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8 The basic context and structure of Hegel's *Philosophy of Right*

I

My aim in this essay is to sketch the political and philosophical context of Hegel's *Philosophy of Right* and to reconstruct the basic aim and structure of its main argument.¹ I argue that Hegel is a reform-minded liberal who based his political philosophy on the analysis and fulfillment of individual human freedom. Hegel gave this theme a profound twist through his social conception of human individuals. He argued that individual autonomy can be achieved only within a communal context.

II

To understand Hegel's political views, it is helpful to see how they stand with regard to conservatism, romanticism, and liberalism. Hegel has been accused of conservatism or worse. The most common basis for this charge is Hegel's claim that what is rational is actual and what is actual is rational (Preface 24/20). This claim has been taken as a blanket endorsement of the status quo, but in the paragraph headed by this statement, Hegel distinguished between phenomena that embody a rational structure and those that do not. The mere fact that a state exists, on Hegel's view, does not entail that it is either rational or, in Hegel's technical sense, "actual." Hegel's distinction between existence and actuality is tied to his metaphysics, according to which the universe's rational structure progressively actualizes itself. In the political sphere, this means that social institutions aspire and tend to achieve a fundamentally rational form. The basis of this view cannot be explored here. For present

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purposes it suffices to note that Hegel's slogan is not a blanket endorsement of extant institutions.² This does not, however, determine where Hegel's politics lie in the political spectrum. That requires determining what political institutions Hegel thought were rational and why.

Hegel has been branded a conservative by associating him with the historical school of jurisprudence, whose most prominent representative was Friedrich Karl von Savigny. In a phrase, the historical school of jurisprudence sought to justify (then) contemporary German law by tracing its roots back to Roman law. Hegel refuted this main principle of the historical school by charging it with the genetic fallacy – with a twist. Instead of justifying laws by determining their origins in specific historical circumstances, this effort delegitimizes laws because those circumstances no longer exist (§3R).³ The historical school also opposed codification of civil law because they viewed law as an organic growth thoroughly rooted in a changing society. Codification appeared to them to be antithetical to an organic conception of law and society. Hegel opposed the historical school on this point, too, firmly insisting on the need for law codified and promulgated in the national language as a key element in achieving rational freedom (§§258R, 211R).

Hegel has also been styled the philosopher of the Prussian *Restoration*. This is incredible, in view of Hegel's merciless attack on the leading figure of the *Restoration*, Karl Ludwig von Haller, author of *Restoration der Staatswissenschaft* (1818). Haller appealed to a version of natural law and so is subject to Hegel's criticisms of natural law in general (see below). Haller's version of natural law equated natural law with divine law, and regarded the natural might of the stronger as the basis for their natural right to rule. Haller opposed any binding legal codification, regarding a code only as a way princes could choose to inform judges of their commands. Hegel condemned Haller's view that legal codes are optional and reiterated the irrelevance of historical origins for determining matters of legitimacy (§219R; cf. §258R). Hegel further condemned Haller's anti-rationalism and opposition to codification in a long paragraph and an even longer note appended to it (§258R & N). Hegel's tone in these passages is extremely sharp and makes plain his opposition to the main tenets of the *Restoration*.⁴

Hegel has also been taken as a conservative because he espouses

an organic conception of individuals and society. Most organic theories at the time, such as Burke's, were conservative. Organicism opposes atomistic individualism by holding that people do not enter society fully formed in order to satisfy their pre- or non-social aims and interests. According to organic views, individuals are formed, together with their needs, aims, and ways of thinking, within the social group to which they belong. An organic view becomes specifically conservative if it additionally holds that individuals have no conception of themselves apart from their group, that individuals cannot escape their group because it has formed their identities and needs, that individuals thus are incapable of evaluating society by pre- or non-social standards, and that because individuals are formed by their society's cultural traditions and social and political institutions, their society also suits them.

Hegel did espouse an organic conception of individuals and society. However, it is crucial to understand how he recast the issue. Typically it is supposed that there are two positions on this issue. Either individuals are more fundamental than or are in principle independent of society, or vice versa: society is more basic than or "prior to" human individuals. Hegel realized that these two options form a false dichotomy. Briefly, Hegel held that individuals are fundamentally social practitioners. Everything one does, says, or thinks is formed in the context of social practices that provide material and conceptual resources, objects of desire, skills, procedures, and the like. No one acts on the general, merely biological needs for food, safety, companionship, or sex; and no one seeks food, safety, companionship, or sex in general. Rather, one acts on much more specific needs for much more specific kinds of objects that fulfill those needs, and one acts to achieve one's aims in quite specific ways; one's society deeply conditions one's ends because it provides specific objects that meet those ends, and it specifies procedures for obtaining them. Even so, Hegel realized that this fact does not render individuals subservient to society. First, what individuals do depends on their own response to their social context. In addition, Hegel argued that there are no individuals, no social practitioners, without social practices, and vice versa, there are no social practices without social practitioners – without individuals who learn, participate in, perpetuate, and *who modify* those social practices as needed to meet their changing needs, aims, and circumstances. The issue of the ontological priority of individuals or

society is bogus.⁵ Hegel's views have been widely misunderstood and castigated by critics who were beholden to a false dichotomy.

Conservatives of a certain stripe recognize that social institutions and practices are subject to change in the face of changing circumstances; Hegel's stress on the corrigibility of social practices alone does not absolve him of conservatism. Reform conservatives, as they may be called, do not believe in progress, but will adapt the status quo piecemeal to accommodate ineluctable social, economic, and political changes. Like conservatives in general, reform conservatives are skeptical about our ability to comprehend society rationally, much less to reconstruct it rationally. They place much more trust in customs, traditions, or even prejudice than in human reason, and they regard the non-rational components of human nature as the foundation of society and as a bulwark against the aspirations of rationalist reformers.⁶ Conservatives thus stress the importance of a society's molding of individual character and sentiment to inculcate allegiance to one's society. In conservative political thought, feelings of patriotism are fundamental to political allegiance.

Hegel acknowledged the force of Romantic criticisms of the Enlightenment's a-historical, a-social, individualist account of reason, but he held strong Enlightenment ideals concerning human rationality. For Hegel, as for Kant, human rationality is the key to autonomy, to self-determination, and Hegel stressed this point as Kant's great contribution to practical philosophy (§135R). Hegel regarded the demand for rational understanding and justification of norms and institutions as the hallmark of modern times,⁷ and he sought an account of society and government that met that demand (Preface 26/21). He also held that, although important, patriotism is too weak and insufficiently rational a basis for a modern state (§273R). In this regard, Hegel was a rationalist in principle, not out of rear-guard action, and so in this crucial regard Hegel was not a conservative, not even a reform conservative. He firmly believed in historical progress as a rational process (§§342, 343, 345). Finally, Hegel's organicism is not inherently conservative because he stressed that a society's practices are subject to rational criticism and revision. This point has been overlooked due to the assumption that rational criticism must be based on non-social standards. Hegel denied this assumption and developed subtle accounts of internal criticism, of self-criticism, and of the social bases for evaluating norms and principles. These views

cannot be explored here,⁸ but they are crucial for understanding the fundamental role assigned to social practices in Hegel's political philosophy.

Hegel is also reputed to be the philosopher of the reactionary Prussian state. In fact, Hegel's political philosophy became prominent during a fortunate break in conservative dominance. Conservative forces in Germany were in retreat after the Battle of Jena in 1806. The Prussian Restoration began reversing this political trend in 1815 and achieved dominance only after Hegel's death in 1831. Hegel's political philosophy is rightly associated with the core of an energetic liberal reform movement led by Prime Minister Baron Karl vom Stein, Prince Karl August von Hardenberg, Wilhelm von Humboldt, and Baron von Altenstein. The details of Stein's and Hegel's views converged significantly, and Altenstein and Hegel agreed on a number of fundamentals.⁹ Among the reforms instituted by Stein were the abolition of trade barriers between provinces, the break-up of the ossified Guild system, and improvements of roads and canals for the sake of commerce. Hardenberg recognized the civil rights of Jews and championed the political interests of the middle class. Altenstein brought Hegel to Berlin in 1818 and fostered the Hegelian school at the University of Berlin, in part as a bulwark against Romantics and the Historical School. Hegel first published the *Philosophy of Right* while at Berlin in 1821.

There was a deep split between these ministers and both the conservative nobility and the superstitious and reactionary king, Friedrich Wilhelm III. The king was suspicious and fearful of Stein, and the nobility regarded both Stein and Hardenberg as the worst of republicans. Although the king twice promised a constitution, he probably never intended to provide one. The king belonged to the Rosicrucians, an anti-scientific cabalistic Christian sect devoted to the occult,¹⁰ and he was quite taken with Haller's *Restauration der Staatswissenschaft*. He showed his antipathy to sharing power with the middle class by suppressing Görres's newspaper and book, which advocated these policies, and by ordering his arrest.

