

Hegelian Conscience as Reflective Equilibrium and the Organic Justification of Sittlichkeit

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In this essay I analyze two of the major conceptions of justification in the *Philosophy of Right* and unpack the relation between them. I argue that we should link Hegel's conception of conscience to the account of reflective equilibrium introduced by John Rawls because Hegel's view of conscience contains the holism, as well as the back and forth between universal principles and individual judgments, that are central to the reflective equilibrium account. In the transition from 'Morality' to 'Sittlichkeit', Hegel switches the locus of justification from the moral individual to the whole ensemble of social institutions of modern life. This system of institutions is justified because of its organic, living structure characterized by the productive interplay of universal and particular ends. In contrasting these two models, my goal is to figure out just what Hegel thinks is wrong with the reflective model and what is gained in the move to organic justification. The main difference hinges on Hegel's orientation by *action* rather than by *judgement*, where the action-based organicism proves superior because it includes a public feedback process that supports a dynamic, self-correcting model of political justification.

Preliminaries

The recent proliferation of readings of the *Philosophy of Right* has not resolved a central interpretive issue. The issue is how to explain the relation between Hegel's theory of individual freedom, on the one hand, and his theory of the organic rationality of *Sittlichkeit*, on the other. Hegel does take pains to discuss the individual at every level of the account, yet he addresses some of his strongest polemic at political theories based on the individual will, and it is clear that the distinctiveness of his theory stems from his thesis about the social whole. There has been renewed attention to Hegel's concept of the free will as laid out in the *Elements of the Philosophy of Right* §§ 5–7, but that account of the structure of the

will is compatible with emphasizing the primacy of the whole over the individual members of that whole. The persisting questions are the following: how strongly holist is Hegel's organicism; and is it compatible with core liberal democratic commitments?¹ While not offering a full answer to these difficult questions, I will argue that the organic model has much to contribute to contemporary discussions on social and political justification.

To frame the discussion of the text that follows, I lay out here what I see as the main elements of any adequate account of Hegel's conception of the justification of the political. This is meant to be a preliminary characterization that is relatively uncontroversial, drawing on familiar aspects of his account. The main issue of the essay is how the first and second elements are related, with the other five elements playing important roles in adjudicating the main issue.

- (1) Norms and institutions are justified if they conform to Hegelian rationality, for that rationality is the form in which anything at all can be justified. While the exact terms of this rationality are contested, the general picture is fairly clear. Norms and institutions are rational as a systematic whole in which universals, particulars and individuals stand in a dynamic interrelationship. In Hegel's terminology, it has the three-moment structure of the Concept and the systematic, 'actualized' character of the Idea.
- (2) Norms and institutions should be such that they are affirmed by the individuals embedded within them. Thus Hegel's main description of freedom is 'being with oneself in otherness', a criterion of identification or non-alienation. This affirmation includes a component of reflective endorsement, though it is more important to Hegel that individuals identify with norms by acting in ways that realize the norms, finding the result of their actions to be an expression of their freedom.
- (3) The norms and institutions must provide social *stability*. This is a hallmark of nearly all political justification, but is most prominent in Hobbes's *Leviathan* owing to his predominant aim of preventing civil strife.
- (4) The norms and institutions must be characterized by *mutual recognition*. The theme of recognition runs very deep in Hegel's philosophy, and it shows up in places in the *Philosophy of Right*, yet it takes

¹ For a good overview of current thinking on this issue, see Alison Stone, 'Gender, the Family, and the Organic State in Hegel's Political Thought', in Thom Brooks (ed.), *Hegel's Philosophy of Right: Essays on Ethics, Politics and Law* (Oxford: Blackwell, 2012), 143–164.

some work to figure out just how to understand its overall function in the text.

- (5) For Hegel any justifiable conception of political institutions will have to include legal rights and equality before the law. This domain of 'Abstract Right' is also a domain of mutual recognition, though one in which the particular differences of individuals are inessential. One of the most pressing questions for Hegel's conception of *Sittlichkeit* has always been the extent to which the rights of the individual are *aufgehoben* within the institutions, that is, how to understand the subordination of individual rights to the organic system.
- (6) The norms and institutions must operate to realize the overall conception of value that Hegel calls the Good.² By itself this is not saying very much, since there are many ways for norms and institutions to be oriented towards achieving the Good, though it does cut against the grain of the line of liberal thinking that takes political institutions to shun all ideals. An important corollary of this component is that there is a consequentialist element in Hegel's account that has to figure into any account of justification.³
- (7) Whatever we end up saying about the previous six aspects, Hegel makes it clear in many remarks that the justification of norms and institutions is not going to be the justification of a timeless ideal, but rather one that is actual in the here and now. One can call this element historicist or pragmatist, but more important than any label is its demand to be responsive to changes on the ground.

The most obvious issue with this list is simply how long it is. Full Hegelian justification can seem terribly unwieldy and thus useless for any guidance in resolving practical disputes. Yet the truth of politics might just be that complex, and Hegel's frequent charges of superficiality against his contemporaries do show that he expected comprehension of the domain he called Objective Spirit would be difficult.⁴ Complexity and difficulty do not preclude justification in specific cases, since in the real world pretty much all cases involve holistic considerations. As a pioneer of holism, Hegel does provide resources for thinking through how a system of rational considerations can justify. His theory of rationality as

² When I capitalize the Good I am referring to Hegel's conception in PR § 129.

