

HEGEL'S THEORY OF INSTITUTIONS  
A STUDY OF *Sittlichkeit*

by

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Department of Philosophy  
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## Abstract

Hegel's institutionalization of ethical life (*Sittlichkeit*) into the spheres of the family, civil society, and the state is regarded as among his most important contributions to philosophy. In this study, I show that Hegel understands institutions to be *rational social forms*. Institutions, such as marriage, the corporation, and sovereignty, are concrete forms that order social life according to its immanent telos, the realization of human freedom.

For Hegel, I argue, institutions must be understood ontologically (Chapter 3) and normatively (Chapter 4). In doing so, he unifies the two institutional paradigms that precede him: the French institutional tradition, exemplified by Montesquieu and Rousseau, and the German one, represented by Gustav Hugo and Kant (Chapter 1). Hegel's use of the concept of institutions across his published writings is also examined (Chapter 2).

Ontologically, institutions are, for Hegel, meso-level social structures that combine a mode of being with a social function. For example, marriage is a social relation (*Verhältnis*) that functions to spiritually unite two spouses; the corporation (*Genossenschaft*) is an association that functions to establish internal order and mutual respect among its members. Against the views of contemporary social ontologists, such as John Searle and Vincent Descombes, these forms have an existence that is ontologically objective, similar to other social phenomena like economic recessions and racism, because their existence does not depend on people's attitudes about the institution itself.

Normatively, institutions are both transcendental conditions of human sociality and teleological conditions of human freedom. Challenging the prevailing readings of normativity in Hegel, I argue that Hegel distinguishes between two kinds of institutional critique. The first is scientific critique, which has a limited scope and derives from the concept of the institution in question. The second is political critique, which is wider-sweeping and derives from one's membership in an ethical community, but is always open to contestation by others, and so cannot achieve certainty. By distinguishing between these two forms of institutional critique, Hegel limits science to make room for politics.

Hegel's institutional theory should be compelling to us today, I conclude, because it accounts for the nature, necessity, and objectivity of institutions in human life and provides a normative foundation for social critique. Appreciating Hegel's theory will aid us in rethinking institutions and inspire new directions in social research.

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## Abbreviations

Hegel's works are cited by their English translation (if available) followed by the corresponding volume and page number from the *Gesammelte Werke* or *Werke*. Hegel's *Encyclopedia* and *Philosophy of Right* are cited by section (§), with remarks designated by A (*Anmerkung*) and second-hand lecture additions by Z (*Zusatz*). The *Phenomenology of Spirit* is cited by the paragraph numbers (§§) given by Pinkard's translation. I have occasionally modified the translations. Kant's works are cited using the Cambridge translation followed by the *Akademie* pagination, with the exception of the first *Critique* for which the standard A and B edition pages are given instead.

## G. W. F. Hegel

### German Editions

- B** *Briefe von und an Hegel*. Edited by Johannes Hoffmeister and Rolf Flechsig. 4 vols. Hamburg: Meiner, 1961.
- GW** *Gesammelte Werke*. Edited by the Rheinisch-Westfälische Akademie der Wissenschaften. Hamburg: Meiner, 1968–.
- VRP** *Vorlesungen über Rechtsphilosophie, 1818–1831*. 4 Bände. Edited by Karl-Heinz Ilting. 4 vols. Stuttgart-Bad Cannstatt: Frommann-Holzboog, 1973–74.
- W** *Werke in 20 Bänden Mit Registerband: Gesamte Werkausgabe*. Edited by Eva Moldenhauer and Karl Markus Michel. 20 vols. Frankfurt am Main: Suhrkamp, 1986.

### English Translations

- E17** *Encyclopedia of the Philosophical Sciences in Outline, and Critical Writings*. Translated by Ernst Behler, Arnold V. Miller, Steven A. Taubeneck, and Diana Behler. New York: Continuum, 1990.
- EG** *Hegel's Philosophy of Mind*. Translated by M. J. Inwood, A. V. Miller, and William Wallace. Oxford: Oxford University Press, 2010 [1830].
- EL** *Encyclopaedia of the Philosophical Sciences in Basic Outline, Part 1: The Science of Logic*. Translated by Klaus Brinkmann and Daniel Dahlstrom. Cambridge: Cambridge University Press, 2010 [1830].
- EN** *Hegel's Philosophy of Nature*. Translated by Michael Petry. 3 vols. London: George Allen and Unwin, 1970 [1830].
- HW** *Heidelberg Writings: Journal Publications*. Translated by Brady Bowman and Allen Speight. Cambridge: Cambridge University Press, 2009. [1816–1817]
- L** *Hegel: The Letters*. Translated by Clark Butler and Christiane Seiler. Bloomington: Indiana University Press, 1984.



- MW** *Miscellaneous Writings of G.W.F. Hegel*. Edited by Jon Stewart. Evanston: Northwestern University Press, 2002.
- PhG** *The Phenomenology of Spirit*. Translated by Terry Pinkard. Cambridge: Cambridge University Press, 2018 [1807].
- PR** *Elements of the Philosophy of Right* [Grundlinien der Philosophie des Rechts]. Edited by Allen Wood. Translated by H. B. Nisbet. Cambridge: Cambridge University Press, 2011. In *GW* 14,1. [1821]
- PW** *Political Writings*. Translated by H. B. Nisbet. New York: Cambridge University Press, 1999.
- VBDG** *Lectures on the Proofs of the Existence of God*. Translated by Peter Crafts Hodgson. Oxford: Clarendon Press, 2011.
- VG** *Lectures on the Philosophy of World History. Introduction: Reason in History*. Translated by H. B. Nisbet. Cambridge: Cambridge University Press, 1975.
- VWG** *The Philosophy of History*. Translated by J. Sibree. Revised Edition. New York: Willey Book Co., 1944.
- WK** "On the Essence of Philosophical Criticism Generally, and Its Relationship to the Present State of Philosophy." In *Between Kant and Hegel: Texts in the Development of Post-Kantian Idealism*, edited by George Di Giovanni, translated by George Di Giovanni and H. S. Harris, Rev. ed., 272–91. Indianapolis: Hackett, 2000.
- WL** *The Science of Logic*. Translated by George Di Giovanni. Cambridge: Cambridge University Press, 2010 [1812, 1816, and 1831].

## I. Kant

### German Editions

- AA** Kant's *gesammelte Schriften*, edited by the Royal Prussian (subsequently German and then Berlin-Brandenburg) Academy of Sciences (Berlin: Georg Reimer, subsequently Walter de Gruyter and Co., 1900).

### English Translations

- KrV** *Critique of Pure Reason* [Kritik der reinen Vernunft]. Translated by Paul Guyer and Allen Wood. Cambridge: Cambridge University Press, 1998. Cited using translation pagination and, when available, A/B numbers.
- KU** *Critique of the Power of Judgment* [Kritik der Urteilskraft]. Translated by Paul Guyer and Eric Matthews. Cambridge: Cambridge University Press, 2000. Cited using translation pagination and Akademie pagination.
- MA** *Metaphysical Foundations of Natural Science* [Metaphysische Anfangsgründe der Naturwissenschaft]. Translated by Michael Friedman. Cambridge: Cambridge University Press, 2004.

## **J. G. Fichte**

### **German Editions**

**GA** *Gesamtausgabe der Bayerischen Akademie der Wissenschaften*. Edited by Erich Fuchs, Hans Gliwitzky, Reinhard Lauth, and Peter K Schneider. Stuttgart: Frommann-Holzboog, 1962–.

**FW** *Fichtes Werke*. Edited by I. H. Fichte. 11 vols. Berlin: De Gruyter, 1971.

### **English Translations**

**CCS** *The Closed Commercial State*. Translated by Anthony Adler. Albany: State University of New York Press, 2012.

**GNR** *Foundations of Natural Right: According to the Principles of the Wissenschaftslehre*. Edited by Frederick Neuhouser. Translated by Michael Baur. Cambridge: Cambridge University Press, 2000.

**SS** *The System of Ethics: According to the Principles of the Wissenschaftslehre* [Das System der Sittenlehre nach den Principien der Wissenschaftslehre]. Edited and translated by Daniel Breazeale and Günter Zöller. Cambridge: Cambridge University Press, 2005.

## **F. W. J. Schelling**

### **German Editions**

**SW** *Sämmtliche Werke*. Edited by K. F. A. Schelling. Stuttgart: J. G. Cotta, 1856–61.

### **English Translations**

**HMP** *On the History of Modern Philosophy*. Translated by Andrew Bowie. Cambridge: Cambridge University Press, 1994.

## **K. Marx and F. Engels**

### **English Translations**

**MECW** Marx, Karl, and Frederich Engels. *Collected Works*. 50 vols. London: Lawrence & Wishart, 1979–2004.

### **German Editions**

**MEW** Marx, Karl, and Frederich Engels. *Marx-Engels-Werke*. 43 vols. Berlin: Dietz Verlag, 1956–68.

## **J.-J. Rousseau**

### **French Editions**

**OC** *Œuvres complètes*. Edited by Bernard Gagnebin and Marcel Raymond. 5 vols. Paris: Gallimard, 1959.

### **English Translations**

**EOL** "Essay on the Origin of Languages." In *The Discourses and Other Early Political Writings*, translated by Victor Gourevitch, 247–99. Cambridge: Cambridge University Press, 1997.

**SC** "Of the Social Contract." In *Rousseau: The Social Contract and Other Later Political Writings*, translated by Victor Gourevitch, 39–152. Cambridge: Cambridge University Press, 1997.

**SD** "Discourse on the Origin and Foundations of Inequality Among Men." In *The Discourses and Other Early Political Writings*, translated by Victor Gourevitch, 111–222. Cambridge: Cambridge University Press, 1997.

# Chapter 0

## Introduction

### 0.1 Hegel and the Institutional Turn

Since the 1980s, the humanities and social sciences have undertaken an institutional turn: institutions have become the predominant subject-matter and conceptual frame for social science and social philosophy. Spurred by a desire to explain the radical social transformations of this period and address the novel challenges facing Western liberal democracies, scientists and philosophers have developed institutional theories that see social phenomena like money, political regimes, and social oppression as fundamentally constituted by institutions. However, this institutional turn has also led to a proliferation of institutional theories. In a recent study, Jupille and Caporaso (2022) catalog no fewer than eighty definitions of an institution (159–64). These definitions reveal wide-ranging disagreement about the nature of institutions and the validity of institutional analyses. Moreover, they also reveal that little scholarly attention has been paid to the historical genesis of the concept of institutions in modern European philosophy. Our moment calls for a reexamination of the concept of institutions and its history, one that could contribute to unifying the diverse institutional theories on offer today.

This thesis aims to address these issues. It does so by reconstructing the institutional theory of German philosopher G. W. F. Hegel (1770–1831) in its historical context. But before examining Hegel’s relevance to these problems, let us consider again the renewed interest in institutions in contemporary social thought from a conceptual angle.

#### 0.1.1 Why Institutions?

To inquire into institutions is to concern oneself with *social structure*. If, following Luhmann, we permit ourselves a provisional simplification and divide thinking about society into two opposed approaches—system versus action, Durkheim versus Weber—then institutional theory belongs to the former side (2013, 7–8). This remains true even when we acknowledge that, in fact, the pressing social-philosophical questions always concern the manner in which these extremes are mediated. The turn towards institutions in contemporary thought thus expresses various attempts to think social structure. This is true in social philosophy no less than social science.

But to think social structure, we must also think *structures*, in the plural, or, if you like, struc-

turation, structure as the processual unfolding of social structures. This is because structure without the differentiation of what is structured is no structure at all. There is, I suggest, an essential connection between institutions and social structure: institutions are the localized structurations of structure, without which structure could not be what it is, but nonetheless are more specific, more mutable, and more transportable than the overarching structure that they internally differentiate.

This rather obtuse conceptualization of institutions nonetheless helps explain why institutions are attractive to us today across various intellectual contexts. It is because institutions, as the locus of one's explanation or theory, strike the proper balance between specificity and generalizability. When we turn to institutions, we desire a differentiated analysis of the social phenomenon into its components or structures, structures that are both *universal*—applying beyond the context of their immediate empirical origin—and *concrete*—differentiating the social totality into its diverse yet interrelated parts.

### 0.1.2 Why Hegel?

Enter Hegel, who is motivated to transform social and political philosophy into a theory of institutions precisely because institutions are *substantial* and *meso-level* social structures that are both historically situated and concretely universal.<sup>1</sup> Indeed, without exaggerating much, one can say that Hegel first "discovers" institutions in the history of European social and political philosophy, having only Montesquieu as his forerunner. More specifically, Hegel's theory of institutions is worthy of our attention for three reasons.

First, Hegel develops a novel institutional theory that differs from current views yet bears features that may be attractive to us today. Rather than portraying institutions as sets of foundational rules or laws, coordination equilibria in a game, or as a combination of the two—the three predominate kinds of contemporary institutional theories (Guala 2016)—Hegel understands institutions to be *rational social forms*, social structures governed by the concept. Ontologically, Hegelian institutions are thoroughly *objective* because their existence does not depend on people's intentional attitudes about them. Normatively, Hegelian institutions are *rational* not only because they partially constitute our substantial freedom but also because they are bearers of rationality, corresponding more or less to their concept or telos. This view of institutions as rational social forms is attractive, I will argue, because, first, its objectivity accounts for the resistance of institutions to change, even when this change is widely desired, and can accommodate the existence of genuinely oppressive institutions, features of institutions that are difficult to explain if they are conceived as the outcomes of rational agreement, mutual recognition, or collective acceptance. Second, its inclusion of what I call *telic* normativity, the normativity corresponding to being a good or bad instance of one's kind, enables us to make some normative assessments of institutions that are objectively valid, namely, judgments that the institution fails to correspond to its concept. Finally, Hegel's institutional theory accomplishes these two feats not by *competing* with empirical science, replacing their institutional theories with a superior, speculative one, but by *cooperating* with it, conceptually transforming its relevant theories and research into a genuine system of institutions. Appreciating Hegel's institutional theory can, therefore, inspire new directions in

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1. On institutions as "meso"-level structural alternatives to "micro"- and "macro"-level analyses in social science, see Dopfer, Foster, and Potts (2004); van Staveren (2019).

contemporary research.

Second, we should not lose sight of the historical incisiveness of Hegel's turn toward an institutional analysis of society and politics. In taking the institutional turn, Hegel opposes the prevailing moralizing and individualist approaches to the social, represented, on one side, by Kantian morality and, on the other, by the social contract tradition of modern natural law, especially Rousseau and Fichte. Despite wide-ranging recognition that Hegel's institutional turn was among his most important contributions to philosophy, little scholarly attention has been given to this pivotal episode in the history of the concept of institutions. The study of Hegel's institutional theory thus aids in the reconstruction of this important conceptual history.

Finally, within scholarship on Hegel, it remains an open debate precisely how to understand his institutional theory and its success as a paradigm for social and political philosophy. In particular, commentators have criticized Hegel's *Philosophy of Right* (1821) for subsuming individuals under institutions, overlooking the social function of intersubjectivity and mutual recognition that Hegel, in the *Phenomenology of Spirit* (1807), had previously identified in his famed master-slave dialectic. This objection is known as Hegel's "over-institutionalization" (Axel Honneth) or "strong institutionalism" (Dieter Heinrich). Assessing whether strong institutionalism, as a thesis about the ontology and normativity of institutions, can be accurately attributed to Hegel and, if so, whether such a thesis can be defended, forms an important contribution to the scholarly literature.

For these three reasons, reconstructing Hegel's institutional theory—thereby opening up the possibility of its reevaluation—will aid us in the rethinking and recentering of institutions being undertaken in the science and philosophy of the social.

## 0.2 Theories of Institutions

Before addressing the structure of institutional theory in general (§0.3), we can benefit from reviewing the institutional turn in philosophy over the last few decades. In particular, we can identify the rise of institutions and institutional theory across four subfields of social and political philosophy and in social science. This brief review of the prevailing theories of institutions enables us to appreciate the difficulties facing Hegel's institutional theory and its potential value as an intervention in these contexts.

### 0.2.1 Liberal Political Philosophy

In his hugely influential work, John Rawls reconstituted political philosophy in part by placing institutions at its center. He did so by introducing what he calls the "basic structure of society" to be the "primary subject of justice," and in holding this basic structure to be nothing but the "system" of this society's "main institutions."<sup>2</sup> Although Rawls retains the standpoint of contractarianism—that that agents' consent under various constraints ("devices") and modalities (hypothetical "reasonableness") constitutes the ultimate source of normative justification—for Rawls, *what* is being normatively justified are institutions. Rawls's project, then, is ultimately an attempt to discern the conditions under which a set of institutions could be deemed just.

2. Rawls (1977, 159); see also Rawls (1993, xli, 11); Rawls (2001, 4, 8–9).

### 0.2.2 Philosophy of Law

In the philosophy of law, institutions rose to prominence in the early twentieth century under the banner of legal institutionalism.<sup>3</sup> Generally speaking, legal institutionalism positions itself as an alternative to the dominant legal theories of positivism and natural law. From a philosophical point of view, its chief representatives are Maurice Hauriou (1856–1929), a French jurist and theorist of public law who is regarded as the founder of legal institutionalism, and Carl Schmitt (1888–1985), who, during his period of "concrete order thinking," adapts and develops Hauriou's position.<sup>4</sup> Although legal institutionalism does not predominate in contemporary legal theory, it persists as a living tradition and continues to influence the positivist mainstream.<sup>5</sup>

### 0.2.3 Critical Social Theory

Institutions have also become central in critical social theory, though this was not always the case.<sup>6</sup> With the first generation of the Frankfurt School, represented by figures such as Max Horkheimer, Theodor Adorno, and Herbert Marcuse, one finds no general theory of institutions, although many specific institutions are addressed in their local contexts. One has the sense that the concept of institutions does not much develop in their thinking, let alone takes on a central role.

This changed with Jürgen Habermas, the second generation, especially with his 1981 publication of the *The Theory of Communicative Action*. Here, Habermas uses a systems-theoretic concept of institutions to theorize the "structural differentiation of the lifeworld" that gradually increases from archaic to modern societies (1984, 2:174; see also 2:166–72, 2:242–45). Generally speaking, for Habermas there is a basic distinction between, on the one hand, the "system"—including, but not limited to, the system of institutions—and, on the other hand, the lifeworld; with this distinction, the history of modernity can be understood as the history of the "colonization" of the life-world by the system. But Habermas's contributions in that monumental work are not to be found in institutional theory, but in the normative consequences that he draws from its application. This application more or less presupposes an already-developed institutional theory from the sociological tradition. Thus, Habermas can hardly be said to have developed a novel theory of institutions, but he puts a preexisting one to great use.

Axel Honneth, the third generation, is the first figure in critical social theory to develop a novel theory of institutions. While in his first work on recognition (1996; 1992), based on Hegel's early Jena writings, Honneth appeared to be indifferent to institutions, or even anti-institutionalist in spirit. After encountering Hegel's mature *Philosophy of Right*, Honneth later argues that recognition does not oppose institutionalization but grounds it (Honneth 2000, 2003, 2010, 2014; Boltanski and Honneth, 2014). For Honneth, institutions are nothing but the historically achieved patterns

3. On legal institutionalism, see the overviews by Pintore (2016); Scott, Christodoulidis, and Goldoni (2018); Culver and Giudice (2023); La Torre (2023).

4. Another central figure in legal institutionalism is the Italian jurist Santi Romano (1875–1947), whose writings have been recently translated into English (2017). However, Romano exerts little influence on contemporary legal institutionalism and none at all on contemporary social and political philosophy.

5. Contemporary legal institutionalists include Weinberger (1991); MacCormick (2008); La Torre (2010).

6. By critical social theory, I mean to include not only the Frankfurt School and those working within this tradition, but also a broader range of philosophers and social scientists influenced by German idealism and Marxism who, on the one hand, demand a closer interrelation of normative theory and empirical science than is practiced in mainstream political philosophy, and, on the other, connect their research in some way to the aim of universal human emancipation. Nonetheless, I here summarize only the trajectory of institutions in the Frankfurt School. For an insightful overview of the history of the Frankfurt School and its philosophical commitments, see Celikates (2018).

of mutual recognition and intersubjective action that structure our social life; recognitive institutions not only meet our basic moral needs, i.e., establish the formal preconditions of our freedom, but also enable us to partially transform these institutions into more comprehensive realizations of recognition over time. Honneth's recognitive paradigm therefore placed institutions at the core of critical social theory.

In present-day critical theory, the fourth generation, this ascendance of institutions has been challenged by its most prominent representatives, Rahel Jaeggi and Robin Celikates. While indebted to Honneth's work, both of these authors resist his recognitive theory of institutions, turning Honneth's criticism of Hegel—over-institutionalization—into a critique of Honneth's own critical-theoretical project. They contend that Honnethian institutions overlook the more fundamental level of normativity embedded in our everyday actions and attitudes. For Jaeggi (2018), such a critique of Honneth entails shifting the target of social critique away from institutions to "forms of life," ensembles of practices that include a multiplicity of "softer," informal, non-institutional practices that escape what can be grasped as institutions (39–40).<sup>7</sup> For Celikates, it requires us to recenter the conflict-driven and extra- and anti-institutional nature of the *struggle* for recognition, dimensions of recognition that escape its institutionalization (Celikates and Bertram 2015; Celikates 2021, 277–81). By no means do Jaeggi and Celikates abandon institutions in their social theories. Nonetheless, they aim to identify a broader normative terrain upon which institutions can be seen as particularly important special cases of normativity in general, a normativity that is just as much informed by dynamic practices, preferences, and social relations as it is by static institutions. Taking a step back, we can conclude that although critical social theory has not thoroughly investigated the social ontology of institutions, it nonetheless operates with them as a key social-theoretical device, and debates sounding the nature and centrality of institutions remain pressing within this field.

#### 0.2.4 Social Ontology

Institutions are also foundational within social ontology.<sup>8</sup> Influential works by John Searle (2010), Margaret Gilbert (2000), and Raimo Tuomela (2013) articulate what Burman (2023) calls the "standard model of social ontology," in which institutions, alongside practices and groups, have become the primary target of analysis. The core idea of this model is collective acceptance: institutions exist because we collectively recognize them or because we have the right kind of intentional attitudes ("we-intentions") toward them. For these authors, all institutions are products of collective acceptance. Recent work in social ontology challenges this view, resisting the reduction of institutionality to intentionality (Thomasson 2003; Haslanger 2012; Brännmark 2019; Burman 2023). This resistance raises the question of how to understand the objectivity of institutions given that they are socially constructed.

7. In an important earlier essay, Jaeggi calls institutions the "backbone of the social" (2009, 528; English translation n.d.). But, continuing with this metaphor, institutions are then a mere skeleton of the social, lacking the flesh and blood of forms of life. To repurpose Hegel, institutions are the "dead bones" of sociality "to be quickened by spirit"—forms of life—"and become substance and content" (SL 32/GW 21:37).

8. This literature often focuses its attention not on institutions per se but on "institutional facts," which are a subset of "social facts." I see nothing to be gained by shifting our attention away from the social world to language ("facts"), and so omit, so far as possible, speaking of facts throughout this study. For a defense of social facts as the relevant unit or "ontological category" in social ontology, see Burman (2023, 6); Epstein (2016, 150).



### 0.2.5 Social Science

Finally, institutionalist approaches have risen to prominence across many social science disciplines. These include economics (e.g., Veblen 1899; North 1990; Aoki 2001; Hodgson 2016), political science (e.g., March and Olsen 1989; Ostrom 1990; Knight 1992; Rhodes 2008; Peters 2019), sociology (Parsons 1951; Schelsky 1970; DiMaggio & Powell 1983), and evolutionary social science (e.g., Heintz 2007; Boyer and Petersen, 2012). Nonetheless, nearly all practitioners of institutionalist approaches complain that the concept of institutions remains highly variable across these fields, lacking cogent determinacy. Boltanski, a sociologist, exemplifies this point nicely:

On the one hand, the concept of institution is one of [sociology's] founding concepts: one of those it is virtually impossible to ignore. And in most sociological writings the term institution recurs, often incidentally, as if it were both necessary and obvious. On the other hand, however, the concept is rarely the object of an attempt at definition or even specification. It is used as if it were self-evident, although in very different senses depending on the context. (2011, 51)

What Boltanski claims for sociology holds no less for the other social-science disciplines. Institutions are a key concept within social science, yet they remain one of its most enigmatic.

## 0.3 The Structure of Institutional Theory

Having examined the theories of institutions across several subfields of philosophy and social science, we can now introduce two basic divisions within institutional theory. These divisions serve two purposes: first, they help organize our thinking about institutions; second, they will allow me to articulate an important limitation of this study.

### 0.3.1 General and Specific Institutional Theory

The first division in institutional theory is that between *general* and *specific* theories of institutions.<sup>9</sup> Specific institutional theories purport to tell us about particular *kinds* of institutions: social, political, legal, and economic, international, etc., and may involve further constraints, such as time and place. The value of such theories consists in their articulation of the concrete institutions operative within their specific domain, and the tethering of these institutions to empirical data. By contrast, a general theory of institutions purports to tell us about institutions *as such*: what it is to be an institution at all, how they change, and what kinds of roles they play in society and in our lives. General theories must, of course, make use of concrete institutions as examples in their articulation, but the aim of developing a general institutional theory is to arrive at an account that applies to all institutions, at least in principle. Despite their obvious interdependence, these two 'levels'

<sup>9</sup> I take this distinction between a general institutional theory ("allgemeine Institutionentheorie") and a specific ("spezifische") institutional theory from Roth (1989, 5–13). Roth's dissertation contains a wealth of insights into Hegel's institutional theory, providing an exhaustive treatment of its reception by twentieth-century German social theory. In spirit, his work is the closest existing one to my own. However, my contribution differs from Roth's on an essential point: I reconstruct Hegel's institutional theory from his mature social and political philosophy, namely that *Philosophy of Right*. Roth, by contrast, bases his reconstruction of the Jena practical philosophy, dealing with the *Grundlinien* only in a single late chapter (1989, part 3, chap. 1) and only "in light of" the Jena writings. Roth's dissertation was later shortened and republished as a book (1991).

of institutional theory are nonetheless relatively detachable. For example, an account of the role and influence of economic institutions in the rise of capitalism in early modern Europe—a specific institutional theory—will likely be relatively robust across a variety of plausible general institutional theories, remaining valid within each of them. Similarly, a general institutional theory can retain its validity even if the examples used to develop it are inadequate, incorrectly understood (either empirically or theoretically), or simply outdated.

This division equally holds for Hegel’s institutional theory, within which we can separate his specific institutional doctrine—the concrete social forms he identifies as institutions—from his general institutional theory—his account of what institutions are, how they function, their normativity, etc.. We can, therefore, separate issues concerning Hegel’s specific institutional theory, such as its postulation of the monarch in the state and his sexist views on marriage in the family, which are indeed very worrisome, from his general institutional theory. Although this general theory is initially informed by these concrete institutions, it is not reducible to them, and, in the last analysis, need not be beholden to them. This study is an exposition of Hegel’s *general* institutional theory. Although great attention will be paid to the concrete forms identified by Hegel as institutions, we aim to discern the general institutional theory coursing through them.

### 0.3.2 The Topology of Institutional Theory

The second division occurs within general institutional theory. It concerns the division of such a theory into its interrelated dimensions or aspects—its topology. Nearly all general theories of institutions posit an institutional topology. For example, Jupille and Caporaso (2022) decompose institutional theory into temporality, sociality, efficiency, and power, which they map to the disciplines of history, sociology, economics, and political science (2, 12). Such typologies are not only helpful in approaching general institutional theory, but are nearly unavoidable if we wish to construct a general institutional framework.

For the purposes of understanding Hegel’s institutional theory and its possible contribution to ongoing philosophical debates, I propose the following threefold institutional topology:

- **Institutional ontology:** what institutions *are* and what kinds of things they *depend on* in order to exist.
- **Institutional dynamics:** how institutions *function*, in two senses: how institutions, in their localized operation, effect and react to individuals and their interactions; how institutions maintain themselves and change or stagnate over historical time; *performativity*.
- **Institutional normativity:** how institutions relate to normativity, in two senses: when institutions are good or bad and how institutions contribute to judgments of goodness or badness being possible in the first place; *reflexivity*.

In my view, this threefold topology carves institutional theory at the metaphorical joints. But one need not accept this claim for my proposed topology to serve its purpose, which is merely to enable us to compare Hegel’s institutional theory with contemporary institutional theories in a meaningful way. Moreover, this topology allows us to identify lacuna in existing scholarship on Hegel’s institutional theory. As we will see, most scholarship on Hegelian institutions concerns institutional normativity; almost none of it deals with institutional ontology.

This study, too, will be limited. Hegel's institutional theory crosses all three dimensions. But this study treats only Hegel's institutional ontology (chapter 2) and institutional normativity (chapter 3), omitting institutional dynamics, although some of its aspects naturally emerge in the course of exposing the other two. What results from this study is therefore only a *synchronic* view of institutions in Hegel's practical philosophy, how they operate as a whole in a society at a given moment in time. Future research on this topic would do well to develop in tandem a *diachronic* view of Hegel's institutional theory, which, when juxtaposed with this synchronic view, would provide a fuller comprehension of institutions in Hegel's social thought.

## 0.4 Historical Considerations

### 0.4.1 Textual Sources

My reconstruction of Hegel's institutional theory relies upon a strict textual diet. Rather than attempt to encompass all of Hegel's writings on society and politics, or what Hegel calls spirit (*Geist*), I focus on the *Philosophy of Right* (published in October of 1820) and, to a lesser extent, the 1817 *Encyclopedia* and other published writings in the period of 1812–1820, most notably the *Science of Logic* (1812, 1816).<sup>10</sup> Centering the *Philosophy of Right* in a study of Hegel's social and political philosophy is hardly controversial. It is Hegel's most mature, systematic, and influential statement of the part of philosophy he calls "objective spirit." But excluding the wealth of other materials, such as his Jena writings on spirit and the many student lecture transcripts, requires further justification. Four reasons in particular can be given for restricting the available material in this way.

The first reason is really a cluster of generic exegetical principles. First principle: if we wish to understand a historical text from a prolific author, then supplementary texts should be weighted in proportion to their temporal distance from the target text, all other things being equal. This principle supports weighing the 1817 edition of the *Encyclopedia* over the 1827 and 1830 editions, for example.<sup>11</sup> To this we may add a second, hardly controversial principle: that an author's published writings be given priority over her notes, unpublished manuscripts, and student-compiled lecture transcripts. This principle, too, underscores the importance of the 1817 *Encyclopedia*. Finally, Hegel's *systematic* works must take precedence over his occasional writings on political affairs, personal matters, and official duties, such as his newspaper articles, university addresses, letters, and book reviews. While these sources provide essential material, indeed, material whose value is often overlooked in Anglophone Hegel scholarship, they nonetheless remain secondary in importance to Hegel's systematic writings. These three generic exegetical principles clearly pick out the *Philosophy of Right* and the 1817 *Encyclopedia* as the proper textual basis for reconstructing Hegel's institutional theory.