Hegel distinguished between the old absolutist form of monarchy and the modern constitutional form, and he held that the constitutional form is the sole rational form worthy of the times (§273). Hegel thus took a decisive and progressive stand on a burning issue in Prussia at the time. Hegel also advocated a permanent representa-

tive assembly, although none was to exist in Prussia until 1848. In attacking Savigny and especially Haller, Hegel vociferously attacked views shared by the king. Moreover, his admonition near the end of the Preface to dance in the cross of the present was directed against other-worldliness, in particular, that of the Rosicrucians – including that of the king (Preface 26/22)!¹¹

Hegel's differences with the Prussian conservatives, the landed nobility or *Junkers*, deserve comment. The *Junkers* favored a monarchy that was independent of popular consent but was nevertheless limited by the nobility's positions in the military, in government, and as land owners. Haller was the political philosopher most closely associated with the *Junker* aspiration to reestablish a feudal state. Hegel opposed these conservative elements. He put the government bureaucracy in the hands of an educated middle class instead of the nobility (§297). He also placed the landed classes in the upper house of his representative assembly, where they would have to function under pressure from the crown above and from the commercial classes from below (§304; cf. §302 & R). This institutional arrangement would preclude a return to the feudal "dualistic state" (where power was shared between the king and landed nobility) and would thwart independent political action by the estates, including the landed nobility. In sum, Hegel opposed all the conservative forces of his day.

Hegel unquestionably shares some themes with Romanticism, for example, an organicism according to which things are essentially related by their contrasts, and a social conception of individuals. Romantics loved symbols and viewed the monarch as a symbol of political unity. Hegel's governmental arrangements vaguely resemble Novalis's proposal.¹² The Romantic Görres advocated a corporate constitution that shared political power with the provinces and the middle class. Even so, when one examines their respective treatments of these themes, the differences between Hegel and the Romantics strongly predominate.

In style, Romantics tended to be epigrammatic and intuitive or inspirational rather than rationally systematic or argumentative. They began as fanatic individualists, but they came to view individuals as lacking self-sufficiency, a defect to be corrected by membership in an organically organized society.¹³ Romantics were suspicious of capitalism; they venerated the nobility and denigrated the

bourgeois as an acquiescent philistine. They fled from their present dissatisfactions into an idealized feudal age. They held that individuals are related to the state through devotion and veneration. They based state authority on religion, and many Romantics reacted against rationalism by converting to Catholicism. Novalis even denounced Protestantism as an interruption of the organic development of humanity.

On all these counts, Hegel differed unequivocally with Romanticism. Hegel regarded the Reformation as an important contribution to the historical development of autonomous, morally reflective individuals who rightly require rational justification for acts and institutions (Preface 27/22).¹⁴ He denied that religious authority is the basis of state authority (§270R), and in his lectures he castigated the Romantics' conversions to Catholicism as willful capitulation to intellectual servitude (§141Z).¹⁵ When Hegel grandiloquently described the state as God standing in the world (§270R), his point was not to divinize the state. One main point of this remark is best understood against the backdrop of the Dialectic of Kant's *Second Critique*. According to Kant, happiness results from fulfilling one's inclinations. For moral agents, on Kant's view, happiness is a gift of divine grace, first, because it's luck that one's causally determined inclinations are morally permissible, and second, because God is required to ensure that one has the luck and ability to achieve one's morally permissible ends.¹⁶ In ways indicated below, Hegel's state is designed to minister to both these allegedly divine tasks.

Although Hegel sought to incorporate many traditional elements, such as corporations, in his view of society, he did so because he thought that they could serve a current rational purpose. Hegel rejected any retreat to a prior age or circumstance. His detailed political studies of Württemberg taught him what the Romantics never realized, that reestablishing a feudal order could not provide a stable state.¹⁷ He looked to the middle class as a crucial foundation of any modern state, both in commerce and in the civil service. Hegel qualified his approval of capitalism (§236), but he did not oppose it and indeed based his political philosophy on a careful rethinking of modern political economy.

Having distinguished Hegel's views from conservatism and Romanticism, I now turn to his stance toward liberalism, in particular to his views on political autonomy, natural law, the social contract

tradition, and utilitarianism. Modern liberalism typically has upheld two important principles. One is the principle of individual autonomy, that each person is competent to and ought to participate in making law. The other principle is the rule of justice, the idea that there are standards any law must meet to be good or just. Providing for individual autonomy requires coordinating individual decisions in order to maintain a viable social unit, and conjoining these two principles requires explaining the relationship between autonomous individuals and objective standards of justice. There are three general strategies explaining this relationship. One strategy holds that the general will is an aggregate of individual wills. Another holds that correct policy is independent of individual wills and awaits their discovery. The third, collective strategy holds that there is a general or collective will that is not simply a function of individual wills and is not simply a reflection of some antecedent correct principle.¹⁸ Hegel took a collective approach to reconciling the two liberal principles of individual autonomy and the rule of law. In his view, individuals do play a crucial role in determining the content of law, although it is not performed by plebiscite. Individuals play a role in forming the content of law by maintaining and modifying social practices as needed to secure their freedom and their individual ends. Those social practices necessary for achieving freedom are, in Hegel's view, the proper basis of and content for statutory law. (I return to this point below.)

Hegel's rejection of two standard liberal strategies for justifying normative principles may be considered together, since Hegel makes analogous criticisms of both. One strategy for justifying normative principles or claims, especially in morals, is to appeal to conscience. Another strategy, especially in politics, is to appeal to natural law or, analogously, to natural rights. In either case, one appeals to a kind of self-evidence to justify one's claim or principle. Hegel disputed such alleged "self-evidence" for two basic reasons. First, theories of self-evidence either conflate or fail properly to distinguish between being certain that something is true, and thus believing it, and something's being true, and thus being certain of it. Second, he knew that the claims allegedly justified by appeals to conscience or to natural law are diverse and even mutually incompatible. A main desideratum for any mode of justification is to sort justified from unjustified claims, in order to help sort true from false claims. This is especially

important for the controversies in our collective moral and political life. Any mode of justification that can warrant a claim and its negation fails to meet this basic desideratum and is, as such, inadequate. Appeals to conscience or to natural law fail to meet this basic requirement.¹⁹ Hegel also held that appeals to natural law or conscience tend to omit relevant principles or considerations. This produces incomplete accounts of an issue, what Hegel called one-sided or abstract accounts.²⁰ Although Hegel disagreed fundamentally with standard approaches to determining the *content* of natural law, he nevertheless upheld and revamped a basic principle of natural law, namely, that right is a function of freedom of the individual will. This principle is fundamental to his argument in the *Philosophy of Right*.

Hegel's objections to the social contract tradition are merely suggested in the *Philosophy of Right*. They may be summarized briefly. Hegel argued that the state of nature is arbitrarily contrived to obtain the theorist's desired outcomes, and that abstracting from any points that might be regarded as inessential, arbitrary, or controversial would empty the state of nature of all descriptive content.²¹ The principles attributed to the state of nature often have the same sort of justification as natural laws and suffer the same deficiencies. Most important, the social contract misrepresents the nature of our membership in society. Our membership in society is inevitable, necessary, and constitutive of much of our character, whereas the social contract models our membership on an elective association of otherwise independent individuals (§§75R, 100R, 258R, 281R). Viewing membership in society in this way misrepresents ourselves as mutually independent parties to a fictitious contract whereby we agree to join society, or to form a government, in order to achieve some specified range of antecedent interests we independently choose to pursue. This thwarts recognizing and understanding the social dimensions of human life. On this basis, laws or principles of justice can only be seen as restricting individual freedom of action in return for security and peaceful coexistence (§29).²² Hegel stressed instead the role of laws and principles of justice as enabling conditions for a wide range of aspects of character development and individual action. On this basis he claimed to sketch a far more detailed and accurate account of our social involvements and our political allegiance. Hegel agreed with the social contract tradition that mem-

bership in society and obedience to government are matters that require rational justification, but he sought this justification in rational insight into the nature of our involvement in actual institutions (Preface 24–26/20–22, §31R, cf. §189R). Taken together, Hegel's most-fundamental objection to the social contract tradition is that the abstractions used by social contract theories to describe the state of nature, and to describe persons in that state, evade a whole range of benefits and obligations we have as members of a politically organized society (including the obligation to defend the state [§§325, 326]). Consequently, social contract theory is implicitly skeptical about those benefits and obligations and is morally and politically irresponsible, since it precludes their proper recognition and analysis. Hegel's objections to the social contract tradition do not, however, preclude him from sharing many issues and points of doctrine with that tradition.

Hegel agreed with one of Kant's main criticisms of utilitarianism, that it cannot account or provide for human autonomy because it takes given desires as the basic locus of value and source of ends.²³ He believed that utilitarianism does not take proper account of the intellectual character of the will; that it involves too atomistic a view of individuals, too instrumental a view of the state and the government; and that it is incompatible with the proper basis of right, which rests on freedom and autonomy. He regarded the concept of utility as an important component of an intelligent grasp of one's alternative courses of action and of the coherence of one's long-range plans (§§20, 63, 77). He also regarded utility writ large, welfare, as a fundamental component of the aims of individuals and organizations and a basic responsibility of a number of civil institutions (§§123, 125, 128–30). However, he viewed freedom as a more-fundamental value than utility – considerations of utility cannot justify sacrificing freedom or individual rights (§§125, 126) – and he regarded securing freedom as the most-basic obligation of governmental institutions. Indeed, Hegel regarded happiness as beyond the competence of political arrangements. A rational state and its government are obliged to secure the conditions for the success of individual actions; they are not obliged to secure success itself, and so not the happiness it brings. These are Hegel's basic reasons for rejecting utilitarianism.