³ I discuss this in Dean Moyar, 'Consequentialism and Deontology in the Philosophy of Right', in Thom Brooks (ed.), *Hegel's Philosophy of Right: Essays on Ethics, Politics and Law* (Oxford: Blackwell, 2012), 9–42.

⁴ See, for example, PR § 272A.

the interrelation of the particular, universal and individual enables him to think of multi-layered justification as a dynamic, contextually sensitive process. In this respect his theory looks quite similar to the most prominent holistic model of justification in political philosophy, namely reflective equilibrium.

Reflective Equilibrium and Hegelian Conscience

The deep affinities between Hegel's *Philosophy of Right* and Rawls' *A Theory of Justice* are now well known. While on the surface more Kantian than Hegelian, major elements of Rawls' project – the basic structure as subject, the social bases of self-respect, the reconciliatory function of political theory – derive from Hegel. I introduce Rawls here not in order to rehearse the argument for their similarity, but rather to focus on one key, and rather neglected, point of comparison. The idea of *reflective equilibrium* was pivotal in Rawls' resuscitation of political theory, as it gave him a way to think of political justification that both appealed to common sense and avoided the theoretical pitfalls of excessive formalism and foundationalism. I will give a sketch of this conception of justification and then argue that we can see Hegel's conception of conscience in the *Philosophy of Right* as a precursor of Rawls' approach. Understanding this affinity will help set up the subsequent move to Hegelian *Sittlichkeit* and the different conception of justification operative there.

Justification might seem like an unlikely point of contact since one might think that for Rawls justification simply is the procedure of the original position, a *contractualist* position that has little in common with Hegel's more holistic, non-formal understanding of justification. Yet for Rawls the formalism or proceduralism of the original position is only one element of an essentially holistic view. His initial presentation of reflective equilibrium is contained within the section 'The Original Position and Justification', which makes it seem that the contractualist ideas are primary and the equilibrium considerations secondary. But the central justificatory strategy is to consider *all of the factors* that enter into the proper description of the rational choice of the two principles of justice. It would not be hard to spell out correlates in Rawls for all but the first of the elements of justification that I listed in Hegel, though for several of these correlates there will be crucial differences. The point I want to stress is that the holistic justification to an individual in reflective equilibrium is compatible with taking these six elements seriously (even the organic conception could be given a Rawlsian interpretation, though I will not explore

that possibility here). As Rawls says in a Hegelian vein at the very end of *A Theory of Justice*, 'Thus what we are doing is to combine into one conception the totality of conditions that we are ready upon due reflection to recognize as reasonable in our conduct with regard to one another'.⁵

Rawls writes of the method of reflective equilibrium as justifying and adjusting principles based on how well they lead to results that match our 'considered convictions':

We can note whether applying these principles would lead us to make the same judgments about the basic structure of society which we now make intuitively and in which we have the greatest confidence; or whether, in cases where our present judgments are in doubt and given with hesitation, these principles offer a resolution which we can affirm on reflection.⁶

The principles are tested by seeing whether they produce judgements (at all levels of generality) that are concurrent with those we already make. The equilibrium is between our particular judgements and abstract principles, and it is achieved by adjusting both those elements and the procedure that is supposed to model them. He writes that, 'By going back and forth, sometimes altering the conditions of the contractual circumstances, at others withdrawing our judgments and conforming them to principle, I assume that eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgments duly pruned and adjusted'.⁷ The 'reasonable conditions' include, most prominently, the veil of ignorance. The veil is supposed to represent our moral intuitions that the terms of justice should not be based on unfair bargaining positions and that no one deserves credit for the circumstances into which they are born.

Notice that for Rawls there are two kinds of justification that take place in reflective equilibrium. *First*, there is the justification of *specific judgements* through the principles of justice. This justification is tentative, for it is answerable to our considered convictions or intuitions. If those intuitions contradict the proposed justification through the principle, then the principle has to be adjusted to deliver better results. *Second*, the *whole theory of justice* is justified through reflective equilibrium. The principles, together with various circumstances or facts, should allow us to produce results for a broad range of issues in political philosophy, and the overall theory is justified insofar as those results and the principles together

⁵ John Rawls, *A Theory of Justice*, Revised Edition (Cambridge, MA: Belknap Press, 1999), 514.

⁶ Rawls, *A Theory of Justice*, 17.

⁷ Rawls, *A Theory of Justice*, 18.

amount to a coherent whole. While one can assess cases and principles one by one using the first type of justification, in the end that type will depend on the second, overall kind of justification in reflective equilibrium.

What Rawls calls a problem for rational choice is what Hegel would call a problem of the free will, so it is not at all far-fetched to think of Rawls' holistic consideration of what the rational agent would choose under the right conditions as a relative of Hegel's grounding of right in the free rational will. Virtually nothing in Rawls' account hinges on the element of contractualism that Hegel most criticizes – dependence on the contingent, arbitrary will. Rawls is aiming to secure a *system* of justice that does not depend on any given individual's contingent choice to opt in or opt out. Rawls' principles of justice are principles *designed to govern the basic structure*, where that structure consists primarily of just those institutions (specified differently, of course) that Hegel conceives of as *Sittlichkeit*. However, Hegel does not present the transition to *Sittlichkeit* as what the fully rational will would choose upon reflection. Rather, he unites – with explicit reference to his speculative logic – the universal principles of the Good with the particularity of individual conscience in a social system that is justified because of its organic, living character.