The second reason is specific to Hegel's intellectual trajectory. There is evidence suggesting

10. Thompson defends a similar restriction of sources for interpreting Hegel's position in the *Philosophy of Right* (2019, 10–13).

11. The 1817 *Encyclopedia* was its first edition, and is sometimes called the Heidelberg *Encyclopedia* because of its location of composition and publication. The later two editions of the *Encyclopedia* (1827, 1830) were composed and published in Berlin. The changes to the 1827 edition are substantial, the 1830 edition much less so (the third edition appears to have been issued primarily the second was out of print, not because Hegel wished to make serious alterations).

Hegel changed his views in practical philosophy in the period before 1817.<sup>12</sup> Prior to 1817, Hegel retains elements of his early political romanticism, particularly the ideal of the beautiful Greek polis as the consummation of *Sittlichkeit*. Hegel's association of *Sittlichkeit* with the Greek ideal appears in natural law essay (1802) and throughout the unpublished system drafts. It can also be detected in the sections on "True Spirit, *Sittlichkeit*" (PhG ¶¶443–82) of the *Phenomenology* (1807) in which *Sittlichkeit* corresponds only to the ancient Greek and Roman worlds. In the Nuremberg *Propaedeutic* (1810), Hegel comes close to the tripartite division of the *Philosophy of Right*, but still lacks the concept of *Sittlichkeit*.<sup>13</sup> Only with the 1817 *Encyclopedia* does *Sittlichkeit* emerge in its full systematic significance—the unity of objective and subjective spirit as such—and so it is only with this text that we can begin a reconstruction of his institutional theory, which, as we will see, is coterminous with his mature doctrine of *Sittlichkeit*.<sup>14</sup>

The third reason relates to the state of the scholarly literature on Hegel's theory of institutions. In the Anglophone literature, scant attention has been paid to the interconnection between the *Philosophy of Right* and the 1817 *Encyclopedia*, despite their chronological proximity.<sup>15</sup> This neglect has two causes. First, the burgeoning interest in identifying recognition as the 'principle' of Hegel's practical philosophy led many commentators to focus on his institutional theory during his Jena period, either in his unpublished system drafts, which, from the standpoint of recognition, address institutions directly or in its culmination in his *Phenomenology of Spirit* (1807), which addresses institutions, but obliquely. Because Hegel abandons this recognitive tack to institutions in the 1817 *Encyclopedia*, it, along with the *Philosophy of Right* itself, have been set aside by these commentators in favor of the purportedly more radical "junge Hegel."<sup>16</sup> Second, system-inclined interpreters usually read the *Philosophy of Right* together with the 1830 *Encyclopedia*, bypassing the 1817 *Encyclopedia*. By omitting the 1817 *Encyclopedia*, they assume that Hegel's philosophical views remain largely unchanged between 1817 and 1830, with the 1830 edition merely expanding and clarifying the same basic position. While this assumption might ultimately be correct, it should be demonstrated, not presupposed. It is more prudent to admit that Hegel could have changed his views and to take the cautious route of reading the *Philosophy of Right* in light of the 1817 *Encyclopedia*, not the 1830 edition. Other research can then determine this matter conclusively. Moreover, the earlier edition offers a different perspective on many crucial argumentative turns, particularly in the transition from subjective to objective spirit. Thus, the 1817 text thus warrants

12. There is also evidence that Hegel changes his views in theoretical philosophy after 1820, especially on the relation between logic and metaphysics, on the one hand, and between experience and philosophy, on the other. On this latter issue, see Renault (2019). This evidence of major changes in Hegel's theoretical philosophy after 1812 is inconclusive; however, it is sufficiently plausible to warrant caution among interpreters.

13. The relevant sections follow the division: right, morality, and the state (W 4:58–65).

14. Because Hegel's mature career in theoretical philosophy begins in earnest in 1812, when he published the first part of the *Science of Logic*, the objective logic, the most reasonable period for reconstructing Hegel's institutional theory are on the basis of the texts published between 1812 and 1820.

15. This temporal proximity is amplified if we consider the context surrounding the publication of the *Philosophy of Right*. Hegel had already begun lecturing on the *Philosophy of Right* in the winter semester of 1817–18 in Heidelberg on the basis of a manuscript that closely resembles the published text. Evidence suggests that Hegel intended to publish this text much earlier than 1820, but was delayed due to the murder of August von Kotzebue (March 1819) and the Carlsbad Decrees (September 1819). In Berlin, Hegel writes in a letter to Creuzer dated October 30, 1819: "I allowed my reply to be delayed partly in order to respond with a few sheets of my *Philosophy of Right*. [...] I was just about to have the printing begin when the Diet's decisions on censorship arrived. Now that we know what freedom we have under the censors I shall shortly give the material over to the printer" (L 451/B 2:217–20). Evidently, Hegel either elected not to realize this plan or was prevented from doing so, and another year would pass before the *Philosophy of Right* was seen in print (bearing on its title page the incorrect date of 1821). Thus, the composition of the *Philosophy of Right* lies much closer in time to 1817 than 1827.

16. For example, Roth (1989, 235); Honneth (1996); Habermas (1973); Lukács (1975; 1948).

consideration in its own right.

Finally, the fourth reason is pragmatic: narrowing the scope of texts makes the project manageable in its current form. I do not entirely omit earlier, later, and non-systematic texts, such as the *Phenomenology of Spirit*, the 1830 *Encyclopedia*, and the "English Reform Bill." However, I give them secondary importance in the reconstruction, using them only for non-contentious clarification of points already established in the target texts. I do not intend to provide any comprehensive account of these supplementary texts. Future work on Hegel's institutional theory would benefit from closely examining all of the relevant and available materials that have not been considered here. This is especially so for the student transcriptions of Hegel's lectures on the philosophy of right and world history. The former are entirely omitted from this study and the latter only occasionally consulted. In future work, I hope to incorporate these materials, especially their presentation in the new critical editions. These new editions, found in GW 26,1–4 (2014–19) and GW 27,1–5 (2015–), replace the older editions of Ilting (1973–74) and Hoffmeister/Lasson (1955). Certainly, new insights will emerge from them, enabling us to think Hegel's theory of institutions again and differently.

## 0.4.2 Terminology

Two terminological remarks are unavoidable at this stage. The first concerns the primary subject of this study, institutions, and the second the conceptual scaffolding that envelopes them, *Sittlichkeit*. Since the former is simpler, let me begin with it.

### Institutions

It pertains to my argument that the German terminology surrounding the concept of institutions had not yet solidified in the first half of the nineteenth century, and that Hegel's achievement within this conceptual field is in part terminological. Naturally, terminology for institutions in this period remains quite slippery. Nonetheless, it is essential to maintain terminological consistency so that my argument can be properly assessed. While there are many words that can be plausibly translated into English as "institution," I have chosen to do so only for two German words: *Einrichtung* and *Institution*.<sup>17</sup> In my research, I have been unable to discern any meaningful difference between these two nouns in either Hegel or any other major author in this period.<sup>18</sup> This is not surprising, as the Germanic *Einrichtung* is a very literal translation of the Latinate *Institution*. In this study, I will therefore assume a semantic identity between the two. However, to provide the reader the opportunity to arrive at this conclusion herself, I have always noted in brackets (at least upon first quotation) whether Hegel writes *Einrichtung* or *Institution*.<sup>19</sup>

On this basis of this principle, we will notice that the term "institution" appears much more often in our modern English translations than it does in Hegel's German (e.g., PR §245/GW 14,1:194). This is certainly understandable from the standpoint of the translator, who must bring

17. Other candidates include: *Institut*, *Anstalt*, *Veranstaltung*, *Stiftung*, *Einsetzung*, and many others. I use other, context-appropriate words to translate these terms.

18. Circumstantial evidence can be accumulated that Hegel identifies *Einrichtung* with *Institution*, but this evidence remains inconclusive. For example, in his handwritten notes to PR §3—a section containing some of Hegel's most significant meditations on institutions in the *Philosophy of Right*—Hegel in the same breath speaks of *Institution* and *Einrichtung* (W 7:43–44).

19. For a more in-depth treatment of this terminological issue, see chapter 1.

Hegel's dead letter into our living world, but a rigorous study such as this one must take a more literal approach, at least at the onset, as this will ultimately allow us to judge in a principled way whether these interpretive glosses on the part of the translator are warranted or not.

Notably, I almost always refer to institutions in the plural. This is because it pertains to the concept of institutions—at least for Hegel—that they cannot exist in isolation from each other but form an interconnected totality. We can, of course, identify existing singular institutions. But at the level of the concept, institutions are inherently plural.

### Ethicality

Throughout this study, I have mostly left *Sittlichkeit* untranslated, Hegel's term of art for the final moment of objective spirit and the unity of subjective and objective spirit. When translated, I have chosen the somewhat unorthodox "ethicality" over the now standard "ethical life."<sup>20</sup> This choice is driven not only by the need to distinguish it from *sittliche Leben*, a phrase Hegel sometimes uses,<sup>21</sup> but more importantly (1) to ward off certain misunderstandings and (2) to highlight the radical universality the concept holds for Hegel.

To the uninitiated, "ethical life" suggests something like *Gemeinschaft*, a close-knit, homogeneous, value-oriented community, opposed to *Gesellschaft*, an anonymous, alienated, efficiency-oriented society, to use Tönnies's famous distinction (2001, 17–19). Yet this is misleading. Hegel believes that *Sittlichkeit* encompasses both modes of sociality and does not prefer one over the other in any simplistic manner. The tinge of vitalism suggested by "ethical life" is equally unnecessary. As we know from Durkheim, the former, homogenizing society can be said to be formed through "mechanical" solidarity and the latter, heterogenizing society (because divided in its labor) formed through "organic" solidarity. Insofar as "ethical life" hints that Hegel sides with "communitarianism" in contemporary political philosophy or is a or a proponent of "inter-subjective" approaches to sociality, it distorts. To be sure, when T. M. Knox introduced "ethical life" as a translation of *Sittlichkeit* in 1942, he was justified in doing so, as this translation accurately expresses Hegel's intention to combat the empty abstractions of law and morality. But given the increasing sophistication of scholarship on Hegel's practical philosophy, we should forgo this interpretive crutch and think of *Sittlichkeit* in more literal terms.

My proposed translation, ethicality, better captures the high level of generality—really, *universality*—at which Hegel is operating with his notion of *Sittlichkeit*. In *Sittlichkeit*, Hegel asks himself: What it is for something (spirit) to be ethical at all? His answer is that it is for spirit to inhabit a world of objective normativity that is also the condition of its realized freedom. *Sittlichkeit*, then, (and as I will defend in more detail) pertains to all human sociality as such. The historical specificity that is so central to Hegel's project therefore occurs *not* at the level of *Sittlichkeit*, but at the more concrete level of institutions, which, as I will explain, internally differentiate the three spheres of *Sittlichkeit*: the family, civil society, and the state. In contrast to each sphere's historically specific institutionalization, the spheres themselves share *Sittlichkeit*'s universality. This universality of *Sittlichkeit* is better expressed in my proposed translation, ethicality. The suffix of "-keit," missing in "ethical life," but recuperated—somewhat awkwardly—by the "-ality" of "ethicality," helps remind of us the universality that this term has for Hegel.

20. Kervégan (2018) also opts for "ethicality" as a translation for *Sittlichkeit* on similar grounds (367).

21. E.g., PR §175/GW 14,1:153; PR §270A/GW 14,1:222; PR §273A/GW 14,1:226; PR §357/GW 14,1:280.

## 0.5 Chapter Overviews

This work is a study of Hegel's groundbreaking intervention in history of institutional theory: his institutionalization of *Sittlichkeit* in the *Philosophy of Right*. Its general procedure is three-step: to first situate this theory within the history of the concept of institutions (chapter 1), then, to examine Hegel's own words on the matter (chapter 2), and, finally, to reconstruct Hegel's institutional theory in relation to contemporary theories of institutions (chapters 3 and 4). Chapters 1 and 2 serve as prolegomena, laying the groundwork for the reconstruction in chapters 3 and 4, which are the most substantial parts of the work. More specifically, the contributions of each chapter are as follows:

*Chapter 1: History.* The history of the concept of institutions remains unwritten. Examining this history reveals that Hegel unifies two institutional paradigms in modern European philosophy: one that sees institutions as *artificial*, justified by being outcomes of agreement or consent (the Roman-German institutional tradition), and another that views institutions as *natural*, justified by their interconnection with a people's way of life (the French institutional tradition). Starting with Gustav Hugo, a precursor of the historical school of law, and his review of Hegel's *Philosophy of Right*, I trace this historical trajectory, culminating in Kant, setting the stage for Hegel's unification in subsequent chapters.

*Chapter 2: Excursus.* This chapter examines Hegel's institutional theory in his own words. This excursus is necessary because, despite widespread acknowledgment that institutions are central to Hegel's contribution to political thought, no study of institutions in his writings has been undertaken in the scholarly literature. Close attention to Hegel's texts generates three insights. First, Hegel distinguishes between "spheres" (*Sphären*)—the family, civil society, and the state—and "institutions" (*Institutionen, Einrichtungen*)—e.g., marriage, the corporation, and sovereignty. Although often overlooked, Hegel's sphere-institution distinction is crucial for understanding his institutional theory: spheres are invariant across historical time, whereas institutions are the localized ways in which these spheres are made concrete. Second, institutions are, for Hegel, meso-level structures that combine a way of being and a function. For example, marriage is a social relation (*Verhältnis*) that functions to spiritually unify two spouses. Finally, Hegel criticizes institutions throughout his published writings. Accommodationism is therefore put into question as an interpretation of his institutional theory.

*Chapter 3: Ontology.* This chapter reconstructs Hegel's institutional ontology in the *Philosophy of Right*—that institutions are *social forms*—and defends it against its most pressing objection—ontological over-institutionalization. According to this objection, Hegel perniciously prioritizes institutions over individuals and their interactions, ontologically speaking. I argue that Hegel indeed gives ontological priority to institutions over individuals. For Hegel, institutions are ontologically independent of individuals' representations about them. However, this is not the implausible position that his critics take it to be; instead, it parallels the objectivity we ascribe to other social phenomena like economic recessions and racism. No longer facing the specter of ontological over-institutionalization, Hegel's institutional theory can be received as live option in social ontology, critical social theory, and the philosophy of social science.

*Chapter 4: Normativity.* This chapter reconstructs Hegel's account of institutional normativity in the *Philosophy of Right*. Widespread disagreement about the status of normativity in Hegel's

practical philosophy persists in the scholarly literature. Aiming to disambiguate this discussion, I distinguish three kinds of normativity in Hegel: deontic, transcendental, and telic. Institutional normativity, for Hegel, involves the latter two kinds. Institutions both serve as transcendental conditions of human society (*institutionality*) and have as their telos the realization of human freedom (*institutional rationality*). This resolves the problem of normativity in his practical philosophy. Moreover, the latter kind of normativity grounds a weaker, reformist type of institutional critique deriving from *the concept* of the institution in question (*scientific* critique). But Hegel also legitimates a wider-sweeping type of institutional critique deriving from one's *membership* in an ethical community (*political* critique), one which is always contestable by other members, and so cannot achieve certainty. Hegel limits science to make room for politics.



# Chapter 1

## History

### 1.1 Introduction

In his review of Hegel's *Philosophy of Right*, Gustav Hugo, a forerunner of Friedrich Carl von Savigny, who later recognized him as the founder of the historical school of law,<sup>1</sup> criticizes Hegel for conceiving of institutions (*Institutionen*) in the "French sense" (VRP 1:378–79), which Hugo contrasts with Roman-German sense of this term. While Hugo makes this criticism only in passing, it reveals, I shall argue, deep insight into the structure and argument of the *Philosophy of Right*, as it correctly ascertains Hegel's decisive break with the institutional theory of his predecessors. Hugo's critique, in other words, makes explicit that there are diverging concepts of an institution in this period and raises the question of which is to be preferred.

In this chapter, I use Hugo's remark as a springboard to articulate a historical thesis, viz., that Hegel's *Philosophy of Right* intervenes in the history of institutional theory by unifying the French and Roman-German institutional traditions. Hugo thus overlooks Hegel's incorporation of certain aspects of the Roman-German tradition in unifying it with the French one. This historical thesis supports a second and more systematic thesis, viz., that institutions are central to Hegel's intervention in social and political philosophy, and, more specifically, that Hegel's institutionalization of *Sittlichkeit* constitutes his master argument in the *Philosophy of Right*. Although historical considerations cannot prove this latter thesis, which can only be demonstrated through systematic interpretation of the text itself, they lend it external support.

Before examining these two traditions of institutional theory in detail, it is helpful to outline the two conflicting concepts of an institution to which they give rise and examine its etymology. A complete treatment of this history in modern European philosophy lies outside the scope of this chapter. Nonetheless, any compelling philosophical analysis of institutional theory in this period must consider the shifting semantics of the concept of institutions at this time, particularly if one hopes to appreciate the radicality of Hegel's institutionalization of ethicality. We also hope to avoid anachronism in our interpretation of Hegel to better retrieve what is novel in his social

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1. See Beiser 2011, 219. Evidence of Savigny's high appraisal of Hugo can be found in his glowing review of Hugo's *Lehrbuch der Geschichte des Römischen Rechts* in *Vermischte Schriften* (Berlin: Veit, 1850), 5:1–36. Marx similarly calls Hugo "the forefather and creator of the historical school" and Hugo's *Lehrbuch des Naturrechts* the "Old Testament of the historical school" (MECW 1:204/MEW 1:79; MECW 1:203/MEW 1:78).

thought.<sup>2</sup>

*Two paradigms of institutional theory.* From the Romans we receive the *legal* paradigm of institutions as the fundamental rules or codes stipulated by legislation, lawgiver, or convention; from the French the *natural* paradigm of institutions as ways of life growing from a people's mores, manners, and habits, thus relegating written law to be merely one class of institutions among others.<sup>3</sup> We may summarize the difference between these two conflicting conceptions of institutions as that between *nature* (Greek *physis*, Latin *natura*) and *artifice* (*techne*, *ars*), with the qualification that we do not intend this opposition to recapitulate the ancient one between *physis* and *nomos* (the latter encompassing, for the Greeks, both written and unwritten law or custom). Instead, for moderns the stress lies less on the factual origin of institutions but instead on the source of their normative justification: do institutions attain legitimacy as organic effects of a society's way of life or national spirit (*Volkgeist*) or as by being conceived as the outcome of agreement or legislation (either positive or natural), usually among individuals taken in abstraction from their social context? Hegel's intervention, I argue, is to have united these two competing concepts of an institution. However, his is not a symmetrical unification; Hegel gives *ontological* precedence to the French theory because institutions for him need not be legally constituted nor agreed upon, and certainly not by isolated individuals; however, he gives *teleological* precedence to the Roman theory because he inscribes *some* legal codification, what Hegel identifies with the "form of universality," into the telos of *all* institutions, which therefore contributes to their legitimacy and secures the right of subjectivity.

*Etymology and origins.* English, French, and German renditions of institution have a common origin in the Latin verb *institutio*, "to put in place," or "to set up," in the sense of "establishing something permanently" (cf. Kervégan, Schmidt, Zabel 2021, 2–4). In particular, German authors have available to them both Latin expressions (*instituieren*; *Institution*, *Institut*) and Germanic ones for this concept (*errichten*, *stiften*; *Einrichtung*, *Anstalt*, *Veranstaltung*, *Stiftung*, *Einsetzung*).<sup>4</sup> This etymological origin from *institutio* supports the artificial-judicial paradigm of institutions for two reasons.

First, the Latin prefix "in-" bears the meaning of "indicating motion into something," compa-

2. To my knowledge, there exists no monograph on the history of the concept of institutions in Western social and political philosophy in English or German. The best resource on this topic is the entry in the *Historisches Wörterbuch der Philosophie* (Helmut Dubiel, "Institution," in *Historisches Wörterbuch der Philosophie*, eds. Joachim Ritter et al., Bd. 4 [Basel: Schwabe, 1976], 418–24). "Institution" is notably absent from the *Geschichtliche Grundbegriffe*, although Manfred Riedel's entries "Gesellschaft, Gemeinschaft" and "bürgerliche Gesellschaft" are instructive in this regard (*Geschichtliche Grundbegriffe*, eds. Otto Brunner, Werner Conze, and Reinhart Koselleck, Bd. 2, [Stuttgart: Klett, 1975], 719–862). I have also consulted the following encyclopedia entries: Wolfgang Fritz Haug, "Institution," in *Historisch-Kritisches Wörterbuch Des Marxismus*, ed. Wolfgang Fritz Haug (Hamburg: Argument, 2004), 1222–243; Reiner Wimmer and Oswald Schwemmer, "Institution," in *Enzyklopädie Philosophie und Wissenschaftstheorie*, eds. Gottfried Gabriel, Martin Carrier, and Jürgen Mittelstrass, Bd. 4 (Stuttgart: Metzler, 2010), 2–6; Hansmartin Kuhn, "Institution," in *Europäische Enzyklopädie zu Philosophie und Wissenschaften*, eds. Hans Jörg Sandkühler and Arnim Regenbogen, Bd. 4 (Hamburg: F. Meiner, 1990), 684–88. This lacuna is masterfully outlined in a recent introductory article to a special issue on institutions in modern European social thought (Kervégan, Schmidt, and Zabel 2021).

3. To be sure, Roman law also admits of unwritten law: "Our law is either written or unwritten. The Greeks also make this distinction between written and unwritten law." (Inst. I.2, p. 37). But unwritten law retains the features of being *rules* and of having been the object of *consent*: "Law comes into being without writing when a rule is approved by use. Long-standing custom founded on the consent of those who follow it is just like legislation" (Inst. I.2, p. 39). These two features sufficiently distinguish it from the natural paradigm of institutions.

4. According to Kervégan (2022, 182n4), a "distinction [is] made in German legal language between *Institut* and *Institution*: property or marriage are *Rechtsinstitute*, the State or the University are *Institutionen*." But this distinction derives from Savigny, not Hegel, in whose works I have found no evidence of a systematic distinction between *Institut* and *Institution*. Hugo deems this distinction between *Institut* and *Institution* to be characteristic of the French institutional tradition, to which Savigny, no less than Hegel, is indebted.

rable to the English "in-" and German "ein-." In practice, the use of the word institution in these languages connotes being the product of activity, often the purposive and so artificial activity of a human agent. Children, for example, must be "instituted" in the sense of being laboriously instructed and brought up—this enculturation does not happen "by nature."<sup>5</sup> Institutions thus frequently appear in a didactic register, meaning something like "foundational instructions." For example, we find in Quintilian "institutions of rhetoric" (*Institutio Oratoria*) and in Erasmus and Calvin pedagogical institutions into Christianity (*Institutio principis Christiani, Institutio Christianae Religionis*).<sup>6</sup> In its original Latin meaning, institution referred only to those things that were the product of human art, of conscious organization, planning, and effort.

Second, the *locus classicus* of the legal paradigm of institutional theory lies in the *Corpus Iuris Civilis* (529–534).<sup>7</sup> the "Institutiones" form one of the *Corpus's* four parts, along with the Digest or Pandects, Code, and Novels. The prevailing influence of the *Corpus* is evident by Hegel's use of its structure to characterize the relationship between *Recht* as an object of philosophical science and right's empirical existence in positive legislation. Rather than being "oppositional or antagonistic" to one another, philosophical right and positive right are complementary, relating like "Institutionen to Pandecten," that is, as between foundational rules and their concrete specification (PR §3A/GW 14,1:26).<sup>8</sup> Hegel thus denies that the philosophical treatment of right could ever produce "a positive code of laws [Gesetzbuch] such as is required by an actual state" (ibid.) Thus from the Roman-German point of view, institutions are the foundational rules laid down by an authorized lawgiver that establish the framework within which subsequent and more concrete law can be legislated.<sup>9</sup>

The origins of the naturalist program in institutional theory are less determinate. Nevertheless, Montesquieu proves to be the central figure in this tradition for Hegel and the historical school of law. By 1750, Montesquieu could identify institutions in the natural sense to be the generic objects of his investigation in *The Spirit of the Laws* (1748):

Those who have some understanding will see at first glance that the object of this work is the laws, customs, and various ways of all the peoples of the earth. One can say that its subject is immense since *it embraces all the institutions [institutions] that are received among men*.<sup>10</sup>

5. For example, Hobbes, a proponent of the Roman concept of institutions, asserts the parents' right to "institute their children as they themselves think fit" (*Leviathan*, Ch. 21/148).

6. This didactic flavor of institution is reflected in famous eighteenth-century textbooks on metaphysics, such as Friedrich Christian Baumeister's *Institutiones metaphysicae* (1738) and Henrich Ulrich's *Institutiones Logicae et Metaphysicae* (1785).

7. Samuel P. Scott, ed., *The Civil Law*, 17 vols. (Cincinnati: The Central Trust Company, 1932). Reprinted in Samuel P. Scott, ed., *The Civil Law*, 7 vols. (New York: AMS Press, 1973). The Institutes are in vol. 2 (reprint vol. 1). I have also consulted Peter Birks and Grant McLeod, trans., *Justinian's Institutes* (Ithaca: Cornell University Press, 1987).

8. To be sure, Hegel's rough analogy between the pandects and positive right, on the one hand, and the institutes and natural right, on the other, drew him criticism from legal scholars, such as Hugo, because the *Corpus Iuris Civilis* is not in fact so rigid in its structure. Today, commentators share Hugo's negative assessment of this analogy. Riedel: "Hegel's comparison is not very good, because the elementary textbook of law, Justinian's *Institutes*, is not constructed as systematically as is his own *Grundlinien*" ("Dialectic in Institutions," in *Between Tradition and Revolution*, 359). Kervégan: "The comparison is no doubt a clumsy one and shows the limits of Hegel's information about Roman and scholarly notions of law" (*The Actual and the Rational*, 64).

9. Institutions in the Roman-German paradigm therefore resemble Hart's "secondary rules," that is, rules for changing the first-order rules. See Hart, 2012, 79–81.

10. Montesquieu, "Defense of The Spirit of Law (1750)," in *Montesquieu: Discourses, Dissertations, and Dialogues on Politics, Science, and Religion*, ed. and trans. David W. Carrithers and Philip Stewart (Cambridge University Press, 2020), 238, emphasis in the original.

In bringing together laws, customs, mores, manners, and ways of life under the banner of institutions, Montesquieu broadens the concept of institutions beyond that of Roman law. He does so primarily in two ways. First, because institutions need not derive from arbitrary legislation or consent (explicit legal institutions now become a special case) but always emanate from the *nature of things themselves* (as Hegel also insists), informal norms, manners, and customs—usually represented as coalescing bottom-up into impersonal forces that come to resemble natural ones—become the paradigm of an institution, replacing the artificial-juridical paradigm of positive law. Second, because these institutions causally interact with one another and so stand in relations of mutual dependence, one comes to understand any particular institution only through an analysis of its contribution to and dependence on the social totality—its *function*—of which one can comprehend nothing in abstract isolation from its context, viz., the holistic character of its national origin and historical age. In short, the true object of social philosophy comes to be institutions in their *Zusammenhang*.

Undoubtedly, Montesquieu's naturalized concept of institutions, one that need not be legislated nor consciously willed, exercises significant influence on Hegel's institutionalization of *Sittlichkeit*. We can thus begin to understand Hugo's observation that Hegel uses *Institutionen* in the "French sense," in contrast to its juridical use by Roman and German writers. Yet missing from Hugo's opposition of these two institutional traditions is a recognition of Hegel's attempt to unify or sublimate the French tradition. I seek to redress this oversight in this chapter, which proceeds in four further sections. First, I will reconstruct Hegel's engagement with the historical school of law as represented by Gustav Hugo. Hegel's engagement with Hugo has been relatively understudied in the literature, but Hugo's influence on the *Philosophy of Right* is significant and not merely negative. In the second and third sections, I examine the French and Roman-German conceptions of an institution. For the former, I draw on Montesquieu and Rousseau, and for the latter Kant and the German natural law tradition, as these are the authors most influential on Hegel's and Hugo's conceptions of institutions. I also sketch the relation of two English authors, Hobbes and Burke, to these traditions. I conclude by transitioning to Hegel's *Philosophy of Right*. Hegel's institutional theory, I contend, aims to unify these two traditions; the systematic interpretation of this unification I advance in the following chapters.

## 1.2 Hugo's Review of the *Philosophy of Right*

Commentators often omit Hugo from their readings of Hegel's *Philosophy of Right*.<sup>11</sup> Yet Hugo proves to be a central figure for Hegel's understanding of Roman law, informing his treatment of the sphere of abstract right and law within civil society. Hegel's engagement with Hugo is most explicit in his long remark criticizing Hugo's legal positivism, in which Hegel cites Hugo's textbook by name (PR §3A/GW 14,1:27–28).<sup>12</sup> When he revisits the same issue in the context

11. Exceptions to this tendency include Thompson (2001; 2019, 104n6); Losurdo (2004); Kervegan (2018, 63–72); Weisser-Lohmann (2011, 74–87); Haller (1981, 112–13); Wieacker (1996 300–3). More commonly, commentators refer to Hugo's more influential successor, Savigny. On Savigny, see Kantorowicz (1937); Kervegan (2022b, 172–74); Beiser (2011, 214–52). Ritter (1969, 31–33) helpfully contextualizes Hegel's reception of Hugo's review.

12. Hegel's reference is to Gustav Hugo, *Lehrbuch der Geschichte des römischen Rechts*, 5 Aufl., Bd. 3 (Berlin: August Mylius, 1815), §53, p. 53. Hugo's works pose serious difficulties for scholars. As Wieacker rightly observes, "Hugo's lifelong contributions are rather lost in compendia and re-editions" (1996, 302n6). This is because Hugo issued several editions of each work, usually including major changes and omissions from edition to edition. Moreover, each work usually lists two titles, one on each side of the title page, and occasionally these titles are also modified across editions.

of civil society, Hegel approvingly adopts verbatim from Hugo's textbook a description of the Roman "law of citations" (*Citirgesetz, lex citationum*), again citing Hugo by name (PR §211A/GW 14,1:177).<sup>13</sup> That Hegel relied on Hugo as an important source for understanding Roman law is further corroborated by Hegel's letters and library. In 1818, Hegel requests Hugo's *Lehrbuch der Geschichte des römischen Rechts* from his bookseller while preparing his first lectures on the *Philosophy of Right* in Heidelberg, which would serve as the basis for the published 1821 edition (B 2:177/L 373–74).<sup>14</sup> By 1831, two copies of Hugo's volume are found in Hegel's library (GW 31,II:1103).<sup>15</sup> Of the seven published reviews of the *Philosophy of Right*, Hugo's was the only one to which Hegel published a response.<sup>16</sup> Despite his criticism of Hugo's legal positivism, Hegel remains influenced by Hugo's work on Roman law, and when Hegel criticizes the historical school of law, it is likely Hugo, and not Savigny, that he has foremost in mind.<sup>17</sup>

In view of the importance of Hugo for the composition of the *Philosophy of Right* and his being the primary target of Hegel's critique of positive right, we should pay special attention to Hugo's review of this text. Setting aside Hugo's *ad hominem* attacks, which merely meet Hegel's, Hugo's review, consisting of three long paragraphs, raises three sorts of questions.

