkers who are often not combined and whose views, both on civil society and in general, are seemingly in stark opposition to each other: G.W.F. Hegel and Michel Foucault. What they share, however, is a critique of civil society as something primary or original and as a given, existing sphere of (free) interaction among individuals. To spell out Hegel's conception of civil society would be a massive task, so the presentation in this article is limited. The focus is on Hegel's conception of civil society as a fundamental part of modernity, industrialization, and capitalism (although he does not use those terms), where the satisfaction of needs was mediated by the market. Civil society was thus mainly a site of struggle, antagonism, and the clashing of wills that needed to be policed by the state in order to direct the particular interests and wills towards the universal (Marcuse, 1960, pp. 200-214; Neocleous, 1996). This was done primarily through the police (in its pre-modern conception of administration and order) and the corporation (understood broadly as legal recognition of associations). Hegel then provides the view that the state attempts to control the processes and struggles of society by incorporating them and giving them a corporate-legal state form, as well as to recognize those forms of civil society that advance (or at least do not hinder) its own interests (Neocleous, 1996). The creation of legibility (in Scott's terms) thus here occurs mainly through law.

My first argument in this article is that we can use Hegel to conceptualize corporations as central subjects in (civil) society, and that the state uses the corporate form to attempt to fashion society into a corporate-legal form to further its own interests. The second argument of the article is that we must understand a specific type of corporate subject, the for-profit, capitalist, limited liability, publicly-traded, shareholder-owned corporation as the most central subject of neoliberal civil society. I understand neoliberalism in a Foucauldian sense as a governmental rationality centered on the state and as a form of state-craft (Dean, 2014). In a Foucauldian reading, defining

neoliberalism in contrast to classical laissez-faire capitalism is the constitutive role of the state in expanding the market logic and competition to all spheres of social life (Foucault, 2010). Foucault's focus on the production of subjects and subjectivities (Foucault, 1982), turned in his analysis of neoliberalism to the theory of human capital, and how human subjectivity in neoliberalism was modeled on the enterprise (Foucault, 2010). This has led many Foucault-inspired analyses of the production of neoliberal subjects and subjectivities (Brown, 2015; Lazzarato, 2012). However, in the focus on *individual* subjects and subjectivities, I believe that Foucault (and his followers) have missed an essential focus on *corporate subjects*, and the *corporation as the primary subject of neoliberalism*.

The state has always accepted, chartered, created, and recognized a number of corporate bodies, corporations, and associations in order to achieve certain government aims and to govern social life. And in order to do so, they have been granted legal privileges and exemptions from law, such as autonomy and tax-privileges (Barkan, 2013). My argument here is that the rise of corporate power since the 1970s can be understood in relation to the fact that the chief governmental aim became to secure economic growth and prosperity. Therefore, the private, for-profit corporation became the central corporate subject. My understanding of neoliberalism is thus the promotion of the corporate form to all areas of social life, and the privileging of the corporation as the primary subject of neoliberal society, as it is viewed as the primary creator of wealth. This has happened to the detriment of a number of other collective subjects and corporate bodies, as well as individual subjects and families. In many ways, the corporation is the ideal neoliberal subject—perfectly economically rational and free to move to where profit is made. As a result of this, the corporation is granted a number of privileges and exemptions from rules and law (primarily limited liability and entity shielding).

The article goes through a number of steps: Firstly, I spell out a reading of civil society in the shadow of the state through Hegel's conception of the state's incorporation of civil society; Secondly, I outline Foucault's approach to civil society; Thirdly, I discuss the relation between Hegel and Foucault; Fourthly, I discuss Foucault's relation to the state; Fifthly, I present the Foucauldian approach to neoliberalism as a form of state-craft and his unfinished analysis on the enterprise as the basic unit of neoliberalism; Finally, I argue that corporations can be understood as the primary subject of neoliberalism before I end with some concluding remarks.

