

A Reconstruction of Hegel's Theory of Civil Society

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The Hegel of the *Philosophy of Right* is the representative theorist of civil society. This is the case because of the synthetic character of his work and even more because he was both first and most successful in unfolding the concept of civil society as a theory of a highly differentiated and complex social order.

Running through Hegel's work, however, is a contradiction between systematic philosophy and social theory, expressed politically as the antinomy of étatistic and anti-étatistic positions to be found in the doctrines of both civil society and the state.¹

Hegel's social theory presents modern society both as a world of alienation, and as an open-ended search for social integration. His philosophical system on the other hand announces that this quest has ended in the modern state, though it is never entirely clear *whether* he meant a possible and desirable state, or a not yet existent but necessary state or an already existing actual state. But even in the weakest version of this argument where the possible and desirable form of the state is identified with a modernizing and constitutional version of a bureaucratic monarchy, the étatistic implications of Hegel's system building becomes inevitable. Nevertheless, at the same time, Hegel's recurring arguments against monarchical absolutism and revolutionary republicanism revive an anti-étatistic stress on intermediary bodies limiting bureaucratic sovereignty and providing a locus for public freedom. This trend in his thought is compatible only with the repeated, implicit, but nowhere systematized, denial that the search for social integration can end in institutions like "our modern states" that can provide citizens only with "a limited part in the business of the state."²

The contradiction runs through Hegel's analysis of civil society and, in particular, in the form of two interrelated questions to be pur-

sued below: First, is *Sittlichkeit* or ethical life only possible as inherited and unquestioned *ethos* to which individual subjects must conform to be consistent with their very identity, or is it possible to think of ethical life in a truly modern form which permits and even requires both its own questioning and criticism as well as a plurality of normatively valued forms of life? Second, is civil society to be conceived as *Sittlichkeit* or *Antisittlichkeit* or as a dynamic combination of "moments"?

The two questions are of course deeply related and may indeed be ultimately the same. To answer them we must begin with some of the basic categories of the *Rechtsphilosophie*. As is well known, Hegel differentiated objective spirit [*objektiver Geist*], rationally reconstructed intersubjective structures of meaning ("spirit") embodied in institutions ("objective"), into three dimensions: abstract right, morality, and *Sittlichkeit* (ethical life). The differentiation among them is not so much that of content (though each successive level gets progressively richer than the prior one) but among three levels of moral argumentation. Abstract right represents a form of argument based on dogmatically assumed first principles exemplified in natural rights theories. Morality, a level clearly referring to the Kantian ethics, represents the self-reflection of the solitary moral subject as the proposed foundation for a universalistic practical argumentation. Finally, *Sittlichkeit* represents a form of practical reason that is to raise through self-reflection the normative content and logic of inherited institutions and traditions to a universal level. Only *Sittlichkeit* allows the exploration of normative questions (including "rights" and "morality") through the framework of concrete historically emergent institutions and practices that represent, at least in Hegel's view of the modern world, the institutionalization or actualization of freedom (§§ 4, 142). Ethical life is itself differentiated in a way (entirely unique to Hegel) that combines the two dualities of *oikos/polis* and state/society in the three part framework of family, civil society, and state. Civil society (*bürgerliche Gesellschaft*) is defined in various ways, but most revealingly as ethical life or substance "in its bifurcation (*Entzweiung*) and appearance (*Erscheinung*)" (§ 33).

This definition of civil society can only be understood through a more thorough examination of the notion of *Sittlichkeit*. Charles Taylor is surely on solid foundations in at least one dimension of Hegel's text when he interprets the content of this notion as "the norms . . . of a society . . . sustained by our action, and yet as already there."³ According to Taylor, "in *Sittlichkeit* there is no gap between what ought to be and what is, between *Sollen* and *Sein*."⁴ Hegel's overall scheme indeed repeatedly stresses the total identity of the rational will of the

subject with that of laws and institutions (§§ 147, 151, 155), making any clash between particular and universal will, subject and object, and right and duty impossible or at least irrational.⁵

Taylor is less on solid ground, however, when he interprets *Moralität* and *Sittlichkeit* merely in the form of opposition. Modern ethical life, as Hegel unfolds it, is distinguished from all ancient *ethos* because it contains the other two ethical dimensions, rights and universalistic morality, on a higher, institutionalized level. Indeed, institutional space is created for private morality which according to Hegel should not become "matter for positive legislation" (§ 213).

To be sure Taylor reaches only the main strand of Hegel's conception, but not the antinomic whole. Hegel's own definition of *Sittlichkeit* involves a greater stress on its production and reproduction through self-conscious action (§ 142). Yet it remains questionable whether the bases of such action are found in *Sittlichkeit* alone or also in *Moralität*, or at least, for the modern world, in a form of ethical life that has incorporated morality, along with the tension between is and ought. When we say that *Sittlichkeit*, as the norms of a society's public life, is already there, Hegel's authority only takes us so far as to register the institutional existence of the norms in question, possibly in forms of discourse only or also as legitimations and ideologies. Their often "contra-factual" character is noted by Hegel himself in the case of the principles and practice of positive law. Unfortunately, Hegel did not discover that modern society is characterized not only by the conflict of moralities (which he at times seemed to note) but also by the conflict of the normative conceptions of politics itself. Thus, he did not see that a new form of *Sittlichkeit* could be established containing a plurality of forms of life, making consensus possible only on the level of procedures, though such consensus can lead to some shared substantive premises and even a common identity. At the same time, he certainly did admit the possibility of conflict between the institutionalized norm, the actual basis of moral opposition, and the practice of institutions. It is for this reason above all that his thought and the social world he describes is open to immanent critique.

