

The Ethics of Freedom: Hegel on Reason as Law-Giving and Law-Testing

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The sections on “Reason as Lawgiver” and “Reason as Testing Laws” are the last two sections of Chapter V of the *Phenomenology of Spirit* (PS 228–37/M 252–62). This chapter is entitled, simply, “Reason.” The next chapter is entitled, simply, “Spirit.” However, Hegel provides another way of organizing the book. In that way there are three major divisions: “Consciousness,” “Self-Consciousness,” and then a third that is left blank. This third division is then divided into four parts: “Reason,” “Spirit,” “Religion,” and “Absolute Knowing.” The question is, what name should fill in the blank? “Spirit” is the most obvious answer, given Hegel’s later system constructions. If that answer is right, then our sections are the point at which Reason becomes aware of itself as Spirit.

What do Reason and Spirit mean here? Reason is essentially individual reason, but it is individual reason that projects itself as universal. So it is an individual’s self-certainty of knowing the truth that must obtain for everybody. It is the “I” that thinks that everybody else should know what it knows and agree with it. Spirit, in contrast, is the “We” that makes individual forms of Reason possible. Spirit is the cultural and historical background that allows one to be who one is. Moreover, Spirit is not just a matter of different cultural paradigms that flourish at different points in history, but it is the cumulative story of the development of thought up to Hegel’s own historical moment.

These sections are important, therefore, because they represent the moment when individual reason becomes moral. Morality implies seeing that one’s own maxims for actions can be the same for everybody else. The most famous version of this view is Kant’s theory of Practical Reason. Hegel provides some counterexamples to show the emptiness of Kant’s famous procedure whereby we can test our maxims to see if they can consistently be viewed as moral rules. For Kant these moral rules are then duties, which must be acted on for the sake of duty alone, whether or not they represent our natural inclinations.

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This story becomes especially challenging from a philosophical standpoint when one realizes that Hegel is not simply shifting his narrative from the “I” to the “We,” but that he is developing a stronger argument that there is no “I” without a “We.” The question is, however, what kind of argument is he giving and how strong is it? Does a dialectical transition in the *Phenomenology* constitute a transcendental argument establishing necessity or a hermeneutical interpretation establishing possibility? This is the larger meta-theoretical question that I will be unfolding around his account of *Sittlichkeit*. This account comes up in the last paragraphs of these sections and is the starting point of the next chapter on Spirit. *Sittlichkeit* is the shared ethical life that surrounds and conditions individual moral reason. Hegel is thus not simply jumping from Reason to Spirit, but he is offering an interpretive *explanation* of the transition from Reason to Spirit. This essay will therefore examine the meta-philosophical issues as well as the dialectical plot structure at this crucial point of the *Phenomenology*. Insofar as Hegel developed these ideas in other writings, including the later *Philosophy of Right*, those texts are referenced as well.

1 John Rawls on Hegel

Interpreters of earlier philosophers have to be aware of differences between the present-day and the earlier contexts. Currently, for instance, Kant is taken as a paradigmatically deontological philosopher, and his position is standardly contrasted to the utilitarian theory of Mill. This contrast brings out some features of the Kantian theory and suppresses others. Hegel could not have read Kant in terms of the contrast with Mill, because Mill was only born when Hegel was writing the *Phenomenology*. The Harvard political philosopher John Rawls points out in *A Theory of Justice* that Kant was writing not only against teleological theory, but also against a tradition that Rawls identifies as rational intuitionism (see Rawls 1971, 30, 396). This group of theories (including Leibniz’s and Wolff’s perfectionism) postulated the difference between the natural and the moral orders, such that moral principles were grasped through a purely rational form of intuition of the prior and independent moral order. This view was thus “heteronomous” from Kant’s point of view. As the capstone of individual reason, Kant was trying to develop an account of morality evolving from within reason rather than outside reason.

Today, however, we tend to see moral philosophy mainly in terms of the standard contrast between *teleological* theories, which start with a conception of the good and only then specify what is morally right, and *deontological* theories, where the right is not defined in terms of the good. Kant’s sense of morality as duty-based rather than happiness-based leads him into the deontological camp that sees teleological theories as “heteronomous.” Kant’s emphasis on duty puts more weight on conscious intention than on the consequences of action. The term ‘deontology’ can be misleading if it suggests that Kantians entirely eliminate the relevance of consequences of action from judgments of moral worth – which, Rawls says, would be crazy.

Rawls's lectures on Hegel have not yet received the attention from Hegel scholars that they deserve. These lectures, which were eloquently compiled by the UCLA moral philosopher and Kant scholar Barbara Herman, also illuminate Rawls's own philosophy. They show how Rawls is not a strict Kantian and how he transcends the rigoristic Kantian conception of individual autonomy and rule-governed action. He recognizes that Hegel is not opposed to Kant's notion of moral principles, but instead that Hegel seeks to ground principles in the social domain of this world rather than the noumenal domain of a transcendent world. The Hegelian rejection of noumenal freedom brings moral philosophy more within the ambit of political philosophy (Rawls 2000, 330). Hegel is also replacing Kant's morality of duty with what I will call (following Foucault 1997, 284) an ethics of freedom. A morality of duty supplies rules for action and demands that these rules be followed only for the sake of duty. An ethics of freedom, however, requires reflection on the contingencies of the social and political situation. Rawls brings this out in his first of two lectures on Hegel where he explicates Hegel's dark saying, "The free will is the will that wills itself as the free will" (*PR* §§10, 27).

