Contents

[INTRODUCTION]

4

SECTION ONE THEORY OF CIVIL SOCIETY

[Division of this Section]

7

PART ONE

THE ESSENCE OF CIVIL SOCIETY

Chapter 1. The more general differences contradistinguishing the three societies necessary for the perfect organisation of the human race	
Article 1. Three principal constituents characterising societies	8
Article 2. DE FACTO and DE IURE societies	9
Article 3. All de facto societies can be called MAN-MADE	10
Article 4. Theocratic society alone exists per se as a DE IURE SOCIETY, independently of human activity	10
Article 5. Considered in relationship to the good which they propose as their proximate end, the three societies can be distinguished by calling one divine, the other natural and the third man-made	12
Article 6. The end of civil society	14
Article 7. Difference between the proximate end of civil society and the proximate end of theocratic and domestic society	16
Article 8. Corollary: civil society must never harm theocratic or domestic society; rather, if must minister to them	17
Chapter 2. Definition of civil society	17

Contents	xi
Article 1. Distinction between civil society, State, and Power Article 2. Erroneous definitions of civil society	18
§1. Definitions which err from excess	19
§2. Definitions of civil society which err by defect	22
Article 3. True definition	24
Chapter 3. The modality of rights, and the characteristics accruing to civil society from it Article 1. Various species of modality Article 2. How civil society is distinguished by its characteristic	25
of universality from other societies which have the modality of rights as their proximate end	28
Article 3. And by the characteristic of supremacy from other modal societies	29
Article 4. Errors resulting from mistaken concepts of these two characteristics	29
Article 5. Third characteristic: perpetuity	31
Article 6. Fourth characteristic: the prevalence of force	32
Article 7. Fifth characteristic: the end of civil society is the common good together with the tendency to equalise the share of	
utility	33
Article 8. Sixth characteristic: the end of civil society is also the public good if this is directed to the common good Article 9. Seventh characteristic: the end of society is private	36
good also, provided concurrence, or opportunity for this good, is open to all	38
Article 10. Corollaries from the two preceding articles	38
Article 11. Eighth characteristic: civil society needs external	11
means to fulfil its end; it is an EXTERNAL society	41
Article 12. Corollaries of the eighth characteristic §1. Corollary 1: civil society does not necessarily include all human beings	12
§2. Those excluded from citizenship retain their extra-social	42
\$3. Corollary 2: it is not absurd for an individual to belong	43
to several civil societies contemporaneously	44
§4. Corollary 3: external means must be provided for civil society by the members in proportion to the quantity of rights	11
which they place under the protection of the society §5. Corollary 4: in civil society members must enjoy a degree	46

Contents

of social power equal to the share-quota they contribute, except for the judicial part	17
§6. Corollary 5: Is an electoral patrimony to be set in the	4/
case of representative governments? If so, what kind of patri-	10
mony should it be according to rational Right?	48
Article 13. Ninth characteristic: civil society has neither sei- gniorial nor profit-making power; its power is purely bene- ficial	49
Article 14. Tenth characteristic: civil society is a multi-quota	•
society	50
Article 15. Civil society can accidentally seem unequal	50
Chapter 4. Government in so far as it flows from the essence	F 0
of civil society	50
Article 1. The sense in which fathers of families, by associating	
in civil society, cede the regulation of the modality of their	51
rights	51
Article 2. Radical governmental authority resides in the associated fathers	51
Article 3. The authority of the representatives	52
Article 4. Executive authority in officials, or government in the	
strict sense	53
Article 5. Moral duties governing the choice of political deputies	
and officials	53
Article 6. The independence and dependence of political deputies	
and officials on the fathers	54
Chapter 5. Alienation of social authority	
Article 1. The civil authority of the fathers can be alienated in	
whole or in part	55
Article 2. Alienation of the social authority of the fathers intro-	
duces a slight seigniorial element into social society	56
Article 3. How the social contract was conceived in the last	
century	57