Hegel thus opposed the main forms of liberal thought in his day

and in our own. I nevertheless maintain that Hegel is a progressive liberal. One basis for this claim has already been suggested, namely, that Hegel upheld the liberal principles of individual autonomy and the rule of law. There is in fact a deep point of continuity between Hegel and the social contract tradition: both Hegel and the social contract tradition take the analysis of the individual will and its freedom as the starting point for justifying basic political principles and institutions. Indeed, Hegel expressly credits Rousseau with contributing the fundamental idea that the state must be based on the will (§258R).

III

Hegel realized that to be relevant to modern life political philosophy must take economics into account (*cf.* §189R). This is especially important for a view like Hegel's that provides a social analysis of the origins and justification of normative principles. Early industrialization generated considerable personal and social fragmentation. Hegel recognized that personal and social fragmentation were two sides of the same coin and that the solution to either problem must solve both.²⁴ Hegel realized that the division of labor, which produces social fragmentation, is not simply an obstacle to an integrated social and political community. Rather, the relations and lifestyles engendered by the division of labor form a substantial set of practices and norms shared among the members of a modern society. Hegel discerned in the workings of modern society an increasing social interdependence that indicated the social, rather than the atomically individual, nature of human beings. He argued that achieving community and actualizing freedom are based on recognizing this common mutual interdependence. Effecting this recognition and its attendant freedom is the very point and purpose of the social and political institutions in Hegel's theory of the state.

Hegel's view of the liberating effects of modern economic developments enabled him to reinterpret Kantian autonomy. Hegel regarded autonomy of the will, our ability to legislate normative laws to ourselves, as Kant's most important contribution to practical philosophy (§135R). Autonomy requires avoiding two kinds of heteronomy, the heteronomy of determining how to act on the basis of naturally given inclinations, and the heteronomy of determining

how to act on the basis of external authority. Kant's analysis and defense of autonomy rest on his transcendental idealism. Hegel criticized Kant's transcendental idealism, rejected Kant's metaphysics, and was very sensitive to ways in which Kant's metaphysics caused problems for his theory of action, and hence for his moral theory.²⁵

Hegel shared Kant's aim of avoiding the heteronomy of acting on naturally given impulses or inclinations. Unlike Kant, Hegel did not view this as a problem of psychological determinism within the phenomenal realm. Instead, Hegel viewed this much more as a problem of self-knowledge and attitude. This is because no mature adult has inclinations that are causally given by nature; human motives are a joint product of biological nature, cultural inheritance, and individual response to circumstance. Hegel avoided the metaphysical issue of freedom of the will by focusing instead on the moral, social, and political issue of bringing people to understand how (in a well-ordered society) their needs, aspirations, and principles form a rationally acceptable system. This system enables them to lead integrated personal lives, where their individual lives are integrated into a network of social institutions.

Defending human autonomy requires showing how individuals are self-legislators, how they give themselves their own principles, aims, and objects of will. (Hegel called these the "content" of the will (§9).) The problem of heteronomy is serious because Hegel argued that the free, rational, spontaneous human will cannot generate or specify its own principles, aims, or objects *a priori* (§258R). The content of the will thus derives from nature, but it must be transformed into a self-given content: "the drives should become the rational system of the will's determination; to grasp them thus in terms of the concept [of the will] is the content of the [philosophical] science of right" (§19). This statement is crucial; it indicates that the issue of avoiding natural heteronomy by rationally integrating our needs, desires, ends, and actions is basic to Hegel's whole argument in the *Philosophy of Right*. One reason Hegel viewed human freedom as a social phenomenon is that through collective efforts to meet individual needs, natural needs are elaborated into more-specific needs for the kinds of goods communities make available to their members. The social elaboration of needs transforms those needs from a natural level of mere givenness to a social level, indicating that humans come to give themselves their own needs.

One of Hegel's most brilliant insights is how the development of commerce contributes to the development of human enculturation, a collective process whereby we liberate ourselves from our naturally given needs and desires. Political economy is thus crucial for overcoming natural heteronomy and to achieving autonomy. Achieving autonomy from nature is central to Hegel's account of the family and civil society.

IV

Analyzing the structure of Hegel's argument in the *Philosophy of Right* shows that achieving political autonomy is fundamental to Hegel's analysis of the state and government. Hegel divides his exposition into several distinct parts. His introduction sketches an account of the will, freedom, and the nature of right. Part One, "Abstract Right," treats principles governing property, its transfer, and wrongs against property. Part Two, "Morality," treats the rights of moral subjects, responsibility for one's actions, and *a priori* theories of right. Part Three, "Ethical Life" (*Sittlichkeit*), analyzes the principles and institutions governing central aspects of rational social life, including the family, civil society, and the state as a whole, including the government.

The *Philosophy of Right* analyzes the concept of the will (§§4–7, 279R); the main issue is what is required for a will to achieve its freedom.²⁶ Hegel's introduction indicates two basic requirements for achieving freedom: achieving one's ends and engaging in actions voluntarily. Hegel's sense of "voluntary" combines Aristotle's sense of not regretting one's act after the fact in full view of the actual consequences (§7 & R) with Kant's sense of autonomy, of obeying only laws one legislates for oneself. Acting freely, on Hegel's view, requires both achieving one's ends and matching one's intentions with the consequences of one's acts (*cf.* §§10 & R, 22, 23, 28, 39). Unintended consequences may give grounds for *post facto* regret, or for the sense of being bound by circumstances one did not foresee and would not desire or approve.

The main question of Hegel's analysis is, What sort of action, in what sort of context, constitutes this kind of free action? Hegel's dialectical arguments rely on indirect proof, critically analyzing alternative views that purport to solve this problem. When analyzing

alternative accounts of freedom, Hegel's main critical question is, To what extent does the kind of act or intention in question succeed at its aim? Hegel argued that the conditions for successful free action are enormously rich and ultimately involve membership in a well-ordered state. His argument rests on an unspoken principle much like Kant's principle of rational willing: Whoever rationally wills an end is rationally committed to willing the requisite means or conditions for achieving that end.²⁷ On Hegel's analysis, the most basic end of the human will is to act freely (§27). Hegel held that obligations are generated by commitment to the basic end of willing to be free, and by the consequent commitment to the necessary legitimate means or conditions for achieving freedom (*cf.* §261R). Correlatively, rights are generated and justified by showing that a right secures some necessary legitimate means or condition for achieving freedom (§§4, 29, 30, 261R). Principles, practices, and institutions are justified by showing that they play a necessary and irreplaceable role in achieving freedom.

Hegel's discussion of "abstract right" concerns basic principles of property rights. It is abstract in three ways. First, actions and principles are (initially) abstracted from interpersonal relations; second, they are abstracted from moral reflection; third, they are abstracted from legal and political institutions. These abstractions are sequentially shed as Hegel's analysis develops. Hegel's argument begins by analyzing a standard liberal individualist proposal for the most-basic free act, taking something into possession. He holds that thoroughly analyzing the presuppositions and the inadequacies of this alleged basic free act ultimately leads to justifying membership in a specific kind of modern state.

According to most modern social contract theories, taking something into possession is the most-elementary free act, at least as regards political philosophy. For example, according to Locke, the rights that make such an act intelligible and possible are natural. In opposition to this view, Hegel expands upon Hume's and Rousseau's lesson that property rights are not natural, but are founded on conventions.²⁸ Hegel aimed to show that possession and other rights of property exist only on the basis of mutually recognizing the principles that constitute those rights. He defended this point through the internal criticism of the opposed natural law or "possessive individualist" view.

Although Hegel came close to Hume's view that rights are a matter of conventions, Hegel disagreed with Hume about the nature and philosophical import of conventions. Hume held that reason is primarily analytic and deductive, that given motives and desires set the ends of human action, and that custom was the great guide of human life. He therefore stressed the affective and habitual components in the customary basis of conventions. Most significant, while Hume justified conventions in terms of utility, Hegel justified conventions by their contribution to actualizing freedom. This standard follows directly from the concept of a rational will. Hegel stressed that the will is an intellectual and rational faculty (§21R, 258R), and he denied that reason only analyzes and deduces. Reason legislates the fundamental end of human action, achieving freedom, and rationality involves recognizing principles, acting on their basis, and critically assessing or revising them. Consequently, Hegel stressed the rational aspects of social conventions, especially in his discussion of the abstract principles governing property and its exchange (§§13R, 21R, 211R). Hegel highlighted the necessary role of mutual agreement to principles in any system of property rights and the intellectual achievement reflected in such agreement. Such agreement involves a common "object" among individual wills, where that object is a set of principles and their maintenance, since these are required for any successful individual act that is constituted by those principles.

Simply grasping and holding an object is not an adequate example of freedom, because it does not achieve its aim, which includes stability of holding (§45). Mere seizure of things doesn't prohibit others from making off with one's holdings. Possession (or ownership) is distinguished from mere holding by others' recognition that one possesses something (§51). Such recognition involves recognizing a set of principles that govern possession (§71). While such mutual recognition may be implicit in simple possession, it is quite explicit in contractual relations, because contractual relations involve agreeing to the principles of contractual exchange as well as agreeing to the particular exchange governed by a specific contract (§§72–74).