Rawls begins this explication by emphasizing that Hegel's goal is not to view individual persons as isolated units who are guided in some mysterious way by a part of themselves that is outside of space and time. Instead, Hegel wants us to reconcile ourselves to being who we are in space and time. He wants us to find our freedom in the best aspects of the society in which we find ourselves. However, to say that philosophy is *reconciliation* is not to say that it is *resignation*. There is much about his contemporary society that Hegel deplors. But he believes that contrasting the real world to an ideal world in the Kantian manner is counterproductive. Contemplating the ideal world tends to lead us to condemn the real social world. As Rawls puts it, "for Hegel, in contrast to Kant, the aim of the account of ethics as *Sittlichkeit* is not to tell us what we *ought* to do – we know that – but to *reconcile* us to our *real* social world and to convince us not to fix our thinking and reflection on an ideal social world" (Rawls 2000, 334).

I have more to say about *Sittlichkeit* below, but for now let me focus the contrast that Rawls sees between Kant and Hegel. Kant thinks that through transcendental freedom each person can individually rise above the contingencies of space and time and act purely from the moral law, thereby achieving a good will. Hegel, in contrast, does not think that human freedom is possible without a social framework. What we must come to understand collectively is how that framework promotes rather than stifles our freedom and therefore our capacity to lead fully rational and good lives. Rational social institutions are the necessary background for freedom.

Of course, at the same time individuals must be able to reflect on and judge their own and others' conduct. Hegel believes, however, that the kind of guidance that Kant envisions with the reflective procedure of the categorical imperative is not sufficient. The CI-procedure rules out some behavior, so Hegel is not saying that there is no content at all in Kant's account of practical reason. Rather, on Rawls's reading, Hegel is saying that the CI-procedure does not have all the

content that Kant claims it has. “Moreover,” says Rawls, “what it does give us are not moral conclusions that we can properly be said to know: we do not attain moral knowledge through the CI-procedure. We attain moral knowledge only in what Hegel calls *Sittlichkeit*” (Rawls 2000, 334).

Hegel also disagrees with Kant’s account of the psychology of moral agency. Kant thinks that moral action should follow from the moral law itself and nothing else. In contrast to Kant’s desire for what Rawls calls “radical purity” (Rawls 2000, 335), Hegel rejects the distinction between morality and prudence. Instead, Hegel sees what Kant might consider as heteronomous interests (e.g., family, friendship, and the normal involvements of everyday life) as important moments of ethical life.

In effect, then, Rawls can be read as agreeing with Hegel’s transition in the *Phenomenology* from Reason to Spirit. I will have occasion to return to Rawls’s Hegel lectures again below. Guided by this reading of Hegel’s moral and political philosophy, let me now turn to the details of the *Phenomenology of Spirit*.

2 Legislating and Testing Moral Rules: Christine Korsgaard vs. Hegel

While there is general agreement that Hegel’s section on “Reason as Testing Laws” targets Kant’s moral philosophy directly, there is some disagreement about whether the section directly preceding it is aimed at Kant or not. This section, on “Reason as Law-Giver,” is not a deep or sophisticated critique of Kant’s texts, and as a critique of the deontological approach to morality, it is rather casual. Michael Forster is therefore inclined to say that Hegel is not targeting Kant in the “Law-Giver” section, but *Popularphilosophen* like Feder and Garve (Forster 1998, 348–50).

However, the idea of giving oneself the law is so central to Kant’s moral theory that it is hard not to hear Kant in the background when reading Hegel’s critique of the notion of the lawgiver. In the *Critique of Practical Reason*, Kant emphasizes that what it means for pure reason to be practical is that reason can be “*law-giving*” or, as I might translate him, *self-legislative*. I shall therefore take Hegel as targeting some basic Kantian intuitions, and as pointing out other features of ethics that are overlooked or only minimally acknowledged by deontological moral theory.

Before proceeding further, I should register a note on terminology. Translations of Kant usually distinguish ‘maxims’ from ‘laws’. Maxims are personal, whereas laws are universal. The term ‘law’ can be ambiguous, and can mean a law of nature or a legal law. A legal law is prescriptive: it tells you what you have to do if you do not want to be punished. A law of nature is descriptive: one could not disobey it. Insofar as moral principles can be disobeyed, I prefer to think of the deontological program as investing heavily in the idea of moral *rules*. I use the term ‘rules’ because I think that it captures the action-guiding sense of prescription that is at stake in practical reason in general, and in the terms ‘maxims’ and ‘laws’ more specifically.

Hegel's critique of moral rules can be interpreted in at least three ways. One is that moral rules are too weak because they are purely formal and empty of content. Another is that they are too strong insofar as they can lead to overly rigoristic demands on action that could well result in an impoverished life. A third is that even if they are just right, they are not action guiding because they depend on interpretation and interpretations can vary. I will use the terms '*formalism*' for the charge of emptiness, '*rigorism*' for the charge of being too strong, and '*dogmatism*' for the charge of lacking a "hermeneutical consciousness," that is, an awareness of the variability of interpretation. These three levels of criticism are important moments of the present essay, as will become evident shortly.

Hegel offers three examples to show the limitations of the idea of moral rules. The first is the claim that everyone ought to speak the truth (see *PS* 229.36–230.36/*M* 254–5). Hegel argues that there are suppressed assumptions behind this rule, and that making these assumptions explicit shows that what seems "universally necessary" and "intrinsically valid" is in fact "completely contingent" (*ibid.*). His point is that individual reason thinks that it knows this rule with certainty, yet when it tries to act accordingly, it finds out that the rule must be qualified because what it thinks is true might not be true. So the rule becomes merely that everyone must speak the truth only if what is said is true. In light of the fallibility of belief, it turns out that one is no longer sure of what one believes or means to say. Reason, which was apparently self-certain, turns out to be tongue-tied and unsure of what it wants to say.