The first set of questions challenges the architectonic systematicity of the text, for example, its doubled title page (VRP 1:378), which Hugo thinks is appropriate only in multi-volume works, like his *Lehrbuch eines civilistischen Cursus*. Hugo also doubts Hegel's inclusion of world history within the purview of the state, on the one hand, and, on the other, its exclusion of administration of justice and the police from this sphere, which are found, quite unexpectedly, in civil society (VRP 1:383).<sup>18</sup>

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Understandably, these details generate confusion about each book's proper title, and erroneous citations to Hugo's works are common. For this reason, I refer to Hugo's texts primarily by the year of publication as listed on the work's left title page.

13. "In criticizing the Roman "law of citations," Hegel notes this law's establishment of "a kind of collegiate institution [Einrichtung] among long-deceased lawyers" (PR §211A/GW 14,1:177). This quotation is taken verbatim from Gustav Hugo, *Lehrbuch der Geschichte des römischen Rechts*, 5 Aufl., Bd. 3 (Berlin: August Mylius, 1815), §354, p. 516. In the Cambridge translation, the reference is erroneously listed as the 1799 edition. Hegel's verbatim (and occasionally unattributed) quotations from Hugo's textbook form part of their dispute.

14. Simultaneously, Hegel returns Savigny's *Geschichte des Römischen Rechts im Mittelalter* (1815), reporting to his bookseller that he was "mistaken about the aim of this work and had in mind something entirely different" (*ibid.*)

15. Hegel apparently purchases the second copy at a book auction in 1819 after having moved to Berlin (B 4,1:206, cf. GW 14,3:855). By contrast, none of Savigny's systematic works are to be found in Hegel's library (GW 31,II:1263–64), in which we find only his famous pamphlet against Thibaut in the *Kodifikationsstreit, Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft* (Heidelberg, Mohr und Zimmer, 1814).

16. Hegel's "Erklärung" appeared in the *Allgemeine Literatur-Zeitung*, no. 122 (May 1821): 111–112, only weeks after Hugo's review appeared in the *Göttingische gelehrte Anzeigen*, no. 16 (April 1821), 601–7. In a letter to Hegel, Hermann Hinrichs, an important pupil of Hegel, writes of Hugo's review: "I do not read reviews, but I have been able to look through all those that have appeared on your natural right, of which Hugo's is the most amusing, but also the one that most prevents lawyers from buying it, for I know quite well from the study of jurisprudence that what a respected jurist condemns is condemned by all" (B 2:264). Hegel responds to Paulus's review of the *Philosophy of Right* in the 1827 *Enzyklopädie* (§6A/GW 19:32), and, perhaps, also to a critical letter from Nicholas von Thaden, a Danish civil servant, who raised similar concerns about Hegel's distinction between existing and actuality (B 2:278–82/L 463–65). To my knowledge, Hegel does not publically acknowledge any other criticisms of the *Philosophy of Right*.

17. Many commentators interpret Hegel's harsh criticism of Hugo in §§3 and 211 as a stand-in for criticisms of Savigny (Kervégan 2018, 64; Avineri 1972, 74n43; see also the editors' notes on PR 394). Savigny could not be directly attacked, it is argued, because of his great influence at the University of Berlin, where he served as its first Rektor, a position that would later become Hegel's—Hugo therefore merely provides cover for Hegel's attack on Savigny. Yet this conclusion is tendentious; collegiality did not prevent Hegel from polemicizing against his other colleagues in Heidelberg and Berlin, such as Fries and Schleiermacher, and given Hegel's demonstrable interest in Hugo's work, and lack thereof in Savigny's, not to mention the deep differences between the two as it pertains to the source of legitimate law (*empirically* enacted law for Hugo, the non-empirical *Volkgeist* for Savigny) attention should be directed to Hegel's relation to Hugo, not Savigny. On the important differences between Hugo and Savigny, see Stühler 1978, 137, 147.

18. In his handwritten notes in his copy of the *Philosophy of Right*, Hegel acknowledges Hugo's structural challenge to his architectonic of right: "Hugo wonders about world history [being] under the state" (PR §33/W 7:90).

Hugo's second set of questions concern Hegel's speculative method. These questions challenge, first, Hegel's apparent dismissal of the value of history for *Rechtswissenschaft*, and, second, his natural law rationalism, which deduces determinations of right from the concept alone.<sup>19</sup> In this latter regard, Hegel shares the "indifferentist" fate of Wolffian natural law, in Hugo's eyes, in that it proves everything and nothing or, as he puts it in his review, that the concept "proves too much or too little" (VRP 1:383).<sup>20</sup> Hugo's critique of Hegel thus follows his general dictum - "To a certain extent nothing, and to a certain extent everything, agrees with actual right": if Hegel's *Rechtsbestimmungen* are maintained too stringently, then nothing will accord with them; however, if they are maintained too loosely, then nearly all actual circumstances can be seen to be in accordance with them.<sup>21</sup> (Hugo attempts to demonstrate this general predicament in the case of Hegel's prohibition, deduced from the concept alone, of marrying one's family members [PR §168]. Such a determination is too strong if it forbids marriage between partners with *any* blood relation, but too weak if it permits marriage between *all* members of dissolved families, e.g., children and their former parents.) Hugo resolves the difficulty presented by "metaphysical" and "pure philosophical" approaches to natural law by turning to "experience," by which Hugo means a combination of a "juridical anthropology" and a careful and historicist hermeneutics, in which legal propositions are referred to the total context of Western legal history, especially to close readings of the sources, and to the semantics of everyday life.<sup>22</sup>

The final set of questions, closely related to Hugo's resolution of the previous one, concerns terminology, such as Hegel's idiosyncratic distinction between *Moralität* and *Sittlichkeit* and, most notably, his liberal and "French" concept of *Institutionen*. At first glance, this kind of question appears to be the least significant of the three. Indeed, Hugo passes these questions off quite quickly and does not fully develop them. But given Hugo's hermeneutic attentiveness and the centrality of institutionalization in Hegel's *Sittlichkeit*, it is worthwhile to examine Hugo's objection to Hegel's use of the word institution.

In the second paragraph of his review, Hugo writes:

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19. Hegel again acknowledges Hugo's critique of his speculative method in his handwritten notes in his copy of the *Philosophy of Right* (cf. n18 above), but this time he criticizes Hugo for failing to arrive at the "rational standpoint," accessible only philosophically, not merely through "scholarly knowledge": "This misjudgment of the *rational standpoint* [vernünftigen Standpunktes] - the unconcern about it, the arrogance to think that with *scholarly knowledge* [gelehrten Kenntnis] one already has *rational knowledge* [vernünftige Erkenntnis] for oneself - it then takes revenge; - it does not work, there are places where *thoughts* [Gedanken] are important; - one cannot resist coming to *the universal* - there the whole nakedness comes to light; - so it is especially with Mr. Hugo, it is pitiful how it looks there" (PR §3/W 7:44-45, emphasis added).

20. Cf. Garrido 2023, 158: Hugo "reject[s] [...] any metaphysical or aprioristic value judgment and [considers] law existing in history as rational, since positive law finds its very justification in its historical existence. [...] [S]ome of his contemporaries called his theory 'indifferent Natural Law' ('indifferentistisches Naturrecht')." On Hugo's inauguration of "indifferentistisches Naturrecht," see also Stühler 1978, 148-49. In principle, Hugo does not exclude philosophy or the metaphysics of law from *Rechtswissenschaft*, but merely puts it on a par with experience and history. For Hugo, the science of right, or jurisprudence, divides into three parts, each of which maps to a basic question: legal *dogmatics*, which asks: what is right?; legal *philosophy*, is it rational that it is so? and legal *history*, how did it become right? On Hugo's tripartite structure of *Rechtswissenschaft*, see Stühler 1978, 136; Garrido 2023, 157.

21. Gustav Hugo, *Lehrbuch der juristischen Encyclopädie*, 6. Aufl., 1820, §37, 46-47. In general, Hugo relegates philosophy to merely cognizing what is logically *possible*, and so the philosophy of positive right accordingly investigates *possible* right, and is therefore empty without empirical content: "The philosophy of positive right is [...] the rational cognition from concepts of what can be (juridically) right. Of course, this also includes concepts and propositions *a priori*, metaphysics, but these decide nothing but the form, which in and for itself fits everything, or rather is completely empty; the content must therefore be taken from experience and history in order to have something to which the form can be applied, and to cognize from the consequences what is more or less suitable for a universal law" (Hugo 1799, §48, p. 52).

22. Hugo's juridical anthropology maps onto the three basic questions of jurisprudence (see note 20 above) and the three basic kinds of right: the doctrine of the human being as an animal (*ius naturale*), the doctrine of the human being as a rational being (*ius gentium*), and the doctrine of the human being as a member of a state (*ius civile*). See Hugo 1799, 53, §49. On the importance of language in Hugo, see, e.g., Hugo 1815, §290, p. 435-36.

On p. 14 the consistency of the Roman jurists, praised by *Leibniz*, is indeed an essential characteristic of every intellectual [verständigen] science [. . .]; but [according to Hegel] the inconsistency and silliness of the jurists mentioned is to be respected as one of their greatest virtues, because they thereby depart from abominable *Institutionen* (the word often used here in the French sense, where it is opposed to *institutes* and *instituts*, but has little in common with *institutiones* of the Romans, which we otherwise call by that name in German). (VRP 1:378–79)

Readers of Hegel will recognize that Hugo refers, almost verbatim ("abominable institutions"), to Hegel's critique of his *Lehrbuch der Geschichte des römischen Rechts* at the end of §3A (GW 14,1:30–31). In that passage, Hegel's basic point is that the Roman jurists were compelled to develop legal fictions in order to uphold genuine right within the letter of bad institutions and that, far from indicating the soundness of the development of concepts in Roman law, the necessity of these fictions on the part of the judges indicate its fundamental irrationality. Hugo rejoins that the aim of his *Textbook of the History of Roman Right* is, naturally, historical and hermeneutical, aiming to assess the "linguistic usage of a people" (the Romans) and a "subject-matter" (Roman law) while being separated from this material by five or six hundred years (VPR 1:381). "This is not the philosophy of right," Hugo complains, "but the history of the same" (VRP 1:380). As such, Hugo's work as a whole can hardly be discounted by his passing praise that Kantian philosophy and classical jurisprudence share in their liberal use of trichotomies.<sup>23</sup>

Hegel and Hugo are undoubtedly closer to one another than either would be willing to admit. Both intend to defend a middle position that seeks critical distance to positive law while also demanding its recognition as in itself rational or valid. Rather than adjudicate their dispute or evaluate Hegel's quite shallow response to Hugo's review, it is more productive, I believe, to examine Hugo's basic insight: namely, that Hegel has diverged in his use of the concept of institutions from Roman and German writers, and has moved towards the French, who distinguish in some way between *Institutionen* and *institutes*. What is entailed by these two concepts of institutions? Who are the relevant French and German authors? And what systematic difference do these conceptual distinctions make to the science of right? Hugo says nothing more about institutions in his review. However, we can glean insight into these questions by examining some of Hugo's other works.<sup>24</sup>

Hugo's 1815 *Lehrbuch der Geschichte des römischen Rechts* aims to be a compressive introduction to the history of Roman law, primarily aimed at law students. Hugo follows Edward Gibbon (1815, §16, p. 16), of whose *History* Hugo had translated a portion, chapter 44 on Roman law, into German, in dividing this history into four periods (*Perioden*): until the time of the Twelve Tables, until Cicero, until Alexander Sever (who appoints Ulpian), and until Justinian (1815, §§27–30, pp. 26–29).<sup>25</sup> Hugo also follows Johann Friedrich Reitemeier, a teacher of his in Göttingen, as

23. Hugo had written: "Few know that there is no class of writers who, in their consistent deduction from fundamental principles, deserve so much to be placed by the side of the mathematicians, and in a general peculiarity of the development of concepts, as the modern creators of metaphysics, as the Roman jurists. Leibniz, a man who knew mathematics and Roman law very well, claimed the same, and the curious fact that nowhere are there so many trichotomies as among the legal classics and Kant proves the same" (Hugo 1815, §289, pp. 432–33). The relevant trichotomies are the division of right into those of persons (*personae*), things (*res*), and actions (*actiones*) and the division of the sources of private right into *ius naturale*, *gentium*, and *civile* (*ibid.*).

24. On the textual difficulties regarding Hugo's works, see note 12 above.

25. See Hugo (1789b). Hugo insists that the history of Roman law ends with Justinian: "The history of law concludes with Justinian, and only includes, as an appendix, what happened under his successors in his empire. [. . .] The fate of

exhibiting each period as having an essential character that distinguishes its doctrines from those proceeding it (1815, §17, pp. 17–18). Each period is to be considered in three parts: according to the history of its sources (*Quellen*) of right, according to the history of its treatment (*Bearbeitung*) by jurists and commentators, and according to positive right itself, as it once was (1815, §31, pp. 29).<sup>26</sup> Central to Hugo's idea of a *Rechtsgeschichte* is his distinction between inner and outer legal history, which he claims to receive from Leibniz (1815, §2, p. 2). Whereas *external* legal history deals with the sequence of sources and commentary as textual objects, *internal* legal history concerns *conceptual* development, "dealing with juridical concepts and propositions themselves, how they came into being, how they developed further, also often how they were distorted, and even how they disappeared" (*ibid.*). This internal history, Hugo reports, was "only occasionally dealt with in individual doctrines" by ancient writers, and so must be reconstructed by the contemporary historian (1815, §9, pp. 9–10). One therefore expects from Hugo both a historical and conceptual treatment of institutions.

However, despite promising internal *Rechtsgeschichte*, there is in fact little conceptual development to be found in Hugo's *Lehrbuch*, especially as it concerns institutions. (To this extent, Hegel's criticism appears justified.) Instead, we find what one may call a nominal conception of an institution, paradigmatic for the Roman-German institutional tradition: *Institutionen*, which Hugo also translates into German with *Einrichtungen*,<sup>27</sup> refer simply to any foundational set of laws, statutes, or rules that has been established by an author with the intent to introduce systematicity into an existing body of norms or to introduce new norms systematically.<sup>28</sup> Each jurist and emperor can therefore compile and propagate his own *Institutionen*: Gaius (§307, p. 465), Augustus (§288, p. 429), Seineccius (§14, pp. 14–15), Justinian, etc. Justinian's stands out as the most famous among these, and, so, if used unqualified, we must assume the reference is to it; however, there is no essential connection between *Institutionen* and any particular author. Consistent with this understanding, Hugo himself had introduced his own *Institutionen* in 1789 (*Institutionen des heutigen Römischen Rechts*), which presented an organized kernel of Roman law ignoring its changes over time (Hugo 1789a). According to Hugo, one should study law like one learns geography, first studying its basic elements, the present-day national borders and physical features, and only afterward examining changes to these features over time and the relevant disputes (Hugo 1789a, 4–5). This is the contribution of his *Institutionen*: it provides law students a 'presentist' overview of the state of the art in Roman law as it remains efficacious in German courts.

Two features, then, summarize the Roman-German tradition of institutional theory as represented by Hugo. First, it entails a synchronic systematization of foundational legal norms, detemporalizing and hypostatizing living law, almost to the point of simplification. Second, the purpose of this program is primarily didactic, aimed at providing neophytes an overview of the

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Roman law in the German states that emerged on the ruins of the Western empire is left entirely to literary history, which has nothing to say about the Roman jurists up to Justinian, their writings and their teachings" (Hugo 1815, §19, p. 20).

26. On the basis of this division, Hugo stresses that *Rechtsgeschichte* consists not merely in recounting the series of scientific treatments of right but also considers them in relation to their *truth*, according to "the concept of something positive, i.e., of something that has become true through human action, entailing that *Rechtsgeschichte* must be taken in a much broader sense, in that one also asks about the history of the origin of legal truths (*Rechtswahrheiten*)" (1815, §1, pp. 1–2).

27. E.g., Hugo (1815, §382, p. 572; §288, p. 429).

28. Hugo never uses *Institut* in this work, and appears to generally avoid it elsewhere. This omission suggests that, for Hugo, and (generalizing) the entire Roman-German institutional tradition, there is no meaningful difference between *Institutionen* and *Institute*; both refer to the same thing, viz., a set of fundamental legal rules. Therefore, Hugo, like Hegel, does not share Savigny's distinction between *Rechtseinstitute* (e.g., marriage) and *Institute* (e.g., the university).



whole or a model, so to speak, that could be complicated through future studies. Hugo affirms this didactic function of his *Institutionen* and those of Justinian (Hugo 1815, §10, p. 11). As one legal historian puts the point:

Curiously the Roman law from which much of the civil law derives was not seen by its practitioners as an organized system. [...] This is equally true of the Digest and Code of Justinian. The only part of his *Corpus Iuris* which does express an interest in systematic presentation is the Institutes, the latest example of a literary genre whose use until then was entirely confined to the schools of law. The law student was allowed the luxury of having the law presented as a systematic whole, but once had obtained his grounding, he was expected to see that the system was artificial and that the real substance of the law was much less orderly than the institutional scheme suggested. (Stein 1988, 73)<sup>29</sup>

Because Hugo understands institutions to be a systematized and didactic set of foundational laws, it is no surprise that he objects to Hegel's calling marriage, monasteries, and corporations institutions. Only some of these are foundational rules (marriage), whereas the others (monasteries, corporations) are of an apparently different nature. So much for our first question.

Our second question concerns the relevant authors, according to Hugo, for the French and Roman-German traditions. I submit that these are, for the former, Montesquieu and Rousseau, and, for the latter, Kant. Given Hugo's claim that Roman law comes to an end with Justinian, these figures do not feature in Hugo's 1815 *Lehrbuch*.<sup>30</sup> But they do appear in his 1799 *Lehrbuch der Naturrecht*, the second volume in his six-volume *Lehrbuch eines civilistischen Cursus*. Although Hegel did not appear to know this text, Hugo's critique therein of the German natural law tradition, represented most prominently by Christian Wolff (Hugo 1799, §23, p. 23), was quite influential, and Hegel, having himself criticized this tradition earlier in his career, would have likely been familiar with Hugo's argument.

In this text, Hugo presents Montesquieu and Rousseau together as enemies of positive law (§§27–28 in 1799, §§22–23 in 1819). Montesquieu, who is "almost too well known," is criticized for privileging public right over private right, i.e. "proper jurisprudence," in his *Spirit of the Laws* and attacking the autonomy of positive law by reducing it to the influence of external circumstances.<sup>31</sup> More worrisome is Rousseau, who "caused even more of a stir" than Montesquieu and who Hugo names among the most prominent "opponents of positive right in France," formed by the "Physiocrats or economists" (Quesnay) and the "opponents of private property" (Diderot,

29. As the translators of one edition of the *Institutiones* put it, "The Latin '*Institutiones*' comes from the verb '*instituere*' one of whose meanings is 'to teach'. Justinian also gave the book an alternative name, '*Elementa*.' This means much the same, though there is a hint of nourishment, the basic principles on which to grow. [...] It is a book for beginners, only one-twentieth the size of the *Digest*." (12); "The role of the *Institutes* was to give the student a coherent framework" (16). In the Preamble, the *Institutiones* are addressed to "young enthusiasts for law" and to "students," for whom the *Institutiones* are to "form the first principles of all learning in the law," and who receive the imperative: "Study our law. Do your best and apply yourselves keenly to it. Show that you have mastered it." Book One also begins by concerning itself with students: "[T]he best plan will be to give brief, straightforward accounts of each topic. The denser detail must be kept till later. Any other approach would mean making students take in a huge number of distinctions right at the start while their minds were still untrained and short of stamina. Half of them would give up. Or else they would lose their self-confidence - a frequent source of discouragement for the young" (1.1 Justice and Law).

30. Montesquieu appears twice, Kant only once (in the comparison with the tripartite distinctions of the Roman jurists discussed above), and Rousseau not at all.

31. On Montesquieu's importance for Hugo, see Garrido 2023, 155; Stühler 1978, 137; Wieacker 1996, 283–85.

Gabriel Bonnot de Mably, and Rousseau).<sup>32</sup> Hugo singles out Rousseau's *Discourse on Inequality* and *Social Contract* as the most pertinent texts. No other French writers figure in Hugo's "history of the philosophy of positive right" (Hugo 1819, §§29–34), which otherwise includes many other ancient and German authors.<sup>33</sup> We can therefore be quite certain that the French tradition of institutional theory can be found in these two representatives.

Matters are more complicated with the Roman-German authors. Hugo sees himself as allied to Kant, to which he opposes the German natural law tradition associated with the "Wollfian school" (Hugo 1799, §36, p. 39; Hugo 1819, §21, p. 26). Contemporaneous representatives of this school included Reinhold, Schmalz, Hufeland, Schmid, and Fichte (Hugo 1799, §§45–6, pp. 48–9; Hugo 1819, §26, p. 31–32, §28, pp. 33–34).<sup>34</sup> Hugo notes the proliferation of natural law textbooks since 1789: "During this period, every book fair in Germany produced at least one new textbook on natural law, and probably also a new proposal to treat the whole science" (Hugo 1799, §45, p. 48). Yet most of these figures understood their theories of natural law to be compatible with if not extensions of, Kant's critical system, and so Hugo's opposing of them to Kant appears strained.

Hugo responds to this concern by contending that the post-Kantian writers on natural right diverge from Kant's positivist insight in his "universal principle of right", found in his *Rechtslehre*, that a priori metaphysics can determine only the *form* of right, viz., the conditions under which an action is capable of coexisting with everyone's freedom in accordance with a universal law (AA 6:230). This is because all positive law can, in Hugo's view, be given universal form, even slavery, and therefore no content can be derived *a priori* from the form of law alone. But to derive such content from the form of *Recht* alone is the aim of natural law as these post-Kantians understand it.<sup>35</sup> Therefore, natural law theorists who take themselves to be *Kantians* are mistaken:

His supposed disciplines [...] cannot understand what their lord and master teaches, or why he does it. They often overlooked precisely the most important part of his *Doctrine of Right*, the metaphysics. [...] In vain did he declare all external rights without a judge to be merely private, and thus the judge and the state to be essential to all definitive rights; in vain did he divide private right just as the Romans had done; in vain did he distinguish between that which is law in itself and that which is only subjectively conditional (that is, for a judge in the state); in vain did he declare the duties of the ruler to not be juridical duties. (Hugo 1799, §47, pp. 50–51).

Although the proliferation of Kantian natural law could be excused when one only had access to Kant's 1785 *Groundwork*, the publication of his 1797 *Doctrine of Right* should have expelled natural law from Kantian philosophy. Thus among the modern German writers on the philosophy of

32. For Hugo, Rousseau's is a "bitter rebuke of the abuses that are inseparable from our bourgeois constitution based on property" (1799, §28, p. 29).

33. As an exception, Hugo does refer to Sieyes and Robespierre as putting forward new ideas concerning the philosophy of positive law (Hugo 1799, §44, p. 47), and, elsewhere Saint-Just (Hugo 1799, §322, p. 367), but these references drop out of later editions and are less essential to Hugo's history of philosophy of positive law.

34. The innovative, and therefore non-Kantian, character of these natural law theorists is corroborated by Friedrich Bouterwek in his review of Kant's *Doctrine of Right*: "The philosophical and philosophising thinkers who have for several years enriched our libraries with no small number of compendia of natural law based on Kantian ideas now appear, in regard to their presentation of principles, to have provided their own" (Bouterwek 2014, 242/AA 20:445). As Bouterwek explains, the natural law Kantians diverge from Kant's *Rechtslehre* because they attempt to derive the principle of right from morality (i.e, from the *Groundwork*), but in the *Doctrine of Right* Kant separates right (the idea of universal freedom) from morality (the categorical imperative) and does not deduce one from the other (243/AA 20:446).

35. To the extent that the natural lawyer adopts empirical premises, she abandons natural law as such. Hugo identifies Fichte as an exemplar of this mixing of the pure and the empirical (Hugo 1799, §49, p. 54; Hugo 1819, §28, p. 33).

right, it is the Kant of the *Doctrine of Right* that Hugo most closely associates with the philosophical reception of Roman law, and which can therefore stand in as our representative of the Roman-German institutional tradition.<sup>36</sup>

We have now determined the relevant authors for the two institutional traditions—Montesquieu and Rousseau, on the one hand, and Kant, on the other—and the basic character of the Roman-German concept of institutions. In the next two sections, I will develop these two traditions in more detail using these representative authors. With these two characterizations in hand, we will be able to appreciate the systematic stakes of Hegel's endeavor to unify them.

## 1.3 English Institutionalists — Hobbes, Burke

### 1.3.1 Hobbes

Characteristically rigorous, Hobbes, in his *Leviathan* (1651), restricts his use of the concept of institutions to its Roman-German sense. His interest lies in distinguishing between the establishment of a commonwealth through mutual agreement (sovereignty by institution) from its establishment through force (sovereignty by acquisition).<sup>37</sup> For Hobbes, the former, institutional manner of establishment sets the normative paradigm. The famous covenant of "*every one, with every one*" occurs only in instituted commonwealths, and only these can be genuinely called "political."<sup>38</sup> For Hobbes, then, there are no natural institutions; institutions can only be the product of conscious human agency.

Hobbes's Roman-German concept of institutions can be understood as a consequence of his polemic against Aristotlean attempts to ground the normative foundations of the body politic (i.e., the obligation to obey state authority) in *nature*, Hobbes's comparison of the political body to the biological one notwithstanding. This contrast between institutions (art) and nature is clearest in *De Cive* (1642), wherein Hobbes calls acquisitive sovereignty through force the "natural origin" (*origo naturalis*) of the commonwealth, contrasting it to sovereignty that has its "origin by institution" (*origo ex instituto*), that is, artificially. It is only this latter, artificial path to sovereignty that is a product of "the *determination and decision* [a consilio & constitutione] of the uniting parties" and that instantiates a "commonwealth by institution" (*ciuitate institutiua*).<sup>39</sup> For this reason, any talk of "artificial" institutions is, for Hobbes, superfluous, and even becomes dangerous if it suggests the existence of "natural" institutions. Thus, Burke, in criticizing the Revolution's attempt to level all "artificial institutions" in his *Reflections on the Revolution in France* (1790), clearly diverges from Hobbes's concept of institutions.<sup>40</sup>

36. As we have seen, Hugo also mentions Leibniz. But Hugo cites only Leibniz's *letters*, which merely praise the Roman jurists, and, in one instance, call for a science of positive right. But no works on positive right by Leibniz ever appeared, and Hugo makes no use of Leibniz's philosophy. Leibniz can therefore be left aside for our purposes.

37. Hobbes, *Leviathan*, Ch. 17/121.

38. Hobbes, *Leviathan*, Ch. 18/121: "A *Common-wealth* is said to be *Instituted*, when a *Multitude* of men do Agree, and *Covenant, every one, with every one*, that to whatsoever *Man*, or *Assembly of Men*, shall be given by the major part, the *Right to Present* the Person of them all." Hobbes maintains across all his political writings that states by acquisition exercise the same legitimate authority as instituted ones.

39. Hobbes, *De Cive*, Ch. 5, §12/74. Cf. also Ch. 6, §20/89: "[I]t is not by nature that the consent of the majority should be taken for the consent of all [...]. Rather it has its origin in civil institution [institutione civili]."

40. See Burke (2014, 35–6, 41, 143–44).

### 1.3.2 Burke

Burke's discussion of the concept of institutions lacks Hobbes's rigor.<sup>41</sup> This ambiguity is a consequence of Burke's dialectical standpoint in criticizing the revolutionaries who he believed to be dismantling France's traditional institutions. This ambiguity requires him, in short, to simultaneously assert the naturalness and artificiality of institutions. On the one hand, Burke must assert the artificiality of the old institutions and their revolutionary opposition, e.g., Revolutionary clubs at home and abroad.<sup>42</sup> It is precisely the vulnerability of the old institutions, their capacity to be annihilated by overhasty human action, that animates his defense of traditional institutions as a form of "entailed inheritance."<sup>43</sup> This precarity of the old institutions excludes their being things that arise "by nature"; if institutions were natural and so essentially unalterable, then the Revolution would be incapable of threatening their existence. Likewise, institutionalized opposition to the old institutions (such as literary societies and other organs of public opinion) cannot be natural for the same reason. But, on the other hand, Burke must assert the naturalness of institutions to justify their preservation; artificial institutions are justified insofar as they conform to nature.

Burke emphasizes the naturalness of institutions in two ways, first, because they are *enculturated* and, second, because they undergo *organic change*. Let us examine these two innovations in more detail.

First, Burke conceives of institutions as being "embodied" in individuals, thereby instilling in us "love, veneration, admiration, or attachment" to them.<sup>44</sup> "These public affections, combined with manners," Burke continues, "are required sometimes as supplements, sometimes as correctives, always as aids to law." Lacking this rootedness in common feeling, institutions, Burke warns, become ineffective in regulating social behavior. For Burke, this positive affection towards one's national institutions has its grounds in divine revelation and nature (the latter understood as the product of one's "education" and "habits of life") and such affection can never be directly engendered by an "artificial institution."<sup>45</sup> Only a mechanistic and therefore wholly inorganic and artificial conception of institutions, a view which Burke does not hesitate to impute to the revolutionaries, could overlook the essential function of natural affection in their constitution.

Second, Burke acknowledges the historical necessity of institutional change but casts this process in naturalistic language. In reforming our institutions, we ought to use "the method of nature" (35) by which Burke understands a program of slow and gradual change, upon which we must "care not to inoculate any cyon alien to the nature of the original plant" (32). By recognizing that artificial institutions should grow organically and harmoniously according to the political community's natural affections, we also receive two standards according to which we can evalu-

41. Hegel never mentions Burke by name in his published writings, but he undoubtedly knew of Burke's *Reflections*, likely through Friedrich von Gentz's (1794) popular translation of this work and its influence on leading political philosophers such as A. V. Rehberg. See Comay (2011, 53); Beiser (1992, 287–88); Losurdo (2004, 292–93 and *passim*); Maliks (2021, 215). The significance of Burke for Hegel's generation is captured by Novalis: "Many antirevolutionary books have been written for the Revolution. But Burke has written a revolutionary book against the Revolution" (1997, 43/WTB 2:278).

42. Burke, *Reflections*, 4–5. Burke later criticizes the bourgeoisie as having "little regard to the stability of any institution" (44).

43. Burke, *Reflections*, 32, 34.

44. "On the principles of this mechanic philosophy, our institutions can never be embodied, if I may use the expression, in persons; so as to create in us love, veneration, admiration, or attachment. But that sort of reason which banishes the affections is incapable of filling their place" (Burke, *Reflections*, 79–80).