Civil society is the framework par excellence where the tension between is and ought occurs because of the internal division of this institutional sphere. But, as we shall see, this division hardly disappears in Hegel's theory—even in the state sphere which is supposed to be that of reconciliation of all antinomies. Hegel periodically implies that no actually existing state should be stylized as already rational. Nevertheless, the ethical (*sittliche*) substance defined by Hegel in terms of the identity of rational self-reflection and actualized institutions is

revealed by Hegel to be as the "*wirkliche Geist einer Familie und eines Volks*" (the actual mind of a family and a nation) (§ 156). The absence of civil society, and the presence of state only as people, are the notable features of this definition of *Sittlichkeit*. Consistently enough in the next paragraph (§ 157), civil society reappears but only as an "abstract" and "external" version of *Sittlichkeit*. Again, in the section on the transition between the family and civil society (§ 181), Hegel speaks of the "disappearance of ethical life" and its reemergence only as a "world of ethical appearance." He goes on to speak of civil society "as a system of ethical life lost in its extremes." (§ 184) (my translation).

Civil society is, thus, a level of *Sittlichkeit* where the oppositions of is and ought, subject and object, right and duty, and even rational and actual would all reappear. But it would not be difficult to argue in this context that this level of *Sittlichkeit* is its veritable antithesis, a *Gegen- or Antisittlichkeit*.⁶ Indeed, much of Hegel's discussion of civil society emphasizes the disintegration of the supposedly natural form of ethical life, represented by the family in a world of egotism and alienation. Nevertheless, when he speaks of the ethical roots of the state, he speaks of the family and the corporation, the latter "planted in civil society" (§ 255). Here is the real sense of seeking of civil society as the "bifurcation of ethical life," as both *Sittlichkeit* and *Antisittlichkeit*, where the unity of substantial ethical life, according to Hegel's final judgment on civil society, is attained only in appearance.

Hegel's unfolding of the categories of civil society from the system of needs and the system of laws to the police (general authority) and corporations, and even beyond to the estate assembly and public opinion, depicts modern society as a veritable dialectic of *Sittlichkeit* and *Antisittlichkeit*. Only the illusions of system building put an end to this movement in the highly inconsistent depiction of the state as fully realized but no longer naturally given ethical life.

We should stop to consider the great importance of a two-sided understanding of Hegel's concept of civil society. If it was interpreted only as alienation, social integration would have to be conceived exclusively on the levels of family and state. In relation to civil society, then, the prescriptive or critical dimensions of the theory would come to the fore, but a transcendent version of critique⁷ would have to take either the form of romantic communalism with face-to-face relations as its telos, or that of étatism whose self-legitimation could take various republican or nationalist forms. If, however, civil society were interpreted exclusively in terms of the forms of social integration that emerge here, the descriptive and tendentially conformist elements of the theory would come forward, and the negative aspects of bourgeois civil society

that Hegel was one of the first to thematize would be lost from view. The richness and power of Hegel's social theory lie precisely in his avoiding both a transcendent critique of *civil* society and an apology for *bourgeois* society.

Many interpreters of Hegel see the integration of modern society as a series of mediations between civil society and state. Yet, by phrasing the issue this way, the interpreters become hostage to the étatist dimension in Hegel's thought. Not to accept from the outset that the only important line of thought in Hegel assumes the state as the highest, most complete and universalistic level of social integration allows the issue of mediation to be put differently. On a more abstract level mediation is, as should be clear already, between *Antisittlichkeit* and *Sittlichkeit*. On a more concrete level, however, it involves the distance between *private* and *public*, if we understand the former as the vanishing point at which the social integration of the family is dissolved before the ones characteristic of civil society begin. Thus it is my thesis that the mediation of *Antisittlichkeit* and *Sittlichkeit* culminates in a notion of public life that is only inconsistently identified by Hegel with state authority.⁸ After Marx's early critique of Hegel's philosophy of the state, little would have been left of this identification, except for the small detail of the role of étatism in the critiques of the capitalist market economy in the next century and a half,⁹ including Marx's own followers. In Hegel's and Marx's work, however, the étatistic trend is in a powerful tension with anti-étatistic options.

As any reader of Hobbes should immediately know, the road to étatism is prepared by the identification of society outside the state with egotistic competition and conflict. If the concrete person is first defined as "a totality of needs and a mixture of natural necessity and arbitrary will (*Willkür*)," we must ascribe this to Hegel's starting point, the system of needs as the first level of civil society. As the argument proceeds through the next levels, "the administration of law" and "general authority and corporation," the concrete person reappears but under new headings: legal person, client of general authority, and association member.¹⁰ Further, it is only on the level of the system of needs, the description of which Hegel derives from political economy,¹¹ that a radical depiction of civil society as *Antisittlichkeit* is consistently upheld. For example, when Hegel defines civil society as a system of *Sittlichkeit* "split into its extremes and lost," (§ 184) he has in mind a condition where egoistic individualism—one extreme—is integrated by an abstract generality entirely foreign to the will of individuals—the other extreme. Civil society, therefore, involves the creation of a new type of market economy that integrates the "arbitrary wills" of

self-interested economic subjects by an objective and "external" process that achieves a universal result unintended and unanticipated by the participants (§§ 187, 199).