The second rule that Hegel deconstructs is the commandment to love your neighbor as yourself (see *PS* 230.37–231.27/*M* 255–6). Here again Hegel argues that the rules depend on the context of interpretation, such that one must know what is good for the neighbor in order to act with love. What seems to be universal and necessary (that one should love one's neighbor) thus depends on knowing the particular circumstances of the individual in question in order to know how to act toward that particular individual. Hegel then infers that the rule has only a "formal universality" (*PS* 231.30–37/*M* 256).¹ This demonstration of the emptiness of the rule when universalized thus leads to the charge of formalism: "For universality that lacks a content is [merely] formal, and an *absolute* content itself is tantamount to a distinction which is no distinction, i.e. to absence of content" (*ibid.*). The "mere form of universality" is mirrored in the "tautology of consciousness" (*PS* 231.38–232.3/*M* 256). The problem with tautologies, after all, is not that they are not true, but that their truth is *vacuous*.

The narrative then unfolds dialectically. From the vacuity of moral rules, universal reason learns that it has to abandon the idea of being able to give itself *substantive* moral rules. Reason therefore backs off from this overly strong conception of morality to a weaker one based purely on the idea of *procedural* rules. In other words, reason no longer sees itself as being able to specify the good concretely, but instead settles for specifying the right way to achieve the good. Hegel thus characterizes this procedural morality as reason as *testing* or *critically examining* rules, not as giving them to itself (*PS* 232.4–7/*M* 256). The third example that he brings up to illustrate the shape of reason as merely testing rather than

legislating rules is whether there should be an absolute right to property (see *PS* 233.3–33/M 257–8). Here the question is whether property is essential to society. If so, then stealing, for instance, would seem to contradict itself, in some sense of “contradict” that remains to be clarified below. But if there could be a society without property, then, as I will explain, the actions of an “anarchist thief” would not be contradictory and the categorical imperative procedure would be disproved by counterexample.

Subtle Kant scholars have been quick to defend Kant against these Hegelian lines of criticisms. Harvard Professor Christine Korsgaard, for instance, offers rebuttals of the Hegelian charges of formalism and rigorism. (She does not address the charge that I am calling dogmatism.) Of course, she has the advantage of over 200 years of Kant scholarship to draw on, whereas Hegel had fewer than 20 years after the publication in 1787 of Kant’s *Critique of Practical Reason*. Also, Korsgaard is not concerned with the role these criticisms play in the context of the *Phenomenology*. In fact, as she herself states explicitly, she is not purporting to deal with Hegel directly, but with the formulations of the criticisms by F. H. Bradley and H. B. Acton, who give arguments generally attributed to Hegel. Let me give a brief account of her defense of Kant.

Kant offered different formulations of the categorical imperative, but the first, the Universal Law formula, is the most well known: *Act only according to that maxim by which you can at the same time will that it should become a universal law*. The way that a maxim is tested is by seeing what happens if a personal maxim were like a universal law of nature. I should therefore ask if everybody could follow the principle that I would be following in a particular action without contradiction. I am to test the moral maxim (where a maxim is the personal reason that I have for doing something) by seeing whether its contradictory (the immoral maxim) could be followed without contradiction. Kant thinks that when put to this test, immoral maxims will self-destruct, or annihilate themselves, insofar as they are inconceivable or cannot be willed. In Kant’s best example of making false promises, for instance, Korsgaard suggests that we are trying to imagine a situation in which someone tries to deceive by making a false promise in a world where no one accepts promises at all. By stipulation, then, making a promise in that world would be impossible.

However, as Hegel indicates, there are many other cases where what contradiction involves is not entirely clear. That is the point of Hegel’s example mentioned above about whether it ought to be “an absolute law that there should be property” (*PS* 233.5–7/M 257). Hegel applies Kant’s universalizability test, which involves seeing what would happen if the contradictory of the principle in question were universalized. In this case, Hegel sees no reason why there could not be a society without property. Kantians then try to save Kant by asking whether, in parallel with the case of false promising, we could *will* a world without property. Hegelians could grant that we could not will a world without promises because we require the trust that promises presuppose. However, we could will, and indeed entire nations have tried to will, a world without property. The failure of these attempts does not necessarily show the inconceivability of the principle that prop-

erty is not a necessary good. The decline of world communism may simply be the outcome of an economic power struggle with capitalism, which requires property.

Although this may be the point of the argument in the *Phenomenology*, in the *Philosophy of Right* Hegel takes a more Kantian tack on private property. As Rawls points out, there Hegel does not advocate a utilitarian justification of private property on the basis of our desires and wants, but strictly on the idea of freedom, which is manifested in respect for the dignity of other persons as free beings. Rawls sums up Hegel's argument as follows:

So it is as a free will that I have the right to own property; my needs and the fulfillment of my desires have nothing to do with it. The true position, as Hegel says, is that the system of property is justified as the most appropriate embodiment of freedom. The very system itself as expressing freedom is the substantive end. (Rawls 2000, 342)

Hegel thinks that nothing is gained by formulating the rules for action and then calling them our "duty." As I explain below, Hegel's view is that free will is expressed in the institutions of *Sittlichkeit*, so moral rules are just the reflective working out of what ethical life already calls for.

Commentators now distinguish between contradiction in conception and contradiction in the will. The latter is the more difficult to understand. Korsgaard makes an important contribution by noticing that in the Kant literature there are currently three different interpretations of contradictory willing. These include logical contradiction (whereby universalization would entail an action that was inconceivable, i.e., logically impossible), teleological contradiction (whereby universalization would be inconsistent with a systematic harmony of purposes or principles), and practical contradiction (whereby universalization would be self-defeating in that it would thwart its own purpose). Korsgaard thinks that Kant's actual texts could support each of these interpretations, so she bases her own preference for the third interpretation on philosophical considerations about what makes willing rational. Let me now take a closer look at her reasons for this preference.