45. "[N]o name, no power, no function, no artificial institution whatsoever, can make the men of whom any system of authority is composed, any other than God, and nature, and education, and their habits of life have made them. Capacities beyond these the people have not to give. [...] They have not the engagement of nature, they have not the promise of revelation for any such powers" (Burke, *Reflections*, 41).

ate the normative desirability of institutions, viz. according to their age and nobility. Adopting such an institutional arrangement according to these standards amounts, for Burke, to "choosing our nature" because, on the one hand, this arrangement is artificial and so exclusively an object of free choice but, on the other hand, success in its undertaking ultimately rests on our having chosen an arrangement which coheres with our habitualized way of life. In a provocative passage, Burke summarizes his account of organic institutional change, entailed inheritance, and the simultaneous naturalness and artificiality of institutions:

By a constitutional policy, working after the pattern of nature, we receive, we hold, we transmit our government and our privileges, in the same manner in which we enjoy and transmit our property and our lives. [...] Our political system is placed in a just correspondence and symmetry with the order of the world. [...] Thus, by preserving the method of nature in the conduct of the state, in what we improve we are never wholly new; in what we retain we are never wholly obsolete. [...] Through the same plan of a conformity to nature in our artificial institutions, and by calling in the aid of her unerring and powerful instincts, to fortify the fallible and feeble contrivances of our reason, we have derived several other, and those no small benefits, from considering our liberties in the light of an inheritance. [...] We procure reverence to our civil institutions on the principle upon which nature teaches us to revere individual men; on account of their age; and on account of those from whom they are descended. All your sophisters cannot produce any thing better adapted to preserve a rational and manly freedom than the course that we have pursued, who have chosen our nature rather than our speculations, our breast rather than our inventions, for the great conservatories and magazines of our rights and privileges.<sup>46</sup>

Burke thus breaks with Hobbes by reintroducing nature as a feature of institutional theory. Although institutions are always the product of human art, they nevertheless must follow the "pattern of nature" in the sense of cohering to a community's *feeling*—itself a product of its habits, customs, and form of life—if they are to win stability and longevity. And since these natural institutions have congealed over the span of generations, they are more a product of unconscious cultural memory than of conscious agency, although we may assume that they were originally created by some individual or group. In this way, Burke attempts to reconcile the artificiality of institutions with their natural constitution.<sup>47</sup>

There is a further consequence of Burke's partial rejection of the Roman-juridical model of an institution. Namely, institutions in Burke's hands are transformed into regulating principles of behavior, principles which are in some way constituted bottom-up, replacing the top-down model of an original lawgiver. Because solid institutions, for Burke, must cohere with nature, and because this nature primarily refers to the mores and customs of a people, lasting artificial institutions must correspond to these mores and customs. Institutions are now given not by the founding codes of special individuals (Moses, Solon, Gaius, Justinian, ...) but by the ordinary masses. Notably

<sup>46</sup> Burke, *Reflections*, 34–6.

<sup>47</sup> As Isaiah Berlin puts it, Burke holds that "the 'natural' [...] path of a great nation, must [...] accord more faithfully with its past: that the Glorious Revolution restored ancient liberties, while the French destroyed them; that for him the Revolution was an offense against history, an arbitrary break, and attempt to destroy the pattern of national life, the mechanical application of timeless formulae without regard to the divine tactic, to institutional development dictated by those transcendent goals which for Burke [...] history reveals and embodies." (Berlin, "Review of *Montesquieu and Burke* by C. P. Courtney" in *The Modern Language Review* 60, no. 3 [1965], 452.)

lacking in Burke's more naturalistic account of institutions, however, is any consideration of how artificial institutions can in turn influence the habits and ways of life that are incorporated into his concept of nature, which in German idealism falls under the concept of second nature. This omission is especially surprising given his incessant concern for the unintended consequences of radical social change. Nor does Burke seriously consider the function of material-environmental factors such as climate, geography, and commerce on this nature. We find treatments of these further issues, however, in the more sophisticated and more radically naturalized institutional theories of Montesquieu and Rousseau.

## 1.4 The French Institutional Tradition — Montesquieu, Rousseau

### 1.4.1 Montesquieu

Montesquieu's *Spirit of the Laws* (1748) extends the naturalness of institutions noted by Burke.<sup>48</sup> Using Montesquieu's *précis* of the *Spirit of the Laws*, quoted above, wherein Montesquieu explained that he examined "all the institutions that are received among men,"<sup>49</sup> we can infer that the "principles" he draws from "the nature of things"—that is, draws from the "infinite diversity of laws and mores" found in human societies—to be *institutions*.<sup>50</sup> This imputation of an institutional theory to Montesquieu helps clarify his somewhat puzzling taxonomy of laws, customs, and spirit.

Let us begin with laws. Undoubtedly, at the outset Montesquieu intends laws to be the unit of analysis in *The Spirit of the Laws*. In the book's first paragraph (in its first book, entitled "On laws in general"), Montesquieu defines *laws* to be "the necessary relations deriving from the nature of things."<sup>51</sup> Montesquieu thereby affirms the traditional linkage between law and reason: "Law in general is human reason insofar as it governs all the peoples of the earth."<sup>52</sup> Thus both rational law and institutions lay claim to being the subject of the book, raising the question of whether laws and institutions are one and the same for Montesquieu and, if not, how we should understand their relation.

In my view, we should follow the Montesquieu of 1750 in holding that institutions, not laws, to be the subject matter of his book. This is because the concept of institutions avoids the ambiguity in Montesquieu's use of the term "law" and explicitly includes customs within its purview.

48. My exposition of Montesquieu has been informed by the following studies: Louis Althusser, "Montesquieu: Politics and History," in *Politics and History: Montesquieu, Rousseau, Marx*, trans. Ben Brewster (London: NLB, 1972); Raymond Aron, "Montesquieu," in *Main Currents in Sociological Thought: Volume One* (London: Routledge, 2018); Ernst Cassirer, "The Conquest of the Historical World," in *The Philosophy of the Enlightenment*, trans. Fritz C. A. Koelln and James P. Pettegrove (Princeton: Princeton University Press, 1951); Emile Durkheim, "Montesquieu's Contribution to the Rise of Social Science," in *Montesquieu and Rousseau: Forerunners of Sociology*, trans. Ralph Manheim (Ann Arbor: University of Michigan Press, 1960); Robert Shackleton, "Montesquieu's Conception of Law," and "Climate and Causes" in *Montesquieu: A Critical Biography* (Oxford: Oxford University Press, 1961), 244–64, 302–19; Céline Spector, "Spirit, General Spirit," in *A Montesquieu Dictionary*, ed. Catherine Volpilhac-Auger, trans. Philip Stewart, 2013.

49. Montesquieu, *The Spirit of the Laws*, Bk. 19, Ch. 14, p. 315.

50. "I began by examining men, and I believed that, amidst the infinite diversity of laws and mores, they were not led by their fancies alone. I have set down the *principles*, and I have seen particular cases conform to them as if by themselves, the histories of all nations being but their consequences, and each particular law connecting with another law or dependent on a more general one. [...] I did not draw my *principles* from my prejudices but from the nature of things" (Montesquieu, *The Spirit of the Laws*, Preface, xliii, italics added).

51. Montesquieu, *The Spirit of the Laws*, Bk. 1, Ch. 1, p. 3. He continues: "and in this sense, all beings have their laws: the divinity has its laws, the material world has its laws, the intelligences superior to man have their laws, the beasts have their laws, man has his laws. [...] There is, then, a primitive reason; and laws are both the relations that exist between it and the different beings, and the relations of those various beings to each other."

52. Montesquieu, *The Spirit of the Laws*, Bk. 1, Ch. 3, p. 4 8.

Montesquieu distinguishes between at least four senses of law: first, its general sense as the necessary and rational relations between things; second, its divine sense as the "constant rules" (*règles constantes*) governing the world before the creation of human beings; third, its generic legal sense as the norms governing the moral behavior of intelligent beings (e.g., natural law); and finally, its specific legal sense as the positive laws that are procedurally established, publicly disseminated, and authoritatively enforced to govern the actions of subjects (e.g., statute law). Only laws of the last kind are "made" by human beings, according to Montesquieu; the rest are "not made" by us. "Intelligent beings," then, are governed by both 'made' and 'non-made' law.<sup>53</sup> However, unlike non-human animals and inorganic beings, intelligent beings can diverge from the laws that govern them, either by applying the laws erroneously, by forgetting them, or by willing contrary to them. For example, Montesquieu asserts that in despotic states there are no laws but only customs.<sup>54</sup> By this, he does not mean that the necessary relations of reason disappear in despotic states, nor that the constant rules governing physical bodies are violated, nor that natural law does not oblige. Rather, he means that the despot's commands, even if codified, fail to attain the *constancy* demanded by the very concept of law<sup>55</sup> and thus fail to count as law in the fourth, positive sense—in other words, despotism undermines the rule of law. While Montesquieu does not deny the lawfulness of customs, they are laws only in the first and most general sense of being necessary relations deriving from the nature of things. His point about the lawlessness of despotism concerns only the fourth sense of law. By using the concept of institutions, which encompasses both laws and customs and is endorsed by Montesquieu in 1750, we can avoid this ambiguity in Montesquieu's use of the term "law."

This brings us to customs (*coutumes*) as a special kind of institution. According to Montesquieu, customs are composed of *mores* (governing *internal* conduct) and *manners* (governing *external* conduct)<sup>56</sup> and are generally "usages" that govern human behavior but have not been established by positive law. As a result, customs regulate a broader set of human actions than law does, encompassing the "actions of man" rather than law's more limited focus on the "actions of citizen." The importance of custom for Montesquieu is revealed in his account of social change. For Montesquieu, social change is driven by bottom-up changes in a nation's customs, a transformation that cannot be directly brought about by positive law.<sup>57</sup> Therefore, a wise legislator should aim to

53. "Particular intelligent beings can have laws that they have made, but they also have some that they have not made" (Montesquieu, *The Spirit of the Laws*, Bk. 1, Ch. 1, p. 4).

54. "[I]n [despotic] states, there are no laws, so to speak; there are only mores and manners" (Montesquieu, *The Spirit of the Laws*, Bk. 19, Ch. 12, p. 314); "In despotic states, where there are no fundamental laws, neither is there a depository of laws. This is why religion has so much force in these countries; it forms a kind of permanent depository, and if it is not religion, it is customs that are venerated in the place of laws" (Bk. 2, Ch. 3, p. 19).

55. Bk. 1, Ch. 1, p. 4: "Thus creation, which appears to be an arbitrary act, presupposes rules as invariable as the fate claimed by atheists. It would be absurd to say that the creator, without these rules, could govern the world, since the world would not continue to exist without them. These rules are a consistently established relation. These rules are a consistently established relation. Between one moving body and another moving body, it is in accord with relations of mass and velocity that all motions are received, increased, diminished, or lost; every diversity is *uniformity*, every change is *consistency*."

56. Montesquieu, *The Spirit of the Laws*, Bk. 19, Ch. 16, p. 317: "Mores and manners are usages that laws have not established, or that they have not been able, or have not wanted, to establish. The difference between laws and mores is that, while laws regulate the actions of citizen, mores regulate the actions of the man. The difference between mores and manners is that the first are more concerned with internal, and the latter external, conduct." Montesquieu nowhere explicitly claims that customs are composed of manners and mores. But it is reasonably evident that he holds this view. Cf. Bk. 19, Ch. 14, p. 316; Bk. 19, Ch. 16, p. 317 (esp. n16); and Bk. 19, Ch. 27, p. 325.

57. Montesquieu, *The Spirit of the Laws*, Bk. 19, Ch. 14, p. 315: "[W]hen a prince wants to make great changes in his nation, he must reform by laws what is established by laws and change by manners what is established by manners, and it is a very bad policy to change by laws what should be changed by manners." Bk. 19, Ch. 14, p. 316: "In general, peoples are very attached to their customs; taking their customs from them violently makes them unhappy: therefore, one must

establish a balance between advancing the demands of the government's guiding principle (virtue, honor, or fear) and those of the everyday practices of its people, its customs. Montesquieu's key contribution to institutional theory lies in his recognition that institutions comprise *both* artificial-juridical law and naturalistic customs. He distinguishes between "laws" as the "particular and precise institutions of the legislator" and "mores and manners" (i.e., customs) as "the institutions of the nation in general."<sup>49</sup> Both means of regulating behavior are institutions; their interconnected totality Montesquieu calls spirit.

The concept of spirit (*esprit*) remains obscure throughout *L'Esprit des Lois*, despite its prominence in the work's title and its reputation as the work's most significant contribution to social theory. Two ways of understanding spirit in this text present themselves. First, Montesquieu occasionally speaks of spirit ("general spirit", the "genius" of a nation or people) as merely *aggregative*, as the sum of a society's laws, customs, and history. For example, in Montesquieu's most concise definition of spirit, he writes:

Many things govern men: climate, religion, laws, the maxims of the government, examples of past things, mores and manners; a general spirit is formed as a result.<sup>58</sup>

On this formulation, spirit appears to "supervene" on its seven causal factors in the sense of covariance: any variation in spirit depends on variations in these factors. Such a reading of spirit is defended by Spector (2013), for whom Montesquieuian spirit "incarnat[es] nothing more than the result of a conjunction of independent variables" or is simply "the effect of variable causality." As Spector argues, this supervenience view of spirit does not contradict Montesquieu's spirit holism, in which the institutions comprising spirit are systematically interconnected. However, although Spector is certainly right to observe that "general spirit does not denote the singular essence of a nation," the mere fact that spirit is not an essence does not rule out that it could exist *sui generis*, that is, emerge from these interacting forces as something with its own distinct nature.

Montesquieu's more rigorous determination of spirit as the totality of second-order laws governing a nation, is compatible with this latter view, viz., that spirit has an existence *sui generis*. In Book I, immediately after listing off the various ways by which a nation's generic laws, i.e., its institutions, are determined (its inhabitants' way of life; its religion; its climate, geography, and demography; the personal designs of its lawmakers, etc.), Montesquieu declares:

[Laws] must be considered from all these points of view. This is what I undertake to do to do in this work. I shall examine *all* these relations; *together* they form what is called *the spirit of the laws*. I have made no attempt to separate *political* from *civil* laws, for, as *I do not treat laws but the spirit of the laws*, and as this spirit consists in the various relations that laws may have with various things, I have had to follow the natural order of laws less than that of these relations and of these things.<sup>59</sup>

In this passage, Montesquieu distinguishes the spirit of the laws from the laws themselves. While he again remains noncommittal regarding the kind of unity spirit exhibits, he nonetheless shows himself to understand spirit to be the *total collection* ("all of these relations") of *second-order laws*,

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not change their customs, but engage the peoples to change themselves." Bk. 19, Ch. 12, p. 314: "Laws are established, mores are inspired; the latter depend more on the general spirit, the former depend more on a particular institution; now, it is as dangerous, if not more so, to overturn the general spirit as to change a particular institution."

<sup>58</sup> Montesquieu, *The Spirit of the Laws*, 310.

<sup>59</sup> Montesquieu, *The Spirit of the Laws*, Bk. 1, Ch. 3, p. 9, italics added.



that is, the laws holding *between* institutions (which, as saw above, are themselves necessary relations between things) and their determining factors ("spirit consists in the various relations that laws may have with various things").

With these passages in mind, we can summarize Montesquieuan institutions as follows: Montesquieuan institutions, as first-order laws, are *social relations* in a threefold sense. First, they are the determinate kinds of relations between members of a nation, and in this respect have a *descriptive* valence. Second, they *normatively* relate these members to *reason*, providing an immanent rational standard for evaluating an action or state of affairs relative to its function within the whole.<sup>60</sup> Finally, these institutions (first-order relations) are put into second-order relations with one another and to external causes, the totality of which Montesquieu calls spirit. Spirit, in other words, is the interconnected whole of second-order laws that *causally* explain the genesis of a nation's institutions by factors *external* to them (physical and moral causes). So, for example, Montesquieu *describes* the nature of popular government (i.e., the institutional relations in which the people rule), argues for its *normative* superiority (i.e., that these kinds of relations accord with reason), and *causally explains* how, and under what conditions, these relations establish themselves within a nation and those in which their emergence is forstalled. To understand the organized set of second-order laws governing the external determination of a nation's institutions (its first-order laws) is thus to grasp its spirit. For this reason, Montesquieu could have titled his book *The Spirit of Institutions*.

There remains the question of whether and in what precise sense spirit is 'unified' in Montesquieu's social thought. Nothing I have said so far decides the matter conclusively. However, there are reasons to believe that Montesquieu holds spirit to be unified to a greater degree than merely being the aggregate "effect of variable causality" or the "conjunction of independent variables" *à la* Spector. First, in an early definition of general spirit (*De la politique*, c. 1722–25), Montesquieu had already identified society with the "union of minds" (*union d'esprits*) he called a "universal soul" (*Âme universelle*).<sup>61</sup> While this unity is certainly produced by heterogeneous physical and moral causes, it nevertheless constitutes a collective mind capable of enough singularity so as to be the true sovereign of the nation. Rulers need no skill, Montesquieu quips, because "the spirit governs for them." Later, another note of Montesquieu's prefigures general spirit in *The Spirit of the Laws*:

States are governed by five different things: by religion, by general maxims of government, by particular laws, by mores, and by manners. These things all relate to each other. If you change one, the others follow only slowly; which puts a kind of dissonance everywhere. (*My Thoughts*, p. 182, [542])

Elsewhere, Montesquieu asserts reciprocal causality between these factors, arguing, for example,

60. Recall Montesquieu's definition of *laws*, i.e., *institutions*: "Laws, taken in the broadest meaning, are the necessary relations deriving from the nature of things. [...] There is, then, a primitive reason; and laws are both the relations that exist between it and the different beings, and the relations of those various beings to each other" (Montesquieu, *The Spirit of the Laws*, Bk. 1, p. 3).

61. "In all societies, which are only groupings of minds [union d'esprits], a common character, that collective soul [Âme universelle], takes on a manner of thinking which is the effect of a chain of infinite causes that multiply and combine over the course of centuries. Once the tone is set and takes root, it alone governs, and all that the sovereigns, magistrates, and peoples are able to do or contrive, whether it seems to go against that tone or follow it, is always in relation to it, and it dominates even to total destruction" (Montesquieu 2020, 165; quoted in Spector, "Spirit, General Spirit" and Althusser, *Politics and History*, 57n1).

that "laws follow mores" and "mores follow laws."<sup>62</sup> Under these descriptions, it would seem that Montesquieu's spirit demands a unity more thoroughgoing than that of conjoined causes.

As we have seen, Montesquieu's concept of institutions as the laws or principles that collectively constitute a nation's spirit incorporates the artificial-juridical institutional paradigm, which existed before him, with the natural institutional paradigm, which he largely inaugurated. However, there remain two defects in Montesquieu's achievement in institutional theory salient to Hegel's project.

First, Montesquieu occasionally relapses into the artificial-juridical institutional paradigm, contradicting his insight that institutions in fact include *all* laws and customs, not merely the legally foundational rules introduced with didactic intent and that, as such, institutions cannot be stipulated top-down. This equivocation can be observed in Montesquieu's description of the "singular institutions" (*institutions singulières*) given by the mythic lawgivers of antiquity. Solon (Athens), Lycurgus (Sparta), and Moses, Montesquieu tells us, each gave their subjects singular institutions, i.e., basic rules, juridically established, govern all aspects of life, social, political, and economic.<sup>63</sup> Singular institutions thus derive from the genius of the lawgiver, who in making a "single code of laws and religion," set his people on a "unique path," totally determining social life.<sup>64</sup> Such "singular institutions" are perniciously utopian according to Montesquieu ("you believe you are reading the history of the Sevarambes") and he diagnoses their aspiration to total control as pathological. Singular institutions demand from legislation more than they can accomplish, attempting to regulate all aspects of human life top-down, and therefore overlook the resistance to legislation embedded in history and custom. Such totalizing institutions can last only in small, tightly-knit societies or "small republics" in which "all citizens pay a singular attention to each other" and the "love of the public good" presides over all other affections.<sup>65</sup> Nevertheless, Montesquieu maintains the historical existence of these mythic lawgivers in the ancient and Asiatic worlds, who, in establishing singular institutions, proved themselves capable of having unilaterally "formed manners."<sup>66</sup> Montesquieu's account of "singular institutions" therefore contradicts his causal analysis of spirit.

The second defect in Montesquieu's institutional theory lies in the abstractness of his concepts of law and spirit. In short, the tension between nature and artifice that prior political philosophers had attempted to reconcile with institutional theory is not so much resolved by Montesquieu as forestalled and pushed back into law and spirit. Spirit combines many heterogeneous forces, each of which is governed by its laws. But it remains unclear how moral and physical causes (representing, for Montesquieu, artifice, and nature) fit together and interact to "form" spirit. Nor is it any more evident how the generic form of law unifies these natural-physical and artificial-moral causal forces, forces that appear to be of fundamentally different natures, subjected to different kinds of laws, and open to different degrees of human control. Thus the mediation

62. *The Spirit of the Laws*, 324–25. Cassirer observes: "Montesquieu founds the doctrine that all elements which constitute a certain commonwealth stand in a strictly correlative relationship to one another. They are not merely the elements of a sum, but interdependent forces whose reciprocal interaction [Wechselwirkung] depends on the form of the whole. This community and structural arrangement can be shown to exist in the minutest details. The kind of education and justice, the form of marriage and family, the whole structure of domestic and foreign politics, depend in a certain way on the fundamental form of the state; these aspects of the state cannot be arbitrarily altered without affecting the form of the state and finally destroying it." (Ernst Cassirer, *The Philosophy of the Enlightenment*, 212, translation modified)

63. Montesquieu, *The Spirit of the Laws*, Bk. 4, Ch. 6, p. 36; *The Spirit of the Laws*, Bk. 4, Ch. 7, p. 38–9.

64. Montesquieu, *The Spirit of the Laws*, Bk. 4, Ch. 6, p. 36.

65. Montesquieu, *The Spirit of the Laws*, 38.

66. Montesquieu, *The Spirit of the Laws*, 317–18.

between nature and artifice desired by institutional theory fails to find its adequate expression in Montesquieu's thought.

### 1.4.2 Rousseau

Rousseau accepts Montesquieu's wide concept of institutions, its corresponding integration of art and nature, and its centrality in political philosophy. Rousseau's originality instead lies in his terminology. Having not only coined the phrase "public opinion" (*opinion publique*), Rousseau was also the first political philosopher to deploy the notion of "social institutions" (*institutions sociales*). Despite the apparent modesty of this modification, in apprehending the sociality of institutions Rousseau makes two developments important for the history of institutional theory: first, he establishes a *critical* standpoint towards most existing institutions (as congealing *amour propre*); second, he recognizes *language* to be the prototypical social institution.<sup>67</sup> We will treat these two innovations in turn. However, it is helpful to first note Rousseau's dependence on Montesquieu.

This dependence arises most clearly in two connected moments in Book 2 of the *Social Contract* (1762). The first moment occurs in Rousseau's famous discussion of the lawgiver (Ch. 7), wherein Rousseau declares that "anyone who dares to institute a people must feel capable of, so to speak, changing human nature."<sup>68</sup> This famous line owes its inspiration to Montesquieu, as the preceding sentence makes clear: "At the birth of societies, says Montesquieu, it is the chiefs of republics who make the institution, and after that it is the institutions that form the chiefs of republics."<sup>69</sup> The second moment occurs in Rousseau's treatment of the "systems of legislation" (Ch. 11). After having reminded us that the ends of every system of legislation are freedom and equality, Rousseau insists that their implementation must differ across time and place to hang together with the prevailing way of life:

But these general aims of every good institution [viz., freedom and equality] must be adapted in each country to the relations that arise as much from local conditions as from the character of inhabitants, and it is on the basis of these relations that each people has to be assigned a *particular system of institutions* which is the best, not, perhaps, in itself, but for the State for which it is intended.<sup>70</sup>

Within the same paragraph, Rousseau confirms that this principle, that a society's *system of institutions* corresponds to the *relations* of its citizens (i.e., their customs and other causal factors), is Montesquieu's.<sup>71</sup>

67. Fichte closely follows Rousseau, which explains why Hegel often criticizes Fichte and Rousseau in the same breath. For Hegel, both conceive of "freedom in the form of the singular individual" [Freiheit in der Form des einzelnen Individuums] (*Lectures on the History of Philosophy*, W 20:412–13) and "the will only in the determinate form of the *singular* will" (PR §258A/GW 14,1:202). The result is that, for both, "the union of singulars within the state thus becomes a *contract*, which is accordingly based on their arbitrary will and opinions, and on their express consent given at their own discretion; and the further consequences which follow from this, and which relate merely to the understanding, destroy the divine which has being in and for itself and its absolute authority and majesty" (*ibid.*).

68. SC 69/OC 3:381.

69. *Ibid.* Recall Montesquieu: "Once the tone is set and takes root, it alone governs. [...] Thus princes are able to be less than elsewhere. This spirit governs for them" (*Discourses*, 165).

70. SC 79/OC 3:393, emphasis added. The possibility of disharmony between the people and their institutions leads Rousseau to introduce the "Tribunate" as "a tie or middle term" between them (SC 136/OC 3:453–54).

71. "In a word, besides the maxims common to all, there is within each People some cause which orders these maxims in a particular manner and makes its legislation suited to itself alone. Thus formerly the Hebrews and recently the Arabs had religion as their principal object, the Athenians letters, Carthage and Tyre commerce, Rhodes seafaring, Sparta war, and Rome virtue. The Author of the *Spirit of the Laws* has shown in a great many instances the art by which the lawgiver directs the institution toward each one of these objects" (SC 79/OC 3:393).

We should notice, however, that Rousseau's formulations differ from Montesquieu's in an important respect. Rousseau not only speaks of a system of institutions and of particular institutions, such as the Roman Comita (SC 131/OC 3:448) and Jewish law (SC 71–72/OC 3:384) but, more oddly, of "the institution of a people,"<sup>72</sup> or simply "the institution," without reference to any in institution in particular, uses of the concept that are foreign to Montesquieu. This is because, in addition to holding institutions to be the *cause* of social life or that which governs it, such that we are *effected* by institutions, Rousseau wishes to retain, from the Roman-German tradition, the *active* sense of instituting as the *act* of establishing these causes, the *act* by which the institution is instituted.<sup>73</sup> By conceiving of instituting as an agential act, we can also understand institutions *teleologically*, that is, according to the "end" or purpose for which they were established, as common in Hobbes, and as arising at a determinate moment in time (SC 57/OC 3:368).

Thus Rousseau's obscure phrases—"the institution of the people," "the moment of institution,"<sup>74</sup> or just "the institution"—refer to the primordial instituting act of the lawgiver by which the people are made receptive to society, a receptivity that requires sacrificing their physical needs for moral ones. Memorably, Rousseau describes the conditions of this transformation as an inversion of cause and effect:

For a nascent people to be capable of appreciating sound maxims of politics and of following the fundamental rules of reason of State, *the effect would have to become the cause*, the social spirit which is to be the work of the institution would have to preside over the institution itself, and men would have to be prior to laws what they ought to become by means of them.<sup>75</sup>

But if we look beyond Rousseau's paradoxical formulation, we see that his position in truth lies near Montesquieu's. This is because Rousseau's concern in these passages is not so much with the mythical beginnings of human cooperation, though this is the garb with which he presents his views, but instead with a theory of education, enculturation, and social naturalization, i.e., second nature.<sup>76</sup> Like Montesquieu's insight, Rousseau's can be described in terms of *reciprocal* causality. We might say that where Montesquieu primarily locates the reciprocal interaction of institutions *synchronically*, Rousseau recognizes the *diachronic* reciprocal interaction of institutions, that is, the temporally extended feedback loop between a nation's institutions and the character of its subjects. Although this reformulation goes some way to taming Rousseau's bewildering conception of the primordial lawgiver, his focus on the instituting act remains central to his critical attitude towards institutions in the *Second Discourse* and his identification of language as the first social institution in the *Essay on the Origin of Language*.

In the *Second Discourse*, Rousseau puts into doubt the legitimacy of most, if not all, of modern institutions. This makes him the most notable institutional theorist to unfold his theory with a

72. In addition to the passages already cited, see SC 77/OC 3:390 ("the institution of a people"), SC 71/OC 3:383 ("the institution"). Similarly, in *Considerations on the Government of Poland*, Rousseau writes: "Prohibiting the things people ought not to do is a clumsy and vain thing to do unless one begins by making these things hated and scorned, and the law's disapproval is only effective when it confirms one's own judgment. Whoever goes about instituting a people has to be able to rule men's opinions and through them to govern their passions" (189/OC 3:965–66). In the *Second Discourse*, Rousseau also speaks of the "original institution" of "each People" (SD 184/OC 3:189).

73. For example, in "Of the Institution of Government" (Book 3, Ch. 17), Rousseau writes: "What, then, is the idea in terms of which one should conceive of the act by which Government is instituted?" (SC 117/OC 3:433)

74. SC 77/OC 3:390.

75. SC 71/OC 3:383, emphasis added.

76. That Rousseau has education primarily in mind in these passages is made clear in his *Considerations on the Government of Poland*. See 179/OC 3:955; 183–84/OC 3:390; 219/OC 3:998.

*critical* attitude. He does so by showing these institutions to produce unjustifiable *moral*—that is, *social*—inequalities in wealth, status, and power.<sup>77</sup> As Rousseau summarizes at the end of this text, social inequalities are legitimate *only if* they track natural merit or "Physical inequality," which is never the case in modern societies:

[M]oral inequality, authorized by positive right alone, is contrary to Natural Right whenever it is not directly proportional to Physical inequality; a distinction which sufficiently determines what one ought to think in this respect of the sort of inequality that prevails among all civilized Peoples.<sup>78</sup>

Thus, according to Rousseau, modern institutions fail to distribute social benefits according to the standard given to us by nature. Few of Rousseau's fellow *Aufklärer* would have challenged his identification of unnatural disproportionality in existing institutions, although they likely would have resisted his further inference to their illegitimacy.

However, there remains an important question in Rousseau's position: are modern social institutions inherently unjust, or is their miserable state merely a contingent result of external influences, and therefore capable of rectification through careful reform? While Rousseau occasionally appears to accommodate the reformist position, these passages, on careful consideration, usually land against reform. For example, after tracing the "progress of inequality" through its "revolutions" which ultimately lead to the relations of mastery and servitude so characteristic of modernity for Rousseau, he writes that this relation "is the last degree of inequality [. . .] until new revolutions either dissolve the Government entirely or bring it closer to legitimate institution."<sup>79</sup> Here, Rousseau considers a "legitimate institution" of government a genuine possibility, albeit one requiring revolutions, in the plural, hardly an attitude consonant with gradual reform.<sup>80</sup>

Elsewhere in the *Second Discourse*, Rousseau expresses even less optimism for our capacity to eliminate the unjustified social inequality embodied in modern institutions, tending in an anarchist direction. In the process, he raises a dilemma for the French tradition of institutional theory: "social" institutions, on this construal, are either *impotent*—too weak to change the underlying customs and ways of life—or *superfluous*—casually efficacious, but serving only to reinforce custom that is sufficient in itself. Rousseau writes:

[T]he same vices that make social institutions necessary make their abuse inevitable; and since, [. . .] Laws, in general less strong than the passions, contain men without changing them; it would be easy to prove that any Government that invariably worked exactly in accordance with the end for which it had been instituted, without disintegrating or deteriorating, would have been instituted unnecessarily, and a Country where no one eluded the Laws and abused the Magistracy would need neither Magistrates nor Laws.<sup>81</sup>

In this passage, Rousseau supposes that social institutions function merely to direct preexisting social forces and do not themselves create these forces *sui generis*—institutions "contain men without

77. See Frederick Neuhauser, "Rousseau on the Nature of Social Inequality," in *Debating Critical Theory: Engagements with Axel Honneth*, ed. Julia Christ, Kristina Leopold, and Daniel Loick (Lanham: Rowman & Littlefield, 2020), 97–8.