Hegel argued that these property rights are abstract, and that they do not constitute a self-sufficient system of actions and principles because they generate several problems that cannot be resolved within such an abstract system of rights. Hegel analyzed these prob-

lems under the heading of "wrong" (*Unrecht*). The first problem is that this system of principles enables agents to commit wrong acts in the form of theft, fraud, or extortion. Hegel noted that, within this system of rights as such, the agreement between contracting parties is merely contingent (§81); the express contractual agreement may be duplicitous (as in fraud) or the exchange may be forced (as in coercion or crime). This abstract system of rights cannot of itself train agents habitually and intentionally to uphold rather than to violate the system of rights. This problem, which is generated on principles internal to the abstract system of property rights (including the fact that people make contracts to advance their personal aims), cannot be solved within the abstract system of rights. It can be solved only within a system of education. This is one way in which an effective and stable system of property rights presupposes a social ethos as one of its conditions of success.

It is possible to define wrongs against property within this abstract system of property rights and to argue that wrong acts are incoherent expressions of freedom. Wrongs against property are defined as acts that violate specific rightful acts of others (§92; cf. §126). Wrongdoers, thieves, seek to own something that rightfully belongs to someone else. Successful theft thus presupposes a system of principles of ownership while also violating that system of principles of ownership. Therefore, thefts are incoherent expressions of freedom (§92).

It is not possible to distinguish between revenge and punishment within the abstract system of property rights. Revenge can be defined within the abstract system of property rights as the informal exchange of bads for (alleged) bads, instead of goods for goods. The principles that define violations are defined within the abstract system of property rights; they simply are the system of property rights. But in addition to principles that define violations, punishment requires impartial application of those principles, and it requires common recognition of the impartiality of judgment. The common recognition of impartial judges directly anticipates social institutions of courts. But courts without impartial judges are illegitimate. Impartial judgment requires individuals to ignore their individual circumstances and to judge according to universally valid and accepted norms (§103). This is much more stringent than can be defined within the abstract system of property rights. Within the abstract system of property rights, agents commit themselves to and

act in accord with the system of property rights only insofar as doing so enables them to achieve their private wants and desires. This is an insufficient basis for impartiality, because impartiality may require judging to the disadvantage of one's personal interests. The concept of a particular agent who judges impartially thus transcends the realm of abstract property rights. Indeed, such an agent is fundamentally a moral agent (§104). This is the key to Hegel's transition from "Abstract Right" to "Morality." The abstract system of property rights is not self-sufficient because its maintenance and stability require impartial judges, but the capacity of impartial judgment cannot be defined or developed within the abstract system of property rights. For this reason, the abstract system of property rights must be augmented by moral agency and reflection.

The second part of Hegel's exposition, "Morality," has two basic aims. The first is to enumerate a set of rights that are fundamental to moral agency. The second is to argue that moral principles cannot be generated or justified *a priori*. I treat these in turn.

Hegel distinguished between mere proprietors and moral agents, referring to abstract proprietors as "persons" and moral agents as "subjects." Hegel identified a number of "rights of the subjective will." These rights are due to and required by moral subjects. These rights include the rights only to recognize something (such as a principle) insofar as one adopts it as one's own (§107), only to recognize as valid what one understands to be good (§132), only to be responsible for one's actions insofar as one anticipates their results (§117), and in general to be satisfied with one's acts (§121). These rights are due moral subjects because they are necessary to preserve and promote the autonomy of thought and action that are required to assess alternative courses of action, to justify and accept responsibility for one's acts and their consequences, to evaluate behavior, and to form impartial, well-reasoned judgments. Although the rights of subjectivity are abstract (they are too general to determine any specific injunctions or directives), they are crucial to Hegel's enterprise, and Hegel regarded them as crucial to humanity. The recognition of these rights marks the divide between antiquity and modernity (§124R); freedom simply isn't actual, it doesn't exist, without the free voluntary action of moral subjects (§106).²⁹

One responsibility involved in moral reflection is to reflect adequately on the principles, circumstances, and consequences of ac-

tion. Hegel was aware that the rights due moral subjects just enumerated, as such, allow a radical subjectivism or backsliding due to ignorance or irresponsibility (§132R). He insisted that moral reflection must be based on correct principles (*cf.* §140R), and he insisted on a "right of objectivity" to the effect that agents are responsible for the actual consequences of their acts, even if they were unintended (§§118 & R, 120, 132R). Furthermore, important as the rights and capacities of moral subjectivity are, Hegel held that moral reflection alone can neither generate nor justify a set of substantive moral principles (§258R). Having criticized natural law theory and utilitarianism elsewhere, Hegel focused his critical attention in *The Philosophy of Right* on the two strongest remaining contenders, Kant's ethics and the ethics of conscience. I treat these in turn.

Hegel's criticisms of Kant's moral theory are as brief and obscure as they are crucial to his whole undertaking; only their basic import may be indicated here. One basic issue between Hegel and Kant concerns moral motivation. Hegel agreed with Kant that duties ought to be done because they are duties (§133), but he disagreed with Kant that duties ought to be done *solely* because they are duties. Kant distinguished sharply between motives and ends of action, and he held that the cause of action, the motive, determines the moral worth of an action. Acting from duty is the sole morally worthy motive. Any other motive is an inclination. While acting on inclination may lead one to do the right act, it cannot give an act unconditional moral worth, because inclinations only contingently motivate right acts.³⁰ Kant devised a special motive, "respect," just for this case. According to Kant, respect for law is the sole rationally generated motive. Consequently it is the sole motive that reflects our transcendental freedom, and it is the sole motive that is entirely self-determined.³¹ Thus it contrasts with all other "heteronomous" motives that may be caused by our (phenomenal) psychology, upbringing, environment, or other circumstance not chosen by us. (Kant allowed us to perform duties out of mixed motives, as long as the motive of respect predominates and as long as we strive to act solely on the basis of respect.)³²

Hegel held that there can be no such pure rational motive as Kant's "respect for law." One of his reasons is straightforward: He held that Kant's arguments for transcendental idealism, and in particular for the distinction between phenomena and noumena, are inadequate.

Hence transcendental idealism provides no legitimate basis for distinguishing between the sole noumenally grounded motive of respect and all other phenomenally grounded motives (that is, inclinations) in the way Kant proposed. Furthermore, all else being equal, parsimony requires a uniform account of human motivation. This point underscores how Kant devised his account of "respect" to fit the narrow requirements of transcendental idealism.³³ Hegel also held that one cannot distinguish sharply between motives, as causes of action, and the ends of action. He held that humans act on the basis of the ends they seek to achieve, and that there are various ends sought in any action. In addition to any specific ends, Hegel believed that there is always a general end to any act, the end of enjoying one's abilities. This is reflected in successfully executing one's intended action, which results in what Hegel called "self-satisfaction" (§124 & R). If Hegel is right about this, then Kant's view that we must abstract from all ends, determine how to act solely on the formal requirement of the conformity of a maxim to universal lawfulness, and perform an act solely because it is a duty, is impossible (cf. §124). It is impossible because such an abstraction would leave us with no reason to act, because reasons for acting always concern ends. If we did nevertheless act, our action could not be specified on the basis of pure dutifulness. Since Kant's requirement of doing one's duty solely because it is a duty abstracts from all ends, it cannot have any content at all, since (Hegel held) actions are always conceived, intended, and performed in view of ends (§135R).³⁴

Hegel also charged that Kant's Categorical Imperative cannot determine duties unless some other principle is antecedently presupposed. Hegel's charge appears to rest on some crude mistakes about Kant's test of the categorical imperative. Kant insisted, after all, that the categorical imperative requires "anthropology" to apply it to human circumstances.³⁵ Kant's categorical imperative takes into account a wide range of logically contingent information about our abilities, ends, and circumstances by using a principle of rational willing, that "who wills the end, wills (so far as reason has decisive influence on his [or her] action) also the means which are indispensably necessary and in his power."³⁶ Hegel seems to ignore this crucial aspect of Kant's view.

This Kantian rejoinder does not meet Hegel's fundamental contention. Roughly put, on Kant's theory, inclinations propose and the

categorical imperative, as a test on maxims, disposes. The main way in which the categorical imperative disposes of maxims is by ruling out selfish maxims, *maxims* that allow one to make demands on others without allowing them to make similar demands on oneself. Because maxims are formed in specific circumstances, in view of an agent's desires, abilities, and available resources, Kant's test on maxims does presuppose a rich context of wants, ends, circumstances, practices, and institutions. Hegel argued that the categorical imperative cannot be the *fundamental* normative principle, because what needs evaluation is the normative status of precisely those antecedent wants, ends, social circumstances, practices, and institutions. The idea that ends are permissible insofar as they do not violate the categorical imperative must itself be justified by a normative analysis of ends and their permissibility. Perhaps, for example, theft does involve treating others as a mere means, but why is property legitimate to begin with? Kant of course offered grounds to suppose, for instance, that human life must be respected and that there must be property. Human life is to be respected because humans are rational agents and as such have an incommensurable value called "dignity."³⁷ Property must be possible (roughly) because to regard any object as, in principle, ownerless involves contradicting the principle that the will can and must be able to make use of anything it needs.³⁸ Hegel's point is that this is where the fundamental normative principles and justifications lie, not in subsequent tests of the categorical imperative about whether our maxims are consistent with such norms and institutions (§135R). I must leave aside for now issues between Kant and Hegel about the nature and adequacy of Kant's reasoning about these more fundamental matters.