To understand conscience as reflective equilibrium, we need to take one step back in the account to the point at which Hegel introduces the Good. Hegel presents this Good as an all-inclusive conception of the formal rights previously introduced in the *Philosophy of Right*. Hegel calls the Good 'the Idea' and '*the ultimate purpose of the world*' (PR § 129; translation modified), a claim that despite appearances is compatible with the Good being what Rawls would call a 'thin theory of the good'.⁸ It includes only those general rights that anyone would need in order to pursue more substantive conceptions of the good. Hegel initially presents the relation of the Good to the will in terms of the abstract universality of Kantian duty, then follows with his famous objection that the categorical imperative is formal and empty. The *realization of the Good* demands that the *particularity* of the will come into play, and thus that the individual conscience take on the role of specifying which realizations of the Good are justified.

There is an apparent peculiarity in Hegel's treatment of conscience that brings out why it makes sense to align it with reflective equilibrium. Hegel introduces conscience as '*particularity in general*' and 'the determining

⁸ See Rawls, *A Theory of Justice*, 347ff. See Frederick Neuhouser, *Foundations of Hegel's Social Theory: Actualizing Freedom* (Cambridge, MA: Harvard University Press, 2000), 266ff., for an argument that Hegel's Good is considerably thinner than usually supposed.

and decisive factor' (PR § 136), and he tends to stress that it is the perspective of the actual individual judging in specific situations what is right. Yet Hegel also thinks of conscience as the act of rising above one's specificity: it is 'that deepest inner solitude within oneself in which all externals and all limitation have disappeared – it is a total withdrawal into the self. As conscience, the human being is no longer bound by the ends of particularity, so that conscience represents an exalted point of view ...' (PR § 136A). How, if conscience is the subjective certainty of the particular individual in a particular situation, can it also be the perspective from which the 'ends of particularity' have disappeared?

These two seemingly opposed aspects are in fact just the two poles of reflective equilibrium – we must take some fixed points of reference in our particular judgements, but we aim at justification in reflecting on those judgements and attempting to fit them with other judgements and principles into a rational whole in which the universal perspective predominates. Conscience is the perspective of the individual arriving at a holistic justification, where that justification takes into account both the particular judgements and the universal principles. Hegel thinks of conscience primarily as a mode of ethical judgement in specific cases – what set of considerations *justifies* this specific action? But he clearly thinks of conscience as a candidate for Rawls' second sense of justification through reflective equilibrium – how do the totality of principles (formal rights) and specific judgments hang together? Hegel's critique of conscience is in part a critique of the latter function for reflective equilibrium – conscience cannot be the *medium* of overall justification, but must see itself as embedded within an actual system of ethical institutions. The organic character of that system is a reflection of the fact that it has developed in conjunction with the authority of individuals to judge for themselves on specific cases, but ultimately the system *justifies itself* through its dynamic, self-correcting realization of the Good.

From Independent Centre of Justification to Dependent Agent in a Justified System

If reflective equilibrium represents the holism of justification for an individual reasoner, the organic model of justification of *Sittlichkeit* is a holism of justification at the system-wide level in which individual reasoners are one element of the whole. Hegel is very worried about the potentially disruptive nature of individual holistic justification. Rawls, in contrast, does not mention the sense in which reflection can *undermine* attachment to

important principles or judgements. He does not worry about this because he is considering an idealized individual behind the veil of ignorance who is evaluating principles for a basic structure in which all individuals will be fully compliant. In Hegel's worries about 'formal conscience', we see that the holism of justification itself is disruptive when we take the issue of individuality – and non-compliance – seriously. For Hegel, the holism of reflective equilibrium in judgement is not the proper medium of ultimate justification because its way of connecting universal principles and particular judgements remains too unstable. Because the process is internal to the reflecting subject, there simply is too much room for interpretation when one goes to connect one's general principles to particular judgements. There are always numerous ways in which one can imagine the principles playing out in specific cases. For the ethical individual the process of principle–judgement equilibrium is indispensable and, while it is not infallible, it is generally the right model for moral deliberation. But in the case of the justification of a social and political system, of its laws and institutions, such an internal process is inadequate.

Without something like an actual experiment to test the principles, the connections between universal principles and particular cases are liable to be mostly conjecture, or at least liable to be seen that way by the other agents who are supposed to be subject to the justified system. Hegel stresses the internality of conscience when he writes of conscience that 'This subjectivity, as abstract self-determination and pure certainty of itself alone, *evaporates* into itself all *determinate* aspects of right, duty, and existence [*Dasein*], inasmuch as it is the power of *judgement* which determines solely from within itself what is good in relation to a given content ...' (PR § 138). Hegel uses change-of-state metaphors (in other places he writes of 'dissolving') to express the way in which principles have to be provisionally suspended in order to arrive at an overall judgement, an overall justification for action. Hegel is worried about what we can call *particularized conscience*, a shape of subjectivity that tends towards preference for one's own good over the universally good (a preference that Hegel calls evil), but also towards the self-righteous judgement of others for failing to conform to one's own abstract conception of the good.