Sometimes the Hegelian objections to particular moral principles can be rebutted easily. For instance, in discussing the principle of loving one's neighbor, Hegel points out that the principle is not an absolute, but a qualified one:

I must love him intelligently. Unintelligent love will perhaps do him more harm than hatred. Intelligent, substantial beneficence is, however, in its richest and most important form the intelligent universal action of the state – an action compared with which the action of a single individual, as an individual, is so insignificant that it is hardly worth talking about. (PS 231.5–10/M 255)

Korsgaard takes Hegel's point that in a world in which there is no one who is poor, the maxim to aid the poor would be impossible to apply, and therefore fails by the logical contradiction test. Hegel, like William Blake and F. H. Bradley, does

sometimes argue that the Kantian duties such as beneficence to the poor or pity of those less well off presuppose a world in which there are indigents and unfortunates. The critique would then be that Kantians really value beneficence and pity so much that they must really want a world in which poverty exists. Without poverty, it would be impossible to fulfill these duties and the CI-procedure would be worthless. Korsgaard then shows that the CI-procedure and the Logical Contradiction Interpretation are not invalidated by this example. She argues that in a world with no poor, the maxim to aid the poor is not self-contradictory because the maxim can still be a rule, but it is a rule “that gives one nothing to do” (Korsgaard 1996, 87).

Hegel’s point here in the *Phenomenology* is somewhat different, however. He is more concerned with the efficacy of the action than its formal outcome when the CI-procedure is applied. The Kantian will find Hegel’s point irrelevant to the issue of universalizability. However, Hegel’s narrative at this stage in the dialectic is also to show the limitations of the individual agent, and to emphasize that ethical requirements apply to the social collectivity as well: to the “We” more so than to the “I” (although the “I” is, of course, among the “We”). In the middle of his discussion of whether there is an individual duty to relieve poverty (PS 231.14–19/M 255), Hegel introduces seemingly from nowhere the point that an individual’s efforts can do little for society as a whole, and that only the state can do much that is genuinely efficacious. This is not as much a leap as it might seem if one did not know about his view of social intentions that come to more than the sum of individual intentions. Whereas Reason sees only I-intentions, Spirit involves what the philosopher Wilfred Sellars called we-intentions, that is, ends that we hold as a collectivity and that do not simply reduce to the individual’s aims and purposes.

The advantage of the Teleological Contradiction Interpretation is that it can accommodate this emphasis on collective willing. The Teleological Contradiction Interpretation is based on the idea of the systematic harmony of human purposes. Take Kant’s example of why suicide is wrong and then imagine someone with a brain tumor or Alzheimer’s disease. In order to preserve his sense of who he is, he kills himself. But this just destroys his selfhood altogether. For the Kantian (and for Kant himself), this action is contradictory. However, Korsgaard recognizes the power of the Hegelian objection here. The Hegelian objection is that there is no reason for the suicide to suppose that self-preservation is a necessary feature of the harmony of human purposes. To accommodate this objection, Korsgaard develops her own view (acknowledging its affinity with arguments developed by Marcus Singer and Onora O’Neill), which is that the contradiction in willing is neither logical nor teleological contradiction, but practical contradiction. Crucial to the Practical Contradiction Interpretation is that the agent’s *purpose* be specified. The practical contradiction is that in acting on the universalized maxim, the agent’s purpose will be frustrated. Korsgaard responds to the Hegelian charge of formalism and emptiness – for instance, when the Hegelian points out that there is no contradiction in a world without promises – as follows:

The proponent of the Logical Contradiction view replies that the contradiction is not merely in a system without such practices as deposits or promises but in an agent engaging in these practices in a system without them. On the Practical Contradiction Interpretation the answer we shall give is still better. The person who tries to will the universalization of this maxim is not only thereby willing a situation in which practices like deposits and promises do not exist. He is also willing that they do exist, precisely because he is willing to *use* them to achieve his ends. (Korsgaard 1996, 95)

On her interpretation, then, the Hegelian reproach is taken into account and resolved in Kant's favor.

Korsgaard also believes that the charge of rigorism is best answered by this interpretation. To the charge that the Kantian duties are too strong and that they presuppose the existence of the social evil (e.g., poverty) in order for there to be a duty towards the afflicted, Korsgaard responds:

One's purpose in succoring the poor is to give them relief. The world of the universalized maxim only contradicts one's will if it thwarts one's purpose. A world without poverty does not contradict this purpose, but rather satisfies it another (better) way, and no contradiction arises. (Korsgaard 1996, 95)

Consider again the case of the thief who is an anarchist and who does not believe in private property. On the Logical Contradiction Interpretation, *everyone* would have to want property to exist. But Hegelians can imagine a world without property. So does that mean that a thief who is an anarchist and who does not believe in private property would be justified in stealing? Note, however, that on the Practical Contradiction Interpretation, when the agent's purpose is included, the analysis would be that the anarchist thief must want property to exist by the very fact that he takes it for himself.

I think that Hegel would feel that none of these three interpretations of contradiction (whether logical, teleological, or practical) fully responds to what he is trying to bring out in his examples. One claim that he surely wants to make is that, stated in their most general form, moral rules would not be action guiding in the way that the moralist thinks. His point about loving others intelligently or about being able to speak the truth only when one knows the truth is to bring out that to guide action, the general principles have to be made more concrete by specifying the qualifications that are assumed in the interpretation of the situation. Students of Hegel could thus raise the following two questions about Korsgaard's defense of Kant.

(i) The first is whether the maxim is really being universalized so that everybody could will it, or whether only those with the specific purpose could will it. The more conditions that are tacked on, the more specific the law becomes. This problem reinforces the argument against Kant that if the universal law formula has some content, that content does not follow from the idea of pure duty (*Moralität*), but from more empirical practices (*Sittlichkeit*) that are tacitly presupposed by the moral point of view.