Hegel continued his argument to show that moral reflection is not sufficient, of itself, to generate a substantive set of moral norms by criticizing the ethics of conscience. He distinguished two forms of conscience. One holds that conscience, of itself, is sufficient to generate a substantive set of moral norms. The other holds that conscience is an important aspect of moral reflection that is properly rooted in an ongoing system of social practices. Hegel called this latter type "true conscience," and he indicated that this type was not the object of his criticism (§137 & R). He criticized only the stronger type of conscience that claims normative self-sufficiency. To repeat, Hegel's basic objection to this type of theory of con-

science is that it cannot reliably and adequately distinguish between subjective certainty, being convinced of something and thus concluding that it is right, and objective certainty, where the correctness of a principle forms the basis on which one is certain of its rightness (§137 & R). Subjective certainty is no guarantee of the correctness of moral principles, yet reasoning with correct moral principles is essential (§140R).

To recapitulate, one aim of Hegel's analysis of "Morality" was to show that moral reflection is essential to the individual integrity required for impartial judgment and for the stability of the system of property conventions, and yet that moral reflection *alone* cannot establish any principles of right. If Hegel was right that objective principles cannot be justified on the basis of natural law, utility, Kant's categorical imperative, or conscience, then he had very strong grounds for concluding, by elimination, that the relevant standards must be social. If Hegel substantiated these conclusions, then he established an important pair of biconditionals: first, principles of right can exist if and only if there is personal integrity and moral reflection; second, there are principles of right on which to reflect if and only if there are social practices. (Social practices were presented abstractly in "Abstract Right" as mutually recognized principles.) Such a system of integrated principles, practices, and morally developed agents is what Hegel called *Sittlichkeit* ("ethics" or "ethical life").

Hegel explicitly stated that his argument for introducing "Ethical Life" is regressive, since the communal phenomena analyzed in this Part provide the ground for the possibility of the phenomena analyzed in "Abstract Right" and "Morality" (§141R). "Ethical Life" analyzes a wide range of social practices that form the basis of legitimate normative principles. Social practices, however, cannot occur without social practitioners, agents who behave in accordance with social practices and who understand themselves and others as engaging in those practices. Thus these practices also include subjective awareness on the part of agents of their own actions and the actions of others. In "Abstract Right" Hegel argued that property rights cannot be understood adequately or established in abstraction from subjective reflection on the principles of action. In "Morality" Hegel argued that moral reflection on principles of action cannot be understood adequately or be effective apart from some set of objectively

valid norms. In "Ethical Life" he argued that rational social life accounts both for the validity of objective norms and for the conscious knowledge and acceptance of those norms. His justification of ethical life is that the conditions for the possibility of abstract right and of morality are not given within the accounts of abstract right or of morality. The conditions for their possibility – their grounds – are provided only by ethical life.

Hegel held that normative moral, social, and political theory should focus on rational social life because so doing solves the related problems of the possibility, the principles, and the motivation of moral action. Since rational social life couldn't exist unless it were practiced and supported by individuals, action in accordance with its norms must be possible (§151), and transcendental idealism is not required to explain the possibility of moral action. Second, since rational social life consists of recognizable norms that guide the action of particular people, there can be no problem in principle about its being abstract or empty of content (§150R). Third, since individuals inevitably develop their aims, desires, skills, and knowledge by maturing within their particular society, they naturally tend to develop characters and a self-understanding that value what their rational social life promotes. Hence, by doing what their rational social life requires, they fulfill aims essential to their own characters, and their motivation for behaving ethically is quite understandable (§§152–55).

Even so, justifying *Sittlichkeit* as the proper locus for analyzing human freedom and its conditions does not, of itself, solve much. Hegel addressed several problems in his analysis of *Sittlichkeit*. First, how does rationally ordered social life enable agents to achieve their aims successfully? Second, how can the principle that one is responsible only for the anticipated consequences of one's acts be reconciled with the principle that one is responsible for all the consequences of one's acts? Hegel proposed to reconcile these principles by regularizing and making known the social context of individual action, so that individuals could act knowingly and reliably succeed. A third problem then is, how can the social context of action be regularized and made known? Fourth, how are natural needs and desires customized to make them rational self-given ends? Fifth, How can political autonomy, the right to obey only those laws and principles that one legislates for oneself, be preserved within a social

context? finally, how do extant institutions perform the functions required by the points just indicated?

The usual objection to Hegel's emphasis on a community's practices and standards is that it simply endorses the status quo of any community. Two points should be made in advance. First, on Hegel's account, not just any communal structure will do; it must be a structure that in fact aids the achievement of individual freedom. This is central to his whole account of the justification of acts, norms, and institutions; they are justified only insofar as they make a definite and irreplaceable contribution to achieving individual freedom. Moreover, Hegel required that an adequate rational society make the civil, legal, and political structure of the community known to its members, along with how individual activities contribute to and benefit from this structure. This is crucial to preserving political autonomy within a social context. Ultimately, Hegel required that a society be so effective at providing this knowledge and at satisfying individual needs for objects, relations, culture, and for belonging, that once individuals understand all of these features of their community and their roles within it, individuals will affirm their community as fulfilling their aims, requirements, and needs. Only in this way can individuals freely engage in actions in their society. This requirement stems directly from Hegel's initial analysis of freedom (§7).

Because humans act collectively to promote their freedom, the primary question of modern political philosophy, on Hegel's view, is not *a priori* what institutions would fulfill these functions, but rather how and to what extent existing institutions do fulfill these functions. This is why Hegel analyzed the rationality of extant institutions.³⁹ Some of the institutions to which Hegel assigned basic functions are now long gone, while others never developed in the form he described. Although we may find neither merit nor likelihood in the specific institutions Hegel advocated, we may still learn much from his accounts of the functions he assigned to various institutions and how those institutions are supposed to fulfill those functions. I turn now to an overview of Hegel's interpretation of modern social and political life, of the roles he assigned to the family, civil society, and the government. (For a graphic illustration, see the organizational chart of Hegel's state following the notes at the end of this essay.)

Among other things, the family provides an institutional context for customizing and rationalizing sexual desire, and it affords a way of fulfilling the duty to raise the next generation. This involves not simply reproducing human organisms but raising human beings by introducing the child to the ways and means available in one's society for meeting basic needs and by educating the child in the principles and practices established in one's society for achieving various purposes and upholding various rights. Customizing whatever needs are due solely to biological and psychological nature occurs here, through upbringing and socialization (§§174, 175). Since in modern economies the vast majority of families do not produce for their own subsistence, the family must have dealings with the economic and civil life of society.

Civil society comprises the institutions and practices involved in the production, distribution, and consumption of products that meet a variety of needs and wants. Hegel called this the "system of needs" (§188). The system of needs transforms natural impulses, needs, and wants by providing socially specific goods that meet those needs and wants, by modifying and multiplying those needs and wants (§§185, 187R, 193, 194 & R), and by inculcating the social practices through which individuals can achieve their ends (§§182, 183, 187). Hegel saw what atomistic individualists overlook in the division of labor: specialization requires coordination, and coordination requires conformity to "the universal," to common practices (§§182, 198, 199). (Hegel indicated that the "universal" he analyzed just *are* those practices, since those practices are the relations among individuals in question [§182].) Furthermore, the collective development of social practices, based on the joint pursuit of individual aims, is the collective development of implicit principles of right (§187R; cf. §§260, 270). Hegel stressed the fact that these "universal" principles derive their content from the ends and activities of particular agents who determine for themselves what to do (§187R). This is the most-fundamental role individuals have in developing the content of principles of right, in Hegel's view. Legitimate law simply codifies those practices that require legal protection in order to remain effective (§§209–12). In this connection he refers back to his opening endorsement of Montesquieu's point that laws are justified on the basis of their systematic interconnection within present social circumstances (§§212, 3R).

Civil society and the economy must support the basic freedom of choosing one's vocation (§§206, 207). Everyone has equal civil (and later, political) rights, not on the basis of *recherché* grounds of the incommensurable value of rational agency (Kant's "dignity"), but because there is no legitimate reason to distinguish among persons to the disadvantage of some and the advantage of others (§§36, 38, 209R, 270N3). (Hegel explicitly repudiated the antisemitism of his conservative and liberal contemporaries [§209R; cf. §270N3].)

Civil society contains three distinct kinds of institution: the Administration of Justice, the Public Authority, and Corporations. The Administration of Justice codifies, promulgates, and administers statutory law. Codification makes explicit the normative principles implicit in social practices (§§209–12; cf. §§187R, 249). Promulgating codified law contributes to informing people about the structure of their social context of action (§§132R, 209, 211R, 215; cf. 228R). This is why law must be codified and promulgated in the national language (§216), and why judicial proceedings must be public (§§224, 228R). The enforcement of law regularizes the context of individual action and protects and preserves the social practices people have developed to exercise their freedom and achieve their individual aims (§§208, 210, 218, 219). Establishing recognized courts replaces revenge with punishment (§220).