Civil Society in the Shadow of the State

Since antiquity, civil society has been a central political concept, most famously espoused by Aristotle in *The Politics* as the *koinōnia politikē* of the *polis*, or state (Aristotle, 1981, p. 54). This was translated into the Latin *societas civilis* and, from antiquity through the Middle Ages and up until the beginnings of classical liberal thought, civil society was equated with political society. To Hobbes and Locke, for instance, civil society was a society governed by law as opposed to the state of nature (Neocleous, 1996, p. 1; Riedel, 1979). It is only in the late eighteenth century and early nineteenth century that civil society becomes a distinct sphere and realm of life separate from the state (Keane, 1998, p. 6), most prominently through the Scottish Enlightenment's political economic thinkers David Hume, Adam Smith, and Adam Ferguson (particularly in his *An Essay on the History of Civil Society* from 1767).

To Hegel, writing in the beginning of the nineteenth century, the separation or distinction between the state and (civil) society is a constitutive and defining feature of modernity and the modern state (as it was also to Karl Marx, although in a more negative variant). Hegel was very inspired by the works of the political economists, and to him, civil society was inextricably linked to modernity, industrialization, and capitalism (even though he did not use those words). To Hegel, the emergence of civil society is a historical development and fact that needs understanding and explanation, needs to be grasped in thought. Philosophy is, in his famous formulation in the preface to the *Philosophy of Right*, “its own time comprehended in thoughts.” (Hegel, 2011, p. 21).

To Hegel, civil society (or more properly, bourgeois society, *bürgerliche Gesellschaft*, encompassing what we would understand as both civil society and bourgeois society) is a space of social relations between family and state (Neocleous, 1996, p. 1). In Hegel's view, civil society encompasses (or is in fact primarily) the market (the distinction or singling out of civil society as separate from both state and market came in its re-emergence in the 1980s). Civil society thus contains three moments: the system of needs, the administration of justice, and “[p]rovisions against the contingency which remains present in the above systems, and care for the particular interest, by means of the *police* and the *corporation*.” (Hegel, 2011, § 188). Civil society is primarily a site of struggle, of antagonisms, of the clashing of wills. Therefore, it must be regulated by the protection of rights and property (the administration of justice) and by the directing of the particular interests and wills towards the universal, which is achieved through the police and the corporation (Marcuse, 1960, pp. 200–214; Neocleous, 1996).

Civil society is socio-economic, and not political (the political is abstracted into the state). This view would inform Marx's later critique of Hegel, in that his conception depoliticizes civil society (that is, the economy) and abstracts all political questions to the state. Civil society to Hegel is a space of "atomized self-seeking individuals" (Neocleous, 1996, p. 2), who strive only to fulfill their own private gains and interests. Because of this, they will necessarily clash, and feuds will arise—and so, civil society must be regulated. Where the law and the administration abstract right into law, thereby securing the protection of property and persons, the particular welfare of particular individuals also needs securing, and this is done by the police and the corporations (Hegel, 2011, §230; Marcuse, 1960, pp. 206–210). The police and the corporations are thus "the penetration of the state into civil society" because "the system of needs must be politically ordered and publicly regulated" (Neocleous, 1996, p. 3). The police in Hegel's understanding reflect the pre-modern signification of a general "good order" of society and denotes "the legislative and administrative regulation of the internal life of a community to promote general welfare and the condition of good order" (Neocleous, 2000, p. 1). Police, in this sense, has more to do with the modern term "administration" than with what we today understand as police (Napoli, 2003, p. 12).

The police was concerned with upholding good order, especially in the face of such maladies as poverty, idleness, vagabonds, and laziness (Neocleous, 2000, pp. 13–18). To Hegel, the police should "provide for street-lighting, bridge-building, the pricing of daily necessities, and public health" as well as education, welfare, and colonies (Hegel, 2011, § 236; Neocleous, 1996, p. 3). A central part of this was to secure and maintain individuals in work, seeing that "[s]ince civil society is obliged to feed its members, it also has the right to urge them to provide for their own livelihood." (Hegel, 2011, § 240).