78. SD §58/188; OC 3:193–94.

79. SD 49/182; OC 3:187.

80. We will return below to Rousseau's account of the legitimate state determined by the "*contrat social*."

81. SD §50/182–83; OC 3:187–88.

changing them." The people are therefore prior, social-ontologically speaking, to the institutions that govern them. It follows that if *the people* are *good*, then they will conduct themselves justly without institutions being in place (and so institutions are *superfluous*); if *bad*, then no system of institutions could reliably coerce them (and so institutions prove to be *impotent*).

In Rousseau, we can identify two ways of resolving this dilemma. The first is anarchistic: because modern institutions are inherently pathological, entrenching *amour prop* and leading to social domination, social institutions as such ought to wither away, not to be replaced by better institutions, as these would only inherit similar defects. The second is constructive: to refound society on a good, well-instituted *people*. This is the meaning, I take it, of Rousseau's talk of "instituting a people" which thereby "chang[es] human nature" in *Du contrat social*, discussed above. But this institution of a people should not be understood as a static, singular act that merely generates new social forces that can later constrain it, but rather in a dynamic, processual, and diachronic way, namely as the formation of subjects through institutional education and habits. If we account for these subject-forming effects of institutions, then Rousseau's institutional theory compliments Montesquieu's rather than contradicts it.

Let us turn to the final notable dimension of Rousseau's contribution to institutional theory: his being the first to systematically classify language as a *social* institution. While this insight will be largely overlooked by German idealism, for whom *thought*, and not *language*, is the primary locus of human sociality and activity, language emerges as paradigmatic for much contemporary thinking about institutions, particularly those working within a broadly Wittgensteinian tradition, such as John Searle and Vincent Descombes, and so is worth some historical attention.

This classification occurs in his *Essay on the Origin of Languages*, a piece that, although unpublished in his lifetime, closely relates to the *Second Discourse*.<sup>82</sup> The occasion for Rousseau's reflections on language is a provocation by Charles Pinot Duclos, his friend, in Duclos's edition of the *Port Royal Grammar*: "To note and to show by means of examples the extent to which a people's character, morals, and interests influences its Language would provide matter for a rather philosophical inquiry" (EOL 299/OC 5:429). Montesquieu's influence can be detected in this question, as these are precisely the sorts of factors that he saw as reciprocally causing the "general spirit" of a nation; Rousseau, we will see, gives an equally Montesquieuian answer. He opens his essay on this topic by asserting that language is the first social institution and that, because it is first, its *form*, by which I understand Rousseau to mean the particularity of each token language, must have a physical, as opposed to moral (i.e., *social*) cause:

Speech [parole] differentiates man from the other animals: language [langage] differentiates one nation from another; where a man is from is known only once he has spoken. Usage and need cause everyone to learn the language of his country; but what makes this be the language of his country and not of another? In order to tell, one has to go back to some cause that depends on locality and antedates even morals:

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82. In a preface for this work, Rousseau says that the *Essay* was initially "but a fragment of the *Discourse* on inequality," but was omitted therefrom because it "was too long and out of place" (see the editor's notes, p. 393). The close relation between the two texts is evident, for example, in their nearly identical descriptions of the "golden age" (compare SD 169–171/OC 3:168–71 and EOL 268–69/OC 5:396) and further corroborated by Rousseau's discussion of the "perplexities regarding the origins of Languages" (SD 145–49) and by his corresponding note to this passage, which presumably refers to the *Essay*: "I do not propose to embark on the philosophical reflections that might be made regarding the advantages and inconveniences of this institution of languages" (SD 216/OC 3:218).

since speech is the first social institution, it owes its form to natural causes alone.<sup>83</sup>

Famously, Rousseau answers that linguistic form is primarily determined by *climate*, which he binarizes (a common tactic of the *Essay*, as Derrida [1998] observes), into cold, i.e., European, and warm, i.e., oriental. Despite this limiting simplification, Rousseau's account of the origin of language remains Montesquieuan in method and substance.

Methodologically, Rousseau accepts Montesquieu's institutional holism, which he articulates as the principle that "in order to assess men's actions properly, one has to consider them in all their relations."<sup>84</sup> This methodological principle is important because although language is the first institution for Rousseau, this does not mean for him that this institution is invulnerable to change; it instead gradually adapts to modifications among other relevant social factors.

Substantially, Rousseau follows Montesquieu in seeking physical causes for what is taken to be a moral phenomenon. More specifically, Montesquieu was famous for having foregrounded *climate* among the physical features in his causal analysis of spirit, and Rousseau is likely indebted to Montesquieu in this regard as well.<sup>85</sup> Yet Rousseau radicalizes Montesquieu's insight into climate into a quasi-materialist principle, noting that it is one's "subsistence" that explains the *origins* of language and indeed *all* moral phenomena:

[R]egardless of whether one inquires into the origin of the arts or studies the earliest mores everything is seen to be related in its principle to the means by which men provide for their subsistence, and as for those among these means that unite men, they are a function of the climate and of the nature of the soil. Hence the diversity of languages and their opposite characteristics must also be explained by the same causes.<sup>86</sup>

For our purposes, the significance of the substantive side of Rousseau's investigation into the origins of language is to have developed a naturalized and materialist account of our capacity to establish institutions as such without thereby abandoning the French institutional tradition.

Skipping over the complexity of Rousseau's *Essay*, not to mention the connection he wishes to draw between the origin of language and the development of music, we may draw the following general conclusion: for Rousseau, language *socially*, much like the people *politically*, amounts to something like the *institution of instituting*, that is, the source of our capacity to institutionalize. Characteristically, Rousseau identifies this capacity for institutionalization in two ways: the moment of origin, by a primordial lawgiver or linguistic community ("the inventions of language"),<sup>87</sup> connected to the Roman-German conception of an institution, and, more importantly, as a holistically determined and ongoing process of change, connected to the distinctly French conception. Thus language is not static, but changes, like any social or political institution does on the French model: "language are naturally formed according to men's needs; they change and deteriorate

83. EOL 248/OC 5:375. For our purposes, we put aside the storied distinction between *parole* and *langage*, upon which Rousseau himself occasionally equivocates.

84. Rousseau continues: "[T]his is something we are simply not taught to do. When we put ourselves in the place of others we always put ourselves in their place as circumstances have modified us, not as they must have modified them, and when we think that we are judging them in the light of reason, we are only comparing their prejudices with ours" (EOL 281/OC 5:409).

85. While Rousseau will later incorporate moral causes in his study of language, these enter only once language has been "first" instituted.

86. EOL 272/OC 5:400.

87. EOL 248/OC 5:375.

as these same needs change."<sup>88</sup> Rousseau, with Montesquieu, thus prefigures Hegel's institutional theory in the *Philosophy of Right*, which also abandons the ontological condition that institutions be tethered to legal codes or sets of rules, a condition which is essential to the Roman-German conception of institutions. In the final section of this Chapter, we turn at last to Kant, who, for Hegel, counts as the most sophisticated representative of the Roman-German institutional tradition.

## 1.5 The Roman-German Institutional Tradition — Kant

Kant does not deploy the concept of institutions (*Institution*) in his published works. The term appears only once in his published writings, and only in a metaphorical way.<sup>89</sup> It would therefore seem fruitless to attribute to him an institutional theory. Yet much recent scholarship on Kant's social and political philosophy finds in it a robust theory of institutions (Brandt 1990; Hruschka 2004; Kleingeld 2012; Ripstein 2009; Byrd & Hruschka 2010). I contend that no institutional theory in the wider, French sense can be found in Kant, but only one in the Roman-German sense of foundational rules with didactic intent. Insofar as these commentators find more robust sorts of institutional theory in Kant than this Roman-German one, they can do so only by going beyond the letter of Kant's text. This was, at any rate, the position of Hugo. Moreover, it was Hugo's insight into Hegel's institutionalization of *Sittlichkeit*, expressed in his review of the *Philosophy of Right*, that Hegel importantly breaks with Kant's *Rechtslehre* by revising the concept of institutions to do justice to both the French and Roman-German traditions of institutional thought. By appreciating Kant and Hegel's diverging concepts of an institution, we can better understand Hegel's intervention in the political philosophy of German idealism and modern European social thought more generally.

We can begin to substantiate our claim that Kant, in his *Doctrine of Right*, holds a Roman-German concept of institutions by reviewing some recent attempts in the literature to reconstruct Kant's institutional theory. Three such attempts have been particularly influential.

The first of these is Brandt's (1990). Brandt acknowledges that Kant does not explicitly take up the issue of institutions as such, but argues that an implicit institutional theory can nevertheless be reconstructed from Kant's social and political writings (335). In Brandt's reconstruction, three institutions stand at the center of Kant's theory: the state, the church, and the university. These institutions correspond to the three of Kant's major sociopolitical texts: *Doctrine of Right*, *Religion within the Boundaries of Mere Reason*, and *Conflict of the Faculties*. Each of these institutions, Brandt shows, is characterized by Kant as an organized being (*gemeine Wesen*) (1990, 335–36). According to Brandt, Kant's understanding of these three institutions, particularly to the degree that they

88. EOL 298/OC 5:428.

89. See Brandt 1990, 335. The only appearance of the term *Institution* is in the *Critique of Pure Reason*, wherein Kant metaphorically compares critique to the civil condition: critique "determin[es] and judg[es] the legal powers of reason in general in accordance with the principles of its first institution [ersten Institution]"; by contrast, dogmatic metaphysics corresponds to the unlawful anarchy of the "state of nature," reason's licentiousness before its delimitation by critique (A 751/B 779). However, Kant does use *Einrichtung* social-theoretically in his published writings, albeit seldomly. Most notably, this occurs in the opening lines of the *Conflict of the Faculties*, wherein Kant names the government and the university "artificial institutions [künstlichen Einrichtungen] based on the idea of reason" (AA 7:21) and in the *Anthropology*, wherein he contrasts immaturity of age from immaturity "based on legal institutions [gesetzlichen Einrichtungen]" (AA 7:208–9). In *Religion*, Kant also speaks of the "original institution [ursprünglichen Einrichtung]" (AA 6:125) and "first institution [ersten Einrichtung]" (AA 6:184) of Judaism. But these examples are exceptions; Kant usually deploys *Einrichtung* to refer to purposive arrangements in general, especially those of nature (e.g., *Critique of the Power of Judgement*). Brandt's general point thus stands: one cannot recover a theory of institutions from the letter of Kant's texts alone, in contrast to the authors previously considered, whose writings explicitly develop the concept of institutions.



form a "unity" or "triad," is not modern but "classical," having its roots in antiquity and especially the Middle Ages (336–38).<sup>90</sup> Kant's treatment of these institutions wins its distinctiveness by being connected to his more general view of Enlightenment, namely being on an "irreversible course for the better" (336), indicating that, for Kant, institutions must always be conceived, especially when normative considerations are in play, as tending towards realizing the ideals of right and morality, a practical interest we are justified in adopting insofar as the impossibility of realizing this ideal in the future cannot be disproven (AA 6:354–55).

Our interest lies in Brandt's account of the institution of the state in the *Doctrine of Right* (1990, 338–45), of which two features stand out. First, there is in Brandt's reconstruction a certain ambiguity in its institutional ontology. According to Brandt, the Kantian state is an institution but is further composed of "subsidiary institutions" (1990, 338). We find in public right the "three basic institutions of the state" (1990, 340), namely the three "authorities" or powers (*Gewalten*) and their corresponding "persons" (*Personen*): ruling authority in the person of the legislator, executive authority in the person of the ruler, and juridical authority in the person of the judge (1990, 339; AA 6:313). But to these correspond a "parallel structure" in private right, wherein we find the "institutions of private property, of contract, and of the house" (1990, 340). Finally, there are, according to Brandt, two additional kinds of institutions in Kant's *Rechtslehre*: those corresponding to the "indeterminate sphere" between private and public right (financial system, the police, the church [?]) and the cosmopolitan institution of a congress of states (1990, 345). Thus the conceptual unity of the notion of an institution is lost in Brandt's reconstruction.

Second, Brandt's reconstruction also retains some ambiguity regarding the constitutive status of institutions in Kant. He writes: "All positive right up to the realization of the republic is merely provisional and subject to revision. Political institutions must be understood as instruments of *evolutio juris naturalis*; their legitimizing task is to transform rational right from a mere idea into actuality" (1990, 341). As Ripstein has helpfully noted (2009, 7–8), the interpretive issue here is whether Kant understands the ideal of rational law to be specifiable independently of these institutions (as, for example, the ideal state of affairs would be for Benthamian utilitarianism—namely, the maximization of happiness), or whether institutions are in some way constitutive of this ideal state of affairs, such that it cannot be determined without reference to a justified set of institutions. Brandt's formulation appears indecisive on this important matter.

The next account is Hruschka's, of which two versions can be distinguished. Both versions diverge from Brandt by seeking a unified ground for Kant's institutional theory in the *Doctrine of Right*. In the first version (Hruschka 2004), Hruschka identifies this ground in *private right*, particularly in Kant's obscure notion of a *lex permissiva*, which Kant identifies with the "postulate of practical reason with regards to rights" (AA 6:246). According to Hruschka, this single law "establishes" or "licenses" all the "legal institutions" of Kant's *Rechtslehre*: private property, contract, marriage, parental power, and so on (2004, 47, 55–56, 64, 71). It does so by being what Hruschka calls a "power conferring norm," viz., a rule that can confer a "moral faculty" (*moralisches Vermögen*) or capacity to agents, thereby enabling them to act in ways that were previously not possible. Condominium ownership, for example, becomes possible only when there exists a legal apparatus to

90. Brandt cites passages evincing similar stipitate institutions from Alexander of Roes and Tolomeo of Lucca. Contra Brandt, Maus (1990) argues in the same collection of essays that Kant's institutional theory is distinctly modern because it is concerned with processuality (conceiving of institutionalization, not a static array of institutions) and reflexivity. While compelling as a standalone philosophical position, Maus departs significantly from the text of Kant's *Doctrine of Right*, using the *Critique of Pure Reason* to substantiate her reconstruction of Kant's institutional theory.

"liscence" this form of ownership. Before the establishment of this legal apparatus, then, it would be incorrect to say that I was "prohibited" from owning a condominium; rather, I simply lacked the capacity to be a condominium owner at all, a capacity that is conferred by the introduction of the appropriate legal apparatus (2004, 55). According to Hruschka, all legal institutions follow this model: they are moral faculties "conferred" by this single law, the *lex permissiva*, and are therefore logical consequences of the postulate of practical reason with regards to rights.<sup>91</sup>

In the second version (Byrd and Hruschka 2010), Hruschka grounds Kant's institutional theory in *public right*. Byrd and Hruschka argue that Kant's "rightful condition" (*rechtliche Zustand*), in which the equal freedom and independence of all is secured "conclusively" (AA 6:264), is essentially composed of three "*public institutions*" (2010, 32–33): public lawgiving (corresponding to Kant's *iustitia tutatrix*), the free public market (*iustitia commutativa*), and the public judiciary (*iustitia distributiva*).<sup>92</sup> These public institutions cannot be capacities conferred by a norm as Hruschka had previously understood them, as they are not faculties of agents. Instead, they "must formally exist, meaning *as* institutions, or else a [rightful condition] will remain unattainable" (2010, 33). To exist *as* an institution, Byrd and Hruschka explain, is to exist as the "unity of actions" undertaken by an authorized actor or set of actors (the lawgiver, market participants, the judge), which also entails that Kantian institutions should be seen "dynamically and not statically" because they *are* nothing other than these actions, such that if the actions change, then the institutions change, too.<sup>93</sup> But despite their discrepancies in institutional ontology, there remains a commonality in both of Hruschka's attempts to ground Kant's theory of institutions in the *Doctrine of Right*. For Hruschka, institutions *function* to 'actualize' right: they transform "the *a priori* principles of natural law and mak[e] them public, and thus binding and enforceable" (2010, 34). Although one cannot deny the attractiveness of this functional and right-actualizing conception of an institution, one which would locate institutions in-between/a posteriori/ experience and the pure "metaphysics of right," there is no textual evidence that supports attributing this institutional theory to Kant.<sup>94</sup>

The third, most recent, and most influential account is Ripstein's (2009; 2021). Ripstein argues for what we may call a thoroughly institutionalist reading of Kant's *Rechtslehre*, in which institutions are not merely deduced in the course of Kant's investigation of the universal principle

91. To be sure, Hruschka gives a more complicated, two-tiered analysis of the generation of institutions from the *lex permissiva*. The first step establishes only "abstract legal institutions" (2004, 70), which specifies institutions that are too abstract to be sources of obligations; the second step introduces "concrete" institutions (2004, 67) grounded in the principle "*prior tempore, potior iure*" ("prior in time, stronger in right"). Only these concrete institutions generate obligations. But this two-step procedure leaves unaltered Kant's basic institutional ontology, which is what I am primarily concerned with here.

92. The textual basis for Byrd and Hruschka's reconstruction is principally Kant's transition from private to public right (AA 6:305–6).

93. "When we call the three types of justice 'institutions' we mean the unity of actions committed by a (justly acting) lawgiver in promulgating laws, the unity of actions committed by (justly acting) participants in the public market when closing and performing contracts, and the unity of actions committed by (justly acting) judges when reaching their decisions" (Byrd and Hruschka 2010, 33).

94. In a note corresponding to the *Doctrine of Right*, Kant appears to criticize this intermediary conception of an institution, which would be grounded merely in good judgment, excluding it from the "metaphysics of right" proper: "The miners of the leather would have difficulty mining without the miners of the pen, which is why jurists have stooped so low as to introduce a certain natural law [Naturanrecht] (in the institutions [institutionen]). But [they do so] only from good judgement [bon sens], not from the depths of the metaphysics of right" (AA 23:261). Kant refers to the division of labor in mining camps, wherein "miners of the leather" were those who worked underground and were practically trained, whereas "miners of the pen" were those officers and clerks who administered the mining operation, working primarily by writing, and were theoretically trained (see Heinrich Veith, *Deutsches Bergwörterbuch mit Belegen* [Breslau: Korn, 1871], 80–81). Kant's point appears to be that, *pace* natural lawyers, these intermediary "institutions" are not justified by the pure metaphysics of right. Kant's dismissive attitude towards this "institution" of the division of labor ("stooped so low as..." [sich so weit herabgelassen]) suggests that *no* such intermediary institutions could be justified by the *Doctrine of Right*.

of right but rather form the principal subject-matter of the argument itself. Indeed, for Ripstein, as for Rawls, political philosophy *coincides* with the task of identifying the ideal set of political institutions— what Rawls called "the basic structure of society," by which he meant a system of institutions<sup>95</sup>—which could then be used to justify or criticize existing institutions to the degree to which they approximate the ideal (Ripstein 2009, 1–2).<sup>96</sup> In short, institutions are *constitutive* of Kant's "rightful condition," and therefore ineliminable in any account of the conditions in which the equal freedom and independence of everyone could be guaranteed through law or "conclusively secured" (AA 6:364). Ripstein opposes Kant's institutionalist conception of right with the political philosophy of the moralists (consequentialists and deontologists), according to whom the ideal political state of affairs "could be in principle specified without any reference to institutions or rules" (2009, 7–8). For these moralists, institutions are merely *instrumental* in bringing about the morally desirable state of affairs, but they are not themselves conceptually required to imagine these states of affairs as such (e.g., maximized utility, the kingdom of ends). To the extent that institutions are deemed necessary on these moralizing accounts of politics, this is because of the empirical or anthropological limitations of human beings and the complexity of their interactions, not because they are demanded by right as such (Ripstein 2009, 255).

Institutions are thus constitutive of Kantian *Recht*, according to Ripstein. But what *are* institutions? They are, for Kant, *rules*, which Ripstein identifies with "legal norms" (2009, 9) and "legal rules" (2009, 224–25). At a high level of generality, Ripstein is surely correct about this issue. However, if we examine the features of Ripstein's account, we see that it faces several challenges.

First, for Ripstein institutions are to be found exclusively in public right, paradigmatically in "the institutions of legislation, adjudication, and enforcement" (2009, 306). Ripstein thus excludes institutions from private right. This exclusion entails that property, contract, and marriage are *not* institutions for Kant, which sounds odd, I assume, to the ears of a Kantian.

Second, like Byrd and Hruschka (2010), Ripstein locates institutions as moving between experience and the *a priori*. While he does not use these terms, we may say that, for Ripstein, *that* there should be a basic set of abstract institutions can be derived *a priori* (2009, 252, 256), but positive law is needed for "generating" the concrete institutions to put these into place (2009, 306). As before, this 'mixed' account of institutions has philosophical appeal, it cannot be substantiated with Kant's text.

Third, Ripstein insists on a connection between institutions and the omnilateral will, namely that the omnilateral will *only acts through institutions* (2009, 183, 336). This condition explains Kant's distinction of lawful reform from revolution, as in the latter case a group acts *non-institutionally* but purportedly in the name of the omnilateral will (2009, 309). But if institutions are simply legal rules, and by legal rule we understand a rule with the form of publicity and universality, perhaps subjected to some procedural constraints, then particular associations, such as revolutionary groups, can certainly act institutionally. Indeed, when pressed, this criterion of institutionality to secure rightness, so central to Ripstein's reconstruction, reduces to precisely the kind of positivist

95. "By the basic structure is meant the way in which the major social institutions fit together into one system, and how they assign fundamental rights and duties and shape the division of advantages that arises through social cooperation. Thus the political constitution, the legally recognized forms of property, and organization of the economy, all belong to the basic structure" (Rawls 1977, 159).

96. Incidentally, this tripartite structure of *philosophy - history - politics*, corresponding to the tasks of constructing the rational state, demonstrating its applicability to one's historical circumstances (Rawls's "public political culture"), and contributing to the actualization of this rational state through social critique, is perhaps given its most unadulterated expression in Fichte's *Closed Commercial State*. See CCS 51/FW 3:397.

formalism advocated by Hugo, i.e., that for an action to be right it merely needs to accord with what has been positively legislated as right, i.e., in accordance with an established rule, regardless of the content of the rule itself.

Fourth, for Ripstein, Kant's institutions correspond also to the *structure* of a rightful society, or, as Ripstein puts it, "institutions [...] give effect to the structural features of a rightful condition" (2009, 225). However, this identification of Kantian institutions with social structure cannot be admitted. Rules and norms are not social structures, but elements that populate such a structure. This difference can be seen in the French institutional tradition, which attempted to derive everyday rules and norms *from* institutions, and that these institutions are in some sense *priori* to these rules. Summarizing these four issues, it is reasonable to conclude that Ripstein, although correct in holding that institutions are rules for Kant, subsequently overburdens Kantian institutions, making them carry a conceptual load that they cannot bear.

Having examined these three attempts, the difficulties are ascertaining an institutional theory in Kant's *Rechtslehre* now come into focus. To review, we have seen four mutually exclusive accounts of institutions in this text: that institutions are organized beings, themselves composed of subsidiary institutions, such as the three *Gewalten* or *Personen* of the state (Brandt 1990); that institutions are moral capacities derivable from the postulate of practical reason with regards to rights (Hruschka 2004); that institutions are the three unities of actions constitutive of the rightful condition (Byrd and Hruschka 2010); and that institutions are the basic rules constitutive of the rightful condition (Ripstein 2009).

My preferred view combines Hruschka's (2004) and Ripstein's (2009). Per Ripstein, I agree that Kantian institutions are rules (and not capacities, *pace* Hruschka). But institutions-as-rules cannot be on, in Kant's view, the social structures that Ripstein wants them to be, nor can they exclude the rules of private right. Instead, institutions are, following Hruschka, the pure *a priori* rules drawn from the metaphysics of right, i.e., those rules that can be derived as logical consequences from the postulate of practical reason with regards to right, the *lex permissiva*. This reading renders institutions to be rules in a much more limited sense, *viz.*, that they are the propositions one can derive from the *lex permissiva*. For example, the three powers (*Gewalten*) of government are institutions, i.e. rules, only in the minimal sense that the state, since it should attempt to approximate the ideal state of affairs in accordance with the rightful condition, *ought* to compose itself on the model of this division of power. Its rule is: have three powers of government. But there is nothing structural about this norm if by structure we understand a principled manner in which human social behavior or political life is organized or patterned, as this norm is compatible with *all* possible social structures (recall, for example, that the corresponding three moral persons of the judge, the executive, and the legislator can all be wielded by a single natural person). Institutions, then, are for Kant the minimal *a priori* rules that govern all external lawgiving consistent with the equal freedom and independence of each with all.

To describe Kantian institutions another way, we may say that *the metaphysical parts of the Doctrine of Right just are Kant's institutions*. This reading aligns Kant with the Roman-German institutional tradition, and indeed we can even conceive of Kant in this text as having *philosophically rewritten* the institutions of the *Corpus Juris Civilias*. Such a view opposes the French institutional theories of Montesquieu and Rousseau, for whom institutions are not rules but something wider, say, structural determinations of a nation, and are certainly determined not *a priori*, evident by the

reciprocal causal dynamics they ascribe to them. As Hugo correctly observed, Hegel's institutional theory begins at this crossroad, standing between two divergent and seemingly incompatible institutional paradigms. Hegel then *sublates* Kant's thinking about institutions, retaining what pertains to the nature of the case (the teleological criteria of universality and publicity) while abandoning Kant's overly legalized concept of institutions. Reconstructing Hegel's reconciliation of these two traditions is my task for the remainder of this dissertation.

## 1.6 Conclusion: Hegel's Unification of the Institutional Traditions

In this chapter, I have attempted to display the texture, as it were, of the concept of institutions in modern European philosophy, or what I earlier called its shifting semantics. The use of this concept has congealed around two traditions, identified by Hugo in his review of Hegel's *Philosophy of Right*: a 'naturalized' French institutional tradition, which underscores the non-legality of institutions and their dynamic emergence from our ways of life, and an 'artificial' Roman-German institutional tradition, which takes the form of law as its model. These are rough and ready distinctions that are often in tension with one another within a particular author. Nonetheless, they provide a helpful rubric for understanding and assessing Hegel's institutionalization of *Sittlichkeit*, the third and final part of his *Philosophy of Right*. The historical fact that the concept of institutions was so unsettled underscores the radicality of Hegel's placement of this concept at the center of his social and political philosophy but also explains his somewhat awkward presentation of this theory.

Looking forward: Hegel, I claim, unifies these two institutional traditions. But how? In Chapter 3, I argue that Hegel's *institutional ontology* distinguishes between *ontological* and *teleological* conditions of institutions. This distinction preserves both traditions. Ontologically, Hegel sides with the French tradition, as he holds institutions as forming 'bottom-up' through the activity of a people, not as didactic legal rules. But teleologically, Hegel sides with the Roman-German tradition, as institutions contain, in his view, a telos toward their codification in legal rules appropriate to their nature, bestowing on them the form of universality and publicity.<sup>97</sup> Because, for Hegel, these two kinds of conditions are unified in *actual* institutions, his institutional ontology reconciles these diverging conceptual paradigms.

In Chapter 4, I move from institutional ontology to *institutional normativity*. Here, I argue that Hegel makes a parallel distinction between *institutionality* (ontological conditions of institutions) and *institutional rationality* (teleological conditions). This distinction also preserves both traditions. Institutionality refers to the broadly Wittgensteinian insight that institutions are constitutive of recognizably human life activity because they are what make linguistic meaning and communication—rule following—possible in the first place, an insight Hegel captures with the term *Geltung* or validity. From the standpoint of institutionality, there is no escaping institutions because the possibility of such an escape depends on there being institutions already in place. By making institutions into transcendental conditions of human consciousness, that which

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<sup>97</sup> I say 'appropriate to their nature' because, as we will see, Hegel is no codification freak; institutional formalization is only appropriate to a certain degree, and this degree changes according to the nature of the institution. He does not think, for example, that all aspects of marriage should be legally codified, as he is sometimes portrayed.

must always already be in place for recognizably human behavior, *institutionality* corresponds to the French institutionalist tradition, which discovers embedded in each human community a necessary and interconnected set of institutions that serve as wellsprings of meaning and valid utterances.

The Roman-German tradition, by contrast, corresponds to *institutional rationality*. Institutional rationality refers to institutions not as the *source* of normativity but as its *target*. Institutions, according to Hegel, express reason, and their rationality provides a weak immanent standard for normatively assessing them. The standpoint of institutional rationality thus incorporates Kant's insight in the *Rechtslehre* that reason provides some criteria for assessing a society's basic institutional structure and that these criteria coalesce around the idea of *freedom*, albeit Hegel's reason articulates itself in history and so is "impure," i.e., not *a priori*, from Kant's perspective. It also incorporates Hugo's insight that realizing this rational institutional structure involves considerations that transcend the purview of philosophy, i.e., considerations of the *positive*, and that philosophy is therefore quite limited in the criticisms it may levy against existing institutions. But this limitation pertains only to *philosophical* or *scientific* critique, i.e., the critique that one professes as a philosopher or a scientist; there nonetheless remains another kind of legitimate *political* or *extra-scientific* critique, one enunciated from the standpoint of being a citizen or a member of a community, that underwrites wider-sweeping, but always contestable, social and institutional critique. Hegel limits science in order to make room for politics, as it were.

*Actual* institutions, in Hegel's view, contain, in a unified manner, both of these normative and ontological features to varying degrees. Thus not only does Hegel's distinction between *ontological* and *teleological* institutional conditions, or between *institutionality* and *institutional rationality*, enable him to unify these two institutional traditions, but it also clarifies his murky views on social and institutional critique. But before we can reconstruct Hegel's unification of these two institutional traditions, we must first examine what Hegel himself says about institutions in the *Philosophy of Right*. This is the task of Chapter 2.

## Chapter 2

# Excursus: Institutions in Hegel's *Philosophy of Right*

### 2.1 Institutions in Hegel's *Philosophy of Right*

In this chapter, I consider Hegel's institutional theory in his own words. Despite widespread agreement that institutions are central to Hegel's social and political philosophy, no study of Hegel's use of the concept of institutions has been undertaken in English and German scholarship on Hegel's *Philosophy of Right*.<sup>1</sup> This oversight has led almost all of Hegel's commentators to misinterpret Hegel's institutional theory. Some of these errors of interpretation are minor, but others, as I will argue in the later chapters, seriously distort Hegel's theory. Conversely, careful examination of Hegel's text leads to valuable new insights into what, for him, institutions are, how they change or ossify, and why they hold a grip over our lives. The most important among these insights is that institutions are *rational social forms*. While these insights will stand in need of further clarification and defense in the forgoing chapters, this excursus provides a necessary textual basis for reconstructing Hegel's institutional theory.