The Public Authority is responsible for removing or remedying "accidental hindrances" to achieving individual ends; it minimizes and tends to the natural and social accidents that impair or disrupt successful free individual action (§§230–33, 235). Its responsibilities include crime prevention and penal justice (§233), price controls on basic commodities (§236), civil engineering, utilities, and public health (§236R), public education (§239), moderation of economic fluctuations (including unemployment) (§236), the eradication of the causes of poverty and poverty relief (§§240, 241, 242, 244),⁴⁰ and the authorization and regulation of corporations (§252). If these factors are not regulated, individuals cannot plan or conduct their lives reliably; their freedom is compromised.

The coordination among different economic agents, whether persons or businesses, entails that the economy consists of sectors or branches of industry or commerce (§201, 251). This results from the division of labor and the distribution of specialized manufacture across various regions of the country. In modern specialized produc-

tion, individual jobs and businesses depend on a complex of far-flung economic factors (§183; cf. §§182, 187, 289R, 332). Hegel recognized this fact and sought to ensure that such factors would not hold uncomprehended sway over people's activities and lives. Such unknown influences limit freedom and autonomy. He addressed this need by advocating a certain kind of professional and commercial "corporation." These corporations are a kind of trade association, one for each significant branch of the economy, to which all people working in that sector belong. Membership in a corporation integrates one's gainful employment explicitly into a sector of the economy and provides information about how one's sector of the economy fits with and depends on the other sectors. Corporations also moderate the impact of business fluctuations on their members (§§252 & R, 253 & R). Corporations counteract the divisive tendencies of individual self-seeking in commerce by explicitly recognizing individual contributions to the corporate and social good and by bringing together people who would otherwise form two antagonistic groups, an underclass of rabble and a class of elite captains of industry who would wield inordinate social influence due to their disproportionate wealth (§§244, 253R).

The final institution in Hegel's state is a central government.⁴¹ He distinguished between the government and the state as a whole. He called the government the "strictly political state" (§§273, 276) and reserved the term "state" for the whole of a civilly and politically well-organized society (§§257–71). He called civil society – *sans* representative government – "the state external" (§183). Civil society is an "external" state because it does not fulfill the requirements of political autonomy and because the state institutions in civil society, the Administration of Justice and the Public Authority, are viewed as mere instruments for achieving personal aims. The members of civil society are bourgeois but not (as such) citizens, since they must obey coercive laws without recognizing, and without having public and official recognition of, their role in constituting legitimate law. The Public Authority and the Administration of Justice act on their behalf, but not under their purview. Thus the political aspect of autonomy is not achieved within civil society (cf. §266). Achieving political autonomy and, with that, citizenship is the primary function of Hegel's government.

Hegel ascribed sovereignty to the state as a whole, and not simply

to the monarch or even to "the princely power" (*die fürstliche Gewalt* or "crown") as a whole (§278). No element of the state holds sovereignty (although each has an institutionally defined role in sovereignty), and no office is a private, individual possession (§§277, 278R). Hegel treated the government under the general heading of the constitution. It is important to note that, although Hegel said that the constitution ought to be viewed as eternal (§273R), he recognized that the constitution is subject to change (§§273R, 298). What he said of law in general holds of constitutional law as well, namely, that to be executed, a law must be determinate. By being specific enough to be acted upon, a law must have what Hegel called an "empirical side," where this empirical side is subject to change in the process of implementing the law (§299R). Although this may seem to contravene the nature of law, it does not since, as Hegel stressed, following Montesquieu (§3R), a law is justified by the function it presently performs within an integrated society. As conditions change, so must laws change in order to remain legitimate and effective (§298). In this way, Hegel noted in his lectures, a country can gradually bring its constitution to a very different condition from where it began (§298Z).⁴² Hegel regarded this not as an inevitable concession to historical contingency, but as a rational process of gradual collective revision of the legal conditions required to achieve and preserve freedom. He held that the constitution ought to be regarded as eternal to ensure that change results gradually from detailed knowledge of genuine need, rather than from insufficiently informed ratiocination. He equally held that reform must be a deliberate ongoing process, so that it does not require revolution.

Hegel's government comprises the "princely power" or Crown, the Executive, and the Legislature (§273). The Crown consists of a hereditary monarch and chief ministers of state (§275). The ministers formulate laws that articulate and protect the basic social practices necessary for individual free action (§283). Cabinet ministers must meet objective qualifications (§§291, 292) and are strictly accountable for their actions (§284). At their recommendation laws are enacted by the monarch (§§275, 283, 284). The Crown protects the interests of one's state and one's interests in the state through foreign policy, either by diplomacy or war (§329). The Executive administers the laws necessary for knowledgeable individual free action (§287). The Legislature consists of an advisory body, drawn from

high-level servants with direct ties to the Crown and the Executive (§300), and the bicameral Estates Assembly.

Hegel assigned a quite restricted but very important role to the Estates Assembly. The Estates Assembly provides crucial popular insight into affairs of state (§§287, 301). In particular, the Assembly affords popular insight into the fact that the laws enacted by the Crown and administered by the Executive are laws that codify and protect the social practices in which one participates and through which one achieves one's ends (*cf.* §§314, 315). The Estates Assembly thus places the government under popular purview (§302). Corporate representatives to the lower house of the Estates Assembly are elected by their respective memberships (§§288, 311). Representatives from the agricultural sector, landed aristocrats (§306), inherit their right to enter the upper house (§307). Hegel based his system of representation on the Corporations and other branches of civil society, because doing otherwise would divide political from civil life and leave "political life hanging in the air" (§303R). It must be stressed again that citizens have a hand in developing and modifying social practices as needed, and the law, on Hegel's view, is to follow suit. The main function of Hegel's Estates Assembly is educative, to inform people systematically and thoroughly about the activities of their government and the principles, procedures, and resources for acting within their society, so that individuals can resolve to act in an informed and responsible manner, unencumbered insofar as possible by unexpected consequences. This education and information enables individuals to act voluntarily and autonomously within their society (§301 & R). Hegel expected that when people understood how their society meets their needs and facilitates their ends, they would affirm their membership in society and would act in it willingly. The fact that the institutions of government, especially the legislative assembly, are necessary for free, autonomous action is their primary political justification, according to Hegel.⁴³

Hegel opposed rule by open democratic election. He held that democracy rests too much on political sentiment (§273R), that open elections encourage people to vote on the basis of their apparent particular interests at the expense of their interests in the community as a whole (§§281R, 301R), and that the tiny role each elector has in large general elections results in electoral indifference (§311R). Open elections also do not guarantee that each important economic and civil

branch of society is represented (§§303R, 308R, 311R). Consequently, open elections threaten to allow what Hegel's corporate representative system was designed to avoid: the overbearing influence of factions, especially of monied interests, on the political process (§§253R, 303R). Hegel also recognized that legislation requires expert knowledge; he expected popular opinion to supply general ideas or feedback about matters of detail (§301R). Finally, Hegel was aware of the relative political inexperience of his contemporary Germans. His civil and political institutions were designed to provide regular, publicly acknowledged, institutionalized channels for political education so that people would not act in political ignorance. Hegel may have opposed standard democratic procedures, but he was a staunch republican, and he took the vital issue of an informed body politic and universal participation in political life much more seriously, and at a much deeper institutional level, than any modern democracy.

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Perhaps the greatest internal weakness in Hegel's organizational scheme is his account of the monarch. Although the monarch's role is constitutionally narrowly defined, it is also unstable. Hegel defended an inherited monarchy in part because no talent is needed to sign legislation, since the cabinet ministers are experts and are accountable for the entire content of the law (§§283, 284). But he also counted on the monarch's watchful eye from above (in conjunction with scrutiny by the Estates Assembly from below) to hold the ministers responsible (§295). He can't have it both ways.

Hegel built a number of institutional guarantees into his governmental structure by insisting on a division of mutually interdependent powers (§§272R, 286 & R, 301R, 308, 310 & R), and he listed a number of fundamental civil rights (equal rights and freedoms of person, belief, property, profession, and trade [§§35, 36, 38, 41–49, 57, 62R, 66, 206, 207, 209R, 252, 270R]). Still, he placed the courts under the administration of justice (§219). This would make it difficult to accommodate a doctrine of judicial review of legislative or executive action. Hegel emphasized coordination and the cooperative aspects of civil and political institutions (for instance, §§272, 303 & R), although he insisted that cabinet ministers are strictly responsible and accountable for their actions (§284). He did not,

however, describe precisely how ministers are to be held accountable. This may be because he published only the "elements" (*Grundlinien*) of the philosophy of right. Hegel may have used this excuse because insisting more explicitly on such institutions might have brought him under official censure – or worse. When agents of the state press for personal or factional interests, then politics becomes contestative, as Hegel knew, and strong constitutional structures are needed – stronger than he published – to deal with misappropriations of power.⁴⁴

These sources of possible administrative recalcitrance or irresponsibility raise the political specter that concerned Weber, that independent interests generated within bureaucracies make them unresponsive to their official obligations and constituents. Hegel did not have the historical experience to share this concern, since in his day the state bureaucracy was relatively new and was in the forefront of reform. Although this problem is not unique to Hegel's institutions, it is a genuine and pressing problem, especially in view of the crucial contribution Hegel's government is to make to political freedom and autonomy.