In many respects, Hegel's model of integration on the level of the system of needs is similar to Adam Smith's description of the self-regulating market as an invisible hand linking egotism and public welfare. Nevertheless, Hegel's arguments are less economic than sociological. He sees three levels of integration in this context: needs, work, and "estates." Moreover, more than any political economist he understood that social integration must occur outside the system of needs for the market economy itself to be able to function. But unlike early modern political philosophers in the natural law tradition, this level of integration is confined by him neither to the exercise of sovereign power nor to the sphere of the state. In fact, it was conscious opposition to these theoretical traditions that he developed a theory of social integration that constituted one of the founding acts of modern sociology, or at least of the paradigm developed by Durkheim, Parsons, and Habermas among others.

Leaving aside for the moment Hegel's systematics, his theory of social integration moves through the following steps: (1) legal framework (*Rechtspflege*), (2) general authority (*Polizei*), (3) corporation, (4) the (bureaucratic) executive, (5) the estate assembly or legislature, and (6) public opinion. While the first three of these are developed as parts of the theory of civil society, and the second three belong to the theory of the state or rather constitutional law, the line of argumentation turns out to be essentially continuous and dualistic.¹² Indeed, two lines of argumentation can be differentiated, even if Hegel's movement back and forth between them is so constructed as to avoid the appearance of such differentiation. It is this double argument concerning social integration that I would like to concentrate on.

As has been shown, the system of needs in Hegel's theory is itself integrated, but in an "external" (outside of will and consciousness), incomplete (less than fully universalistic), and self-contradictory manner. Integration beyond the system of needs operates according to two different logics: the logic of state intervention into society, and the logic of the generation of societal solidarity, collective identity, and public will. Throughout most of the text, the unfolding of the two logics can be clearly differentiated; the series universal estate, police crown, and executive expresses the line of state interventionism while the series estates, corporation, estate assembly, and public opinion follows that of the autonomous generation of solidarity and identity. Only in the "administration of law" is it difficult to separate the two

lines of argument. This level represents, in Hegel's exposition, the possibility of the universally, or at least generally, valid resolution of the clash of particulars in civil society. The overcoming of *Gegensätzlichkeit*, as the division of particular and universal, begins here, but in a form that is capable of generating only a limited collective identity. The legal person identifies with the collective only in the form of abstract obligations. To begin with, Hegel not only recognizes the modern, noneconomic presuppositions of economy in the law of property and contract (§§ 213, 218), but also sees that their implications go far beyond the economy. In particular, the corresponding publication of the legal code, and even more the publicity of legal proceedings, are changes of universal significance and validity that make possible the emergence of a universalistic sense of justice (§§ 215–16, 224).

This argument becomes fully intelligible in the context of Hegel's understanding of the concept of the public (*Öffentlichkeit*) that goes beyond the Roman law dichotomy of public and private. On the one side, Hegel sees a functional relation between modern law and the system of needs, each necessary for the emergence and reproduction of the other. On the other side, he equally insists that the relation between modern law and the system of needs is more than merely functional because it provides for institutionalization of subjective right and objective law which protects the freedom and dignity of individual subjects in a way that can be mutually recognized (§ 217) not by isolated individuals, but by private persons brought together in a public process. To Hegel the achievement of the institutionalization of right as law requires both state action (he strongly prefers statutory codification to precedent-based adjudication) (§ 211), and autonomous cultural processes. Thus, Hegel is neither a legal positivist, a natural law theorist, nor even an historicist. According to him, universal rights having more than just an historically restricted validity do emerge in cultural development and can receive universal recognition only through a process of education (*Bildung*) that has become possible in civil society (§ 209).

Universal rights do not, however, attain objective existence without being posited as law (*gesetzt als Gesetz*) which involves legislation, codification, and administration by public authority (*öffentliche Macht*). Without autonomous cultural processes of right creation, rights cannot acquire their validity and recognition. But without the various necessary acts of the state and its organs neither true determinacy nor systematicity are possible (§§ 211, 216). Only the combination of the two yields obligatory force. Hegel wisely recognizes the possible discrepancy between the two moments,¹³ cultural and politi-

cal, "between the content of the law and the principle of rightness" (§ 212). Yet, within the analysis of law, he can offer only some formal and procedural requirements that should not be violated by legislators and judges, in particular the requirement of publicity and the formal generality of law. Presumably he expects the achievement of a closer fit between the principle of right and positive law regarding substantive legal rules through inputs into law creation via the other institutional mediations of his theory, from the corporation to public opinion.

The complementarity achieved between societal and étatist strategies of social integration cannot be maintained by Hegel beyond his analysis of the administration of law. From this point in his argument on,¹⁴ the two types of strategies become identified with differentiated institutional complexes. The étatist trend in Hegel's thought, anticipating Marx and especially Marxism, is clearly connected to the notion of civil society as *Gegensittlichkeit*, and is rooted in the analysis of the system of needs. The pathological consequences of the system of needs, which include extremes of wealth and poverty, want and luxury, as well as the severe threat to both humanity and the very existence of the class of direct labor, call for measures which allow Hegel to anticipate features of the modern welfare state.¹⁵ In particular, it is the bureaucracy of the modern state (that is, the universal class, the class of civil servants) that is called on to deal with the dysfunctional consequences of the system of needs in two forms.