Yet Hegel finds in the particularized conscience itself an element that makes reflective conscience push through its own individualistic boundaries to *Sittlichkeit*. The key to understanding Hegel's transition is that he thinks of conscience both as a kind of *judgement* and as a kind of *action* that implicates the agent in externality and in the particularity of specific interests. In this sense conscience tracks an ambiguity in *practical reason*,

which we also think of both as an individual's deliberative activity and as the action that follows from that activity. Hegel holds that the concept of the free will includes the agent's *particularity*, and that particularity gives the Good *actuality* as opposed to mere abstract universality. Hegel already invokes actuality in § 138, where after the above passage about 'evaporating' he writes that this subjectivity is 'at the same time the power to which the Good, which is at first only represented and an *obligation*, owes its *actuality*' (PR § 138; translation modified). Unlike the Rawlsian agent behind the veil, the agent of Hegelian conscience does not bracket his own interest, for the agent of conscience does not aim simply to arrive at principles, but rather to *act*. For Hegel it is not a sign of corruption that we act on interests, so we need not set our justification at an unrealistic level that we must simply strive (in vain) to attain. This view of *actual* moral action also gives us a way to think of a perspective of justification that includes the moral agent without taking that agent's internal perspective as ultimate. An action takes place in a context and includes both prior intention and actual outcome. The *holism of action* thus includes an external perspective and a dynamic connection between the internal and external.⁹

The question before us concerns the rationality of the shift from the individual reflective perspective to the perspective of *Sittlichkeit*. A contractualist might ask the following question: in what sense is it rational for the agent to consent to a social system in which his judgment of what is right does not have the ultimate authority and in which he is subject to the demands of political holism (including, as Hegel often reminds us, the possible sacrifice of one's life for the whole)? Hegel does not frame the issue as one of consent because he has shifted the issue from one of judgement to one of *action*. His question is rather the following: in what way should we conceive of the ethical world such that the actions that accord with my particularity are also the ones that serve the universal good? Both the particular side and the universal side are elastic concepts here, but the overall point is clear. The solution to the individual's inadequacy as a locus of justification is not to look for an objective truth of the matter apart from all my interests, but rather to locate institutional contexts of action in which interest and moral value are in harmony.¹⁰

⁹ The shift from judgement to action is also a shift from judgement to the *inference* (*Schluss*) as the form of fully rational relations. I explore this theme in Dean Moyer, *Hegel's Conscience* (Oxford: Oxford University Press, 2011), Chapter 5.

¹⁰ Part of the obscurity surrounding the move to *Sittlichkeit* has to do with the reference to his speculative logic in § 141. The logical underpinnings are clearer when Hegel makes the same move away from reflective justification in intersubjective terms in the *Phenomenology of Spirit* in the famous scene of confession and forgiveness at the end of 'Spirit'.

In the move to organic justification in *Sittlichkeit*, Hegel reconceives the universal-particular dynamics that Rawls aims to capture with universal principles and particular judgments. Hegel thinks of the universal as a purpose or end rather than a principle (the Good is the 'final purpose of the world'), and the particulars are the purposes or ends in which the universal is realized. Because those realizations are public events, the match (or mismatch) between the universal and particular is open to public assessment rather than confined to internal equilibrium. This is not to say that the particular ends must conform to universal ends in some simplistic manner. It is essential to Hegel's organic story that the particular ends can disrupt existing universals, which must modify themselves in response. But it is also essential that these particular ends are dependent for their value on the universal ends and on the institutional powers that embody those ends. Since individual human beings are mainly concerned with particular ends, Hegel thinks of individuals themselves as dependent on the whole. We can see this dependence as a replacement for Rawls' veil in the sense that it serves the function of displacing the ultimacy of the individual's interests. Yet it also preserves those interests and therefore allows for an *actual* and *dynamic* equilibrium. Instead of conscience determining what counts as a realization of the Good, the standards for the valuation of actions are set by the institutions of *Sittlichkeit*. The organic justification of the whole is in the end a way for the actual results of laws and policies to be evaluated in public and then the laws and policies altered in the light of that evaluation. Like an organism interacting with its environment, the system generates new results that are initially external but then are fed back to the system so that legislators, judges and civil servants can correct and render more determinate the existing laws and policies.

Organic Justification and Civil Society

Hegel's typical claim about the organic is that we misunderstand *Sittlichkeit* or the state if we do not think of them in organic terms, where this sounds like an argument that *Sittlichkeit* or the state does not *need* to be justified because its very existence justifies itself. In the lecture notes introducing the state we find the claim that we should focus on 'the Idea [of the state], this actual God', and then,

Any state, even if we pronounce it bad in the light of our own principles, and even if we discover this or that defect in it, invariably [*immer*] has the essential moments of its existence within itself (provided it is one of the more advanced

states of our time). But since it is easier to discover deficiencies than to comprehend the affirmative, one may easily fall into the mistake of overlooking the inner organism of the state in favour of individual aspects. (PR § 258A)

Insofar as it exists, the state 'invariably' possesses 'the essential moments' and we are misguided if we think that it requires justification or deserves criticism. Principles of justification do not really apply because the modern state always is what it ought to be.