One of the central ways that the state polices civil society is through the corporation (Neocleous, 1996, p. 4). The corporations offer a way for the state to designate individuals into different classes or estates (*Stände*), so that "[i]f the individual is not a member of a legally recognized corporation (it is only through legal recognition that a community becomes a corporation), he is without the honor of belonging to an estate" (Hegel, 2011, § 253). Importantly, it is only through legal recognition that a community becomes a corporation. It is only through the acknowledgement and recognition of the state that something, both individuals and corporations (or collective entities), become part of civil society. This means very centrally that the state does not simply regulate civil society, but rather actively shapes and constructs it (Neocleous, 1996, p.

4). The state thereby transforms the struggles of the social into an administrative-state form, into a legal-corporate form that can be recognized and governed (Neocleous, 1996, p. 23).

Such a view stands in sharp contrast to the view of civil society characterized in liberalism, and indeed the notion of civil society is closely connected to the emerging liberalism in the eighteenth century, as in the works of the aforementioned Hume, Smith and Ferguson. Indeed, Hegel recognized this contrast, and he was very inspired by the work of Smith and Ferguson, arguing that political economy is the science that takes as its starting point the view of the system of needs (Hegel, 2011, §189). However, this stance does not account for or solve how the antagonisms of civil society can be directed at universal aims. We cannot stop at civil society, as Hegel accused the political economists of doing. Indeed, in the liberal tradition taken up by, for instance, Hobbes and Locke, the state was instituted to protect and safeguard the rights, property, and self-interests of the individuals—but in a Hegelian approach, this view mistakes the state for civil society (Avineri, 1972, p. 134). To Hegel, the state is and should be something more than merely the protection of civil society. In such a conception, the state remains what Hegel terms an *external state*, a *state of necessity* and a *state of the understanding* (*Not- und Verstandesstaat*), in contrast to a true state, a state of reason (Avineri, 1972, p. 142; Hegel, 2011, §183).

Centrally, this Hegelian reading of civil society reveals how the state actively (attempts) to shape civil society, to make the processes of society legible for a state administration. This means that the state (attempts to) shape civil society into an administrable form by giving it a legal, corporate form, thereby recognizing only some parts of society as legitimate parts of civil society. The proposition of this article is that the state (attempts to) mold civil society into a form that is supportive—or at least not directly in opposition or threatening to—its given political project.

Civil Society as a Transactional Reality

Even though Michel Foucault never thoroughly theorizes about civil society, he discusses it in the final lectures of both *Security, Territory, Population* and *The Birth of Biopolitics*, the two lecture series at the *Collège de France* from 1977-78 and 1978-79, respectively, which have subsequently been dubbed the “governmentality lectures” (Saar, 2011, p. 34). In the final lecture of *The Birth of Biopolitics*, concerned with the governmental rationality of liberalism and neoliberalism, Foucault argues that “we should be very prudent about the degree of reality we accord to this civil society” (Foucault, 2010, p. 297). He argues that civil society is “not an historical-natural given which

functions in some ways as both the foundation of and source of opposition to the state or political institutions. Civil society is not a primary and immediate reality; it is something which forms part of modern governmental technology” (Foucault, 2010, p. 297). And further, civil society is “absolutely correlative to the form of governmental technology we call liberalism” (Foucault, 2010, p. 297). Civil society in this view is not something that exists as a given, *a priori* entity, but rather is something that must continually be produced and constructed.

Foucault proposes, therefore, to view civil society as what he terms a “transactional reality.” By transactional reality, Foucault refers to something that does not exist as such, but that nonetheless has very real effects because of the many practices that invoke it and organize themselves in relation to it (Foucault, 2010, p. 297; Villadsen, 2016, p. 11). Viewing civil society as a transactional reality is very much in line with Foucault’s general approach, which avoids starting with what he called “universals”—such as state, sovereignty, the people, civil society—but seeks to find out how such universals are created and come to be regarded *as* universals, as given, existing things (Foucault, 2009, pp. 2–3).