There is no need to repeat here Marx's brilliant 1843 critique of the pretensions of Hegel's view of the universal estate, pointing out its rather particular interests and status consciousness. Hegel managed to delude himself on this score partly because of the étatist strain in his thought, and partly because he did not see any reason to consider the social antagonism implied by the existence of the "class of direct labor." Not capable of intraclass integration, workers in this view do not seem to be capable of interclass conflict. The dysfunctional consequence of the plight of this class is seen in the existence of an anomic mass, the *Pöbel* whose integration calls for measures that aim at individuals (that is, clients) rather than integrated groups. But with the poorest strata removed from the field of analysis, the idea of the representation of a general interest by the bureaucracy needs to be reconciled only with the interests of the possessing classes.¹⁶

Hegel's discussion of the civil servants takes place in two sections of his analysis: the system of needs of civil society and the executive of the state. This is of course a wise decision since the bureaucracy is both a social stratum and a state institution.¹⁷ But what Hegel's theoretical

decision initially disguises is that this estate is different from the others he discusses in two respects. First, it is constituted by the state and not the societal division of labor. Second, in the state, the bureaucracy finds its institutional place in the executive, rather than in the estate assembly. Thus in this context Hegel's argument concerning the fortunate double meaning of the German term *Stände* (§ 303), referring both to social orders and to a deliberative assembly, does not apply. By calling the bureaucracy a *Stände*, Hegel misses the opportunity to discover the second, specifically modern form of stratification whose constitutive principle is political power, and even more important disguises the étatist principle of the form of social integration under consideration.

The way the bureaucracy is to accomplish the integration of antagonistic estates reveals at least some of the consequences. The executive of the state, the political bureaucracy, has the role of "subsuming the particular under the universal," and of executing the laws. Hegel accepts, as we will see in more detail below, the parliamentary assumption that an estate assembly is capable of generating a public and general will. But he believes that in civil society all the particularisms will reappear, and that therefore outside the state sphere proper the bureaucracy must perforce be the executor of universality. The fact, however, that he feels compelled to admit that the authority of local communities (*Gemeinden*) and corporations is needed as a "barrier against the intrusion of subjective caprice into the power entrusted to a civil servant" (§ 295) shows that Hegel is aware that reality can be quite different from his idealized depiction. The presentation of the bureaucracy as an estate of civil society is thus not only a way of disguising the actual level of state intervention advocated, but also is a way of deflecting the responsibility for dysfunctional or even authoritarian intervention from the state to a social group and to the subjective caprice of its members.

Second, the model of integration through state intervention is further developed in the theory of general authority or police (*allgemeine Macht* or *Polizei*). The modern term police does not indicate Hegel's meaning, because in accordance with earlier absolutist usage the term police means more here than the prevention of crime, tort, and the maintenance of public order. But unfortunately Hegel uses the term general authority in senses not covered by the section on the *Polizei*. Thus it may be best to list the actual uses of this concept by Hegel: (1) surveillance (linked to crime and tort) (§ 234); (2) intervention in the economy in the form of price controls and regulation of major indus-

trial branches (§ 236); (3) public welfare in the form of education (§ 239), charity (id.), public works (§ 245), and founding of colonies (§ 248).

The idea behind Hegel's linking these apparently diverse areas is quite coherent. The police is the state penetrating into civil society to serve the interests of justice and order. As a result the centrifugal and anomic consequences of conflict are diminished but not entirely done away with. Crime for example, does not disappear because of "crime prevention" and the punishment of criminals, but is kept within tolerable limits. Conflict and alienation are not abolished by provisions for social welfare and public education, but the decline of the class of labor to the status of the *Pöbel* (unorganized mass or rabble) can be prevented. In all these cases, and also in the case of price and production controls, the goal Hegel espouses is compensation for the dysfunctional side effects of the new type of market economy.

Nevertheless, Hegel does not claim that, on this level at least, the state produces a thoroughgoing unification of society and the attainment of universality in what amounts to merely a form of "external" imposition and control (§ 249) (my translation). In civil society we encounter the state only in the form of externality, and the metaphor of civil society as "universal family" is entirely misplaced in the theory of the police or general authority. This metaphor belongs instead to the second strand of Hegel's conception of social integration, the socialist strand. This strand runs from the family to the corporation and eventually to the estate assembly and public opinion. Since Hegel considers, incorrectly, the integrating role of the family to be null and void in civil society (e.g., § 238), the corporation is the starting point of the self-integration of civil society.

The function of a corporation, according to Hegel's theory, is primarily socialization and education. The business association in particular is to combine vocational training with training for citizenship. Thus all corporate life, by educating individuals to internalize the common good, helps to overcome the gap between bourgeois and citizen produced by civil society. In the process, solidarities are expected to develop that would affect the very motivation structure of individuals, substituting collective concerns and identifications for egoistic ones. In this context Hegel's problem as he well knew was the same as Rousseau's, namely how to move from the particular to the general, given modern individuality. But his answer is significantly different, because Hegel believes neither that the reality of the modern large scale state could or should be imagined away, nor, consequently, that individuals,

entirely egotistical in private life, can attain the general in the political sphere. In his view, generality can be attained only through a series of steps that incorporate something of the public spirit in what is juridically the private sphere.

While the corporation represents a crucial step in the development of the strand of Hegel's thought stressing the self-integration of society, the antinomy of his political position is nevertheless visible in it. Like Montesquieu before him and de Tocqueville after him, Hegel sought an intermediate level of power between individual and state; he feared the powerlessness of atomized subjects and sought to control the potential arbitrariness of the state bureaucracy (§ 295). But on the other hand, in line with his doctrine of the state, he wants to defend a model of socialization that will make the transition to a state-centered patriotism plausible. In this context Hegel's aim is to provide a smooth transition based in everyday life from the *Geist* of the corporation, as the schoolhouse of patriotism, to the *Geist* of the state where patriotism is to achieve its full "universality" (§ 289). Much depends on whether the conception of the state implied here is based on public, parliamentary generation of identity, or bureaucratic-monarchical imposition of unity. But since, as it will be shown, the antinomy is not resolved on the level of the state, the role of the corporation in political education also becomes ambiguous. This in turn affects the conception of the relation of the corporation and the general authority. As Heiman shows, Hegel never could decide between a medievalist doctrine involving corporate independence and legal personality and a Roman law conception stressing state control and oversight.¹⁸