Our trouble digesting Hegel's view is that, while he takes it as a virtue that there is no standpoint outside the social organism from which to judge it, we tend to think that genuine justification has to be able to bring external standards to bear. Hegel's model is 'inner purposiveness' as opposed to the 'external purposiveness' that would justify something through its use for a purpose separate from its internal relations. When we ask whether this car is a good car, we assume that it has all the working subsystems of a functional whole, but we are asking whether it serves *our* purpose of transportation in comfort and safety. Hegel's thesis depends on a fundamental difference between functional commodities and organisms: the organism's purpose is not anything external to itself, but rather is its own survival and flourishing. I can ask myself whether I am justified in buying a car, since I can get along without one. But if I seriously ask myself why go on living, typically something has already gone very wrong in my life. Hegel's organic account of the state is suspicious because he seems to be saying that, if we ask why the state has a right to exist, to go on living as a state, then either the state has already ceased to exist or we have totally misunderstood the nature of the state, which 'is an absolute and unmoved end in itself [*Selbstzweck*]' (PR § 258).

Before I begin my sympathetic (and selective) reconstruction of Hegel's organic account of *Sittlichkeit* and the state, I should note that my focus will be somewhat different from most recent engagements with the organicism issue. Because organicism is closely tied to the idea of functional differentiation, it seems to lead Hegel in an inegalitarian direction. Given that a predominant liberal concern is with equality, much of the focus has been on determining whether Hegel's organicism really commits him to some of the inegalitarian conclusions he actually draws, or whether we can see his view as compatible with the idea that each individual should have opportunities to participate at all levels of *Sittlichkeit*.¹¹ While this is an important issue, I think that it tends to

¹¹ See Stone, 'Gender, the Family, and the Organic State in Hegel's Political Thought', both for an overview of the general debate on this issue and for a specific account of its impact on Hegel's view of the family.

obscure another important dimension of Hegel's organicism, namely the way in which the differentiated members of the whole realize ethical value and provide feedback to the laws and institutional agencies governing the subsystems and the state as a whole. I take it that this aspect of his account remains fruitful even though many of his specific proposals about societal differentiation (such as his views of the separate roles of men and women) are not justifiable. At the very least, his organic model can serve as a corrective to the highly individualized and formal models of justification that predominate in liberal democracies. The organic model allows us to see how social forms become more rational, better justified, in *actuality* rather than in the political imaginary that is often the medium of political philosophy.

Hegel clearly thinks of the organic character of the state as providing *stability*, but what we need is a conception of stability *for the right reasons*. The social organism must be oriented by something more than self-preservation, for that would be compatible with an authoritarian politics and with a stability based on fear of revolution rather than on mutual recognition. Hegel has already offered in his account of the Good a basis for justification of the social system, a standard that the system has to meet to count as flourishing. He confirms this when he opens '*Sittlichkeit*' with the following: 'Ethical life [*Sittlichkeit*] is the *Idea of freedom* as the living Good which has its knowledge and volition in self-consciousness, and its actuality through self-conscious action' (PR § 142). Recall that Hegel's Good is an inclusive concept of freedom that incorporates all the elements of the *Philosophy of Right* up to that point. The Good is the result of the conflict between rights that Hegel resolves in 'the right of necessity', in which he endorses the right of life or welfare *over* the abstract right of property claims. This is significant because it provides a motivation for restrictions of individual liberty based on the demands of that liberty itself, and thus a grounding for the substantive moral dimension of justice that comes from within the right. While individual conscience could not stabilize the realization of the Good, *Sittlichkeit* as 'the living Good' is able to set the competing considerations in a dynamic equilibrium in which realizing individual freedoms does not come at the cost of realizing the common good. For Hegel, 'rationality consists in general in the unity and interpenetration of universality and individuality [*Einzelheit*]' (PR § 258R). Only the organic model in which universality and individuality are mediated by particularity is capable of achieving such rationality. This organic rationality delivers a model of stability for the right reasons because it sees

the strength and stability of the whole as deriving from the freely chosen purposes of the individuals and as nesting those purposes within more universal institutional purposes.¹²

Hegel thinks of organic life as the model for *Sittlichkeit* as a whole, offering an inclusive conception that I call *societal organicism* to contrast it with his *political organicism* that deals specifically with political activity in the state. In the rest of this section, I discuss the way in which civil society, which on the face of it is the realm of mere particularity, is essential for Hegel's societal organicism. The development of particularity in civil society both allows the individual to see why the state is justified *for her* and contributes to the justification of the state as a stable self-determining system. Hegel writes that 'The principle of modern states has enormous strength and depth because it allows the principle of subjectivity to attain fulfilment in the *self-sufficient extreme* of personal particularity, while at the same time *bringing it back to substantial unity* and so preserving this unity in the principle of subjectivity itself' (PR § 260). For a society to be organized and living it must have both elements – the members striving for their personal particularity and the universal bringing the particular back into line with the whole.