To Foucault, civil society is an integral part of a liberal governmental rationality, or governmentality, that determines and regulates the appropriateness of state government, and that forms a sort of self-regulating and self-limiting figure in opposition to state power. In such a governmental rationality, civil society functions exactly as a “historical-natural given,” which is “both the foundation of and source of opposition to the state or political institutions” (Foucault, 2010, p. 297). To Foucault, civil society in the modern sense emerges towards the end of the eighteenth century as a central field of reference for the art of government, of political rationality, that must respect and limit itself with regards to the (economic) processes of society. Civil society emerges as a field of reference for political government, a “system of natural liberty” that those who govern must respect and not interfere with (*laissez-faire*) (Burchell, 1991). Civil society becomes a field of reference for the right or good way of governing, that which dissociates between right and wrong government. Civil society becomes a key site of veridiction, of establishing the right way of governing, and thereby becomes an internal reference to a liberal governmentality (Dean & Villadsen, 2016, pp. 123–124; Foucault, 2010, p. 295). Even though it is a transactional reality, it has very real effects because so many practices have “recourse to it, invoke it, and organize themselves in relation to it, in particular, with regard to questions of true and false ways of governing.” (Dean & Villadsen, 2016, p. 125). A liberal conception of civil society thus stresses

the original (economic) processes of human interaction—the free and natural interests and desires of human beings, which must be protected by and from the state.

Hegel contra Foucault

Upon immediate inspection, the combination of Hegel and Foucault in the same theoretical framework seems quite strange. The point of this article is not to say that Foucault was in fact a Hegelian, or that we can understand Foucault and Hegel to have the same philosophical project. The point is rather to try to combine different insights they each offer in order to understand how the state produces collective or corporate subjects.

However, Hegel and Foucault are to some degree in agreement on the critique of the liberal conception of civil society as a sphere or sector of natural movements and processes, whose protection is the only and most central task of the state. To Hegel, civil society naturally produces conflict and antagonism and must, therefore, be regulated and controlled by the state. To Foucault, the conception of civil society as a place of free exchange is a central part of a liberal governmentality, and it must instead be understood as a transactional reality. While they certainly have very different approaches to analyzing civil society, they both reject the dominant liberal conception of it. They are also, no doubt, in strong disagreement as to the role of the state, but I will argue further down that Foucault is not the anti-statist thinker he is often made out to be.

In recent years, there have been a number of attempts to reconcile, or at least to challenge, the supposedly immense gap between Hegel and Foucault (Allen, 1998; Gutting, 2010; Muldoon, 2014; Raffnsøe, Gudmand-Høyer, & Thaning, 2016, pp. 2–17). Many of these authors argue that Foucault’s engagement with Hegel, especially through his teacher and mentor, Jean Hyppolite, who was central in bringing Hegel into the minds of this generation of French thinkers, was formative for Foucault’s work. In *The Order of Discourse*, Foucault’s inaugural speech to take over the chair in The History of the Systems of Thought from, in fact, Hyppolite at the Collège de France, he says:

[...]to make a real escape from Hegel presupposes an exact appreciation of what it costs to detach ourselves from him. It presupposes a knowledge of how close Hegel has come to us, perhaps insidiously. It presupposes a knowledge of what is still Hegelian in that which allows us to think against Hegel; and an ability to gauge how much our resources against

him are perhaps still a ruse which he is using against us, and at the end of which he is waiting for us, immobile and elsewhere. (Foucault, 1981, p. 74)

In many ways, Hegel is Foucault's great adversary. In *Society Must Be Defended*, Hegel is singled out as the originator of the repressive hypothesis of power, and the Hegelian dialectic is singled out as a preeminent way to hide war and struggle in a philosophical logic of contradiction (Foucault, 2003, pp. 15, 58). But at the same time, Hegel is at the end, waiting. It could be argued that Hegel and Foucault in many ways are close to each other on a number of subjects—for instance, with regard to the focus on history, historicizing the emergence of societal relations and subject-formations, the de-transcendentalizing of given conceptions and discourses, and the focus on philosophy as grasping your own time in thoughts. Therefore, it has been argued, the reference in the invocation of enlightenment is much more aptly Hegel than it was Kant (Allen, 1998; Foucault, 1984; Gutting, 2010; Muldoon, 2014).