This excursus thus prepares the way for my reconstruction and rehabilitation of Hegel's institutional theory in the remaining three chapters. It is more textually focused than the others; the latter chapters are motivated by challenges facing Hegel's view. Given its textual focus, this excursus proceeds with a rather strict method. It begins by considering only the main body paragraphs of the *Philosophy of Right*, what Hegel christens to be the philosophical core of the science of right, the *Natur der Sache*, and only then progressively expands the textual frame to include further sources. Accordingly, §2 and §3 begin by taking up institutions in the main text of the *Philosophy of Right*, and §4 widens the scope to include other related materials published under Hegel's purview. Texts not subject to Hegel's editorial hand, such as the student transcripts of his lectures in Berlin, are not considered.

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1. In addition to Roth, Kervégan, Zabel, and Thompson, recent exceptions to this tendency to overlook Hegel's institutional theory include Campello (2015; 2014, 180–83); Boldyrev (2020); Herrmann-Pillath and Boldyrev (2014). But these studies omit consideration of Hegel's precise concept of institutions, operating instead with a much looser and contemporary concept of institutions.

### 2.1.1 Why Begin with an Excursus?

Terminological confusion concerning institutions abounds in commentaries on Hegel's *Philosophy of Right*. For example, commentators sometimes speak of the book's three primary divisions—abstract right, morality, and ethical life—as being institutions in Hegel's sense. More often, commentators assume that the three moments of ethical life—the family, civil society, and the state—count among Hegel's rational institutions of the modern world.<sup>2</sup> Yet, Hegel *never* uses the concept of institutions in either of these two ways—he instead calls all these "spheres." That is, Hegel *never* calls abstract right, morality, the family, civil society, or the state institutions.

One may immediately object that excluding structures such as abstract right from Hegel's institutional theory is a merely verbal quibble, bearing little on the underlying concept of institutions in the *Philosophy of Right* itself. The mere fact that Hegel does not call, e.g., abstract right, the family, or civil society, an institution cannot be said, so the objection goes, to decisively alter his concept of institutions, nor does it justify thinking that the underlying concept of institutions in the *Philosophy of Right* fails to cohere, more or less, with our conception of institutions today. Commentators are thus warranted in collapsing Hegel's distinction between sphere and institution.

Two responses can be given to this objection. First, as I have demonstrated in the introduction, we cannot speak today of "our" contemporary concept of institutions, as the term takes on numerous conflicting meanings in contemporary social-theoretic and social-philosophical discourse. It is therefore unclear what it would mean for Hegel's concept of institutions to "cohere" or "match up" with our own since our concept remains indeterminate (or even self-contradictory) at disciplinary and collective levels. This terminological ambiguity is rarely acknowledged by commentators who help themselves to the concept of institutions in their exposition of Hegel's *Philosophy of Right*.

Second, such a text-insensitive approach rules out the possibility of learning about institutional theory *from* Hegel. It assumes instead that we already know what institutions are and that our task as interpreters lies merely in subsuming Hegel's views to one with which we are already familiar. Although this sort of assimilation of Hegel's terminology to our concept of institutions may turn out to be justified *after* we have reconstructed Hegel's institutional theory, these preconceptions must be disregarded at the beginning of our investigation if we are to genuinely open ourselves up to the text, i.e., adopt a hermeneutic attentive to what is novel in Hegel's institutional theory. Only with this open attentiveness to the text can we do justice to Hegel's contribution and acquaint ourselves with an institutional theory that may radically differ from our own. This hermeneutic openness is the appropriate attitude in our current historical-conceptual juncture, wherein we seek to unify an important concept despite its increasingly diverse social-theoretical usage.

So, in light of this confusion regarding Hegel's use of the concept of institutions, I undertake in this chapter a task that other commentators have overlooked, namely, to carefully examine Hegel's own words on the matter, beginning with Hegel's examples of institutions in the *Philosophy of Right*.

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2. Almost all commentators overlook Hegel's distinction between sphere and institution. In doing so, they mistakenly assert that the three spheres of right—the family, morality, and the state—are among Hegel's rational institutions. Taken in isolation, this interpretative error is minor and relatively harmless. But I will develop Hegel's distinction between sphere and institution in Chapter 4 in order to resolve the tension between Kantian (transcendental) and Aristotelian (telological) interpretations of Hegelian objective spirit. See Neuhouser, *The Foundations of Hegel's Social Theory*, 3; Pippin, *Hegel's Practical Philosophy*, 125, 203, 208, 255; Honneth, *The Pathologies of Individual Freedom*, 57, 71–72; Pinkard, *Hegel's Phenomenology*, 324–25; Michael Hardimon, *Hegel's Social Philosophy*, 174; Allen Wood, *Hegel's Ethical Thought*, 101, 257.



## 2.2 Examples of Institutions in the *Philosophy of Right*

It is helpful to begin our investigation of Hegel's institutional theory with concrete examples. I first examine the examples in the main text constituting Hegel's argument, not those in Hegel's remarks (*Anmerkungen*) and additions (*Zusätze*) collated from student lecture notes. As Hegel reminds us in the preface to the *Philosophy of Right*, the remarks exist primarily for commenting on "representations" (*Vorstellungen*) in popular circulation, which, as representations, necessarily stand outside the philosophical exposition of the idea of right (PR 9/GW 14,1:5).<sup>3</sup> Only after establishing Hegel's basic views regarding institutions from the main text do I expand the interpretive scope to include the *Philosophy of Right's* remarks and additions and Hegel's writings on contemporary political affairs.

### 2.2.1 Examples in the Main Text

Hegel says little about concrete institutions in the main body paragraphs. In the main text, he uses the term "institution" (*Einrichtung, Institution*) in only eleven sections and the preface.<sup>4</sup> All of these uses occur in sections on *Sittlichkeit*. Of these eleven sections, only five refer to specific institutions.<sup>5</sup> These specific institutions can be classified into three groups: in the family, marriage (*Ehe*) and agriculture (*Ackerbau*); in civil society, the corporation (*Corporation*), and, in the state, sovereignty (*Souverainetät*) and the estates (*Ständen*). I will now address each group in turn.

#### Paradigmatic Institutions of the Family: Marriage and Agriculture

I begin with marriage and agriculture. These arise together in PR §350, Hegel's clearest exemplification of institutions in the *Philosophy of Right*. Hegel writes:

It is the absolute right of the idea to come forward in legal determinations and objective institutions [Institutionen], beginning with marriage and agriculture (see Remarks to §203), whether the form in which it is actualized appears as divine legislation of a beneficial kind, or as violence and wrong - this right is the *right of heroes* to the foundation [Stiftung] of states. (PR §350/GW 14,1:277)

This passage occurs in Hegel's sketch of world history at the end of the *Philosophy of Right*. In this account, Hegel outlines his state-centric view of world history, in which history commences only with the founding of states.<sup>6</sup> In turn, statehood begins only when the institutions of marriage

3. "The fact that this outline was due to appear in print and thus to come before a wider public gave me the opportunity to amplify in it some of those *remarks* [Anmerkungen] whose primary purpose was to comment briefly on representations [Vorstellungen] akin to or divergent from my own, on further consequences of my argument, and on other such matters as would be properly elucidated in the lectures themselves. I have amplified them here so as to clarify on occasion the more abstract contents of the text and to take fuller account of related representations [Vorstellungen] which are current at the present time. [...] A genuine compendium, however, has as its object [Gegenstande] what is considered to be the entire compass of a science; and what distinguishes it [...] is above all the way in which it arranges and orders the essential moments of a content which has long been familiar and accepted" (PR 9/GW 14,1:5, emphasis in the original).

4. The sections in which Hegel refers to institutions in the main text are: §144, §263, §264, §265, §268, §287, §297, §310, §314, §338, §350, preface p. 21.

5. The sections in which Hegel refers to specific institutions in the main text are: §263, §297, §310, §314, §350.

6. Cf. Hegel's *Lectures on the Philosophy of World History*: "[I]t is the state which first presents subject-matter that is not only adapted to the prose of history, but involves the production of such history in the very progress of its own being." Only with the establishment of states in Asia do we "find ourselves for the first time on the actual theater of world history" (VWG 61/W 12:83). It is worth noting that Hegel uses his state-centric conception of history to justify his racist exclusion of Africa from world history because, according to him, its peoples failed to form themselves into a state on his account:

and agriculture have been established. PR §203A, the section to which Hegel refers in the block quotation, confirms this view: "the proper beginning and first foundation [Stiftung] of states has rightly been posited with the introduction of *agriculture* and of *marriage*" (PR §203A/GW 14,1:171). In PR §203A, Hegel further tells us that, in ascribing foundational roles to the institutions of marriage and agriculture in the establishment of the state, he follows Cruzezer's *Symbolik und Mythologie der altern Völker*.<sup>7</sup> Indeed, Hegel finds Cruzezer's insight—substantiated by Cruzezer using the Greek myths of Demeter, Triptolemus, and the Eleusinian Mysteries—so penetrating that he refers to it no fewer than four times in the *Philosophy of Right* (PR §167A/GW 14,1:149; PR §170A/GW 14,1:151; PR §253A/GW 14,1:198; PR §93Z/W 7:180).<sup>8</sup> Without a doubt, marriage and agriculture are paradigmatic institutions for Hegel, ones that are distinguished by being the state's first institutions.

Having established *that* marriage and agriculture are paradigmatic institutions for Hegel, I will now address *what* these institutions are and what their function in *Sittlichkeit* is, beginning with marriage.

**The Institution of Marriage** The institution of marriage is familiar to readers of the *Philosophy of Right*. It forms the first moment of the family in ethical life (PR §§161–169).<sup>9</sup> For Hegel, the family is "immediate or *natural* ethical spirit" (PR §157/GW 14,1:143) or the "*immediate substantiality* of spirit" (PR §158/GW 14,1:144). The family's characteristic determination is love, or spirit's feeling of its unity (*ibid.*). The family is distinguished from the state because it is the *immediate* ethical totality, whereas the state is the *mediated* ethical totality.<sup>10</sup> The family consists of three further moments: marriage, the family's resources, and the upbringing of children. Now, marriage, as the family's first moment, is the "*immediate ethical relation* [Verhältnis]" (PR §161/GW 14,1:145) that holds between "both persons who enter this relation" (PR §162/GW 14,1:145). Hegel calls

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"What we properly understand by Africa, is the unhistorical, undeveloped spirit, still involved in the conditions of mere nature, and which had to be presented here only as on the threshold of world history" (VWG 99/W 12:129).

7. *Symbolik und Mythologie der alten Völker, besonders der Griechen*. 4 Bde. Leipzig und Darmstadt: Heyer und Leske (1810–1812). It is unclear what parts of Cruzezer's book Hegel has in mind. In Cruzezer's lifetime, the four-volume book underwent three significant revisions in 1810–1812, 1819–1823, and 1836–1843. In 1819, Cruzezer sent Hegel a copy of the first volume of the new 2nd edition of *Symbolik und Mythologie der alten Völker* (Leipzig und Darmstadt 1819), which Hegel acknowledges in his reply on October 30, 1819 (B 2:217–20, cf. GW 14,3:846). So, in the *Philosophy of Right*, Hegel could either be referring to Bd. 1 of the 1819 edition or to Bd. 4 of the 1812 edition.

The GW editors suggest that Hegel's reference in the *Philosophy of Right* is to Bd. 4 of the 1812 first edition, esp. §§44–45, pp. 475–573 (GW 14,3:1169, cf. GW 26,4:1789). This suggestion is in my view correct. Two additional pieces of textual evidence support it. First, Hegel repeats this connection between mythology and agriculture in VPR17, wherein he refers to Cruzezer's exposition of the myths of Ceres (the Roman analog of Demeter, the Greek goddess of agriculture) and Triptolemus: "The era during which agriculture comes into being is one of the principal eras in the history and religion of all peoples; this is how the mysteries of Ceres came about. [...] Ceres and Triptolemus did not merely found agriculture but also laid the bases of lawful property [gesetzmäßige Eigentum]" (VPR17 §103A/GW 26,1:113–14). Second, in VPR19, Hegel the same context tells us that "peoples have therefore justifiably viewed the invention of agriculture as a divine endowment [Stiftung]. Cruzezer in particular has emphasized this mythic side" (VPR19 147/ANM 14,123–24, GW 26,1:469). In VPR17, Hegel would not have yet received the 1819 edition and, in VPR 19, Hegel refers explicitly to Bd. 4, which had not yet been published in the 2nd Aufl. So Hegel's reference is almost certainly to Bd. 4 of the 1812 edition.

In Bd. 4 of the 1812 edition, see esp. the connection between the *Thesmophorien* and the beginning of agriculture (485–88), the designation of agriculture and the mysteries as the two greatest gifts from the gods (540–42, 555), and the celebrations of *Thesmophorien* and *Eleusinien* as historical memorializations of the introduction of agriculture, before which the condition of human beings was "lawless" (544–45).

8. Hegel also repeats Cruzezer in his *Lectures on the Philosophy of World History*: "In their mythology [i.e., the Greeks's] we have a definite record of the introduction of agriculture by Triptolemus, who was instructed by Ceres, and of the foundation [Stiftung] of marriage, etc." (VWG 228/W 12:280).

9. On the systematic significance of the family in Hegel's *Philosophy of Right*, see Siegfried Blasche, "Natural Ethical Life and Civil Society: Hegel's Construction of the Family," in *Hegel on Ethics and Politics*, ed. Nicholas Walker, Otfried Höffe, and Robert Pippin (Cambridge: Cambridge University Press, 2004), 183–207.

10. Blasche, "Hegel's Construction of the Family," 185.

marriage a relation in nearly every relevant section in the *Philosophy of Right*.<sup>11</sup> He also speaks later of the "marriage relation [Eheverhältnis]" (PR §172/GW 14,1:151). At bottom, marriage is a social relation for Hegel.

For Hegel, the marriage relation has two chief functions in ethical life, one natural and the other spiritual. Marriage functions *naturally* insofar as it involves itself in the reproduction of the species through the union of the "natural sexes"; however, it functions *spiritually* to the extent that it transforms this merely natural sexual union into one that has being in and for itself, i.e., into a union that constitutes a new single person and about which its participants attain transparent self-awareness into this union's ethical significance (PR §161/GW 14,1:145).<sup>12</sup> The spiritual dimension of marriage has two further consequences. First, it involves a liberation from natural desire, both with respect to sexual inclination (PR §162/GW 14,1:145) and to selfishness regarding property (PR §170/GW 14,1:151).<sup>13</sup> Second, it explains why the marriage relation has its "objective basis," i.e., its essential determination, in each spouse's "free consent" or in the "*free surrender* by both sexes of their infinitely unique [eigen] personality" (PR §168/GW 14,1:149). If this were not the case, then the spiritual self-awareness that Hegel deems to be the achievement of marriage would be rendered impossible because the non-consenting person(s) in the relation would not be able to discern in the union a higher ethical purpose. Because it effects a spiritual *and* natural union, the institution of marriage is, for Hegel, a relation that is monogamous (i.e., two-place), heterosexual, and consensual. Later in my reconstruction, I will return to how we should understand Hegel's *institutional essentialism*, expressed in claims such as "marriage is essentially monogamy" (PR §167/GW 14,1:149), and whether such claims entail, for example, that non-monogamous marriage or marriage between same-sex couples 'count' as an institution for Hegel.<sup>14</sup>

**The Institution of Agriculture** The nature of agriculture emerges less readily in Hegel's text. Agriculture does not appear in any of the *Philosophy of Right's* section titles and, nowhere does Hegel deal explicitly with agriculture as a moment of the philosophical system.<sup>15</sup> Its exposition as an institution thus involves more interpretation than did marriage.

With this in mind, it is instructive to recall the family's *Vorbegriff*, Hegel's anticipatory outline of the sphere of the family prior to its unfolding (PR §160/GW 14,1:144). In it, Hegel divides the family into three "sides [Seiten]": (1) the marriage relation; (2) the family's "external *Dasein*" in its property (*Eigentum*), capital, and capacities and its administration (*Sorgen*) of these—in

11. For example, Hegel speaks of "this relation [Verhältnis]" (PR §167/GW 14,1:149), of the "substantial relation [Verhältnisses]" (PR §164A/GW 14,1:148), and of "the true and ethical of the relation [Verhältnisses]" (ibid.). Later in the text, Hegel contrasts the marriage relation with a "slave relation [Sklavenverhältnis]" (PR §180A/GW 14,1:157).

12. "Marriage, as the *immediate ethical relation*, contains *first* the moment of *natural* liveliness [Lebendigkeit]; and since it is a substantial relation, this involves liveliness [Lebendigkeit] in its totality, namely as the actuality of the *species* [Gattung] and its process. But *secondly*, in self-consciousness, the union of the *natural sexes* [Geschlechter], which was merely *inward* (or had being only *in itself*) and whose existence was for this very reason merely external, is transformed into a *spiritual* union, into self-conscious *love*" (PR §161/GW 14,1:145).

13. "Abstract property contains the arbitrary moment of the particular need of the merely singular; this is here transformed, along with the selfishness of desire, into care and acquisition for [something] *communal*, i.e. into [something] *ethical*" (PR §170/GW 14,1:151).

14. Hegel acknowledges that marriages are not always entered freely (PR §162/GW 14,1:145). Such unfree marriages have a merely subjective basis because only the free consent of the marriage participants grounds its objectivity. In the *Zusatz*, Hegel notes the existence of arranged marriages but criticizes their "harsh effects [große Härten]" (PR §162Z/W 7:313).

15. In the *Philosophy of Right*, Hegel discusses agriculture in five sections, primarily in connection to the "substantial" or "agricultural" estate. These are PR §203A/GW 14,1:171; PR §250/GW 14,1:196; PR §253A/GW 14,1:196; PR §350/GW 14,1:277; PR §351/GW 14,1:277.

short, its resources (*Vermögen*)—and, (3) the upbringing (*Erziehung*) of children and the dissolution (*Auflösung*) of the family.<sup>16</sup> These three sides correspond to the general structure of the idea in Hegelian philosophy: a concept (marriage), this concept's existence (resources), and the unity of the two (children). In the case of a living thing, the fulfillment of its conceptual unity is also always its reconciled demise; hence, the raising of children is simultaneously the natural dissolution of the family (PR §178/GW 14,1:155). In this scheme, agriculture corresponds to a particular shape taken on by the resources within the family; it is, in other words, a prototype of family resources, the first form of this externalizing moment of the family. That agriculture is a form of the family's resources is further confirmed when Hegel tells us that the "[agricultural] principle brings with it the cultivation of the soil, and thus exclusive private property [Privateigentum]" (PR §203/GW 14,1:171), immediately referring us to PR §170A, the first section under the heading "Der Vermögen der Familie" (GW 14,1:151).<sup>17</sup> Agriculture is thus for Hegel a *Vermögen*.

But what does it mean, exactly, for agriculture to be a form of the family's resources? In answering this question, it is instructive to consider how *Vermögen* differs from the other two moments of the family, the marriage relation and the upbringing of children. It does so in two ways: *functionally* (i.e., with respect to its effects) and *ontologically* (i.e., with respect to its social-ontological being, the kind of social thing that it is).

Functionally, agriculture, as we have seen, realizes the moment of objectivity or "external existence [äußerlichen Daseyn]" of the family (PR §160/GW 14,1:144). By contrast, marriage realizes the "shape of [the family's] immediate concept" (ibid.) and so is "only first the immediate ethical idea" (PR §176/GW 14,1:154) or "immediate ethicality" (PR §180A/GW 14,1:157) and the upbringing of children functionally completes and dissolves the "natural unity of the family" (PR §175/GW 14,1:154). Now, initially it is not clear what conceptually distinguishes the family's resources from the upbringing of children since both appear to realize the family's *Dasein*, as Hegel draws out in PR §173 introducing the upbringing of children:

[I]n the children, the *unity* [Einheit] of marriage becomes [...] *an existence* [Existenz] *which has being for itself* and an *object* which the parents love as their love and their substantial existence [substantielles Daseyn] (PR §173/GW 14,1:153).

In this passage, Hegel appears to connect the upbringing of children with the family's *Dasein*. However, closer inspection of the text reveals that the crucial difference between *Vormögen* and *Erziehung* lies in Hegel's distinction between *external existence* and *substantial existence*. As the family's external existence, resources are not the object of anyone's love; they have a merely

16. Hegel later connects the family's resources to its personality: "The family has, as a person, its external reality [Realität] in a *property* [Eigentum], in which it has the existence [Dasein] of its substantial personality only as a *resource* [Vermögen]" (PR §169/GW 14,1:150).

17. In the *Lectures on the Philosophy of World History*, Hegel again describes agriculture as an expansive kind of property (*Eigentum*) that, as such, would count as a form of resources (*Vermögen*) as outlined in the *Philosophy of Right*. E.g., "For agriculture, which prevails here as the primary principle of subsistence for individuals, is assisted by the regularity of seasons, which require corresponding agricultural operations; property in land [Grundeigentum] commences, and the consequent relations of right [Rechtsverhältnisse];—that is to say, the basis and foundation of the state, which becomes possibly only in connection with such relations" (VWG 89/W 12:118); "In regard to Asia the remark above offered respecting geographical differences is especially true; viz. that the rearing of cattle is the business of the Upland—agriculture and industrial pursuits that of the valley-plains—while commerce and navigation form the third and last item. Patriarchal independence is strictly bound up with the first condition of society; property [Eigentum] and the relation of lord and serf with the second; civil freedom with the third" (VWG 100–101/W 12:131); "In agriculture alone lies the cessation of a roving life. It demands provision [Vorsorge] and solicitude for the future: reflection on a general idea is thus awakened; and herein lies the principle of property [Eigentumes] and industry" (VWG 101/W 12:131–32).

instrumental value as the "common property [gemeinsames Eigentum]" with which the family achieves its purposes (PR §171/GW 14,1:151). The upbringing of children substantiates the family in a radically different way. The children, as love objects, realize the family's substantial existence by expanding the two-place marriage relation into a three-place family relation, a relation which now has "being for itself" because it contains the moment of self-conscious love reflected back to the parents by the children. The family's resources, by contrast, serve as a stockpile of common capacities that members of the family can draw upon to realize their aims; it therefore presents the family's union in a merely "external thing [Sache]," whereas the child does so in a "spiritual thing" (PR §175Z/W 7:329).<sup>18</sup> So while the family's resources and the upbringing of children are both ways in which the family garners its existence, resources do so in property, in external things, i.e., its personality (cf. PR §41/GW 14,1:55; PR §181/GW 14,1:158–59). In accordance with §169, then, we can conclude that the function of *Vermögen* is to realize the family's external existence as a person.

These functional distinctions, admittedly quite subtle in Hegel's text, are confirmed when we consider the ontology of the family's three moments. As we have seen, marriage is, for Hegel, a relation (*Verhältnis*). Furthermore, we have also seen that, as the family's substantial (as opposed to external) existence, the upbringing of children is also a relation. This is borne out within the main body of Hegel's text, wherein Hegel calls *Erziehung* a "Familienverhältnis" (PR §175/GW 14,1:153; PR §178/GW 14,1:155; PR §178A/GW 14,1:155; PR §180A/GW 14,1:156) and a "Grundverhältnis" (PR §180/GW 14,1:156). While it might appear strange that "upbringing" is a relation for Hegel, this connection is not as opaque in Hegel's German because *Erziehung* is similarly constructed from the same root verb, *ziehung*, as another common word for relationship, *Beziehung*. So, it is not entirely surprising that *Erziehung* refers, for Hegel, to a relation between family members, specifically between parents and children.<sup>19</sup>

What, then, is the ontological status of the family's *Vermögen* in general and its agricultural form in particular? I suggest the following reading: *Vermögen* is not a social relation; rather, it is a *social power*. As a power, it can be described in three ways. First, as a subjective *faculty* or ability. Kant's faculties of desire, feeling, and cognition are all *Vermögen*, as are cognition's division into reason (the faculty of ideas), the understanding (the faculty of principles), and sensibility (the faculty of intuition). Described as a subjective faculty, a *Vermögen* is a mental power (in the case of cognition) or a volitional one (in the case of desire) to achieve one's ends or, alternatively, an affective power (in the case of the feeling of pleasure or pain).<sup>20</sup> Second, *Vermögen* is objective

18. The corresponding *Zusatz* elucidates: "The relation of love between man and wife is not yet an objective one; for even if this feeling is their substantial unity, this unity does not yet possess objectivity [Gegenständlichkeit]. The parents attain this unity *only in their children*, in whom they see the whole of their union before them. In the child, the mother loves her husband and he his wife; in it, they see their love before them. Whereas their unity is present in their resources only in an *external thing* [Sache], it is present in their children in a *spiritual thing* in which the parents are loved and which they love" (PR §173Z/W 7:326). This is also why "children love their parents less than their parents love them" (PR §175Z/W 7:329).

19. While it is unclear from the text, I take it that Hegel understands this relation as being between the parents and the children and not between all the family members.

20. Of course, Hegel rejects any version of a "faculty psychology" couched in terms subjective *Vermögen* a la Kant: "Those who regard thinking as a particular and distinct *faculty* [Vermögen], divorced from the will as an equally distinct *faculty* [...] show from the very outset that they know nothing of the nature of the will" (PR §5A/GW 14,1:32; cf. PR §10A/GW 14,1:36). Within the main text of the *Philosophy of Right*, Hegel makes it clear that the free will cannot be conceived as a mere subjective capacity: "The will which has being in and for itself is truly infinite; [...] it is not just a possibility [Möglichkeit], predisposition [Anlage], or *faculty* [Vermögen] (*potentia*), but the *actual-infinite* (*infinitem actu*), because the existence of the concept, or its objective externality, is inwardness itself" (PR §22/GW 14,1:42). Beginning one's *Rechtsphilosophie* with an account of the practically free will conceived as a *Vermögen* was common in Hegel's day, as for instance, in Hufeland's *Lehrsätze des Naturrechts* (Jena, 1795), §§1–17, a popular textbook. However, while such a subjective and voluntarist account

*capital*, understood as a stockpile of material, either physical or some abstraction thereof, e.g., value, which, again, serves as means for the achievement of some practical end.<sup>21</sup> The adequacy of this objective description of *Vermögen* is evidenced by the fact that the term is occasionally translated into English as "capital," especially in Hegel's discussion of civil society.<sup>22</sup> Finally, a *Vermögen* can also be described in an Aristotelian way, namely as a hylomorphic *capacity* or *disposition* (*dunamis*), i.e., as a real possibility that, as such, is organized in a determinate manner and essentially connected to its actuality (*energeia*). This is Aristotle's view of a capacity in *De Anima* and *Metaphysics* Theta, in which a capacity or possibility describes both a kinetic change (movement) and a modal one (actualization).<sup>23</sup>

Hegel intends agriculture, as a *Vermögen*, to cover all three of these social-ontological descriptions of a social power. This is most clear when Hegel connects agriculture with the "substantial" (PR §203/GW 14,1:171) or "agricultural" estate (PR §250/GW 14,1:196). Thus, in PR §203,<sup>24</sup> Hegel tells us that agriculture is a form of capital involving the "objective formation [Formirung]" of the soil (*Boden*) and of a system of private property erected on this basis. But agriculture equally corresponds to a certain way of thinking about one's labor and one's place in the cosmos, and so also includes certain cognitive, volitional, and affective capacities on the part of the individual. These include, cognitively, the capacity to plan for the varying seasons of nature—what Hegel calls provision (*Vorsorge*)—and, volitionally and affectively, the blunting of one's capacity to reflect and to act upon one's singular will, opening oneself to the immediacy of religious and familial life and one's trust thereof. Agricultural power is thus also, as it were, a state of mind, a certain way of thinking and acting. Finally, Hegel also accommodates a hylomorphic description of agricultural power when he casts it as a concrete and determinate way of organizing the state. "Agricultural [Ackerbauenden]" thus describes a "substantial moment[]" of the state" alongside other possible (and, in Hegel's evaluation, lesser) organizations, such as "hunter-gatherer [Jägervölker]" and "pastoralist [Viehzucht-treibende]" (PR §351/GW 14,1:277). Agriculture in this sense thus combines a way of organizing property, labor, and capital with subjective features such as one's connection to the familial and the divine, one's capacity for reflection, etc. It is thus a hylomorphic kind of social power. The institution of agriculture, as a form of the family's resources, is thus a form of social power in this sense. Thus, the family's three moments describe two different social-ontological kinds: marriage and upbringing are social *relations* and resources a social *power*.

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of the free will is an unacceptable foundation for Hegel, he nonetheless wishes to accommodate this subjective meaning of *Vermögen* in his view of social power.

21. *Vermögen*'s objective sense appears also in abstract right, e.g. in §49A where Hegel speaks of "inequality of property and fortune" [Austheilen des Besitzes und Vermögens] (PR §49A/GW 14,1:60).

22. See *Outlines*, §200, §237.

23. See Thomas K. Johansen, "Capacity and Potentiality: Aristotle's *Metaphysics*  $\theta$ .6–7 from the Perspective of the *De Anima*," *Topoi* 31, no. 2 (2012): 209–20; Barbara Vetter, *Potentiality: From Dispositions to Modality* (Oxford University Press, 2015), ch. 3.

24. "The *substantial* estate has its resources [Vermögen] in the natural products of the *soil* which it cultivates - soil which is capable of being exclusively private property, and which requires not just indeterminate exploitation, but formation of an objective kind. Given the association of labor and acquisition with fixed *individual* seasons, and the dependence of the yield on the varying character of natural processes, the end to which need is directed in this case becomes that of *provision* [Vorsorge] for the future. But because of the conditions to which it is subject, this provision retains the character of a subsistence [Subsistenz] in which reflection and the will of the individual play a lesser role, and thus its substantial disposition in general is that of an immediate ethical life based on the family relation and on trust" (PR §203/GW 14,1:171).

### Paradigmatic Institution of Civil Society: The Corporation

Civil society has its paradigmatic institution in the corporation. Admittedly, Hegel states that the corporation is an institution only indirectly within the main text of the *Philosophy of Right*. In §263, he writes:

In these spheres in which its moments, singularity and particularity, have their immediate and reflected reality, spirit is present as their objective universality *shining [scheinende] in them* as the might [Macht] of the rational in necessity (see §184), i.e. as the *institutions* [Institutionen] considered above. (PR §263/GW 14,1:210)

In this context, Hegel is introducing the first division within the state, constitutional or civil right (*Die innere Staatsrecht*, §§260–71), which corresponds to *ius civilis* of Roman law and culminates in the concept of the constitution (*Verfassung*). In doing so, Hegel goes beyond the Roman law tradition by reverting to the wider Greek sense of *nomos*, which also incorporates the unwritten law—informal mores and customs—within the constitution. However, the "spheres" and "institutions" Hegel refers to in this quotation are not immediately transparent. But the surrounding paragraphs clarify the matter. From §262, we learn that the "spheres" in question are the family and civil society.<sup>25</sup> Elsewhere, Hegel further tells us that the "institutions" he has considered in these two spheres are marriage and the corporation (PR §255; PR §255A; PR §256A; PR §265Z).<sup>26</sup>

That Hegel considers the corporation a paradigmatic institution is further supported in two other passages from the main text. In his discussion of the "middle estate [Mittelstande]," Hegel argues that the educated middle class will be prevented from becoming a "bourgeois aristocracy" because its power is constrained and its disposition influenced by the "institutions [Institutionen] of sovereignty [Souveraineté] from above, and of corporation rights [Corporations-Rechte] from below" (PR §297/GW 14,1:246).<sup>27</sup> Later, Hegel speaks of "the institutions [Einrichtungen] and interests of the state and civil society," referring, in part, to the corporations as among these institutions of civil society (PR §310/GW 14,1:255). Corporations, then, are undeniably an institution in the strictest sense for Hegel and, indeed, are *the* institution of civil society.