Whatever the ambiguities of Hegel's corporate doctrine, the different center of gravity here when compared to the concept of the police cannot be overlooked. Both police and corporation are at times identified as the individual's second family. Some of the same functions are assigned to each, for example, education. Further, the different normative justifications produced for each are equally convincing. The corporation is a second family small enough and determinate enough in its purpose to allow genuine participation by its members. These include only a part of the population, however; vis-à-vis its members, the corporation inevitably represents a particular interest vis-à-vis other groups and those not "incorporated." Nevertheless, the corporation is capable of creating internal motivations, and does not depend on external sanctions guaranteeing compliance. On the other hand, the regulation of the police is universalistic and should not allow the formation of particular clusters of interests. The activity of the police,

however, does rely on external sanction, does not involve any participation of those concerned, and does not lead to the formation of autonomous motivation.

As the comparison of police and corporation shows, étatism in Hegel's thought is not only linked to some kind of political opportunism, but also to the idea of universality, without which no modern conception of justice is possible. Hegel has good reasons not to make a definite normative choice between police and corporation, and between abstract universality and substantial particularity. These moments are sundered in civil society, and it is Hegel's thesis that they can be reunited only in the state. It would only be on this level that the corporation, as the second ethical root of the state (after the family), would achieve its universality.

This reconstruction of Hegel seeks to replace a stage model that suggests that the antinomies of civil society are resolved on the supposedly higher level of the state. Instead it is more fruitful to interpret Hegel's thought as dualistic or antinomic on both levels; and what we crudely label as "étatistic" and "societalist" trends in his thought appear in the analysis of *both* civil society and state. Accordingly, the doctrine of the state itself can be analyzed in terms of these two trends.

In Hegel's conception the police represents the penetration of the state into civil society. Analogously, the estates assembly represents a penetration of civil society into the state. The civil society that is represented in the state through the estate assembly, however, is one already organized; to Hegel, the presence of an atomized civil society in the state would be most regrettable. According to the rather free yet convincing translation of Knox:

The circles of association in civil society are already communities. To picture these communities as once more breaking up into a mere conglomeration of individuals as soon they enter the field of politics, i.e. the field of the highest concrete universality, is *eo ipso* to hold civil and political life apart from one another and as it were to hang the latter in air, because its basis could then only be the abstract individuality of caprice and opinion. (§ 303).

This conception directly links the estates and corporations of civil society with the estates assembly. While Hegel at first stresses the link of the estates to the estate assembly as indicated by the German term *Stände*, the more important theoretical foundation of the assembly is in fact the corporation, the existence of which is the only real evidence provided for the claim that organization and community are possible

in an otherwise atomized civil society. The deputies of civil society are "the deputies of the various [c]orporations" (§ 303). Earlier, this statement is limited and expanded. Atavistically, the agricultural estate (suddenly meaning only the nobility) is to be directly present, as in the assemblies of the *Ständestaat*. The business estate, on the other hand, is represented by the deputies of associations, communities, and corporations (*Genossenschaften, Gemeinden und Korporationen*) which are all incorporated forms of association. Hegel does not even feel the need to indicate and justify his exclusion of the class of direct labor, which is supposedly totally disorganized, from political life (§ 311). More important than the conformist and conservative elements in his thought, however, are his reasons for recommending his particular version of representative government. According to Hegel's model, civil society, when electing its political deputies, "is not dispersed into atomistic units, collected to perform only a single and temporary act, and kept together for a moment and no longer."¹⁹ Rather, in the process of deliberating and choosing deputies, the associations and assemblies of social life acquire a connection to politics in the same act that politics acquires a foundation in organized social life. It is precisely at this level, at the point of interpenetration of civil society and state, that Hegel rediscovers and integrates the ancient topos of *political* society, without explicitly saying so.

The estate assembly has the role of completing the job begun by the corporation, but at a society-wide level of generality that Hegel, and especially his English translator, often refer to as universality. This job is bringing public affairs, and even more public identity into existence (§ 308). Again, parallel to the doctrine of the corporation, the estate assembly is regarded as a mediating organ, this time between the government (*Regierung*) and the people differentiated as individuals and associations (§ 301). The former is thus prevented from becoming tyrannical, while the latter from becoming a mere aggregate, a mass with an unorganized and therefore according to Hegel dangerous opinion. Of course Hegel does stress the role of the estate assembly in legislation and even constitution making (§ 302). But his main interest throughout is in the constitution of the subject of legislation and even more its proper medium. The category of publicity indicates that only the genuine representatives of the public are legitimately entitled to make the laws. The laws they enact are to be considered legitimate only if the procedures of public deliberation are rigorously followed. Since Hegel insists on genuine and unconstrained discussion and deliberation, he emphatically rejects the *imperative mandate*, the principle of the traditional *Ständestaat*. The assembly must be "a living body in

which all members deliberate in common and reciprocally instruct and convince one another" (§ 298 (my translation)).