This logical problem then translates into a problem for Kantian moral psychology. Later in the *Phenomenology* Hegel says: "Since the determinate duty is an

end, it has a content, its content is part of the end, and so morality is not pure” (PS 339.8–10/M 381; see Wood 1990, 168–72). The Hegelian charge is that the Kantian “moral point of view” depends on the possibility of saying that even when duty and inclination coincide, the agent is capable of acting because of duty and not inclination. Furthermore, the agent must be able to distinguish between acting from *pure* duty (e.g., keeping promises) and not from *empirical* duty (e.g., keeping this particular promise). Hegel’s view is that agents cannot abstract their ends in this way, and that performing one’s duty will always involve some empirical motives for acting on a particular duty in a particular case. The Kantian is therefore wrong to believe that agents could act from pure duty alone. Indeed, Kant himself says as much.² Hegel accordingly rejects the Kantian claim that the only question that is morally relevant is whether the action is motivated by pure duty. Hegelians who reject the Kantian moral psychology may even suspect that the question is not intelligible.

(ii) A second question is whether Korsgaard’s rebuttal of the first two Hegelian objections (formalism and rigorism) does not take into account the third objection that I raised earlier, namely, dogmatism. This is the charge that the Kantian account is dogmatic and does not take account of the social background and the interpretive variability of the situation. Jean-Paul Sartre argued, for instance, that the principle of helping others did not tell a young Frenchman during the last world war whether to stay home and care for his ailing mother or to go off and help others by joining the Resistance. Either way of trying to help others would at the same time violate the principle. If he joined the Resistance, his mother would die and if he stayed home to care for his mother, other Resistance fighters would die.

Furthermore, if the situation depends on its description, then changing the description could very well change the situation. If, for instance, the anarchist thief really has no respect for anyone’s property, including his own, he could even say that “stealing” and “thief” are appellations that should not be applied to him. Of course, then he could have no objection to anyone else taking the items that he had just stolen. The situation is thus ironic, but not necessarily contradictory.

Kant’s theory tries to avoid these difficulties by lexically ordering duties so that there can be no conflict of duties because some come before others. However, this only serves to make the theory even more rigoristic. It also makes the theory seem to say that for every moral question, there is only one right answer. In the next section I will explain why Hegel’s ethics of freedom challenges this apparent dogmatism of a morality of duty.

3 *Moralität* and *Sittlichkeit*: Transcendental Argument or Reflective Equilibrium?

One Kant scholar who has spotted and addressed the issue that I am calling dogmatism is Onora O’Neill. In *Constructions of Reason* (1989) she recognizes that

descriptions of situations are matters of interpretation, and that they can vary even to the point of incommensurability. She thus anticipates the philosophical problem that I see behind Hegel's worries about the universality and the concomitant risk of dogmatism on the part of *Moralität*:

But the comprehensibility of alternative descriptions of a situation and of proposed lines of action is an insufficient guarantee of a way by which agreement on one rather than another equally comprehensible set of descriptions is to be the basis for action. If we have no way in which to reason over the formulation of descriptions of situations and (proposals for) action, practical reasoning must remain local. (O'Neill 1989, 180)

By looking into late writings of Kant, including the third *Critique*, she finds a role for moral principles in what Kant calls reflective judgment, and thus her own stance is not local, but cosmopolitan and Kantian. However, she also wants to keep our appraisals of situations "open-ended" (O'Neill 1989, 186). Appraisals include our intuitive grasp of what is at stake in situations and the way that we understand our situation. Appraisals thus involve interpreting the situation a certain way, such that if this interpretation changes, the cultural understanding of what sort of situation it is could change as well. I understand her to be suggesting that reflective judgment must move between principles and appraisals so as to arrive at what Rawls called a "reflective equilibrium." Without conceding anything to relativism, she thinks that even if our appraisals of situations are guided by "considerations of coherence and interpretability to all parties (and indeed to the 'collective reason of mankind')," that will not necessarily generate only one valid way of looking at a situation (O'Neill 1989, 184). Which principles are applied will vary according to how the situation is understood and appraised. As she quips, "Principles without appraisals are empty; appraisals without principles are impotent" (O'Neill 1989, 186).

This non-dogmatic, hermeneutical way of thinking about the relation of principles to situations is helpful to keep in mind as we work through Hegel's analysis of the balancing of reflection and intuition in concrete ethical life. Appraisals involve *Sittlichkeit's* concern with insight into concrete situations as opposed to *Moralität's* interest in abstract principles. Given this way of thinking about the distinction, one wonders why we are faced with an either/or here. What leads to the idea that these two must be opposed? Apparently, it is only due to a certain conception of philosophy, call it the "Kantian" conception. The goal of philosophy on this Kantian conception is to discover transcendental arguments that show that one concept is *derived* from the other. If we gave up doing this kind of foundationalist philosophy, however, then we might be able to see *Moralität* and *Sittlichkeit*, if not as two sides of the same coin, at least as two interrelated features of ethical life. Let me now explore whether we can find support for this way of viewing the two less as competitors, and more as dual aspects of the ethical domain. After discussing this issue, I will conclude with a response to the charge against Hegel that what is empty and dogmatic is not *Moralität* but *Sittlichkeit*.³

(i) First, let us make sure that we understand what Hegel means by each of these terms. The scholarly literature on Hegel includes many excellent expositions of the differences between them. Clearly, there are contrasts between *Sittlichkeit* and *Moralität*. For instance, in *Sittlichkeit* moral obligations flow from the common life that is already there: my obligations arise in this common life and my fulfillment of these obligations sustains this common life. As Charles Taylor says,

The crucial characteristic of *Sittlichkeit* is that it enjoins us to bring about what already is . . . Hence in *Sittlichkeit* there is no gap between what ought to be and what is, between *Sollen* and *Sein*.