Foucault and the State

With regard to Foucault's relationship to the state, he is often cast as an anti-statist thinker (and sometimes as a result, also as a defender of civil society). This is in many ways natural, given his statement that "In political thought and analysis, we still have not cut off the head of the king" (Foucault, 1998, pp. 88–89), as well as his call for the need to investigate power "outside the model of Leviathan, outside the field delineated by juridical sovereignty and the institution of the state" (Foucault, 2003, p. 34). The notion of "governmentality," developed in the lecture series mentioned above, has also primarily been used to investigate and analyze the power relations and governmental technologies "beyond the state," in what has subsequently been named "governmentality studies" (Barry, Osborne, & Rose, 1996; Burchell, Gordon, & Miller, 1991; Dean, 2010; Dean & Villadsen, 2016, p. 2; Rose, 1999; Rose & Miller, 1992).

However, in recent years, there has been an increased interest in Foucault as a thinker of the state (Biebricher, 2013; Biebricher & Vogelmann, 2012; Jessen & von Eggers, 2020; Jessop, 2007, 2011; Lemke, 2007; Saar, 2011; Sawyer, 2015). While Foucault definitely developed the notion of governmentality to avoid the analysis of the state as a given thing, he nonetheless developed it exactly in order to analyze power at the level of the state, the economy, and the population. To Foucault, governmentality did not in any way entail cancelling "the presence and

the effect of state mechanisms” (Foucault, 2010, p. 77). Even though the state does not exist as such, as a given, *a priori* entity—it is also a transactional reality—this does not mean that it has no power effects. In *The Birth of Biopolitics*, Foucault states of his general *oeuvre* that it was “always the identification of the gradual, piecemeal, but continuous takeover by the state of a number of practices, ways of doing things, and, if you like, governmentalities. The problem of bringing under state control, of statification [*étatisation*], was at the heart of the questions I have tried to address” (Foucault, 2010, p. 77). He was interested in—and that is what the notion of governmentality, at least partly, was meant to analyze—how practices and processes of power, technologies, discourses, knowledge production, subjectification, discipline, and government(alities) were increasingly coming under the auspices of the state, how they were increasingly grasped and understood through the prism or umbrella of the state, how they became “statified” (Jessen & von Eggers, 2020)

In “The Subject and Power” (1982), Foucault also states that “in contemporary societies the state is not simply one of the forms or specific situations of the exercise of power—even if it is the most important—but that in a certain way all other forms of power must refer to it. [...] one could say that power relations have been progressively governmentalized, that is to say, elaborated, rationalized, and centralized in the form of, or under the auspices of, state institutions” (Foucault, 1982, p. 793). It is important for Foucault to stress that this does not mean that power relations are derived from the state, or get their ultimate authority from its sovereignty. It means that in contemporary societies, the state occupies a certain privileged role such that all other forms of power have to refer to the state, to invoke it. And, therefore, is it a transactional reality.

It is also in “The Subject and Power” that Foucault states that contrary to popular belief, the goal of his work “has not been to analyze the phenomena of power, nor to elaborate the foundations of such an analysis,” but instead it has been “to create a history of the different modes by which, in our culture, human beings are being made subjects” (Foucault, 1982, p. 777). Thus, he states, “it is not power but the subject which is the general theme of my research” (Foucault, 1982, p. 778). Foucault is interested in subjects and subjectification—how human beings are made into subjects through diverse relations of power, governmental technologies, disciplines, and discourses. And I would argue that Foucault, or at least with Foucault, we can say that the state plays a central (although obviously not the only) role in this subjectification. One of the kinds of subjects into which human beings have been made is the “productive subject, the subject who

labors, in the analysis of wealth and of economics.” (Foucault, 1982, p. 777). My argument in the following is that the productive subject in neoliberalism can be understood as not a human subject, but a corporate or collective subject—the corporation. And so, the corporation is the primary subject of civil society in the neoliberal state.