Hegel's vehement insistence on genuine publicity in the legislature (as well as the courts) has other important grounds as well. He wished to promote knowledge of public business in society, as well as to make (however inconsistently) the estate assembly permeable to the influence of public opinion. Like de Tocqueville, Hegel is ambivalent concerning public opinion: Defined as "the formal, subjective freedom of individuals to express their own judgments, opinions and recommendations concerning general affairs whenever collectively manifested," (§ 309) (my translation) public opinion is internally contradictory, and "deserves to be as much respected as despised [*geachtet als verachtet*]" (§ 316). Respect is due because of a hidden strain of rationality that is buried and inaccessible to public opinion's opinion about itself because of its concrete empirical form of expression. Interpreting public opinion is thus the role of intellectual and political elites (§ 318). To promote the formation of public opinion, Hegel supports extensive freedom of public communication (especially speech and press), and is only slightly worried about its supposedly possible excesses. Indeed, he believes that the genuine publicity of legislative debates has a good chance of transforming public opinion and eliminating its shallow and arbitrary components, making it *harmless* in the process.²⁰ Nevertheless, it is also implied here that the debates of the estate assembly can transform public opinion precisely to the extent that its essential content and strains of rationality are raised to a higher level. In this sense, not only does the political public of the legislature control public opinion (Hegel's stress), but a prepolitical public sphere plays an important role in the constitution of public life in the political sense.

The concept of public opinion as developed by Hegel is not free of the antinomic structure of his political thought. The étatistic trend in this context is expressed in the concern to control and disempower public opinion, to make it compatible with the management of the state. The societalist trend, on the other hand, involves the raising of public opinion to a higher level of rationality in a parliamentary framework between state and society, itself exposed to the controls of publicity. The étatistic trend views public opinion as ultimately a threat, and the proper relationship to it on the part of political and parliamentary elites is manipulative. The societalist trend views public opinion as the condition of possibility of political public life, and the proper relationship to it on the part of elites would have to be one of public dialogue in which truth would remain an open question to be decided by the more convincing arguments, and would not be the a priori

possession of one of the sides. The public sphere of the estate assembly can play its role in the enlightenment and education of public opinion precisely because truth is not known in advance of the debate, but emerges during the process itself, along with the virtues that serve as examples to the larger audience (§ 319). One trend in Hegel's thought implies that in those states where the life of the legislature is genuinely public, the structure of public opinion will itself change: "what is now supposed to be valid gains its validity no longer through force, even less habit and custom, but by insight and argument (*Einsicht und Gründe*)" (§ 315). However at other times the dialogic model of rational political deliberation is restricted to the parliamentary public sphere. In these contexts, the étatistic trend in his thought, supported by the false analogy between the search for scientific truth and the attainment of normative truth in politics, stops Hegel from extending the model to the public sphere as a whole.

Ultimately, the issue here, as well as in Hegel political theory as a whole, is the locus and nature of public freedom. I accept the interpretation according to which Hegel sought to develop a political doctrine in terms of a whole series of mediations that relativize the Roman law distinction between private and public law (§ 316), but with two reservations. First, the mediations are two distinct series. Second, I do not accept the implicit identification of state and public presupposed by the interpretation, or that each succeeding step in Hegel's exposition represents (even in terms of his own argument) an unambiguously higher level of public life than the one before. The two series once again are: (1) civil servants, police, executive, and crown juxtaposed to (2) estates, corporation, estate assembly, and public opinion. The two once again express the antinomic trends in Hegel's thought. Indeed, the very manner in which they mediate the spheres regulated by private and public law is significantly different in each case. The first series involves public law categories taking on private roles. The second, on the other hand, indicates private law entities, developing structures of publicity, and taking on public functions.²¹ This pattern is the same as the model of constitutional rights which constitute public law rights of private subjects.²² Once these two patterns are separated, the meaning of the public sphere in Hegel becomes uncertain. Is its primary paradigm that of public authority or that of public communication? And if he maintains both paradigms, what is to be their relationship?

For Hegel, undoubtedly the highest purpose of public life is the generation of a rational universal identity, which he identifies with the patriotic ethos of the state. What remains unclear is whether the vocation of generating this ethos is assigned to a state sphere dominated

by the executive and linked only to the projections of the state into civil society, or to one dominated by an estate assembly drawing on autonomous societal resources like the corporation and public opinion. This issue cannot be decided if the problem of the mediation between private and public realms alone is stressed. Most categories of Hegel's theory of *Sittlichkeit*, beginning with the system of needs, provide such mediations. But it can be decided if the generation of a modern rational collective identity is linked to the concept of public freedom Hegel repeatedly uses in this context, that is to a process that allows the effective participation of individuals in the free shaping and appropriation of the meaning of a "we." Obviously, public freedom is quite a bit more than the kind of freedom available to the agents of the system of needs who cannot participate in the formation of any collective identity whatsoever. But Hegel also registers serious doubts about whether the modern state as such can be the locus of public freedom, doubts that run completely contrary to the étatistic strain in his thought.

Although Hegel nowhere systematizes a conception of the public sphere (*Öffentlichkeit*), the categories of public authority, public freedom, public spirit, public opinion, and publicity play key roles in his work. Let us recall K.-H. Ilting's often repeated thesis that the *Philosophy of Right* seeks above all to synthesize the negative freedom of modern liberalism and the positive freedom of ancient republican thought. The categories of the public sphere represent important ways in which republicanism could be sustained in Hegel's thought after his supposed conservative turn. But even here an essential difference with ancient republicanism should be registered. Instead of restricting the formation of public freedom to a single social level, that is, political society, Hegel works out a modern republican theory in which a whole series of levels have key roles to play, including: the public rights of private persons, the publicity of legal processes, the public life of the corporation, and finally the interaction between public opinion and the public deliberation of the legislature. Not all of these processes have a public political purpose, yet they are the stages of learning leading to the formation of public identity. What is common to all of them is the free public participation of those concerned in the formation of decisions. Of course, the public purpose of the acts of the police, at times identified as general (*allgemeine*) and even public (*öffentliche*) power is beyond doubt for Hegel. The same is true of the acts of the executive, and in a *Rechtsstaat* the crown as well. Yet in these cases, Hegel speaks neither of the formation of public spirit, nor the actualization of public freedom. In fact, it has been noticed that Hegel's most

explicit discussion of public freedom juxtaposes the corporation, belonging to civil society, and the modern state:

In our modern states [*modernen Staaten*] citizens have only a restricted part in the general [*allgemeinen*] business of the state; yet it is essential to provide men—ethical entities—with activity of general character over and above their private business. This general activity which the modern state does not always provide is found in the corporation (§ 255A (my translation).