With *Moralität* the opposite holds. Here we have an obligation to realize something which does not exist. What ought to be contrasts with what is. And connected with this, the obligation holds of me not in virtue of being part of a larger community life, but as an individual rational will. (Taylor 1975, 376; 1979, 83)

Allen Wood makes the contrast more explicitly in terms of the difference between moral psychology in Kant and Hegel:

["Moral" duties in the Kantian sense] are experienced as external limits on the subject's particular desires, projects, and mode of life. Morality tells me which of my desires it is permissible to satisfy . . . Moral duties, as Kant often emphasizes, are experienced as constraints on the will . . .

Ethical duties, on the other hand, are not constraints on my life; on the contrary, they are the best part of it, "the substance of my own being" (*PR* §148) . . . Ethical duties include my love for my spouse, my parents, and my children, and the self-satisfaction I get from engaging in my profession or vocation (*PR* §207, §255) . . . Morality takes, as our philosophers say, "the moral point of view." The point of view of ethical life, however, is nothing distinct from the concrete individual's total, unified perspective on the world. (Wood 1990, 210)

In contrast to the paradigm of *Moralität*, which is the stoical Kantian, the paradigm case of *Sittlichkeit* is the ancient Athenian, who acts "as it were, out of instinct" and for whom ethical action is "second nature" (*MM* 12: 57/Hegel 1963, 41; cited by Taylor 1979, 89). If reflection is essential to *Moralität* insofar as action done without reflection on dutifulness has no moral worth, reflection is *problematic* for *Sittlichkeit*. Historically, a breakdown in *Sittlichkeit* can be tied to heightened inward reflection that leads to alienation from the immediacy of *Sittlichkeit*. Hegel thinks that we witness this alienation both in Antigone (discussed in more detail in the next essay in this volume) and in Socrates. Socrates reflects on *Sittlichkeit*, but this is possible only because *Sittlichkeit* is already breaking down. Socrates' need to reflect is itself a sign of this breakdown. The reflective questioning of *Sittlichkeit* may contribute to the destruction of *Sittlichkeit*, but this is not to be taken as a victory of individual reason, since the destruction of *Sittlichkeit* leads in turn to the unfortunate deaths of both Antigone and Socrates.⁴

Historically the destruction of Athenian *Sittlichkeit* leads to the Roman state, which Hegel sees as a mere aggregate of atomistic individuals with no real com-

munity and with laws that are only dead vestiges of a once-living ethos. Eventually the *Sittlichkeit* that no longer existed in this world had to be projected beyond this world to another one. Kantian *Moralität* is a late variant of this process. On the one hand, it identifies the moral capacity with the rational capacity of each individual being. On the other hand, it makes moral worth less a function of how individuals relate to the world and to the consequences of actions, and more a function of how individuals relate both to their own inner wills and to the good will that is ultimately noumenal or other-worldly.

Hegel uses the word *Moralität* not as a general term, like the English word “morality,” but specifically for the way of life that follows from trying to live according to the Kantian theory of morality. That is to say, Hegel does not object entirely to the deontological program. Instead, in the *Phenomenology* he sees *Moralität* as a particular “shape of consciousness,” that is, as a historical and cultural phenomenon to be explained dialectically as evolving from Reason into Spirit. The philosophical explanation would suggest why *Moralität* had come about and therefore what its advantages and achievements were given the previous history of thought. But Hegel also sees Kantian *Moralität* as a response to the particular historical circumstances of modernity. So *Moralität* is a phenomenon or a practice that is not to be simply dismissed. However, the explanation can lead to seeing the limitations of the moral point of view, limitations that may not be perceived from within the point of view.

Consider, for instance, what happens in this dialectical explanation of the central Kantian idea of autonomy. Hegel is targeting Kant’s conception of the rational individual who aspires to actions that are based not simply on personal maxims, but on *laws* that anyone and everyone should *give to themselves*. Insofar as everyone could act on the principle that the particular individual is about to act on, the individual thereby demonstrates autonomy. On the Kantian theory, the autonomy that is a feature of the noumenal will is not something that one could not have. We may not always live up to the autonomy of the will, but even falling short of it requires us to have autonomy. Kant’s conception of autonomy is what makes his moral theory individualistic. So when Kant answers the question, “where do substantive moral laws come from?” his answer is: from the autonomous individual. The autonomous individual gives the law to him- or herself in the sense that the individual determines whether everyone could follow the particular law. This is the kernel of the Kantian stance that Hegel labels “*Moralität*.”

When Hegel asks the same question, he suggests that the Kantian has not understood the problem. For Hegel, moral intuitions are acquired through one’s upbringing and acculturation, or what he calls *Sittlichkeit*. If the origin of moral principles is in *Sittlichkeit*, does that mean that there is no such thing as autonomy? Not necessarily, for autonomy need not be construed as a metaphysical feature of the individual will, but as a social achievement. That is to say, the society that makes it possible for individuals to be autonomous agents is to be preferred to the society that works against autonomous action. Hegel thus turns the tables on the Kantian in a dialectical reversal whereby individual autonomy is not possible without the requisite social conditions that enable and foster one’s freedom of action.

The Hegelian's dialectical reversal may look to the Kantian less like an explanation and more like a dismissal, a misleading characterization, or, as I shall discuss shortly, an irrelevant shift from philosophy to sociology. The moral point of view claims to apply to any social state of affairs, and thus to transcend the particularity of social contingencies. That is, it claims universality for itself, and priority over any other point of view (such as the social, the historical, or the political) that might conflict with it. Morality from within itself claims not to be simply "a point of view," and for Hegel to treat it as one among others is already to reject its own sense of its necessity. It is precisely this sense of necessity, not the historical phenomenon of *Moralität* itself, that Hegel is challenging. This sense of its own necessity and universality is the internal false consciousness of the moralistic outlook of someone like Socrates who sees himself as independent of his social situation.