Civil society represents the oppositional or external element within *Sittlichkeit*, a self-disrupting element that leads to the expansion and refinement of mediating institutions subordinate to the state. This point is hard to appreciate because Hegel's claims about externality tend to focus on individuals in their activity against each other. But, as the domain of externality in general, he is thinking of the self-interested actions of individuals as a way in which society is external to itself. I think this is what Hegel is getting at when he claims that civil society represents the moment of 'irritability' in the organism (see PR § 263A). Irritability is the drive of the organism to outward movement and the ability to react appropriately to external stimuli. By building this externality into their internal structure, modern states have found a way to provoke their own self-regulation and self-correction. Hegel often writes that the city-states of ancient Greece were fragile and vulnerable because they relied on '*original* natural intuition' (PR § 185R). They really were not stable because they had no room for the particular subjectivity that came on the scene in the form

¹² This argument does find an echo in Part Three of *A Theory of Justice* in Rawls' argument for the congruence of the right and the good. In my view it is unfortunate that Rawls largely abandoned this view in the move to *Political Liberalism*.

of the sophists.¹³ Modern states are stable because they have developed institutional structures to allow particularity free reign and to channel externality back into the power and value of the common good.¹⁴

For all its merits, civil society on its own is not an organism and cannot organize itself. The market may claim to be able to regulate itself, but Hegel is very clear that this is a dangerous illusion. To make civil society work in the organic system the state needs to regulate the commercial activities. This type of regulation gives more definition to the kinds of policies that are actually justified through the organic dynamics. Hegel writes that

The differing interests of producers and consumers may come into collision with each other, and even if, *on the whole*, their correct relationship re-establishes itself automatically, its adjustment also needs to be consciously regulated by an agency which stands above both sides. (PR § 236)

Hegel has some faith in the self-correcting character of the market, but he is suspicious of attempts to claim too much autonomy for the market. He writes that 'This interest invokes freedom of trade and commerce against regulation from above; but the more blindly it immerses itself in its selfish ends, the more it requires such regulation to bring it back to the universal' (PR § 236R).

Now one might argue that such concern with the public good is available to any form of justification of public institutions. Hegel's argument would be that in the social contract model one can *try* to justify such intervention, but given the starting point in individual freedom such arguments will be hard to make.¹⁵ The individual liberties of property owners will tend to win out over the claims of the universal. Hegel's

¹³ Hegel contrasts this all-important dimension of the modern state with the ancient one, in which particularity 'had not been released and set at liberty and brought back to universality ... Thus, the universal must be activated, but subjectivity on the other hand must be developed as a living whole' (PR § 260A).

¹⁴ I have argued in *Hegel's Conscience* that Hegel thought that modern societies with strong civil societies are held together in large part because of the development of conscience in Protestant Christianity. In terms of this essay's argument, the claim is that organic justification of *Sittlichkeit* does depend on the reflective equilibrium of individual conscience, so, while Hegel argues that Rawls' reflective equilibrium is appropriate only for individual deliberation, there remain for Hegel important connections between the individual and institutional levels.

¹⁵ Among social contract theorists, Rousseau and Fichte stand out for trying to build into their theories an argument against the ultimacy of private property rights. Their theories are best described as a kind of holistic contractualism, and I doubt that in the end they are stable. I have argued that they are unstable in Dean Mojar, 'Fichte's Organic Unification: Recognition and the Self-overcoming of Social Contract Theory', in Gabriel Gottlieb (ed.), *Fichte's Foundations of Natural Right: A Critical Guide* (Cambridge: Cambridge University Press, 2016).

organic model gives him the resources (admittedly not extensively enough employed) to justify state action to contain business interests and mitigate inequality. There are formal property rights that must be respected, but they are subordinate to the interest of the whole. Contrast the organic justification of state action to Rawls' use of the Difference Principle to promote equality. There is an enormous obstacle to implementing this principle, namely the 'lexical priority' of the first principle that guarantees individual liberties. Secondly, as a general principle applicable to the basic structure, the Difference Principle must travel a long road before it can justify specific state intervention even if the first problem can be overcome. It is unobjectionable as a moral principle, but it remains very unclear how to think of its actuality. The justification of Hegel's *Sittlichkeit* also depends on protections for individual welfare against the exploitative interest of the commercial interest, but Hegel's account is very closely linked to the authorization of power to check that exploitation.¹⁶

A key part of the story of the reintegration of the particular in the universal is that within civil society itself there are what Hegel calls 'corporations'. These are a crucial normative element in the societal and political organicism, a crucial part of what makes society a living whole. If we can say that without these the organicism would not go through, we have an argument that our society itself will not be justifiable without something akin to corporations. In Hegel's vocabulary, individuals must have 'actuality both as private and as substantial persons' (PR § 264) in civil society. Without the 'corporate' element of civil society, the organic justification would not go through – 'the state must hang in the air' (PR § 265A). Deciding what would qualify as a corporation in Hegel's sense is no simple task, but I do think that this demand to find a more universal sense within civil society itself is something we can draw on as we justify or critique our existing institutions. The most important 'corporations' are trade unions and professional organizations, institutions that provide some measure of financial stability and a sense of belonging and self-respect. We can argue that our *Sittlichkeit* is not justified if it is lacking in such stabilizing institutions for workers. The justification would not go through because the workers' identification with their particular occupational role will not be

¹⁶ The biggest objection to this picture for Hegel himself was the existence of the *rabble*, the poor, shapeless, *unorganized* class that is a necessary by-product of modern civil society. If an organic system produces such an inorganic element, that would seem to jeopardize its justificatory status, or at least severely weaken it.

sufficiently recognized and because they will not have an adequate basis for *political* efficacy.