Neoliberalism as Statecraft

As mentioned, *The Birth of Biopolitics* was mainly centered on the governing rationality or governmentality of liberalism and neoliberalism. Although published in the beginning of 1979, just before the election of Margaret Thatcher in the United Kingdom and Ronald Reagan in the United States, Foucault analyzes with great clarity the phenomenon of neoliberalism that would subsequently sweep the Western world and occupy many a scholar. His lectures have been a great inspiration to academic research on neoliberalism (Brown, 2015; Dardot & Laval, 2013; Davies, 2014; Mirowski, 2014; Mirowski & Plehwe, 2015; Peck, 2010).

In Foucault’s view, neoliberalism is to be understood as an art of government, a political or governing rationality, or governmentality that is centered on the state and is a form of statecraft (Dean, 2014; Foucault, 2010). To Foucault, defining *neoliberalism* in terms of its contrast to classical *laissez-faire* liberalism is the view of the state and the market (or civil society, we could say). In classical liberalism, there was still a conception that there was, as we have seen in the previous section, a space of society (civil society), that the state ought to “laissez faire,” to leave alone. In classical liberalism, there was a naturalist conception of the market, meaning a belief that competition and markets would naturally arise if civil society were left alone. In neoliberalism, on the other hand, the conception of the market is anti-naturalist, meaning that markets and competition do not merely exist or will come to exist if left alone, but must be actively fostered. And here, the role of the state is central. A Foucauldian approach to neoliberalism stresses the active role of the state in maintaining and introducing market and competition logics into all areas of social life (Brown, 2015; Dardot & Laval, 2013; Davies, 2014; Foucault, 2010; Mirowski, 2014; Peck, 2010).

Defining *neoliberalism* in contrast to classical *laissez-faire* capitalism is, therefore, to Foucault, the constitutive and active role of the state in creating and upholding markets and market logics as well as expanding the logic of the market—market principles and competitiveness—to

all sectors of social life.¹ The market thereby becomes not a sphere of reference for government, as an external regulatory principle, but rather the very mechanism through which all aspects of the social life are to be shaped. In many ways, the “critical distinction between liberalism and neoliberalism is that it abandons the vision of market and state as independent and ontologically distinct entities” (Davies, 2018). Neoliberalism can be said to collapse the distinction between state, market, and civil society by introducing the logics of competition and the market to all aspects of social life. However, rhetorically and discursively, the roles of civil society and the market remain more vibrant, entrepreneurial, and active spaces than the stale, cold, and bureaucratic state.

As mentioned, Foucault was himself very interested in the production of human subjects, and much Foucauldian scholarship on neoliberalism has thus been focused on the production of neoliberal subjects and subjectivities (Brown, 2015; Dardot & Laval, 2013; Foucault, 2010; Lazzarato, 2012). Here, I am more interested in collective or corporate subjects. In Foucault’s view, the German Ordoliberals² formulated a *Gesellschaftspolitik* (policy of society), which entailed the formalization of society on the model of the enterprise (Foucault, 2010, p. 160). It imagines an economy where the only real agents are enterprises, which means that the true economic subject—the *homo oeconomicus*—is not the man of exchange, or the consumer or the producer, but rather an enterprise (Foucault, 2010, p. 175). It is a vision of a competitive market economy where the enterprise is the basic economic agent (Foucault, 2010, p. 176). To Foucault, this idea of the enterprise as the basic unit or element of economic analysis is “pushed to the limit” in American (Chicago School) neoliberalism (Foucault, 2010, p. 225). Here, he says that “the idea that the basic element to be deciphered by economic analysis is not so much the individual, or processes and mechanisms, but enterprises. An economy made up of enterprise-units, a society made up of enterprise-units, is at once the principle of decipherment linked to liberalism and its programming for the rationalization of a society and an economy.” (Foucault, 2010, p. 225). This also entails a redefinition of the human subject, where the *homo economicus* is no longer conceived

¹ This is not to say that the state did not play a central role in classical liberalism; of course it did (Stahl, 2018). But in the governing rationalities of liberalism and neoliberalism, there is a difference in the conception and role of the state and the market.