	-	1
Con	+00	ato
(17/	IPI	1.1

xiii

PART TWO

THE SCIENCE OF RIGHT IN CIVIL SOCIETY DISTINGUISHED FROM POLITICAL SCIENCE

[Introduction]	60
Chapter 1. The proximate and remote ends of societies	60
Chapter 2. The difference between politics and social Right	61
Chapter 3. The utilitarians' false definition of right confuses the two sciences of politics and Right	62
PART THREE	
THE ORIGIN OF CIVIL SOCIETY	
[Introduction]	67
Chapter 1. Principles pertaining to individual Right, which are necessary for explaining the origins of governments	68
Chapter 2. Titles of right to govern; those of first acquisition and those of second acquisition	69
Chapter 3. Titles of first acquisition Article 1. Right to govern, arising from a preceding right of ownership and of dominion	69
§1. The title of absolute Being	
A. God considered as civil ruler over human beings	70
B. Continuation — Theocracy among the Hebrews	71
C. Possible errors caused by applying the principles of Hebrew theocracy to other civil societies	72
§2. The title of fatherhood A Fatherhood is a greater power than sixil nower and in	
A. Fatherhood is a greater power than civil power and, in the state of nature, contains the latter	75

Contents

B. Continuation — Possible errors resulting from the application of the principles of paternal authority to	
civil authority	77
C. Continuation — Patria potestas is a particular, not a	
universal source of civil governments	78
§3. The third title: seigniory	81
§4. The fourth title: ownership	82
§5. Comment on the titles already discussed	84
Article 2. The right to govern, independent of the right of	
dominion and of ownership — Two classes of titles to this	
right	84
Article 3. Titles of civil rule which consist in an act of the person	
assuming it	
§1. Preliminary teachings — Civil rule is a good for its	
possessor and its subjects	
A. Civil dominion is a good for its possessor	85
B. Civil rule is beneficial for the governed	87
§2. Corollary to the first thesis: civil rule is a suitable object	
for a right of ownership	88
§3. Corollary to the second thesis: peaceful occupancy is a	
valid title to civil rule	
A. Peaceful occupancy	88
B. Continuation — Lack of resentment against attempted	
occupancy is the sign of its legitimacy	91
C. Continuation — Peaceful occupancy is the cause of	
three forms of government: monarchic, aristocratic	
and democratic	92
Article 4. Fragment of a philosophical history of civil society	
§1. Mixed titles to civil rule consisting of seigniory and	
ownership preceded pure titles	94
§2. A republic is more suited to civilised pagan nations; a	
monarchy, to Christian nations	97
Article 5. The title of occupancy (continued) — Forced occup-	
ancy of civil rule	102
§1. Forced occupancy of civil rule as the sole means of self-	
defence	103
§2. Forced occupancy as a means of defending others	104
Article 6. Titles of civil rule arising from a common, combined	
act of many fathers	105
§1. Occupancy by a body of people — As a result of choice	105

Contents	XV
§2. Interpretation of choice	108
Chapter 4. The origins of civil governments in history	110
Chapter 5. Titles of second acquisition Article 1. The two parts of right concern: 1. the FORMATION OF RIGHT, and 2. their TRANSMISSION — The modes of second acquisition pertain to the latter Article 2. Discussion of titles of second acquisition completes discussion about the formation of civil society Article 3. Three ways of transmitting civil rule Article 4. Civil power communicated to another's ownership without loss of power in the communicator Article 5. Power transferred to another's ownership and lost by the person communicating it Article 6. Delegated civil power	119 120 121 122 124 127
PART FOUR OCCASIONAL AND EFFICIENT CAUSES OF CIVIL SOCIETY	
[Introduction]	130
Chapter 1. Need is the general stimulus moving people to establish civil society	131
Chapter 2. Necessity of civil society for the progressive development of mankind	132
Chapter 3. The steps by which civil society comes into being Article 1. Summary Article 2. Gradual formation and growth of civil society	143
§1. The right of war and peace is anterior to civil societies §2. The need of external defence for families is the only	145
efficacious stimulus for the formation of civil societies §3. The circumstances which manifest a permanent need for	145
external defence of families A. Conquests	147 147
-1114	1 1/