The last problem I note concerns the actualization of Hegel's rationally structured institutions. Hegel designed his political institutions as a bulwark against the fragmenting tendencies of economic self-interest and the overbearing influence of economic factors on politics, especially the influence of an active and monied entrepreneurial class. Hegel's efforts thus bear witness to the tension between sectors of the economy and a political process aimed at universal freedom and autonomy. Historically, under pressure of economic interests and developments, few of Hegel's institutions developed at all, much less in the specific form he described. The extent to which modern political institutions serve the functions Hegel advocated cannot be explored here, but it is unlikely to be very great, since few of them are officially assigned those functions. By grounding legitimate law and institutions in social practices, including those practices that are part of the economy, Hegel came much closer to historical materialism than Marx recognized – without being an historical materialist.⁴⁵ Hegel's theory of historical change, cast in terms of the world-spirit actualizing itself by achieving deeper self-understanding (§§342–43, 345–46), may perhaps gloss the results or significance of some historical develop-

ments, but it does not explain the causes or process of historical change. In this regard, Hegel's philosophy is silent where we most need guidance: when facing the problems of achieving genuine political freedom and autonomy through institutional reform. Hegel outlined the basis and rationale of these ideals quite well, but his institutional program remains an idealized image of its age. Marx's political projections are little help, since they require transcending the relative scarcity of goods that makes principles of justice necessary.⁴⁶ The persistence of relative scarcity condemns us to politics and to the issues of bourgeois right. Hence Hegel's idealized model retains great political relevance: To what extent do contemporary political institutions secure and promote genuine freedom and political autonomy? To what extent ought or can they be reformed to achieve this basic aim?⁴⁷

NOTES

- 1 I refer to Hegel's works, including *Grundlinien der Philosophie des Rechts*, in *Werke in Zwanzig Bänden* ed. Moldenhauer & Michel (Frankfurt: Suhrkamp, 1970; cited as *Werke*). I give my own translations. I cite *Elements of the Philosophy of Right* ed. A. W. Wood, tr. H. B. Nisbet (Cambridge: Cambridge University Press, 1991). References to Hegel's Preface are indicated as "Preface," followed by the German page number/and the page number of Nisbet's translation. With the exception of Hegel's Preface, all references to Hegel's *Philosophy of Right* are given by section number, which are shared by the original and the translations. The "Remarks" Hegel wrote and appended to these sections are designated with an "R" suffix: "§138R." If a section and its remark are cited, they are cited as "§138 & R." Notes are indicated similarly with an "N" suffix; if there is more than one note to a section, its number follows: N₃. Citations from lecture notes appended to the *Philosophy of Right* are indicated by a "Z" suffix.
- 2 See *Enzyklopädie der philosophischen Wissenschaften im Grundrisse I* (*Werke* 8; hereafter "Enz."); *The Encyclopedia Logic* tr. T. F. Geraets, H. S. Harris, & W. A. Suchting (Indianapolis: Hackett, 1991), §6.
- 3 Reinhold Aris mistakenly attributes to Hegel the very principle of the historical school Hegel criticized (*History of Political Thought in Germany from 1789–1815* [rpt: New York: Kelly, 1968], 227). I have relied on Aris for historical details.
- 4 See Walter Jaeschke, "Die Vernünftigkeit des Gesetzes" in *Hegels Rechtsphilosophie im Zusammenhang der europäischen Verfassungsgeschichte*, ed. H.-C. Lucas & O. Pöggeler, (Stuttgart-Bad Cannstatt: Frommann-Holzboog, 1986), 221–56.

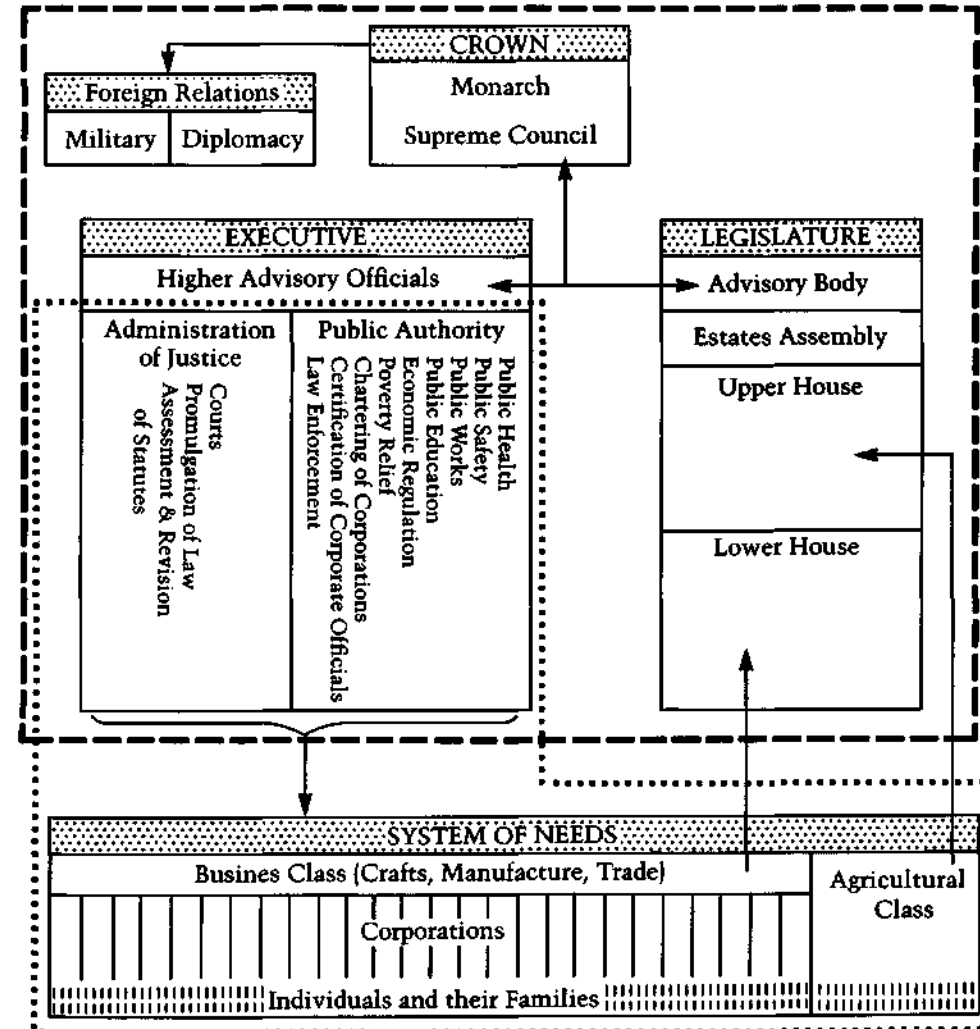
- 5 See my *Hegel's Epistemological Realism* (Dordrecht & Boston: Kluwer, 1989 [hereafter "HER"]), 166, 169–72. Hegel stated his view in easily misunderstood metaphysical terms. He stated that individuals are related to the ethical order and its powers "as accidents to substance" (§145). This certainly can sound like individuals are subservient to a social whole. Yet Hegel held that "substance is in essence the relation of accidents to itself" (§163R). This is to say that substance is essentially the relation among the "accidents" (properties or members) of something. More briefly, he stated that "substance is the totality of its accidents" (§67R). This doctrine is part of Hegel's holistic metaphysics, and it is stated in the section of the *Encyclopedia* to which Hegel refers in §163R, *Enz.* §150. On Hegel's holism, see *HER*, ch. 10.
- 6 This characterization of reform conservatism is adapted from Klaus Epstein, *The Genesis of German Conservatism* (Princeton: Princeton University Press, 1966), 13. I have relied much on this work for historical details.
- 7 This demand and its satisfaction are essential to what Hegel calls the modern "rights of subjectivity" (§§106, 107, 117, 121, 124R, 132) and to Hegel's effort in the *Philosophy of Right* to present and justify an integrated doctrine of rights and duties (§§148R, 149, 150).
- 8 See *HER*, chs. 1, 6–8.
- 9 Compare what is said below with Aris's account of Stein's views (*Political Thought*, ch. 13), and see Wood's editorial notes to §§271n2, 273n9, 277n1, 288, 289, 291, 303, and 312.
- 10 On Rosicrucianism, see John Passmore's entry on Robert Flood in *The Encyclopedia of Philosophy* ed. P. Edwards (New York & London: Macmillan, 1967), vol. 3, 207–8, and Epstein, *Genesis*, pp. 104–11.
- 11 See Adriaan Peperzak, *Philosophy and Politics: A Commentary on the Preface to Hegel's Philosophy of Right* (Dordrecht: Nijhoff, 1987), 108.
- 12 Compare Aris's citation from Novalis's 1798 *Athenäum* (*Political Thought* p. 279) with Hegel's account of the government, discussed below.
- 13 See Jacob Baxa's citation of Friedrich Schlegel in *Einführung in die romantische Staatswissenschaft*, 2nd ed., (Jena: Gustav Fischer, 1931), 68.
- 14 Also see *Vorlesungen über die Geschichte der Philosophie III* (*Werke* 20; hereafter "VGP"), p. 57; *Lectures on the History of Philosophy: The Lectures of 1825–1826* ed. & tr. R. F. Brown and tr. J. M. Stewart (Berkeley: University of California Press, 1990; hereafter "LHP") III, 102–3. Also see *Vorlesungen über die Philosophie der Geschichte* (*Werke* 12; hereafter "VPG"), 496–97; *The Philosophy of History* tr. J. Sibree (New York: Dover, 1956; hereafter "LPH"), 416–17.
- 15 Lectures of 1822–23. See G. W. F. Hegel: *Vorlesungen über Rechtsphilosophie 1818–1831. Edition und Kommentar in sechs Bänden* ed. K-H