² In his lectures, Foucault distinguishes between two types of neoliberals, the German Ordoliberals and the American (Chicago School) neoliberals. This has subsequently become a central division in the literature on neoliberalism.

of as a partner of exchange, but as entrepreneur of him- or herself who must continually invest in him- or herself, in his or her own human capital (Foucault, 2010, pp. 225–226).

However, despite noting that neoliberalism (in both of its most significant variants) imagined society on the model of the enterprise, and noting that the enterprise became the central economic agent of neoliberalism, Foucault never really expands upon this analysis. One reason was obviously that he left the theme of neoliberalism never to return to it again, but another is that he was ultimately interested in individual, human subjects and not in corporate subjects. As a result, he spent some time analyzing Gary Becker's notion of human capital and the thought of the individual modeled on the enterprise, but he did not concern himself with the production of corporate subjectivity and the central role of the corporate form in neoliberalism.

The Production of Corporate Subjectivity

Another central reason that Foucault avoided corporate or collective subjects is also that they are fundamentally creatures or products of law. Due to his avoidance of the “juridico-discursive model” and the focus on power outside of formal repressive institutions, he also avoided law and legal regulations, given their connections to the classical conception of power in the state. The for-profit, limited liability, shareholder-owned corporation is in many ways the central governmental technology of modern capitalism. Where Foucault highlights the production of subjects and subjectivities and the role of the state in neoliberalism to expand the market logic into all spheres of society, I would argue that neoliberalism is the expansion of the corporation and the corporate form to all areas of social life—to the individual, as Foucault and others have stressed, but also to all other forms of associational and collective life. And I believe that Foucault and Foucauldians miss this point by focusing exclusively on individual subjects.

In contrast to this view, Hegel stresses how the state seeks to control and regulate civil society by granting it certain legal forms, thereby penetrating into civil society and recognizing those collective forms that are supportive of its own project. On the one hand, this means that the state will always (attempt) to regulate and police the behavior of its subjects (both individual and corporate) to create a harmonious order, as well as seek to direct individual and corporate actions towards the universal, towards the common good. On the other hand, this means that the state will also attempt to grant and accept certain corporate and collective forms that are seen to further its own political project.

I will argue that the state has always created, used, accepted, and depended upon a number of corporate entities in order to govern social life, and it has in this endeavor granted them extensive rights, privileges, immunities, and exemptions from law in exchange for securing governmental objectives central to the state (Barkan, 2013). I will therefore argue that we need to understand the corporation as a political subject constituted to achieve governmental aims that are deemed central to a given political order. Even more, I want to argue that the rise of corporate power since the 1970s must be understood in relation to the fact that the chief governmental aim became to secure economic growth and prosperity—and that, accordingly, the private, for-profit joint-stock corporation became the central political subject. The corporation was increasingly seen as the primary creator of wealth and growth in a neoliberal world, and it was in many ways the ideal neoliberal subject—perfectly economically rational and free to move to where profit is made. As a result, the corporation was granted a number of privileges and exemptions from rules and law, was privileged as a subject through favorable tax rates and international mobility, and, not least, was favored through the specific, legal mechanisms of limited liability and entity shielding.

As a result, we can understand the rise of corporate power since the 1970s, and in general neoliberalism as a whole, as the privileging of one particular subject: the corporation. Whereas in the Keynesian welfare state (and in industrial capitalism), the primary political subject—and the primary wealth-creating subject—was the individual worker, in neoliberalism it was the corporation. In many ways, the corporation is seen as the primary creator of wealth and growth in a neoliberal world and is in many ways the ideal neoliberal subject—perfectly economically rational and free to move to where profit is made. As a result, the corporation is granted a number of privileges and exemptions from rules and law, privileged as a subject through favorable tax rates and international mobility. The open allegiance among politicians in the West to the neoliberal competition state signaled a clear shift in political objective from the social and economic rights of individuals and families to the promotion of business competitiveness and, thereby, corporate subjects. When competitiveness becomes the most important and central factor, the (comparative) strength of corporations becomes the most important political goal—and as a result, states enter a race to the bottom in order to attract the productive subjects.