B. Accidental hostilities between families	150
I. The period in which civil societies are still unformed,	
but temporary civil establishments are founded	151
II. The period in which civil societies tend to establish	
themselves but have still not reached unity of gov-	
ernmental power	152
III. The period in which civil societies are still only partly	
formed because they lack the institution of some	
essential power	154
Article 3. Considerations on the transition periods between	
domestic and civil society	
§1. Importance of historical facts in this period	155
§2. Civil society passes to complete formation through a	
series of formless states	156
§3. The chief obstacle to the full formation of civil society is	
family selfishness	157
§4. A reflection on the way France should act to lead the	
Arabs of Algeria to civilisation	161
§5. A reflection on the way used by Providence to form	1
modern civil societies in Europe	
A. Theory	163
B. History	
I. The first clash between the family element, which was	
the attacker, during the barbarian invasions, and the	
civil element, which was attacked	165
II. Causes that revived and re-ordered the civil element	
after its first defeat following the assault by the fam-	1/7
ily element	167
III. The struggle between family and civil element was	
carried into the heart of renewed, mature civil	
societies and caused the rise of sovereign houses and modern nations	182
	104
IV. Summary of the stages through which civil society took the more perfect form it shows in our present	
European nations	187
V. The internal struggle to produce perfect civil society in	107
nations already founded	205
muions aiready journaed	203
Chapter 4. The final form to which modern civil societies tend	
Article 1. The ideal of civil society	211

	Contents	xvii
	Article 2. In the movement of 1789, the SOCIAL ELEMENT attempted to destroy the SEIGNIORIAL ELEMENT Article 3. The confused ideas of authors at the time of the	214
	French revolution .	220
	rticle 4. The imperfect mediation between the family and the seigniorial elements rticle 5. How complete mediation between family and civil	221
	elements will be achieved	224
	article 6. Harm caused by freedom of the press; just ways of avoiding it	228
A	rticle 7. Conclusion, concerning the SUBSTANTIAL POWER now being formed and destined to lead civil societies to their	
	ideal	233
	Chapter 5. How civil society gradually regulates modality of rights ever more extensively	
	rticle 1. Epilogue — The first step forward in civil society: it limits itself to regulating modality of rights	235
	rticle 2. Second step forward of civil society: government is extended to the whole sphere of the modality of rights	236
	rticle 3. Description of the sphere of complete regulation of modality of rights	238
	§1. First function of civil government: protection of all the rights of the members and of the free exercise of their rights §2. Second function of civil government: deciding and	239
	settling disputes	241
	§3. Third function of civil government: to regulate the exercise of private rights in such a way that they pose the least possible hindrance to others' freedom	242
	§4. Fourth function: to amalgamate private rights when a common evil has to be avoided, or an opportunity arises to	272
	procure a common good	243
	A. First dynamic: organising the government of society	244
	B. Second dynamic: administering the goods of society C. Third dynamic: the imposition of taxes or social con-	246
	tribution	246
	D. Fourth dynamic: the undertaking of certain enterprises for the common good	249
	E. Fifth dynamic: the stimulation of moral, intellectual and industrial progress by means of rewards for free	
	concurrence	250

Ústřední knihovna právnické fakulty MU Brno Article 4. Conclusion

2

SECTION TWO

RIGHT IN ALREADY CONSTITUTED CIVIL SOCIETY

[INTRODUCTION]

PART ONE

POSSIBLE ELEMENTS OF INJUSTICE IN CIVIL SOCIETY CONSIDERED AS SUCH

[Introduction]
Chapter 1. Two equalities: JURAL and CONSTITUTIVE
Chapter 2. The four sources of injustices in the civil body
Chapter 3. Injustices against real and ideal right by persons holding civil power
Chapter 4. Injustices in the form of government
Chapter 5. Injustices in government
Chapter 6. Injustices in society Article 1. Slavery Article 2. The pure right of command Article 3. Legitimate hard servitude Article 4. Serfdom among the Romans Article 5. Military bond-service Article 6. Mercenary servitude or domestic service Article 7. Administration Article 8. Subjection Article 9. Civil dependence or subjection