Organic Politics and Representative Interests

Discussions of the Hegelian state tend to focus on the problematic theory of monarchy at the apex of the doctrine of *political organicism*, yet the economic issues of civil society are also central for the political doctrine and will be my focus here. He thinks of the state powers as an interlocking, mutually reinforcing set of powers rather than as a system of checks and balances. He writes of such a system of mutual limitation that, 'In this view, the reaction of each power to the others is one of hostility and fear, as if to an evil, and their determination is such that they oppose one another and produce, by means of this counterpoise, a general equilibrium rather than a living unity' (PR § 272R). The view of an equilibrium of forces would be one that is preoccupied with possible abuses of authority. The idea of a living unity, in contrast, is one in which each part of the state (monarch, executive and legislative) is intertwined with the others and informs the work of the others. The subject matter of governmental action is largely the economic interests discussed within 'civil society', providing the direction and control for the productive elements of society.

Hegel's theory of the executive brings civil society and the state into very close contact. In fact, he writes that the executive 'includes the powers of the *judiciary* and the *police*' (PR § 287). It is also here that he clarifies the role of the corporations: 'The *particular* common interests which fall within civil society ... are administered by the corporations (see PR § 251) which represent the communities and the various professions [*Gewerbe*] and estates, with their authorities, supervisors, administrators, etc.' (PR § 288). These officers must in turn be led by 'executive *civil servants* and the higher consultative bodies' (PR § 289), for 'we here encounter the conflict between private interests and particular concerns of the community, and between both of these together and the higher viewpoints and ordinances of the state' (PR § 289R). What justifies the actions of these executives if they are acting on the organic model? Hegel writes that 'The *organization* of official bodies accordingly faces the formal but difficult task of ensuring that civil life shall be governed in a *concrete* manner from below, where it is concrete, but that the business in question shall be divided into its *abstract* branches and dealt with by distinct bodies' (PR § 290). Against the caricature of the organic model in which too much authority is invested in the head, Hegel's organic argument here is

against centralization. The executive officers must take pains to see that the effects of policies – the considered judgements of those 'below' who are directly affected by them – are used to improve the policies.

Voting and representative politics are of course naturally thought of as feedback mechanisms. It is thus not hard to see how they are supposed to function as an essential part of the organic system of interrelated functions. Hegel writes of the beneficial relation of the estates to the executive officials as having largely to do with the effects of the *publicity* of the assembly on the government's deliberations and decisions. He writes that the benefit 'lies in the effect which the expectation of criticism, indeed of public criticism, at the hands of the many has in compelling the officials to apply their best insights, even before they start, to their functions and to the plans they intend to submit, and to put these into effect only in accordance with the purest of motives' (PR § 301R). The publicity brings the dynamics of society's 'living unity' into the open, showing what interests are served by which policy and what results or considered judgements are being taken into account.

In writing about the legislative power Hegel is clearly concerned about stability, seeing the estates as one way not only to make sure that people do not get lost in a mere aggregate, but also to make sure that the people does not become a destabilizing 'massive power in opposition to the organic state' (PR § 302). Hegel thinks that the way to prevent this is by having political representation and participation follow the same economic organization as that of civil society. He writes as follows:

But the state is essentially an organization whose members constitute *circles in their own right*, and no moment within it should appear as an unorganized crowd. ... The idea that those communities which are already present in the circles referred to above can be split up again into a collection of individuals as soon as they enter the sphere of politics – i.e. the sphere of the *highest concrete universality* – involves separating civil and political life from each other and leaves political life hanging, so to speak, in the air; for its basis is then merely the abstract individuality of arbitrary will and opinion, and is thus grounded only on contingency rather than on a foundation which is *stable and legitimate* in and for itself. (PR § 303R)

Reprising his claim about the dependence of the state on the elements of society in which individuals have their particular interests satisfied, Hegel argues that political representation in the estates must reflect the distinction of interests in civil society. Provided that one can imagine the interests of workers actually being represented by their elected officials, paradigmatically in the form of heads of labour organizations, Hegel's

proposal here sounds rather sensible. The foundation of the political body would be the economic life, which forms the stabilizing element in society as a whole.

Our attachment to voting rights as rights of individuals *as individuals*, and especially our sense of voting rights as a symbolic feature of modern politics, make Hegel's main arguments very hard to swallow. Yet it is here more than anywhere that we should take to heart the critique of illusory individual rights that Marx made so famous. Does our ability to show up at the ballot box every few years guarantee that our interests, and the interests of the polity as a whole, are served? Hegel is clearly not inclined to accept the idea that a democratic procedure somehow automatically justifies the decisions of a representative body. He writes that '[t]he idea that *all* individuals ought to participate in deliberations and decisions on the universal concerns of the state ... seeks to implant in the organism of the state a *democratic* element *devoid of rational form*, although it is only by virtue of its rational form that the state is an organism' (PR § 308R).