What, then, *is* the corporation as an institution? In Hegel's architectonic, the corporation concludes civil society (PR §§250–256).<sup>28</sup> The corporation, together with the police, function to reactualize the unity of the subjective and the objective in civil society—that is, the unity between of "subjective particularity," on the one hand, and "the universal which has being in itself," on the other (PR §229/GW 141:188). This unity between objectivity and subjectivity—famously "lost

25. "The actual idea is the spirit which divides itself up into the two ideal spheres of its concept, the family and civil society, as its finite mode, and thereby emerges from its ideality to become infinite and actual spirit for itself" (PR §262/GW 14,1:210).

26. "The *family* is the first *ethical* root of the state; the *corporation* is the second, and it is based in civil society" (PR §255/GW 14,1:199); "The sanctity of marriage and the honour attaching to the corporation are the two moments round which the disorganization of civil society revolves" (PR §255A/GW 14,1:199); "It has already been noted that the sanctity of marriage and the institutions [Institutionen] wherein civil society appears as ethical constitute the stability [Festigkeit] of the whole, that is, the universal is simultaneously the matter [Sache] of each as a particular" (PR §265Z/W 7:412). Cf. the editor's note for PR §263 (*Elements*, 457n1). Admittedly, PR §255 appears to suggest that the two relevant institutions are the family and the corporation, not marriage and the corporation. However, this section's remark, quoted above, clarifies that Hegel means marriage, the first moment of the family, as distinct from the upbringing of children and the family's resources.

27. The notion of a "bourgeois aristocracy" comes from Hegel's 1817 essay on the Württemberg Estates Assembly. See §4.2.1 below.

28. For a relatively standard reconstruction of the corporation's contribution to ethical life, see Stephen Houlgate, "Civil Society and Its Discontents: Hegel and the Problem of Poverty," in *Hegel's Philosophy of Right* (New York: Routledge, 2022), 269–88. On the historical context of Hegel's corporation, see Friedrich Müller, *Korporation und Assoziation*, ch. 3.

in its extremes" (PR §184/GW 14,1:160) in civil society—is *finitely* realized by the police and the corporations as the "external state," whose very finitude, in turn, necessitates the state proper (PR §157/GW 14,1:143; PR §183/GW 14,1:160). It realizes this finite unity in two ways. First, the police and the corporations provide "precautions [Vorsorge] against [...] contingency," a contingency which, because of the particularity and arbitrariness that prevails in civil society, cannot be eradicated in itself but only mitigated through external measures. Second, the police and the corporations further provide the "provision [Besorgung] of the particular interest as a *common* [Gemeinsamen] interest," i.e., a finite realization of the common good which otherwise has no being *for itself*, or explicit existence, in the sphere of civil society, but only an implicit one, i.e., in a Mandevillian sense—private vices, public virtues (PR §188/GW 14,1:164). In short, the police and the corporations realize the particularized, finite care (*Sorge*)—protection from particular contingencies and particular respect for the common good—lacking within the system of needs and the administration of justice.<sup>29</sup>

Now, how does the corporation differ from the police (PR §§231–249)? The difference is both social-ontological and functional. By the police, Hegel has in mind a state-authorized body that makes systematic regulatory interventions into the workings of economic society. It is in these sections that Hegel famously identifies the problems produced by civil society's "own dialectic" (PR §246/GW 14,1:195), namely poverty (PR §§241–42), the rabble (PR §§243–45), and colonization (PR §§246–48) and the inadequacy of any of the proposed solutions to these problems. *Social-ontologically*, then, the police is a kind of authority (*Macht*).<sup>30</sup> It is not exactly a power like agriculture because it is neither an objective resource nor a subjective capacity nor a hylomorphic combination of the two, but a way of ordering such social powers. An authority is not a way of acting or being potentially in the world, as a power is, but a form of regulating these powers, a second-order or regulatory power, if you like. The *functional* effect of the police authority is, accordingly, the actualization of care as an "external order [äußere Ordnung]" (PR §231/GW 14,1:189; PR §249/GW 14,1:196).

By contrast, the corporation is, social-ontologically, an *association* (*Genossenschaft*). Its functional effect is actualizing care as an *internal* order among its members. Hegel repeatedly says that the corporation is an association,<sup>31</sup> which he also calls a community (*Gemeinde*), often in the same breath.<sup>32</sup> With the corporations, Hegel envisions an association in which a subset of members of civil society are united by virtue of the *particular* kind of labor they undertake, their "*Arbeitswesen*" (PR §251/GW 14,1:196).

Hegel's differentiation of the corporations by their sphere of labor has five consequences rel-

29. Cf. Hegel's introduction of *both* the police and the corporation in PR §230/GW 14,1:189: "[In the policy and the corporation], the *right which is actually present in particularity* [in der Besonderheit wirkliche Recht] means not only that contingencies which interfere with this or that end should be sublated [...] but also that the livelihood and welfare of individuals should be secured - i.e. that *particular welfare* should be treated as *right* and duly *actualized*."

30. For Hegel, the police is "that authority [Macht] of the universal which guarantees security" (PR §231) but only insofar as the ends secured are the ends of particular wills, i.e., the selfish ends of consuming and working individuals, and not the ends willed in and for themselves by the universal will. Since the police's authority is limited to particularity in this way, the police does not regulate spiritual life as a whole but only the "sphere of *contingencies*" as an "external order" (PR §231/GW 14,1:189).

31. Hegel also the corporations an association in PR §251/GW 14,1:196–97; PR §252A/GW 14,1:197; PR §253A/GW 14,1:198; PR §308/GW 14,1:254; PR §310A/GW 14,1:256.

32. E.g., "in der Berechtigung der Gemeinden, Corporationen, [...]" (PR §295/GW 14,1:245); "die Rechte der Gemeinden und Corporationen [...]" (PR §299/GW 14,1:247); "die besonderen Interessen der Gemeinden, Corporationen und der Individuen [...]" (PR §302/GW 14,1:251); "das besondere Interesse einer Gemeinde, Corporation" (PR §309/GW 14,1:255); "constituirten Genossenschaften, Gemeinden und Corporationen" (PR §308/GW 14,1:254). Cf. also PR §270A, p. 296/GW 14,1:216.



evant to our exposition. First, Hegel already construes civil society as being determined by the social division of labor, of which one's particular sphere of labor, or what Hegel calls a "branch of civil society" (PR §252A), forms only a small part. Second, this particularity of labor, decisive for the corporation, entails that corporations are exclusive to Hegel's middle estate of trade and industry. This is because within the other two estates, those of agriculture and government bureaucracy, labor appears immediately as a universal activity, not a particular one, and so labor cannot form the basis of a particular association in these estates (PR §250/GW 14,1:196). Third, the effect of the corporation, as a communal association, is not to eradicate the "private vices" of individuals, or what Hegel calls their "selfish end," but to make it such that this particular end *also* expresses the universal one, i.e., the common good, and is known to do so by the corporation's members; the corporation thus makes explicit the merely implicit universality of one's particular sphere of labor within civil society (PR §251/GW 14,1:196–97).<sup>33</sup> Fourth, and as a consequence of this, the corporation provides civil society with an *internal order*, in contrast to the police's external order, because the pervasiveness realized therein is established explicitly *by* the constituents of the order itself. The corporation is thus a self-imposing order in the sense of being justified in the consciousnesses of those over whom it governs, unlike the police's order, which is indeed justified by the immanent demand to realize substantial freedom implicit in the concept of the free will, but, as an external order, need not—and, as Hegel indicates in §268Z, often does not—appear to be justified in the consciousnesses of particular individuals subjected to its authority. Finally, because the corporation realizes an internal order within civil society, one which individuals can readily, even "naturally," identify as corresponding to their own particular interests, it counts for Hegel as a "*second family*" (PR §252) and the moment in civil society in which "*the ethical returns to civil society as an immanent principle*" (PR §249). The corporations thus serve a reconciling function within civil society, redeeming, at least partially, civil society's ethical significance in light of its disastrous social consequences.

### **Paradigmatic Institutions of the State: Estates and Sovereignty**

In his discussion of the state, Hegel identifies two further institutions in the main text of the *Philosophy of Right*: the estates and sovereignty.

**The Institution of the Estates** The quotations from §297 and §310 already indicated that the estates are an institution for Hegel. To these, we add another passage in the main text of the *Philosophy of Right*, in which Hegel posits the "institution of the estates":

Since the institution of the estates [Institution von Ständen] does not have the determination that requires them to achieve optimum results in their deliberations and decisions on the business of the state *in itself*, for their role in this respect is purely accessory [nur einen Zuwachs] (see §301). (PR §314/GW 14,1:258)

This passage is part of Hegel's discussion of the estates' role in the legislative power (PR §§298–320). Hegel's point in this passage is that the estates, in their legislative capacity, are imperfect—as deliberative bodies, they are unlikely to arrive at the most technically efficient solutions to

<sup>33</sup> In the corporation, "the *selfish* [selbstsüchtige] end which pursues its own particular interest grasps [faßt] and activates [bethätigt] itself at the same time as a universal end" (PR §251/GW 14,1:196–97).

problems they intend to address. Selecting the most efficient means for realizing the ends of government instead falls to the members of the universal estate, the bureaucrats. Rather than having this technical function, the estates' deliberations, by being held in the open, functionally realize the moment of "*publicity* [Öffentlichkeit]" in the legislature and, as such, secure the "*formal freedom* [formellen Freiheit]" appropriate to the state (PR §314/GW 14,1:258). The publicity of the estates' deliberations within the state legislature realizes formal freedom because it expresses the moment of subjectivity, allowing the people to air their opinions on political affairs and matters of the state.<sup>34</sup> Having one's subjective insight acknowledged forms a necessary moment of the freedom of subjectivity (PR §123) or the finite "*formal will*" (PR §8; PR §10A; PR §13). Actualizing this formal freedom is the estates' function within the state.

What, then, *are* the estates, social-ontologically speaking? This question is difficult to answer because the estates bear a peculiar status in the *Philosophy of Right*: the estates *originate* in civil society but *function* both in civil society and the state. In civil society, the estates appear as the third moment of the system of needs under the sections on "c) *Das Vermögen und die Stände*" (§§199–208/GW 14,1:20). It is easy to overlook this fact as "die Stände," while present in the *Philosophy of Right's* table of contents, oddly does not appear in the section's title in the body of the text, which reads "c) *Das Vermögen*" (GW 14,1:169). Despite this elision, Hegel does in fact develop an account of the origin of the estates in the sections on civil society in §§201–207. The basic picture Hegel gives us in these sections is tripartite (PR §202/GW 14,1:170). The estates, as "particularity become objective to itself, divides itself [...] into its universal differences in accordance with the concept" (PR §206/GW 14,1:172): a *substantial estate* consisting of agricultural laborers and a landed aristocracy (PR §203/GW 14,1:171), a *formal estate* of trade and industry (PR §204/GW 14,1:172), and a *universal estate* consisting primarily of state bureaucrats and other agents of the state, such as university professors (PR §205/GW 14,1:172).

Hegel then appears to *repeat* this tripartite division of the estates in corresponding sections on the legislative power (PR §§300–314). There is again an agricultural estate or "the estate of natural ethical life" (PR §305/GW 14,1:253) characterized by property inheritance through primogeniture and so represented in the legislature by a landed aristocracy (PR §306/GW 14,1:253); a "second" estate corresponding to the "changing and variable," or market-based and industry-driven, dimension of civil society, whose interest, unlike the other two estates, must be represented by deputies (PR §308/GW 14,1:254; PR §310/GW 14,1:255); and a universal estate concerned with the "*service of the government*" (PR §303/GW 14,1:251) who does not have direct representation in the legislature's "*two houses*" (PR §312) but nonetheless participates in the legislative power indirectly by populating the offices of the monarchical and executive powers which oversee the legislature (PR §300/GW 14,1:248).

Hegel's duplication of his treatment of the estates can be explained by four points, which, once understood, illuminate the social-ontological status of the estates.

First, Hegel holds that the estates have their *origin*, i.e., Durkheimian efficient cause, in civil society, such that they properly owe their existence to it. For Hegel, the estates are *of* civil society, not *of* the state, which explains why Hegel often speaks in these sections of "the estates of civil society [der Stände der bürgerlichen Gesellschaft]" and never of the estates of the state or of the

34. "[T]hese assemblies give expression to sound [gediegene] and educated insights concerning the interests of the state, leaving little of significance for others to say, and above all denying them the opinion that what they have to say is of distinctive importance and effectiveness" (PR §319/GW 14,1:260).

legislature (e.g., PR §305/GW 14,1:253; PR §303A/GW 14,1:252). Social-ontologically, the estates owe their existence to the activities and structures of civil society. Hegel's estates-centric view of civil society is what permits him to predicate it of ancient and caste-based shapes of ethical life (PR §206A/GW 14,1:173). For Hegel, civil society is not a modern invention but a relatively invariant feature of ethical spirit across historical time, like the family and the state. It is only the institutionalization of these spheres that is genuinely historical.

Second, within civil society the estates have two functions: providing their members with the "*honor of one's estate* [Standesehre]" (PR §207/GW 14,1:173; PR §253/GW 14,1:198) and effecting an objective "division of the whole [Eintheilung des Ganzen]" (PR §206A/GW 14,1:173) into "*particular systems* [Systemen]" (PR §201/GW 14,1:170). By *Standesehre*, Hegel refers to the subjective disposition of individuals effected when one becomes "*somebody*" (PR §253) in one's particularized activity and thus becomes "*recognized* [anerkannt] in one's own representation and in the representation of others" (PR §207/GW 14,1:174).<sup>35</sup> Such honor, Hegel contends, comes about only if sufficient social differentiation is already in place.<sup>36</sup> This social differentiation is the second, objective function of the estates, by which "that reason immanent in the system [Systeme] of human needs and their movement articulates this system into an organic whole of differences [organischen Ganzen von Unterschieden]" (PR §200A/GW 14,1:170).

Third, the estates, despite having their social-ontological being and functions in civil society, nonetheless have an additional function in the state. As we saw, in the legislature the estates assembly functionally realizes publicity and formal freedom within the sphere of the state (PR §§314–319). Hegel captures explicitly this social-ontological disjunction between *being* and *function* by speaking in this context of the "political meaning" (*politische Bedeutung*) of the legislature attained by the otherwise apolitical estates of civil society: "in the *estates* elements [ständischen Elemente] of the legislative power, the *private estate* attains a *political meaning* and efficacy" (PR §303/GW 14,1:251). Hegel alludes to the "political meaning" of the estates in almost every paragraph after §303.<sup>37</sup> Thus, in the legislature, the estates of civil society attain their political significance; or, in other words, before they participate in the legislature's two houses (agricultural and commercial estates) or their oversight thereof (universal estate), the estates of civil society were merely private, having no function in the realizing of public freedom. Because the estates'

35. "The individual attains actuality only by entering into *existence* in general, and hence into *determinate particularity*; he must accordingly limit himself *exclusively* to one of the *particular* spheres of need. The ethical disposition within this system is therefore that of *rectitude* and the *honour of one's estate* [Standesehre], so that each individual, by a process of self-determination, makes himself a member of one of the moments of civil society through his activity, diligence, and skill, and supports himself in this capacity; and only through this mediation with the universal does he provide for himself and thereby be *recognized* in his own representation and in the representation of others" (PR §207/GW 14,1:173–74). Hegel later writes: "[In being a member of a corporation], it is also recognized [anerkannt] that he belongs to a whole which is itself a member of society in general, and that he has an interest in, and endeavours to promote, the less selfish end of this whole: - he thus has *his honor in his estate* [seinem Stande seine Ehre]" (PR §253/GW 14,1:198).

36. Commentators occasionally attribute the function of honor exclusively to the corporation (e.g., Houlgate, "Hegel and the Problem of Poverty," 281). However, this is, in my view, a mistake; honor is a more general feature of civil society for Hegel. This is because Hegel distinguishes between the honor of one's estate (*Standesehre*), which applies to *everyone* because each person necessarily particularizes herself into an estate, and, on the other hand, "the honor of the corporation" (PR §255A/GW 14,1:198), which is more specific, applying only to members of corporations, which are open only to members of the middle estate. As Hegel asserts in §250, the agricultural and universal estates do not have corporations, so their members have open to them only the honor of their estate, and cannot participate honor effected by corporation membership.

37. Hegel's allusions to the political meaning of the estates include his discussion of the "*estates in their political capacity* [politisch-ständische Element]" (PR §304/GW 14,1:252), the estates' "*political relation* [politischen Beziehung]" (PR §305/GW 14,1:253), the estates' "*political role and meaning* [politische Stellung und Bedeutung]" (PR §306/GW 14,1:253), the estates' "*political end* [politischen Zweck]" (PR §307/GW 14,1:253), and the estates' "*political connotation* [politischen Zusammenhang]" (PR §308/GW 14,1:254).

contribution to the overall argument of the *Philosophy of Right* primarily concerns this public freedom, I have included the estates as a paradigmatic institution of the state. But I could just as well have grouped it with the corporation in civil society. Therefore, we can say that the estates are an institution of civil society *and* the state because they have their social-ontological standing in civil society but attain their most important function in the state legislature.

Fourth, because the estates have their origin in civil society, each estate is differentiated by the modality of its participation in the satisfaction of human needs, that is, by the particular technical means (*Mittel*), education (*Bildung*), labor processes (*Arbeiten*), forms of production and exchange (*Hervorbringung*, *Austauschung*), and gratification (*Befriedigung*) appropriate to its particular sphere of activity. Hegel thus calls each estate a "complex [Zusammenhang]" (PR §201/GW 14,1:170).<sup>38</sup> Thus, because one's estate is determined by more than just one's kind of work, incorporating dispositional factors like the formation of one's desires and practical education (*praktische Bildung*), material factors like the technology employed in one's labor process, certain determinate social relations. Given the expansiveness of Hegel's estates, they should, I suggest, be understood as being, social-ontologically speaking, *ways of life* (*Lebensweisen*). By way of life, I mean a complex of interweaving practices, norms, habits, preferences, resources, and so on which hang together with a certain degree of coherence and, as such, render some actions and self-understandings natural and others unnatural.<sup>39</sup> The social-ontological genus "way of life" captures well what Hegel is getting at when he calls the estates an institution.

This classification is also justified textually. While Hegel doesn't employ the term *Lebensweise* often in the *Philosophy of Right*—the term appears only twice in the published text—in each case, he uses the term to describe the estates.

In §245, Hegel speaks of the inability of the working poor, or "mass [Maaß, Masse]," to maintain their "ordinary way of life [ordentlichen Lebensweise]" under the modern conditions of market-mediated production, circulation, and needs-satisfaction (PR §245/GW 14,1:194).<sup>40</sup> This immanent tendency towards impoverishment leads Hegel to provocatively conclude that "despite an *excess of wealth*, civil society is *not wealthy enough*," i.e., that the internal logic of civil society necessarily produces an unemployed and indigent class he names the "rabble" (*Pöbel*), whose existential threat to ethical life can only be mitigated by recourse to the state. With the notion of a way of life, then, Hegel characterizes the general practices and expectations of one subclass of the estate of commerce and industry, a class whose way of life cannot be maintained and thus threatens to dissolve.

In §253A, Hegel again associates *Lebensweise* with the estates. In describing the ethical degradation facing an individual who lacks membership in a corporation, Hegel writes that he

38. "The infinitely varied means and their equally infinite and intertwined movement of reciprocal production and exchange *converge*, by virtue of the universality inherent in their content, and become *differentiated* into *universal masses* [Massen]. In consequence, the whole complex [Zusammenhang] evolves into *particular systems* of needs, with their corresponding means [Mittel], varieties of work [Arbeiten], modes of satisfaction [Befriedigung], and theoretical and practical education [Bildung] - into systems to which individuals are separately assigned, i.e. into different *estates*" (PR §201/GW 14,1:170).

39. In so characterizing a way of life, I follow Rahel Jaeggi's exposition of a *Lebensform* in *Critique of Forms of Life*, ch. 1. However, Hegel reverses the priority between *Lebensformen* and institutions set out by Jaeggi. For Jaeggi, a form of life is an ensemble of practices, institutions, habits, and norms (*Critique of Forms of Life*, 25, 39–40). But for Hegel, forms of life, practices, and habits are all instances of institutions. Inverting the relationship between life-forms and institutions makes it possible to see that, for Hegel, the estates, as a "complex" or *Zusammenhang*, are an institution, *not* an ensemble of practices and institutions.

40. In his definition of the estates in §201, Hegel also described them as "differentiating themselves into *universal masses* [Massen]" (PR §201/GW 14,1:1780).

will accordingly try to gain *recognition* through the external demonstrations of success in his trade, - demonstrations that are limitless, because it is impossible for him to live in a way appropriate to his estate if his estate does not exist - since only the common [Gemeinsame] *exists* [existirt] in civil society, what is legally constituted and recognized - hence he cannot achieve for himself a more universal way of life [Lebensweise] that is appropriate to his estate. (PR §253A/GW 1,14:198)

In Hegel's view, each estate sets out a way of life appropriate to its members. If I am unaware of my standing in an estate—which, in the middle estate, occurs through corporation membership—then I lack determinate limits on my natural impulses to luxury and avarice. We can, therefore, reasonably attribute to Hegel the view estates are, social-ontologically speaking, ways of life, bearing the functions in civil society and the state outlined above.<sup>41</sup>

**The Institution of Sovereignty** I now turn to the final institutional example in the main text of Hegel's *Philosophy of Right*: sovereignty (*Souverainetät*). Sovereignty is a difficult notion in Hegel's science of right. For one thing, it is easily confused with monarchy (*Monarchie*) and princely power (*fürstliche Gewalt*). But sovereignty is neither of these.<sup>42</sup> Moreover, despite its importance in the argument of the *Philosophy of Right*, the term is absent from the *Encyclopedia's* doctrine of objective spirit.<sup>43</sup> Its exposition therefore requires careful attention to the text of the *Philosophy of Right*.

We quote again the relevant passage:

Members of the executive and civil servants constitute the bulk of the *middle estates*, which embodies the consciousness of right and the educated intelligence of the mass of the people. The institutions [Institutionen] which prevent this class from adopting the isolated position of an aristocracy and from using its education and skill as arbitrary means of domination are sovereignty [Souverainetät], which acts upon it from above, and the rights of the corporations, which act upon it from below. (PR §297/GW 14,1:246)

In this quotation, Hegel identifies sovereignty, like the corporation, as an institution. In particular, Hegel determines sovereignty to be an institution that protects against ("from above") the aristocratic ambitions of the middle estate. Again, here it sounds as if Hegel envisions sovereignty to be nothing other than a strong monarch who personally checks the power of particular social groups (Rousseau's 'small societies') insofar as it conflicts with the universal interest of the state.<sup>44</sup>

41. I distinguish the estates' *Lebensweise* from the *Gestalt des Lebens* in Hegel's famous lines from the preface—"a shape of life grown old [eine Gestalt des Lebens alt geworden]" (GW 14,1:16). This "form of life" from the preface should be read in line with the "spirit of peoples [Völkergeister]" (PR §341/GW 14,1:274; PR §352/GW 14,1:278) in Hegel's account of world history, which he also calls *Gestalten* (PR §353/GW 14,1:278) and *Gestaltungen* (PR §352/GW 14,1:278; PR §353/GW 14,1:278). Very roughly, these *Völkergeister* correspond to the "shapes of spirit [Gestalten des Geistes]" in the *Phenomenology* (GW 9:35; GW 9:446). The estates' *Lebensweise* is thus more specific as multiple *Lebensweisen* coexist in a single *Volksg Geist* or form of life. Hegel generally avoids using the term *Lebensform*, which appears only in his essay *The Spirit of Christianity and its Fate* (W 1:395; W 1:403).

42. The English translation of the *Philosophy of Right* (Cambridge University Press, trans. Nisbet) unfortunately conflates distinctions necessary for grasping Hegel's notion of sovereignty, namely between *fürstliche Gewalt* (princely power or the power of the crown), monarchy, and sovereignty. Hegel, when careful, is clear that the monarch is *not* sovereign; rather, only the state as a whole - both *innere Staatsrecht* and *äußere Staatsrecht* - is sovereign. See, e.g., *Elements*, 328, where "*fürstliche Gewalt*" is mistranslated as "the power of the sovereign", obscuring the fact that princely power is a *moment* of sovereignty, not sovereignty as such.

43. Hegel refers to sovereignty in sixteen sections in the *Philosophy of Right* (either in the main text or in the remarks), all of which fall under the state. But he never uses the term in the published text of the *Encyclopaedia*.

44. Rousseau, *Social Contract*, Bk. 4, ch. 1, §4.

This view of sovereignty as synonymous with monarchy is further suggested when, in defending pardon, Hegel speaks of the "sovereignty of the monarch" [Souverainetät des Monarchen] (PR §282/GW 14,1:238) and, in justifying it as a guarantee of public welfare, calls it an "institution" (PR §301A/GW 14,1:250).<sup>45</sup> That Hegel specifically names "the monarch," and not "monarchy," to be the relevant bearer of sovereignty is especially puzzling if these two determinations of right are non-identical, as I claim.

The solution to the puzzle turns on Hegel's technical vocabulary. Sovereignty, for Hegel, is the state's ideality (*Idealität*) (PR §276/GW 14,1:230; PR §278A/GW 14,1:231–32; PR §321/GW 14,1:264; PR §324A/GW 14,1:266) or is "the unity of the state" (PR §278/GW 14,1:230; PR §281/GW 14,1:237).<sup>46</sup> By ideality, Hegel refers to the organic unity of a thought-determination's conceptual moments as specified by the tripartite structure of the logical concept—particularity, universality, and singularity. As ideal, the manner of this unification must be concrete in Hegel's sense, whereby each moment preserves its difference from the others and contributes to the unity only in virtue of its difference. Sovereignty as the ideality of the state, then, denotes the unity of its three moments—the executive, legislative, and princely power. Lacking this unity, a particular state may sustain some degree of order and temporary independence, but it is not sovereign (PR §349A/GW 14,1:349). When he is being careful, Hegel always refers to sovereignty in this way.

However, there is another distinction within sovereignty essential to its nature. Sovereignty divides into inner sovereignty (*innere Staatsrecht*, constitutional right) and outer sovereignty (*äußere Staatsrecht*, international right, *Völkerrecht*, *ius gentium*), the Roman heritage of the latter Hegel acknowledges by also calling it "*Volkssouverainetät*" (PR §279A/GW 14,1:234). External sovereignty denotes the self-subsistence that a people or nation has vis-a-vis other peoples or nations or what Hegel calls "individuality" (*Individualität*) (PR §§321–22). For Hegel, a state's "sovereign self-standing" (*souverainer Selbständigkeit*) must be established *against* others in the arena of international relations—a struggle for recognition (PR §331/GW 14,1:269)—and that successes in this recognitive process presupposes the state having already unified itself internally, giving itself objectivity by establishing laws and institutions.<sup>47</sup> Sovereignty as an institution, then, encompasses not only the internal unity of the state but also its individuality vis-a-vis other states.

Returning to monarchy, we can now see why it is not the same thing as sovereignty. First of all, sovereignty is more expansive than monarchy because it also includes external sovereignty. While the monarch plays an important function in international relations for Hegel (PR §329), monarchy is, strictly speaking, a determination of the internal state constitution (*inner Staatsrecht*). Second, sovereignty and monarchy describe two different kinds of things. Monarchy is one of the three moments of the state's internal constitution. Sovereignty, by contrast, denotes a way in which these three moments are related, namely as unified. As the unity of the state, sovereignty contains the monarch's moment of individuality and personality but is not exhausted by it. We can say,

45. "As for that general guarantee which is supposed to lie in the Estates in particular, each of the other institutions within the state [Staats-Institutionen] shares with them the quality of being a guarantee of public welfare and rational freedom; and in some of these institutions [Institutionen] - such as the sovereignty of the monarch, hereditary succession, the constitution of the courts, etc. - this guarantee is present to a much greater degree" (PR §301A/GW 14,1:250).

46. "Sovereignty is the ideality of all the state's particular authorities [die Souverainetät die Idealität aller besonderen Berechtigung ist]" (PR §278A/GW 14,1:231). Hegel also calls sovereignty the "institution of state power [Einrichtung der Staatsgewalt]" (PR §324A/GW 14,1:266).

47. "If a people, as ethical substance [...] does not have this form [of a state], it lacks the objectivity of possessing a universal and universally valid existence for itself and others in [the shape of] laws as determinations of thought, and is therefore not recognized; since its independence has no objective legality or firmly established rationality for itself, it is merely formal and does not amount to sovereignty" (PR §349/GW 14,1:277).

then, that the monarch is not sovereign but only the state as a whole, its inner and outer *Staatsrecht*, and that the monarch is the person who bears this sovereignty, the "personal [...] head" of the government (EG17 §438/GW 13:235, cf. PR §279/GW 14,1:232; PR §278A/GW 14,1:231).<sup>48</sup>

We can now clear up the original confusion. When Hegel speaks of the "sovereignty of the monarch," this is shorthand for internal sovereignty, the internal unity of the state. It is more accurate to say, as Hegel later does, that "the state has *individuality* [...] in the sovereign as an actual and immediate individual," i.e., that the monarch realizes the state's moment of singularity by being, as it were, its face, but is not itself sovereignty, the unity of all of the state's moments (PR §321/GW 14,1:264). That the "sovereignty of the monarch" as an institution refers to internal sovereignty and not to monarchy can be further seen in §278A, wherein Hegel criticizes the absence of internal sovereignty in feudal monarchy: "In the *feudal monarchy* of earlier times, the state certainly was externally sovereign, but internally not only was the monarch not sovereign, but the state was not sovereign" (PR §278A/GW 14,1:231). For the monarch to be sovereign, then, is just for the state to be internally organized. As Hegel says in the next sentence, because the feudal-monarchical state lacked internal sovereignty, "the whole [of the state] was more of an aggregate than an organism [Organismus]" (ibid.). Internal sovereignty, as the ideality or idealism of the state, thus refers strictly to this organic unity of the state's moments, as Hegel continues in the same remark: "The *idealism* which constitutes sovereignty is the same determination as that according to which the so-called *parts* of an animal organism are not parts, but members or organic moments whose isolation and for-themselves-existence [Für-sich-bestehen] constitute disease [Krankheit]" (ibid.). We will return to Hegel's notion of social pathology in our discussion of social critique in Chapter 4.