As Joel Bakan has argued, there is no doubt that private regulation has exploded since the 1980s, and thereby the a sharp reduction of the possibilities of states to protect “the public interests, [...] people, communities, and the environment from corporate excess and malfeasance” (Bakan,

2015, p. 280). However, as he also rightly underlines, this was not paralleled by an equal diminishment in the state's protection of corporations and their interests. It is still national law that incorporates companies, gives them the rights and protections of "legal persons," and imbues them with limited liability and entity shielding. Legal mechanisms and technologies are absolutely central and crucial for their operation. At the same time, it is state power that is used to block and repress protests over the expansion of corporate power into all spheres of social life. And again, it is states (of course, influenced by lobbying interest groups) that agree to and ratify trade agreements that give corporations unprecedented rights and powers.

Since the 1980s, the net profits of the world's largest corporations have tripled, just as corporate tax rates (especially in the United States) have fallen (McKinsey Global Institute, 2015; Wright & Zucman, 2018). In the United States, recent U.S. Supreme Court decisions on *Citizens United v. Federal Election Committee* (2010) and *Burwell v. Hobby Lobby* (2014) have granted first amendment rights of free speech (in the form of money) as well as religious rights to corporations, thereby making them subjects of free speech and religious freedom. In many trade agreements, as also highly debated around the TTIP, the TTP, and CETA, there is the infamous ISDS-mechanism (Investor State Dispute Settlement), which grants the corporation an inherent right to profit by giving them the right to sue a government if they pass laws (for instance, nationalization) that limit the corporation's possibilities of profit. As a result, this mechanism has been termed a "corporate bill of rights" (Monbiot, 2014). Corporations are thus granted rights to profit that supersede the democratic rights of people(s). In this way, the neoliberal era privileges corporations as primary political subjects to the detriment of not only human subjects, but also other forms of collective subjects, including unions, cooperatives, and other forms of associations. This means that corporations have become the primary subjects of civil society—not associations or individuals. This also means that the corporate form is being championed to become the model of not only individuals, but also all forms of human associations and collectives—from the state, as public institutions are increasingly being modeled on the corporation (New Public Management and New Public Governance) with the introduction of private sector management techniques, to civil society associations and organizations, as they need to become more professionalized and corporatized in order to compete with private market actors for contracts.

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Conclusion

In this article, I have outlined a view of civil society that is in contradistinction to the dominant liberal conception of civil society as a sphere or sector with inherently good values. Instead, I have tried to argue that civil society always exists in the shadow of the state. To do so, I have attempted to combine G.W.F. Hegel and Michel Foucault. Hegel's view of civil society stresses how the state seeks to subsume the struggles of society and to direct the particular interests of civil society towards the universal, by means of especially the corporation, understood as the legal recognition of certain associational forms. In doing so, the state also highlights and privileges certain corporate forms that are conducive to its own project. Differently, Foucault views civil society as a transactional reality that comes into being and has effects when being invoked. I have argued that one of the central actors in invoking civil society is the state. A Foucauldian understanding of neoliberalism also exactly stresses the active role of the state in fostering and promoting marketization and competition in all spheres of social life.

In my understanding, the central feature of neoliberalism can be understood to be the attempt to promote the corporate form in all areas of social life—to the individual, but also to all other corporate, associational, and collective forms. Throughout history, the state has always used corporations and corporate bodies to achieve governmental aims and to govern social life, and has in doing so granted them extensive privileges and exemptions from the law. I argue that in neoliberalism, the primary governmental aim is the creation of profit—and, therefore, the most central economic and political subject is the corporation. As a result, the corporation is given privileges and exemptions from the law in order to achieve this central governmental aim. The most central subject of neoliberal civil society is thus not the individual or the association, but rather increasingly the corporation.

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