

International Society as Civil Association: Law, Morality and Responsibility

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In *On Human Conduct* (1975) Michael Oakeshott distinguished between two ‘modes’ of human association, ‘enterprise association’ and ‘civil association’. The former type of association is instrumental to the pursuance of a common cause, common interests, or a specific purpose shared by its members. An enterprise association is a business firm, a football team, a university or a trade union. A civil association, by contrast, is established around pragmatic rules of conduct that are not designed to further particular goals. Civil association first and foremost is a rule-governed activity that flows from what Oakeshott labels the ‘civil condition’ and ‘a relationship in terms of the conditions of a practice’. A practice, he argues, is ‘continuously reconstituted in being used’ and ‘only in virtue of having been learned and understood’ (Oakeshott, 1975, 119-120).

Oakeshott theorised the modern European state as a particular expression of civil association which he labels *societas*. In such an association ‘laws are understood as conditions of conduct, not devices instrumental to the satisfaction of preferred wants’ (Oakeshott, 1975, 202-203). However, as far as contemporary international relations are concerned Oakeshott seems to have been largely a realist rejecting the notion of an international civil association of states. Nevertheless, Oakeshott’s concept of civil association has inspired international society theorists to conceive of international society as not just a ‘purposive association’ in which states pursue their self-interest but also as a ‘practical association’ providing formal and pragmatic rules that are not instrumental to particular goals of state policy, i.e., as a *societas* (Nardin 1983; Jackson 2000). While this paper is generally supportive of the Oakeshottian turn in international society theory it suggests that somewhat different conclusions should be drawn from it. The paper sketches out an alternative conception of international civil association that transcends the boundaries of communities and suggests that such a notion of *societas*, when sustained by a particular legal conception, would promote an effective transformation of moral responsibility into political responsibilities across borders.

The first argument is that the limitation of the two views of ‘civil association’ as either confined to the political life within a state or as applicable to the organised international relations of states is unsatisfactory and that there are good reasons to conceive instead of a third notion when understanding ‘civil association’ as a mode of association that is capable of transcending the boundaries between the two conceptions, i.e., between the ‘civil association’ within the state and the ‘civil association’ in the society of states. The view defended here is that it makes sense to conceive of the modern state and the international society of states as necessarily connected in the sense that both associations are linked when sharing the same mode of association. Drawing on the work of among others Kant and Habermas it is argued that such a notion is not only possible

in a philosophical sense but that it is and always has been a practical possibility in the context of modern political relations.

The second argument is that civil association corresponds to particular notions of legal relations. Civil association rejects the idea of an omnipotent law-maker supporting instead the position that law is a practice requiring an intersubjective account of its authority through what H.L.A. Hart once labelled ‘the internal point of view’ (Hart 1994; Frost & Lechner 2015). Moreover, civil association is consistent with both the notion that of law as the codification of practices as well as the view that law makes moral norms obligatory (Orsi 2015). It is argued that the distinction between, on the one hand, the law of the bounded community and, on the other hand, international law is unsatisfactory for realising the potential of a transnational civil association in international society. International law is too vague and the law of the bounded community is too limited to effectively sustain such practices. What we should look for instead is a transnational legal conception, labelled by Terry Nardin as a ‘civil-confederal model’ of international law (Nardin 2011).

The third argument is that the notion of international society when understood in this way reconstructs the notion of political space in international society and when sustained by a particular notion of law, is conditional for an effective transformation of moral responsibility into political responsibility across borders. Richard Beardsworth (2015) has recently emphasised the importance of a practical concept political responsibility across borders to be developed ‘through a marriage between the national and the global’ (p. 89). While sympathetic to Beardsworth’s view that political responsibility of this kind is called for in today’s world this paper claims that in order to work effectively such an endeavour requires an enhanced practice of civil association across borders.

References

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