- Ilting (Stuttgart-Bad Cannstatt: Frommann-Holzboog, 1974; hereafter "Ilting"), vol. III, 475.
- 16 See my "Hegel's Critique of Kant's Moral World View," *Philosophical Topics* 19, No. 2 (1991): 133–76, §IV.
- 17 "Die Verfassung Deutschlands" (*Werke* I), pp. 461–581, and "Verhandlungen in der Versammlung der Landstände des Königreichs Württemberg im Jahr 1815 und 1816" (*Werke* 4), pp. 462–597; "The German Constitution" and "Proceedings of the Estates Assembly in the Kingdom of Württemberg, 1815–1816" in *Hegel's Political Writings*, ed. Z. A. Pelczynski, tr. T. M. Knox (Oxford: Clarendon Press, 1964), 143–242 and 246–94.
- 18 I have adapted the formulation of this issue from C. Dyke, "Collective Decision Making in Rousseau, Kant, Hegel, and Mill," *Ethics* 80, No. 1 (1969): 22. Dyke misunderstands Hegel's approach to this issue.
- 19 Hegel makes this point against Jacobi's doctrine of "immediate knowledge." See my "Hegel's Attitude Toward Jacobi in the 'Third Attitude of Thought Toward Objectivity,'" *The Southern Journal of Philosophy* 27, No. 1 (1989): 135–56, §VII, 148–51.
- 20 "Wer Denkt Abstrakt?" (*Werke* 2, pp. 575–81); "Who Thinks Abstractly?" in *Hegel: Texts and Commentary* tr. W. Kaufmann (Garden City: Anchor, 1966), 113–18.
- 21 "Über die wissenschaftlichen Behandlung des Naturrechts, seine Stelle in der praktischen Philosophie und sein Verhältnis zu den positiven Rechtswissenschaften" (*Werke* II, pp. 434–530), p. 445; *Natural Law* tr. T. M. Knox (Philadelphia: University of Pennsylvania Press, 1975), 63–64.
- 22 See Joyce Beck Hoy, "Hegel's Critique of Rawls," *Clio* 10, No. 4 (1981): 407–22].
- 23 *VGP* III, p. 334; *LHP* III, pp. 244–45.
- 24 See Roy Pascal, " 'Bildung' and the Division of Labor" in *German Studies Presented to Walter Horace Bruford* (London: Harrap, 1962), 14–28, for discussion of this issue among Hegel's immediate predecessors.
- 25 See my "Hegel's Critique of Kant's Moral World View," cited above.
- 26 Hegel often speaks simply of "the concept" (see §§19, 106). One must recall that "the concept" at issue is the concept of the will.
- 27 *Grundlegung der Metaphysik der Sitten* (*Gesammelte Schriften*, Königliche Preussische Akademie der Wissenschaft: Berlin and Leipzig: de Gruyter, 1904–; hereafter "Ak"); *Groundwork of the Metaphysics of Morals* tr. Paton (New York: Harper, 1964), vol. IV, 412, (cited hereafter as "Groundwork"). I cite only the Akademie pagination, which appears in all recent translations of Kant's writings.
- 28 Hume, *A Treatise of Human Nature*, ed. Selby-Bigge (Oxford: Clarendon Press, 1888, 1965), 488–91; Rousseau, *On the Social Contract*, tr. Masters & Masters (New York: St. Martin's, 1978), 47.
- 29 Hegel's view that "individuals" develop historically has raised controversy. What was Thrasymachus, if not an individual? Two points need to be noted. First, Thrasymachus was a product of the decline of Greek life, a decline brought on, according to Hegel, in part by the development of individualism. More important, the conception of "individual" of interest to Hegel is a conception of an individual who has the moral ability to reflect on and evaluate normative principles, the kind of individual who is capable of such acts as conscientious objection or civil disobedience. Hegel finds the first clear precedents of that development in Antigone, Socrates, and Jesus. This conception of the individual is not an historical constant; even less are examples of it an historical constant. (Socrates may have engaged in something approximating conscientious objection when he openly refused to obey the command of the thirty tyrants to arrest the general Leon in Salamis [*Apology* 32cd], but he nowhere considers civil disobedience; this is not a Greek notion.)
- 30 *Groundwork*, Ak IV, p. 398, cf. pp. 393–94.
- 31 *Ibid.*, p. 401n.
- 32 *Kritik der praktischen Vernunft* (*Critique of Practical Reason*, tr. Beck [Indianapolis: Bobbs-Merrill, 1956]), Ak V, 155–56.
- 33 *Phänomenologie des Geistes* (*Werke* 3), p. 457; *Phenomenology of Spirit* tr. Miller (Oxford: Clarendon, 1977), 377.
- 34 See Allen Wood, "The Emptiness of the Moral Will," *The Monist* 72, No. 3 (1989): 454–83].
- 35 *Groundwork*, Ak IV, p. 412.
- 36 *Ibid.*, p. 417.
- 37 *Ibid.*, pp. 428, 434–35.
- 38 *Metaphysische Anfangsgründe der Rechtslehre* (*Metaphysical Principles of Justice*, tr. J. Ladd [Indianapolis: Bobbs-Merrill, 1965]), Ak VI, 246.
- 39 More properly, extant modern institutions (§299R). Hegel thought, e.g., that the Roman and medieval epochs objectively lacked properly rational institutions and so were not amenable to such interpretation. Roughly, the Roman world lacked sufficient community; the Middle Ages lacked sufficient individuality. See *VPG*, pp. 340, 345–46, 349, 351, 358, 359, 441, 444–47, 455–60; *LPH*, pp. 279, 284, 287, 289, 295, 366, 369–72, 378–83.
- 40 Although the Public Authority is to deal with accidental events, and Hegel here listed poverty relief under its authority, he did not think that poverty was an accidental phenomenon. Rather, he recognized that it results from the workings of civil society (§245), and in his lectures he stated what his text clearly implies, that poverty is a wrong done by one class to another (§244Z; lectures of 1824–25, Ilting IV, p. 609). He held it to be an evil because it produces wretched living conditions and because it systematically excludes the poor from participation in society (§244).

He was deeply concerned with this problem and was not satisfied with any solution to it he proposed.

- 41 Although Hegel advocated a centralized national government, he also held that regional and municipal concerns should be handled by regional or municipal government (§§288, 290).
- 42 Lectures of 1822–23 (Ilting III, pp. 788–90). Cf. Hegel’s lectures of 1824–25 (Ilting IV, p. 698).
- 43 One might wonder about a situation like that described in *Brave New World*, or about a society that progressively reduced its needs and ends so that they were simpler to satisfy and required little political or social activity. Would either society meet Hegel’s criteria of freedom by default? The “Brave New World” circumstance is ruled out by the fact that in it social harmony is produced by social engineering initiated and directed by the government. This directly contradicts the nature of legitimate law on Hegel’s view, where the content and legitimacy of law flows from the free actions of individuals up through the legislative and executive apparatus. The prospect of social degeneracy is very real, on Hegel’s view, but also fails his criteria for freedom. Hegel believed that part of the development of rationality and freedom through history involves an expansion of the understanding of the range of human possibilities, activities, and responsibilities, which, once achieved, serves as an historical benchmark for assessing how free a society is.
- 44 Karl-Heinz Ilting shows that Hegel’s descriptions of these mechanisms were much more specific – and republican – in his lectures. See his introduction to his edition of *Die Philosophie des Rechts: Die Mitschriften Wannemann (Heidelberg 1817/18) und Homeyer (Berlin 1818/19)* (Stuttgart: Klett-Cotta, 1983), 25–27.
- 45 Marx credited Hegel with seeking the roots of government in civil society but claimed as his own insight that the roots of civil society are in political economy. See the 1859 “Preface to the Critique of Political Economy” in *The Marx-Engels Reader*, ed. Tucker (New York: Norton, 2nd ed. 1978), 4. This misrepresents Hegel and consequently misrepresents Marx’s own originality. Hegel sought the roots of civil society in political economy; Marx’s innovation was to seek the anatomy of civil society and its economy in the historical development of productive forces. This root idea of “historical materialism” did not occur to Hegel.
- 46 “Critique of the Gotha Program,” in *Marx-Engels Reader*, p. 531. On relative scarcity as a condition for the relevance of principles of justice, see Hume, *Treatise on Human Nature*, pp. 485–95.
- 47 I wish to thank Allen Wood, Michael Hardimon, Fred Neuhouser, David Kettler, and my departmental colleagues, especially Bob Scharff and Bill DeVries, for comments on previous versions of this essay.

Organizational Diagram of Hegel’s State



Civil Society (The “state external”)

The Political State [the government]-----

The State Proper is the entire system.