In this passage, Hegel not only registers the tension between modern state and public life, but also identifies a different locus for public freedom than did classical antiquity. The corporations are in his own words "the pillars of public freedom (*öffentlichen Freiheit*)."²³ Unfortunately for Hegel the public freedom possible in the corporation, involving relatively high level of participation, cannot be primary in society as a whole. Z.A. Pelczynski and so many others are surely right when they argue that Hegel believed that he has proved that "the (modern) state is the actuality of concrete freedom" (§ 265). While this argument is in general supported by the greater universality of the estate assembly, this veritable corporation of corporations, over the inevitably particularistic societal associations, it also disguises the reality of the modern state as a hierarchy of offices and the monopolistic possessor of the means of violence as well as a compulsory association. By reversing the sociologically obvious hierarchy of the modern state, that is, by making the legislature primary and the executive secondary, Hegel is constructing a legitimation both in the sense of contra-factually justifying a structure of authority, and establishing a set of normative claims open to critique. These critical potentials come into view for example when the assembly on which the normative surplus of state is predicated is depicted as its penetration by civil society.

Hegel, as the peerless social theorist of his time, was aware of the sociology of the modern state. In this respect, we are fortunate to have Ilting's careful reconstruction of Hegel's turn from an early conception stressing the freedom of the citizen in the state to one stressing the freedom of the state.²⁴ The shift, however, may also have its independent intellectual motivations that were reinforced by Hegel's reaction to the reactionary Karlsbad decrees. Hegel knew and rejected both absolutist and revolutionary étatisms as so much of the *Rechtsphilosophie* demonstrates. Is it too farfetched to assume that precisely a reactionary turn in Prussian politics made him realize (as did de Tocqueville soon after) that features of two supposedly aberrant versions of the

modern state belonged to its ideal type instead? If this were so, the shift to institutions of civil society as the pillars of public freedom would be logical and indispensable, from the point of view of strengthening this dimension in parliamentary institutions of the state. Thus Hegel in his mature text not only restricted the possibility of the citizen's freedom in the state, but also expanded, in Iltting's words, the liberties (*Freiheitsrechte*) of civil society into rights of participation (*Teilnehmerrechte*). The most obvious objection in this reading of Hegel is that he himself did not admit and, for systematic reasons, would have rightly rejected the idea that there could be two unreconciled strands in his thought. I am not particularly concerned with this criticism (which in any case is refuted by Iltting's reconstruction) or with the systematic aims of Hegel's work. I am only interested in rebuilding Hegel's conception around what may only be a subtextual antinomy in his political philosophy, to trace a new theory of civil society back to the institutionally most elaborated conception available from which we can still learn. Thus a more serious objection to my reconstruction would insist, as did the young Marx in 1843, that precisely those dimensions that I bring into special relief represent nonmodern elements in Hegel's thought next to the modernity of his conception of the system of needs on the one side, and the bureaucracy on the other. On this reading, Hegel's corporation is an attempt to save *medieval* corporate doctrine, his estate assembly, the institutions of the *Ständestaat*, his notion of public opinion, the *early bourgeois* public sphere, and perhaps the very idea of public freedom, the institutions of the *ancient* city republics. Accordingly, in looking for the modernity of Hegel's social theory, it would be better to focus on either the critical aspects of his depiction of the capitalist economy (as Lukács does) or his anticipation of the welfare state (as Avineri does).

NOTES

1. In perhaps his greatest work in political theory, the young Marx paid much attention to the link in Hegel between étatism and system building. K. Marx, Critique of Hegel's "Philosophy of Right" (J. O'Malley ed. 1970).
2. G. Hegel, Grundlinien der Philosophie des Rechts, in 6 Werke § 255 addendum (1970). The translation by Knox is not quite right. See G. Hegel, Philosophy of Right (T. Knox 1952). [Editor's note: Henceforth, references to the Knox translation will appear by section number in the text. The author occasionally retranslates the German from the original.]
3. C. Taylor, Hegel 382 (1975).