However, in pointing out the dangers of *Moralität*, Hegel is not denying the phenomenon. The danger is that moral principles are abstract, and they are the result of extensive meta-theoretical reflection. Hegel maintains that reflection taken to the degree of Socratic or Kantian (or utilitarian) theory can destroy the concrete moral sense of what is right. Such a result might follow, for instance, from the standard use of the Socratic method in the undergraduate philosophy classroom, which students often perceive as the professor constantly asking questions and never giving any answers. That practice could give students a sense that current ethical theories, like Kantian and utilitarian ones, never lead to a satisfactory moral resolution of a problem.

These contrasts between the moral and the ethical still do not explain why there needs to be a further (transcendental) question about which comes first. This frequently asked question suggests that Hegel is overly influenced by Kantian transcendental philosophy, despite his own abhorrence of the term. Hegel's way of expressing his dialectical critique of the Kantian account of moral practice is to contrast Kantian *Moralität* with its focus on principles and their justification, to concrete ethical practice, or *Sittlichkeit*. *Moralität* also draws this contrast, and asserts itself as "superseding" *Sittlichkeit*. That is, morality claims necessity and universality for itself, and thus to be more than the customs or *Sitten* of particular societies. Hegel's strategy is to reverse *Moralität*'s own story, suggesting ironically that *Moralität* is really *aufgehoben* or superseded by *Sittlichkeit*.

Although commentators often speak as if *Sittlichkeit* and *Moralität* were opposed to each other, the concepts may be responding to different issues and therefore may not necessarily be oppositional. Each of the two terms can be explaining different aspects of practical reason and need not require an either/or. *Sittlichkeit* is the answer to the question about the social glue that binds people together. Often pre-reflective and particular, *Sittlichkeit* involves social skills or what Aristotle called practical wisdom (*phronesis*). *Moralität* enters the picture when these skills are made the object of a reflective judgment that asks for the principles that legitimate actions. Hegel need not be rejecting Kantian *Moralität* altogether, then, but rather he is situating it differently than Kant does. Instead of grounding moral principles in a noumenal will, as Kant does, Hegel focuses on the social origins of moral

activity. Considering two further examples (not from Hegel himself) will show the value of the distinction independently of the transcendental derivation argument.

(ii) The danger of an account based on custom and convention, no matter how longstanding, is that it appears to reduce morality to sociology. This reduction raises difficult questions. If the moral grows out of the social, how is one going to be able to criticize existent values? "In the name of what," it will be asked, "can one go against existing values?" Alan Donagan problematizes Hegel effectively when he reverses Hegel's critique by asking whether it is not *Sittlichkeit* rather than *Moralität* that is empty. Donagan believes that simply looking at the concrete situation cannot be the basis of a moral choice. Donagan cites the specific case of an Austrian farmer, Franz Jägerstätter, who was beheaded in 1943 for refusing induction into the German army because of his belief that the war was unjust. Donagan equates Hegel's position with that of Jägerstätter's bishop, who even after the war criticized Jägerstätter and praised instead the "heroes" of the Wehrmacht. Donagan writes:

Hegel disparaged the point of view of morality on the ground that, being abstractly rational, it could find content for its judgments only in the mores of some actual community. The case of Jägerstätter reveals an opposite process. The moral of Catholic Christianity furnished specific precepts on the subject of legitimate war service . . . But, by recourse to the mores of their actual community, Jägerstätter's spiritual advisers were able to evaporate the precepts whose applicability to his case they could not dispute. For, according to those mores, apart from such fanciful possibilities as a war with the declared intention of destroying the Church as an institution, no individual citizen was deemed capable of assuring himself that any war his country proposed to wage was unjust. Here, what is exposed as empty, as lacking specific content, as allowing any filling whatever, is not *Moralität* but *Sittlichkeit*. (Donagan 1977, 17)

This response is indeed a provocative challenge to Hegel. However, the Hegelian can argue in return that it misconstrues the force of Hegel's turn to the social as the source of concrete practices. As Onora O'Neill pointed out above, the turn to the social need not relativize moral principles. So Hegel need not abandon the universal principles of morality when he rejects Kant's notion of a noumenal will that is outside space and time. Instead, Hegel's emphasis on the social serves to open the door to a different moral psychology than the Kantian one, that is, to a strictly phenomenal (historical and psychological) account of ethical behavior.

For Hegel to make his historical, sociological contextualization of morality stick, he does not need to offer a competing "moral theory," at least not in the same sense of "theory." That is, his criticisms are intended to show the limitations of the Kantian approach to moral experience that turns it into a deduction of principles. Hegel's strategy is not to offer an alternative set of principles, and, more importantly, it is not to offer an alternative "grounding" of these principles in one meta-principle like the categorical imperative or the utility principle. In our more contemporary parlance, I am suggesting that Hegel is not offering an alternative

“foundational” account to Kant’s (like the utility principle). Instead, he is claiming that the attempt to “ground” or justify our ethical practices in something that transcends our contingent self-interpretation is misguided. The “foundational” approach to moral philosophy gives an overly abstract account of ethical practice and moral psychology. It is also misguided in its desire for a meta-principle or a meta-point of view that transcends any and every other point of view.

In contrast, Hegel seems methodologically less like a foundationalist “theorist” and more like what is now called a holistic “anti-theorist.”⁵ Hegel’s approach to *Sittlichkeit* is not to deduce all social and moral relations from a single principle (although these relations are said to flow from human freedom), but to construct an account in which our various practices hang together. The phrase “hang together” should not imply that these practices never conflict with one another, but only that for the most part they are integrated with one another. The Hegelian account is of course theoretical in the sense that it articulates the coherence between practices (and criticizes any incoherency in them), but it does not specify a single universal test or procedure for correct moral conduct in the way that rationalistic moral theory projects.