I	Contents	xix
	Chapter 7. The principle of free concurrence, applied according to the prescriptions of rational Right, saves civil society	
ı	from all the injustices listed above.	284
Δ	rticle 1. Concurrence for citizenship	286
Δ	rticle 2. Concurrence for the state of freedom	291
111	rticle 3. The concurrence of citizens for all social goods and offices	292
	Chapter 8. The sanction of civil rights	
Δ	rticle 1. The sanction of civil rights is found in two supreme	
	forces	295
4	rticle 2. Civilisation increases in proportion to the growth of	
	the two supreme forces which sanction civil rights	295
	rticle 3. Agreement between the two forces produces the most	
	stable public peace and prosperity	297
	rticle 4. A wise civil government never lacks a way to sanction	
	all civil rights	299
	rticle 5. The sanction of civil rights when a government fails	
	in its obligations	300
	§1. Principles, taken from individual Right, to be kept fore-	
	most in mind in this discussion	300
	§2. Opinions of authors	304
	§3. The inviolability of the sovereign's person according to	211
	socio-rational Right (A. No concluse the might to dethance to the second to the secon	311
	§4. No one has the right to dethrone an absolute sovereign	313
	§5. No one has the right to profess anarchic teachings or to promote anarchy even indirectly and as a means to a better	
ı	social state	211
	§6. In unconditional autocratic governments, it is never licit,	314
	according to social Right, for the governed to use the right of	
	violent coercion against the monarch	315
	A. The peaceful means with which the governed can suf-	
	ficiently guarantee their right in the most absolute	
	monarchies	315
	B. Objections	325
	C. Replies	329
	§7. Conditional monarchies	330
	§8. Democracies and aristocracies	331

PART TWO

THE ORGANS OF CIVIL SOCIETY AND THE SOCIAL FUNCTIONS DETERMINING THEM

Chapter 1. The organs of civil society pertain to the science of Right in so far as their existence depends on jural titles
Chapter 2. The relationship of organs with the nature of civil society, with its end, and with its different functions and dynamics
Chapter 3. The relationship between the organs and actions of society
Chapter 4. Description of jural activity in civil society as this activity appears in its different powers and activities Article 1. Autocracy and social action Article 2. Different modes of civil autocracy Article 3. Social action is exercised by means of MENTAL CONCEPTION and EXECUTION Article 4. The execution of the notion conceived by the autocratic mind; how this activity subdivides
§1. Governmental acts which autocratic power carries out itself A. Material operations which serve to carry out the conceptions proper to autocratic power
B. Commands given either to members or to ministers, that is, to organs of powerC. Judgments
D. Legislation I. Civil society must be directed by laws rather than precepts
 II. Extension of the right to legislate a) The competent judge of the first limit b) The competent judge of the second limit III. Is the autocrat subject to laws? IV. The compilation of laws V. Classification of civil laws

Contents	xxi
 a) Classification of civil laws according to the different mode and degree in which they oblige b) Classification of civil laws according to their different purposes, that is, according to the different social good at which they are aimed 	351
i) Civil-jural laws and civil-political laws ii) How social, civil Right modifies individual right	360 361
iii) Laws of civil society, and laws of theocratic society received or acknowledged by civil society iv) Sub-classification of politico-civil laws v) Penal right of civil society E. Organisation F. Nomination to social offices G. Social vigilance	366 370 374 397 398 401
§2. Governmental acts that an autocratic power can carry out through others	402
PART THREE	
APPENDIX TO THE PHILOSOPHY OF RIGHT — THE BETTER CONSTRUCTION OF CIVIL SOCIETY	
[Introduction]	403
Chapter 1. The philosophy of Politics begins where the philosophy of Right ends	403
Chapter 2. How the norms suggested by politics can be considered as the norms of right, and the norms of right as the norms of politics	404
Chapter 3. An outline of the regular construction of civil society — The first condition: justice	405
Chapter 4. Continuation — Second condition: the principle of balance between mutually attractive things	407
Chapter 5. Continuation — Enumeration of the goods which tend to balance one another	410

xxii
Chapter 6. Continuation — Balance between population and wealth
Chapter 7. Continuation — Balance between wealth and civil power
Chapter 8. Continuation — Balance between civil power and material force
Chapter 9. Continuation — Balance between military-civil power and knowledge
Chapter 10. Continuation — Balance between knowledge and virtue
Chapter 11. Recapitulation of social balances
Chapter 12. Continuation — Third condition for the regular construction of civil society: social inequalities dependent on nature
Chapter 13. Continuation — Fourth condition for the regular construction of civil society
Chapter 14. Continuation — The fifth condition for the best construction of civil society.
Chapter 15. Progress towards the natural construction of civil society
Chapter 16. The leading principle of social progress is justice, maintained coherently
SOCIAL RIGHT
Appendix
Index of Biblical References
Index of Persons

General Index