4. Id. at 376.
5. Hegel cannot accept these identities on traditional, i.e., non-reflective grounds and warns against a merely habitual acceptance of *ethos*. Astonishing, though, was that his certainty that after reflection the existing *ethos* will turn out to be rational was always unshaken. But what if after the most thorough reflection, the opposite turned out to be the case? In this respect the incomparably greater modernity of Kant's conception of practical philosophy is obvious.
6. Pelczynski, The Hegelian conception of the State, in *The State & Civil Society: Studies in Hegel's Political Philosophy* (Z. Pelczynski ed. 1984). To be sure, the emphasis of Pelczynski's several articles is on the reemergence of positive social integration *within* civil society.
7. T. Adorno, Cultural Criticism and Society, in *Prisms* (1982).
8. For an analysis of the historical roots of this inconsistency, and the republican strain in Hegel's thought, see Iltting, *The Structure of Hegel's Philosophy of Right*, in *Hegel's Political Philosophy*, in *Hegel's Political Philosophy: Problems and Perspectives* (Z. Pelczynski ed. 1971) [hereinafter Iltting, *Structure*]; Iltting, *Hegel's Philosophy of the State and Marx's Early Critique*, in *The State & Civil Society: Studies in Hegel's Political Philosophy* (Z. Pelczynski ed. 1984).
9. Karl Polanyi's *The Great Transformation* (1944) is both an eloquent analysis and symptom of this étatistic trend.
10. Only for the system of needs can Hegel maintain that in civil society everyone is an end for himself, all others are nothing. Id. § 182A.
11. See S. Avineri, *Hegel's Theory of the Modern State* (1972); G. Lukács, *The Young Hegel* (1975).
12. Hegel's political contradiction between étatism and antiétatism is revealed, however, in the order of exposition. While the outline of the argument concerning the state in paragraph 273 moves from the legislature to the executive and finally to the crown as the highest level, see id. § 273, the actual exposition in §§ 275–320 moves from crown to executive and finally to the legislature itself, culminating in the doctrine of public opinion. The legislature is of course civil society in the state!
13. Contrary to Taylor's interpretation of the concept of *Sittlichkeit*, according to which "the end sought by the highest ethics is already realized." Taylor, *supra* note 3, at 383.
14. And even before, though, we should recognize that part of the system of needs, the section on the estates where the two logics are already visible, at least in part belongs to the later discussion of social rather than system integration.
15. Such is the stress of Avineri in the already cited work. See Avineri, *supra* note 11.
16. Which is also not always as easy as Marx thought in 1843. Marx of *The Eighteenth Brumaire of Louis Bonaparte* can teach us this lesson as well. See Marx, *The Eighteenth Brumaire of Louis Bonaparte*, in *The Marx-Engels Reader* 594 (R. Tucker ed. 2d 1978).
17. Thus Hegel surely does not suffer from the problem mentioned by Luhmann that theorists of the state/society dichotomy are forced, in a preposterous manner, to distribute actual individuals neatly on either side of the societal divide.
18. Heiman, *The Sources and Significance of Hegel's Corporate Doctrine*, in *Hegel's Political Philosophy Problems and Perspectives* 125 (Z. Pelczynski ed. 1971).

19. Hegel raises this issue only in his polemic against the democratic, i.e., universal, participation in politics of all members of civil society. On his own terms Hegel has a good argument here to the extent that he wants to include only those already organized. It is not clear why he does not recommend (and even seems to exclude) the organization of all members of civil society in associations, communities, and corporations so that they could also participate in politics and the election of deputies. Further, voting by the unorganized for deputies who are themselves organized (e.g., the English and American political parties even in Hegel's day) would not have the consequence that Hegel feared: namely the appearance of atomized opinion on the political stage. It is another matter, as the debate on the views of Carl Schmitt was to show, that the representation of a democratic electorate in the liberal 19th-century form could be seen as raising the problem at least of "indecision" or "ungovernability." For this to happen, one key component of legislation as understood by Hegel had to lose its power: namely rational, public discussion and deliberation. See C. Schmitt, *The Crisis of Parliamentary Democracy* (E. Kennedy trans. 1985).
20. While Hegel rightly calls our attention to the volatility and manipulability of public opinion, he is also quite insistent that the essential truths of politics do have this medium for their vehicle. Unfortunately, he also says, however, that the interpretation of these truths is to be the role of political leaders and/or theorists. He considers the following of public opinion, both in life and in science, to be the road to mediocrity. On the other hand, the rather passive acceptance of the views of elites by public opinion is to him unproblematic altogether. *Id.* § 318.
21. See Heiman, *supra* note 18, at 129–35. See also Ilting, *Structure*, *supra* note 8, at 107 (arguing that "civil society and the state" are in Hegel "two different spheres of public life").
22. See J. Habermas, *Die Strukturwandel der Öffentlichkeit* (1962); G. Jellinek, *The Declaration of the Rights of Man and of Citizens* (M. Farrow trans. 1979).
23. Quoted by Pelczynski, *Political Community and Individual Freedom*, *supra* note 1, at 72 in Knox's translation which I had to revise.
24. Pelczynski, *supra* note 1, at 76.

12

Rethinking the Hegelian State

Fred Dallmayr

Hegel is not in vogue today. Outside of restricted circles or enclaves, his philosophy is no longer the fulcrum of sustained inquiry—not to mention creative reinterpretation. This view is not limited to Anglo-American analytical philosophy which has for some time regarded Hegel's work as outmoded or conceptually *dépassé*. Of late, even continental thinkers—and those attentive to their writings—have come to share this sentiment. In an age of non- or anti-foundationalism, notions such as "absolute spirit" and "absolute knowledge" are bound to appear as hopelessly obsolete, if not intellectually perverse.¹ A product of holistic speculation, Hegel's opus is seen as the endpoint of a long metaphysical tradition, or as the watershed between the past and the dawning age of post-metaphysics first captured and given voice by Nietzsche.

Nowhere is this presumed obsolescence more evident than in Hegel's theory of law (or "right") and the "state." At a time when a theoretical premium is placed on diversity, contestation, and dispersal, the view of the state as an ethical fabric permeated by *Sittlichkeit* is liable to be regarded as a quaint relic of classicism—if not as the emblem of sinister totalitarian designs. From different (philosophical and political) angles, our age thus seems to seal the longstanding "dissolution" or disintegration of the Hegelian system, a dissolution already witnessed by the first generation of his heirs (including Marx). Yet, perhaps the triumph of posterity is premature. Perhaps, as Heidegger once observed, the problem is not so much the decay or decomposition of Hegel's work, but rather the inability of our time to raise itself to the complexity of his insights.²

My point here is not to rekindle a Hegelian orthodoxy (if there is such a thing). Neither philosophically nor politically do I see any