So understood, Hegel need not even give up the idea of moral rules. All that he needs to say is that moral rules do not flow from a noumenal or a purely rational and necessary ground, but from historically contingent practices. Rules are determined by reflecting on practices, but through critical assessment reflection can serve not only to reinforce practice but also to undermine it.

I offer a final example to gather together various intuitions about the relation of the two aspects of the ethical life and to challenge Donagan’s charge that it is *Sittlichkeit* that is empty, not *Moralität*. The example is the famous case of Heinz’s dilemma that was debated extensively by Kohlberg and Gilligan. The question is whether an impoverished Heinz can steal a drug that the cruel pharmacist will not give him to save the life of Heinz’s wife. In an addition to §127 of the *Philosophy of Right*, where Hegel is concerned to show the limitations of “abstract right,” Hegel maintains explicitly that pure duty or formal right (e.g., property rights) can be abrogated by concrete circumstances:

Life, as the totality of ends, has a right in opposition to abstract right. If, for instance, it can be preserved by stealing a loaf, this certainly constitutes an infringement of someone’s property, but it would be wrong to regard such an action as a common theft. If someone whose life is in danger were not allowed to take measures to save himself, he would be destined to forfeit all his rights; and since he would be deprived of life, his entire freedom would be negated . . . The *beneficium competentiae* is of relevance here, because links of kinship and other close relationships entail the right to demand that no one should be sacrificed completely for the sake of right. (PR §127Z)

In contrast to the Kantian insistence on following the rule against theft, Hegel thus affirms that Heinz has ethical reason to steal the drug to save his wife’s life. I know that this example will be controversial, but it strikes me as being a case where the *phronesis* of concrete ethical life trumps abstract right. Hegel’s concep-

tion of ethical life shows itself here to have action-guiding value without being formalistic, rigoristic, or dogmatic.

4 Conclusion: The Transition from Reason to Spirit

Whatever one thinks about these examples, Hegel's larger point should not be lost from sight. Kant raised the question, "why be moral?" Kant's answer depends on metaphysical views about not only the existence of God and the immortality of the soul, but also of a will that mysteriously guides action from a standpoint outside of space and time. If these theological beliefs are less than compelling in our own secular time, then Hegel's answer is an alternative that is still available today. His answer depends on seeing that morality is not just a matter for individuals to decide in isolation, but that it is embedded in a collective sense of what is right and wrong. For Hegel the "I" of individual Reason must expand into the social "We" of Spirit. Normative activity is not sufficiently accounted for by an individual morality of duty alone, but it also requires what I have called an ethics of freedom. This broader ethical framework would recognize the role of actual social institutions in determining individual duties. Given the particular historical circumstances, it would also envision the integration of individual wills with their inherent autonomy in the collective drive to maximize freedom.⁶

To understand the transition from Reason to Spirit one must realize that as the *Phenomenology* progresses, natural consciousness changes from the attempt of an individual to look inside consciousness to discover the principles for normative action. In the section on Reason, natural consciousness is at the stage of seeing itself in all others. In contrast, in the standpoint of Spirit the regard turns initially outward towards the world and others. Hegel thus turns away from the individual's decision procedure and focuses more on the actual moral claim itself. At the very end of the section on law-testing, then, he emphasizes the ethical substance more than the moral subject. As the ethical claim becomes the topic, he has to address the question of how there can be ethically compelling obligations, or in his terminology, "absolutes." That these obligations are built into individuals through the culture is to be shown in the next chapter by the analysis of Antigone and ancient Greece. That chapter then ends once again by an analysis of Kantian morality, which is accused of hypocrisy. Hypocrisy is a contradictory duplicity not just in a normative sense, but also in a metaphysical sense insofar as it posits another world as the real world and this world as merely apparent. That chapter moves from the Greeks' sense of themselves as bound to ethical absolutes to the Roman state where legal "persons" are reduced to being the bearers of abstract rights. If abstract moral principles represent a dry and thinned-out conceptualization of the individual agent who is faced with the decision about what to do, abstract legal rights are the dried-up residues of the social glue that holds a culture together. Hegel is often construed as the most conceptual of philosophers. At this point in the text, however, conceptualization is seen as dry abstraction in contrast to the richness of concrete ethical experience. How long the richness of immediate

Spirit will last, and how soon it will degenerate into an impoverished over-conceptualization of normative obligation is for the remaining essays in this volume to explain. The dialectic moves on, and the sections on law-giving and law-testing are not the last instances of Hegel's use of Kant as a stepping-stone to his own system.

Notes

- 1 Translations of the *Phenomenology of Spirit* by A. V. Miller have been revised without further notice.
- 2 *CPrR* 5:25, cf. *Rel.* 6:7 note, 36; *CJ* 5:450, cf. *CPrR* 5:32, 122–5. (My thanks to Ken Westphal for these references.)
- 3 Kantian morality as a shape of consciousness comes up again later in the *Phenomenology* and is a topic for chapter 10 of this volume. My task in this essay is to consider morality only as rule-following behavior, not as postulating the existence of God, an immortal soul, or a free will.
- 4 Cf. chapter 6 on the importance of the historical breakdown of social norms for understanding normativity. – *Ed.*
- 5 For the opposition between rationalistic “theory” and holistic “anti-theory,” see the editors’ introduction to Clarke and Simpson (1989, 10–12).
- 6 For a nuanced account of Hegel’s emphasis on the importance of social institutions in determining duties, see Westphal (2005).

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