We are likely to be uncomfortable with Hegel's argument against democratic participation, but we must also acknowledge the truth of his claim about what happens when political representation and participation are conceived atomistically. He writes that,

If the deputies are regarded as *representatives*, this term cannot be applied to them in an organic and rational sense unless they are *representatives* not of *individuals* as a crowd, but of one of the essential *spheres* of society, i.e. of its major interests ... As for mass elections, it may also be noted that, in large states in particular, the electorate inevitably becomes *indifferent* in view of the fact that a single vote has little effect when numbers are so large; and however highly they are urged to value the right to vote, those who enjoy this right will simply fail to make use of it. (PR § 311R)

Voting trends in the United States certainly confirm Hegel's claims here. We are inclined to blame 'voter apathy', and to bemoan the fact that people 'vote against their interests', but the problem is just that there is no straightforward way for most people to see that their vote counts and their interests are served in elections. This is not to say that Hegel's proposals are at all feasible for a society as differentiated as the United States, but it points to a real problem, a real disconnection between our democratic rhetoric and the way in which democracy fails to serve the interests of the people who most need political power to work for them.

Hegel's reflections here can be compared with Rawls' reflections on the issue of the fair value of the political liberties. Rawls acknowledges that the formal right to participate is inadequate on its own and must be

supplemented by measures that preserve the fair value of equal political liberties for all.¹⁷ Hegel's concern in the passages above is clearly that individuals be able to appreciate the value of their vote. The contrast between the two thinkers on this issue is sharper than usual. While Rawls thinks that the answer is public funding for parties and disconnecting politics from economics, Hegel thinks that representation should be tied directly to economic interests. Once the issue has been expressed in terms of value, the rationale for Hegel's view is easy to appreciate: if the main public value in your life is the value placed on your work, you will find your political representation valuable to the extent that it supports the interests of your employment. The objection to this view is that such a politics will simply replicate the entrenched inequalities of civil society. But why should it? And why should we think that disconnecting the two would serve to counteract economic inequality? In any case, Hegel's view is supposed to be dynamic and progressive in the sense that the economic interests are channelled into the public good in ways that combine the concreteness 'from below' with the publicity and transparency of executive and legislative acts. If one's concern is with the power relations entrenched in civil society, one should demand a state that takes as its business the transformation of civil society's power into the universal ends of the country as a whole. The challenge is to make sure that it is not only the private interests of profit-seeking owners, but rather the interests of ordinary workers that are represented in the estates. Hegel would justify the efforts of workers to 'organize', as we say, for it is the only way to make sure you see the value of your representation.

The Embedded Philosopher

I conclude with the question of how to think about the final picture of Hegelian justification in relation to reflective equilibrium. This question arises because it does seem that a philosopher in some sense *always* relies on his or her considered judgements and universal principles. Hegel's organic model of justification in the account of *Sittlichkeit* certainly involves lots of claims about how that model fits with considered judgements that derive from thinking of society and the state organically. It would seem that the organic justification must ultimately depend on the arrangement or presentation of the organic system by the philosopher, and thus it would always take the form of reflective equilibrium. There are

¹⁷ See Rawls, *A Theory of Justice*, 194–200.

two parts to answering this challenge. The first would be to say that the organic model must rely to some extent on the historical record, on what has actually happened as the result of principles and laws. The success or failure of a certain constellation is not supposed to be up to the construction of the philosopher, but rather up to the actual events that have resulted from enacting the laws.

The second part of the reply is that Hegel can admit the role of the philosopher's reflection and still argue for the priority of the organic by virtue of the philosopher's embeddedness within *Sittlichkeit*. Though in Hegel's system philosophy has a higher place than the state, he still holds that within the domain of action the philosopher is also a dependent member of the whole. His insistence that the philosopher is in some sense accountable to the state is part of his critique of philosophy's tendency to erect abstract ideals. This demand for accountability leads him to some disconcerting claims, such as when he writes that it is 'a stroke of *good fortune* ... that this philosophizing ... has come into closer contact with actuality' (PR *Preface*, 19[23–24]). When we notice this readiness to sell out the scholar (especially Fries) to the state, we are likely to recoil in horror at what looks like an invitation to violate the conditions of free inquiry and speech. It seems to reinforce the fear that the organic model is really a covert way for the powers of the whole to be justified in suppressing the activity of the members when those members step out of line.

The question of the philosopher's relation to the organic state is surprisingly similar to the question of the moral individual's relation to the state. The issue is claiming a privilege that one can justify only through action, where action implicates one in contexts of value that tend to nullify the privilege. Insofar as the philosopher's reflective equilibrium remains withdrawn from action, the philosopher's doctrine is beyond reproach by non-philosophers.¹⁸ But as the philosopher's voice moves from the professional conference to the classroom to the public square, the terms of justification are – and must be, according to Hegel – increasingly out of the philosopher's control. His point is that it would be better for the philosopher, as it is for the moral agent, to have continuous feedback from the world. Only then does the *rationality* of the philosopher's system stand a chance of being able to capture, and to inform, the *actuality* of the ethical world.

¹⁸ In the 'Absolute Knowing' of the *Phenomenology of Spirit*, Hegel goes so far as to claim that the philosopher is close to the 'beautiful soul' that he aligns with the judge in the scene of reconciliation that I mentioned in note 10.