Our exegesis of sovereignty comes to the following conclusion. Sovereignty is, for Hegel, the ideality of the state; this is its social-ontological being. As such, it has two effects or functions. First, it functions internally (or "in peaceful conditions") to organize the state, directing "from above" particular interests back to the universal interest of the state (PR §278A/GW 14,1:231–32).<sup>49</sup> Hegel calls this effect the "preservation [Erhaltung]" of the particular and universal interests and of the whole (PR §270/GW 14,1:212; PR §278A/GW 14,1:232; PR §286A/GW 14,1:240; PR §289/GW 14,1:242). Second, sovereignty functions externally (or "in a state of emergency") to assert the state's individuality, self-sufficiency, or being-for-self (PR §278A/GW 14,1:232; PR §321/GW 14,1:264; PR §322; GW 14,1:264; PR §325/GW 14,1:266).<sup>50</sup>

48. "Der Monarch ist nicht 'souverän' - das ist nur der Staat -, sondern er ist Person" (Franz Rosenzweig, "Hegels Begriff der politischen Verfassung," in *Materialien zu Hegels Rechtsphilosophie*, Bd. 2, ed. Manfred Riedel [Frankfurt am Main: Suhrkamp Verlag, 1974], 350).

49. "In *peaceful* conditions, the particular spheres and dealings pursue the course of satisfying themselves and their ends, and it is in part only as a result of the unconscious *necessity* of the thing [Sache] that their selfishness is *transformed* into a contribution to mutual preservation, and to the preservation of the whole (see §183). But it is also in part a *direct influence* from above which constantly brings them back to the end of the whole and limits them accordingly (see *Regierungsgewalt*, §289), and at the same time urges them to perform direct services for the preservation of the whole" (PR §278A/GW 14,1:231–32).

50. "[I]n a *state of emergency* [Noth] [...] it is around the simple concept of sovereignty that the organism and all the particular spheres of which it formerly consisted rally, and it is to this sovereignty that the salvation of the state is entrusted, while previously legitimate functions are sacrificed; and this is where that idealism already referred to attains its distinct actuality (See §321 below [on external sovereignty])" (PR §278A/GW 14,1:232).

### 2.2.2 Examples in the Remarks and Additions

Hegel also refers to several examples of institutions in the remarks and additions of the *Philosophy of Right*. Because these examples never appear in the main text, they bear lesser value as examples when compared to the five institutions detailed above. Nonetheless, these examples aid us in picturing Hegel's institutional theory. They can be classified into roughly four groups.

The first group are the institutions of *Roman civil law*, codified and preserved by the *Corpus Juris Civilis*. Hegel names three of these *Institutionen*: "Roman matrimony [römische Ehestand]" (PR §3A/GW 14,1:26), "Roman paternal authority [römische väterliche Gewalt]" (ibid.), and "the slave-relation of Roman children" [Skavenverhältniß der römischen]" (PR §175A/GW 14,1:154). The latter two constitute the infamous *patria potestas*, the absolute power of the father over his children.<sup>51</sup> Hegel generally criticizes the institutions of Roman law, associating the Roman world with the deficient view of freedom he calls abstract right (PR §40A/GW 14,1:53–4; PR §77A/GW 14,1:79; cf. PR §357/GW 14,1:280).<sup>52</sup> He writes in §175A, for example, that the slavery of children ranks among this world's "most staining institutions [befleckendsten Institutionen]" (PR §175A/GW 14,1:154). Roman institutions thus provide us with important examples of institutional critique in Hegel's institutional theory.<sup>53</sup>

Second, Hegel calls some *foundations* institutions in the *Philosophy of Right*. These include feudal "monasteries [Klösteren]" (PR §3A/GW 14,1:27, cf. PR §46Z/W 7:110), "hospitals [Hospitälern]" (PR §245/GW 14,1:194), and charitable "endowments [Stiftungen]" (ibid.).<sup>54</sup> Like the institutions of Roman law, these institutionalized foundations are subject to institutional critique in Hegel's hand, as they are liable to become outdated, loosing their "sense" and "right," and so to become "superfluous and inappropriate," all the while persisting in their empirical-historical existence (PR §3A/GW 14,1:27). But unlike legal institutions, foundational institutions refer to organizations in the world.

Third, Hegel calls some *laws* or bundles of laws institutions. These are the "institution of inheritance-right [Institution des Erbrechts]" (PR §180/GW 14,1:158), the "institution of primogeniture [Institution des Majorats]" (PR §306Z/W 7:475–76), and the "*Staats-Institution*" of "hereditary succession [Erblichkeit der Thronfolge]" (PR §301A/GW 14,1:250). The last institution is particularly important for Hegel, as it provides the "*objective* guarantee"—i.e., institutional guarantee—of public freedom (PR §286/GW 14,1:239).<sup>55</sup> Taken together, these examples clarify that, for Hegel, a law or collection of laws directed towards a single purpose can count as an institution.

51. Cf. Table 4, Law 1: "A father shall have the right of life and death over his son born in lawful marriage, and shall also have the power to render him independent, after he has been sold three times" (*The Civil Law*, 1:64). Hegel condemns the *patria potestas* in PR §43A and PR §180A.

52. In the version of objective spirit in the 1817 *Encyclopedia*, Hegel is more Kantian, omitting the "abstract" in "abstract right," thereby identifying Roman law with rational law as such.

53. In criticizing the Roman "*law of citations*," Hegel notes this law's establishment of "a kind of of collegiate institution [Einrichtung] among *long-deceased* lawyers" (PR §211A/GW 14,1:177). However, this passage is taken verbatim from Gustav Hugo, *Lehrbuch der Geschichte des römischen Rechts*, 5 Aufl., Bd. 3 (Berlin: August Mylius, 1815), §354, p. 516.

54. Hegel does not explicitly call hospitals and endowments institutions. I infer that these count as institutions for Hegel because he combines them with the monasteries in §245, which he had earlier named as institutions on multiple occasions.

55. In a fragment from 1820 known as "Die erbliche festbestimmte Thronfolge," intended as notes to PR §286, Hegel writes: "The fixed hereditary succession to the throne is one of the principles, the institution [Institution], which, with the institution of public freedom [Institution der öffentlichen Freyheit], are in direct inseparable interconnection [Zusammenhang]. They are themselves [the] reciprocal guarantee, and the fixed heritability of the throne. [...] One looks for *guarantees*, securities in a complex [Zusammenhang] - in institutions [Anstalten] - not in external [factors]. [Hereditary succession] is one of the infinitely important institutions [Institutionen] for public freedom that history has worked into the monarchical constitution" (GW 14,2:285, cf. GW 14,3:861–62).



Fourth, Hegel names a few more institutions of *civil society*: the courts or various judiciaries and some aspects of the system of needs. Among the former are the "judicial system" or "constitution of the courts [Gerichtsverfassung]" (PR §301A/GW 14,1:250), the "public administration of justice" or "publicity in legal proceedings [öffentlichen Rechtspflege]" (PR §228A/GW 14,1:187), and the "jury-courts" or "trial by jury [Geschwornengerichte]" (ibid.). The courts, along with the corporation and the estates, are the most notable institutions of civil society for Hegel.

Fifth, Hegel specifies two further institutions of the state: "mass elections" or "voting by many individuals [Wählen durch die vielen Einzelnen]" (PR §311A GW 14,1:257) and "elective monarchy [Wahlreich]" (PR §281A/GW 14,1:238). These are significant because they are examples of modern state institutions that Hegel does not endorse. While the *Philosophy of Right* is usually understood, with good reason, as a reconstruction of the rational institutions of the modern state, Hegel nevertheless happily discusses (albeit only in the remarks) institutions recommended by representation or the understanding, like popular elections and elective monarchies, the latter he denounces as "the worst of institutions [Institutionen]" (ibid.). These cases show us that Hegel intends the concept of institutions to be both descriptive and normative. There are institutions, which really are institutions, that are bad.

### 2.2.3 Conclusion: Formal Indications from the Examples

Figure 1: Examples of Institutions in the *Philosophy of Right*'s Main Text

Institution	Text (PR)	Mode of Being	Function
The Family	Marriage ( <i>Ehe</i> )	§350, §263 Relation ( <i>Verhältniß</i> )	Natural and spiritual union ( <i>Einheit</i> ) between spouses
	Agriculture ( <i>Ackerbau</i> )	§350 Power, capacity ( <i>Vermögen</i> )	External existence ( <i>äußerliche Dasein</i> ) of the family as a person ( <i>Person</i> )
Civil Society	Corporation ( <i>Corporation</i> )	§263, §297 Group, association ( <i>Genossenschaft</i> ); community ( <i>Gemeinde</i> )	Internal order ( <i>inner Ordnung</i> ) among members, in contrast to the police's external order
	Estates ( <i>Ständen</i> )	§310, §314 Systems ( <i>Systemen</i> ); ways of life ( <i>Lebensweisen</i> )	Honor ( <i>Standeshre</i> ) and the division of the whole ( <i>Einteilung des Ganzen</i> ) in civil society; publicity ( <i>Öffentlichkeit</i> ) and formal freedom ( <i>formelle Freiheit</i> ) in the state
The State	Sovereignty ( <i>Souverainetät</i> )	§297 Ideality ( <i>Idealität</i> ); unity ( <i>Einheit</i> ) of the state	The state's preservation ( <i>Erhaltung</i> ) in internal sovereignty; the state's individuality ( <i>Individualität</i> ) and self-sufficiency ( <i>Selbstständigkeit</i> ) in external sovereignty

Further examples of institutions from the Remarks (*Anmerkungen*) and Additions (*Zusätze*): Roman paternal authority, Roman matrimony, the slave-relation of Roman children, monasteries, hospitals, charitable foundations, inheritance right, primogeniture, hereditary succession, the judiciary, jury courts, publicity in the administration of justice, mass elections.

Examples of institutions from Hegel's *Encyclopaedia* and political writings: jury courts, episcopal hierarchy, the notary institute, German institutions, English institutions of constitutional and civil law, constitutional institutions.

I have now enumerated all the examples of institutions in the *Philosophy of Right*. In Figure 1, I summarize these examples. The paradigmatic institutions within the *Philosophy of Right* are marriage and agriculture (in the family), the corporation (in civil society), and the estates and sovereignty (in the state). These examples provide test cases for my reconstruction of Hegel's institutional theory in the following three chapters; the reconstructed theory must be adequate to them.

I will now summarize three formal indications that we may glean from these examples. These provisional features of Hegel's institutional theory will need to be reconstructed and justified in the following chapters.

First among these provisional features is Hegel's *institutional pluralism*. By this formula, I mean that institutions are not, for Hegel, one kind of social-ontological thing such as a relation, a norm, a set of rules, a practice, a form of life, and so on. Institutions rather encompass a large range of social-ontological kinds for Hegel. Being an institution, as we have seen, can be predicated of relations, powers, associations, ways of life, and unities. Hegel's institutional pluralism thus opposes the predominate tendency in social ontology and critical social theory to identify institutions as a single kind of thing, and this pluralism must be accounted for in any reconstruction of Hegel's institutional ontology (chapter 3).

Second, Hegel distinguishes between an institution's *being* and its *function*. In our treatment of Hegel's examples, it has been necessary to separate each institution's social-ontological standing or kind of existence—what the institution really *is*, its being—from the institution's effect or function—what the institution *does* or brings about. For example, the corporation *is* an association, but it *functionally realizes* a certain kind of internal order; the estates are a way of life, but they *functionally realize* honor in civil society and, as the estates assembly, formal freedom and publicity in the state, etc.<sup>56</sup> Hegel holds that an institution can have multiple functions and that functions may occur in spheres different from that in which the institution originates. Broadly Durkheimian,<sup>57</sup> this distinction enables Hegel to give separate answers to the questions "What kind of social thing is it?" and "What is its purpose?" and has important implications for the ontology (chapter 3) and dynamics (chapter 4) of Hegel's institutional theory.

Finally, the third feature is Hegel's *institutional essentialism*, encapsulated in Hegel's claim that "marriage is essentially monogamy" (PR §167/GW 14,1:149). Hegel's account of each institution combines descriptive and evaluative components because it discloses the institution's essence or form. To know the essence of a plant, house, or state entails a negative evaluation of a plant, house, or state that lacks one or many of its essential characteristics. A house with a leaky roof fails to protect its interior from the elements; it is therefore a bad house. Such a house fails to be a good instance of its kind, but it counts as a house nonetheless (WL 712/GW 12:214). Institutions are no different. While a polygamous marriage counts as a marriage, it is a deficient mode of

<sup>56</sup> *In abstracto*, all rational institutions have a freedom-realizing function or purpose for Hegel, and this is their normative significance. But by *function* in this context I mean the more concrete way in which a particular institution, when successful, contributes to the realization of freedom.

<sup>57</sup> Durkheim, *The Rules of Sociological Method*, ch. 5. Durkheim summarizes this distinction in the following rule: "When one undertakes to explain a social phenomenon the efficient cause which produces it and the function it fulfills must be investigated separately" (123, cf. 124). Cf. also: "The organ [i.e., institution] is independent of its function, i.e. while staying the same it can serve different ends. Thus the causes which give rise to its existence are independent of the ends it serves" (121). On the cause-function distinction in Durkheim, see Warren Schmaus, "Durkheim on the Causes and Functions of the Categories," in *On Durkheim's Elementary Forms of Religious Life*, ed. N.J. Allen, W.S.F. Pickering, and W. Watts Miller (London: Routledge, 1998), 183–85.

marriage that is not fully adequate to its concept.

Essentialism has been rightly denounced for perpetuating forms of social domination. It is also unclear how one ascertains the essence of an institution and justifies it against competing candidates. In light of these difficulties, I interpret Hegel's essentialist vocabulary in the *Philosophy of Right* not as deriving from an indefensible philosophical anthropology but as expressing a *logical* point. Hegel wishes to disclose the *essential meaning* of our institutional concepts, as forms, both insofar as these concepts are inescapable in our comprehension of the social world as it really is, according to the *Natur der Sache*, and insofar as these concepts must be oriented towards an irreducible telos, namely the realization of human freedom. These commitments recuperate Hegel's essentialist vocabulary by recasting it in terms of the conceptual content and the conditions of freedom's actuality. I untangle these issues concerning institutional normativity in chapter 5.

### 2.3 The Concept of Institutions in the *Philosophy of Right*

I now turn to the concept of institutions in the *Philosophy of Right*. These are the instances in which institutions appear in the text but refer not to one or another institution but generically to all institutions. Examined carefully, they reveal that Hegel develops a coherent theory of institutions in the *Philosophy of Right*. But because Hegel's development of this concept is subtle and so easily overlooked, as exemplified by the widespread misconception that the spheres of ethical life are institutions, a sense of this concept's textual basis in the *Philosophy of Right* is necessary before I reconstruct this theory in the remaining three chapters.

As before, I first examine the philosophical core of Hegel's text, the main body paragraphs (§3.1), and then incorporate its representational penumbra, the remarks and additions (§3.2). I conclude with a summary of the text's formal indications (§3.3).

#### 2.3.1 The Concept of Institutions in the Main Text

Hegel uses the concept of institutions in nine sections and the preface.<sup>58</sup> These uses can be divided into roughly three groups: (i) institutions as the proper locus of objectivity in the science of right; (ii) institutions as that which makes the ethical idea "concrete," i.e., as its internal differentiation and meso-level determination; and (iii) institutions as the internal determinations of the state's constitution.

##### Institutions and Objectivity (§263, §350)

First, Hegel associates institutions with the objectivity of right in *Sittlichkeit*—and so also its rationality, actuality, necessity, and universality. This is most clearly seen in §263 and §350. In the former, Hegel writes that, in the family and civil society, "spirit is [present] as their objective universality *shining in them* as the might of the rational in necessity, i.e. as the *institutions* [of marriage and the corporation] considered above" (PR §263/GW 14,1:210). Simplifying Hegel's terse prose, we may say that institutions present spirit as objective, universal, rational, and necessary within the family and civil society. This view is confirmed in §350, wherein Hegel defends the necessity of

<sup>58</sup> The sections in which Hegel refers to the concept of institutions are: PR §144; PR §263; PR §264; PR §265; PR §268; PR §287; PR §310; PR §338; PR §350, and the preface.

the idea to actualize itself in the form of "legal determinations and objective institutions, beginning with marriage and agriculture," even if establishing these institutions requires running roughshod over the principles of abstract right and morality (PR §350/GW 14,1:277). Institutions, then, not only contribute to the objectivity of *Sittlichkeit*, but are the locus of its objectivity. Institutions are what make objective spirit objective.

### **Institutions and the State's Constitution (§264, §265, §268)**

The next group of texts addresses the role of institutions in the state's constitution. In the opening sections on constitutional right, Hegel uses the concept of institutions across four paragraphs in quick succession (§263, §264, §265, §268). These passages concern not so much the ontology of institutions in themselves but the way in which institutions appear to individuals, this subjective dimension being an important component of the constitution for Hegel. While this dimension was already visible in §263 (evident in Hegel's vocabulary of shining, *scheinende*),<sup>59</sup> it becomes more explicit in these three remaining paragraphs. It is therefore helpful to interpret them together.

In §264, Hegel asserts that individuals within the state contain a "doubled moment," namely, singularity (the individual willing and knowing her particular interest) and universality (the individual willing and knowing the universal or substantial interest). These two moments reflect two corresponding demands on the part of individuals: to be actualized as private and substantial persons. The first is actualized "immediately" in the family, but individuals actualize substantial personality only "by discovering their essential self-consciousness in institutions as that *universal* aspect of their particular interests which has being in itself, and by obtaining through these institutions an occupation and activity directed towards a universal end in the corporation" (PR §264/GW 14,1:210–11).<sup>60</sup> The corporation—and, generalizing, the other rational institutions of ethical life—cause individuals to expand their normative horizons towards the universal interest.

In §265, the institutions of marriage and the corporation are related to the state constitution *insofar as the constitution is determined as particularity*. This section is easily misleading and so is worth quoting in full:

These institutions [of marriage and the corporation] together form the *constitution*, i.e., the developed and actualized rationality, in *particularity*, and they are therefore the firm basis of the state and of the trust and disposition of individuals towards it. [These institutions] are the foundational pillars on which public freedom rests, for it is within them that particular freedom is realized and rational; hence the unity of freedom and necessity is present *in itself* within these institutions. (PR §265/GW 14,1:211)

59. Hegel reiterates that he is discussing the way in which institutions "shine" or "appear" rational to individuals in §263's *Zusatz*: "The laws which govern [the family and civil society] are the institutions [Institutionen] of the rationality shining in them [des in sie scheinenden Vernünftigen]. But the ground and final truth of these institutions [Institutionen] is spirit, which is their universal end and known object" (PR §263Z/W 7:411).

60. "Individuals as a mass are themselves spiritual natures, and they therefore embody a dual moment, namely the extreme of *singularity* which knows and wills *for itself*, and the extreme of *universality* which knows and wills the substantial. They can therefore attain their right in both respects only in so far as they have actuality both as private and as substantial persons. In [the family and civil society], they attain their right in the first respect [i.e., as private persons] directly; and in the second respect [i.e., as substantial persons], they attain it by discovering their essential self-consciousness in institutions [Institutionen] as that *universal* aspect of their particular interests which has being in itself, and by obtaining through these institutions [Institutionen] an occupation [Geschäft] and activity directed towards a universal end within a corporation" (PR §264/GW 14,1:210–11)

It is tempting to infer from this passage that, for Hegel, institutions make up the state's constitution. But this is false. Marriage and the corporation—the paradigmatic institutions of the family and civil society—determine the constitution's *particularity* but not the concept or totality of the constitution. The truth of the constitution is instead its *ideality*, the way in which "each of the powers is in itself the totality, since each contains the other moments and has them active within it" (PR §272/GW 14,1:242). This is why in the following section Hegel rejoins: "But spirit is objective and actual to itself not only as this necessity and as a realm of appearance, but also as the *ideality* and the inner of these. Thus, this substantial universality becomes its own object and end, with the result that the necessity [...] becomes its own object and end in the shape of freedom" (PR §266/GW 14,1:211). Without this self-consciousness on the part of agents, the institutions of ethical life appear to individuals merely as an external necessity standing over them; such is the constitution in its particularity. But in its ideality, i.e., in its freedom-realizing form, the constitution effects a self-awareness of the state's universality on the part of agents. The same is true for rational institutions.

In §268, Hegel finally names this subjective dimension of the constitution: political disposition (*politische Gesinnung*). It signifies that, in a successful state, institutions inculcate in agents an awareness of the universality of ethical life through education, habit, and trust: "The political disposition [...] is certainty based on *truth* [...] and a volition which has become *habitual*. As such, it is merely a consequence of the institutions within the state, a consequence in which rationality is *actually* present, just as rationality receives its practical application [Betätigung] through action [Handeln] in conformity with them" (PR §268/GW 14,1:211–12).<sup>61</sup> Hegel's reference to "action" at the end of this passage is telling. While institutions are undoubtedly prior to individuals in Hegel's theory (and specifying the nature of this priority is the task of chapter 3), Hegel here and elsewhere acknowledges that well-functioning institutions require the subjective corroboration of individuals.

In these three sections on institutions and the constitution, Hegel is thus attempting to connect his structural theory of institutions to his theory of action: how institutions appear to agents and also how agents reinforce institutions. In doing so, he repeats what he has already told us, namely that institutions are objective, universal, rational, actual, being-in-itself, etc. But in this context these determinations take on new meaning, as they now describe how institutions appear *to us* as objective, universal, and, if they are well-functioning, rational. These sections therefore also speak to the possibility of transforming institutional might, a reality which cannot be avoided in ethical life, into concrete freedom, which involves, in part, a change in consciousness in the agents themselves.

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61. "The political *disposition*, i.e. *patriotism* in general, is certainly based on *truth* (whereas merely subjective certainty does not originate in *truth*, but is only opinion) and a volition which has become *habitual*. As such, it [patriotism] is merely a consequence of the institutions [Institutionen] [existing] within the state, a consequence in which rationality is *actually* present [Vernünftigkeit *wirklich* vorhanden ist], just as rationality receives its practical application through action in conformity with them [the state's institutions]. - This disposition is in general one of *trust* (which may pass over into more or less educated insight), or the consciousness that my substantial and particular interest is preserved and contained in the interest and end of an other (in this case, the state), and in the latter's relation to me as a singular. As a result, this other immediately ceases to be an other for me, and in my consciousness of this, I am free" (PR §268/GW 14,1:211–12).

### Institutions and the Concrete (§144)

The next text is closely related to the last two groups. It addresses the role of institutions in making the ethical idea *concrete* in Hegel's technical sense, i.e., their function of internally differentiating ethical life so that it can form a speculative unity, a unity-in-and-through-difference. §144 is paradigmatic in this regard. Hegel writes

The objectively ethical, which takes the place of the abstract good, is substance made *concrete* by subjectivity *as infinite form* [unendliche Form]. It therefore posits *differences* [Unterschiede] within itself which are thus determined by the concept. These differences give the ethical a fixed *content* which is necessary for itself, and whose persistence [Bestehen] is exalted above subjective opinions and preferences: they are *laws and institutions* [Einrichtungen] *which have being in and for themselves*. (PR §144/GW 14,1:137)

Again, this passage reiterates the objectivity of institutions noted above: institutions are necessary, substantial, have "being in and for themselves," and stand above subjective attitudes. But it adds to these the determination "concrete": institutions are the "differences" posited within ethical life, distinctions which give it a "fixed *content* which is necessary for itself." Hegel's name for this concertizing differentiation is "*infinite form*" (cf. PR §256A/GW 14,1:199–200). This characterization suggests, as I will later defend, that institutions are particular instances of this infinite form, i.e., rational social forms.

We also note that this passage is Hegel's most generic characterization of institutions in the *Philosophy of Right*, occurring in the opening sections on ethical life (§§142–157). This corroborates our earlier insight regarding the *institutionalization of ethical life*: that, on the one hand, institutions pertain to ethical life *as a whole* and not merely to the state, and, on the other hand, that institutions have their place *only* in ethical life and are purposefully omitted from subjective and absolute spirit and from abstract right and morality.<sup>62</sup> This justifies the *sociality* I attribute to Hegel's institutional theory, as opposed to its being strictly political.

### Institutions and Method (Preface)

Finally, the last passage related to the concept of institutions in the body of the *Philosophy of Right* is in the book's preface. It occurs in the paragraph immediately following the infamous *Doppelsatz*—that what is rational is actual and what is actual is rational (20–21/GW 14,1:14–15). In it, Hegel articulates the *Doppelsatz* in terms of two standpoints the philosopher may adopt towards "a multitude of circumstances and institutions [Umständen und Institutionen]" (GW 14,1:15). She can either take herself to be in possession of "ultrawisdom [Ultraweisheit]" and "superior knowledge [Besserwissen]" relative to empirical institutions, or she can adopt the more modest standpoint of genuine "science," expositing in these empirical institutions "the substance which is immanent and

62. While it is true that for Hegel the state is the "true *ground*" of ethical life (PR §256A), this grounding function of the state in no way entails that the determinations of the family and civil society (as as their institutions) are subsumed by the state. Hegel's rejection of this subsumption is evident in the book's second title (in fact its first title, sitting left on the double-sided title-page), Natural Right and State Science in Outline (*Naturrecht und Staatswissenschaft im Grundrisse*). The *Philosophy of Right* cannot be understood as a treatise solely on the state (In a passage in which Hegel appears to contradict this, he qualifies, "this treatise, insofar as it contains a science of the state" [p. 21/GW 14,1:15]). All of this is reflected in the fact that the state as such occupies only about a third of the book's pages. See Thompson on "retrogressive grounding" (*Hegel's Theory of Normativity*, 26–36).

the eternal which is present," no matter how deficient or poorly functioning they are. While the former standpoint "hates" empirical institutions, the latter is "in relation to this infinite multitude of objects [...] at its most liberal [am liberalsten]" (i.e. most accommodating).<sup>63</sup> Truth, of course, lies with the latter, and one's deciding in its favor (or one's "faith in reason"<sup>64</sup>) holds implications for scientific method.

So far, this is standard Hegelian *Wissenschaft*. But what is easily overlooked, and what will turn out to be crucial in my reconstruction of Hegel's institutional theory, is that Hegel situates the genuinely scientific method, the one which takes as its point of departure the actuality and rationality of the social world, as standing *inbetween* the extremes of abstract constructivism (the *Sollen*) and merely historical-descriptive empiricism (the *Positiv*). This is not only an intertwining of fact and norm, but also a point about the level of analysis: the science of right is a meso-level theory (as opposed to a macro- or micro-level one), and institutions, by consequence, are the relevant locus of objectivity in this science because the institution is *the* meso-level social-theoretic concept.

I will unpack these claims about the ontology and normativity of institutions in chapters 3 and 5. Here I wish to merely indicate how Hegel makes this methodological point in the preface.<sup>65</sup> According to Hegel, the standpoint of ultrawisdom is both 'too high' and 'too low' relative to the empirical social world. Such a standpoint overlooks the fact that actuality constrains which normative ideals can be feasibly realized and that philosophy is not in the business of determining which particular course of action agents ought to take up in various circumstances (cf. PR §150A/GW 14,1:140). In short, ultrawisdom misses the philosophical target, the *Natur der Sache*. For Hegel, ultrawisdom is embodied by Plato and Fichte (PR 21/GW 14,1:15). Both of these philosopher take as their task the construction a state as it ought to be, indifferent to actuality and so independent of any feasibility constraints that actualization might place on establishing and preserving this ideal state. Such an ideal state is also insulated from any historical developments that may require altering its institutions; it is an eternally ideal state. Each of these philosopher declares his intention to construct an ideal state of this kind. It is therefore trivial to agree with Hegel that each "looks beyond [the present]," positing normative standards that discount actuality, soaring above it.

63. That Hegel understands liberal in this sentence to mean accommodating is corroborated by his later gloss on the "liberal" state's religious toleration: "A state which is strong because its organization is fully developed can behave more liberally [liberaler] in this respect, and may completely overlook singularities which might affect it, or even tolerate communities whose religion does not recognize even their direct duties towards the state" (PR §270A/GW 14,1:216–17).

64. This formulation can be found in Hegel's 1818 inaugural address at the University of Berlin: "[T]he one thing I shall venture to ask of you is this: that you bring with you a trust in *science, faith in reason, and trust and faith in yourselves. The courage of truth and faith in the power of spirit* is the primary condition of *philosophical study*; man should honour himself and consider himself worth of the highest. He cannot overestimate the greatness and power of spirit; the closed essence of the universe contains no force which could not withstand the courage of cognition; it must open up before it, and afford it the spectacle and enjoyment of its riches and its depths" (PW 185/GW 18:18).

65. "For since the rational, which is synonymous with the idea, becomes actual by entering into external existence it emerges in an infinite wealth of forms, appearances, and shapes and surrounds its core with a brightly coloured covering in which consciousness at first resides, but which only the concept can penetrate in order to find the inner pulse, and detect its continued beat even within the external shapes. But the infinitely varied circumstances which take shape within this externality as the essence manifests itself within it, this infinite material and its organization, is not the object of philosophy. To deal with them would be to interfere in things with which philosophy has no concern, and it can save itself the trouble of giving good advice on the subject. *Plato* could well have refrained from recommending nurses never to stand still with children but to keep rocking them in their arms; and *Fichte* likewise need not have perfected his *passport regulations* to the point of *constructing*, as the expression ran, the requirement that the passports of suspect persons should carry not only their personal description but also their painted likeness. In deliberations of this kind, no trace of philosophy remains" (PR 20–21/GW 14,1:14–15).



What is genuinely dialectical in Hegel's criticism of ultrawisdom, however, is his observation that this standpoint also inverts itself and becomes 'too low.' This happens because, lacking actuality's feasibility constraints and without sensitivity to future historical development, no limitations are placed upon the construction, so the philosopher almost inevitably incorporates minute details within the laws and institutions of her ideal state. So we find laws in Plato specifying how mothers shall rock their children and in Fichte how portraits must be painted in passports.<sup>66</sup> In flying 'too high' above the empirical, ultrawisdom also sinks below the level of philosophy, mistakenly turning to the positive, the non-philosophical.

The common source of both errors is this standpoint's indifference to actuality, which leads it to misapprehend the proper subject-matter of philosophy. As ultrawisdom, it looks beyond the present in constructing its normative ideal. But, equally as ultrawisdom, it also best knows how to administer in each detail. This is its vanity or vacuity (*Eitelkeit*). In this last respect, ultrawisdom mistakenly includes the merely empirical in the subject-matter of philosophy. As Hegel writes, "the infinitely varied circumstances which take shape within this externality as the essence manifests itself within it, this infinite material and its organization, is not the object of philosophy. To deal with them would be to interfere in things with which philosophy has no concern" (PR 20/GW 14,1:14).<sup>67</sup> Genuine philosophical science of right, by contrast, takes the middle road: it acknowledges that it is not above actuality, but it also avoids getting caught up in the empirical, the positive. It would be equally unsatisfactory, for example, for a science of right to help itself notions like 'the family,' 'civil society,' and 'the state' without specifying any further differentiation within these concepts. One would rightly complain of undue abstraction. On the other hand, a science of right that simply took up the meanings held by these same concepts in the Prussian state from 1806–1840 would be too specific and too empirical; it would not be sufficiently general. The proper subject-matter for the science of right, then, is at the meso-level, institutions.<sup>68</sup>

66. In fairness to Plato, Hegel severely misrepresents (or misremembers) him on this score. In the passage in the *Laws* to which Hegel alludes, Plato is in fact making the same point as him, viz. that rules regarding the rocking of children ought *not* to appear in a philosophical treatise on ideal laws, precisely *because* such rules do not rise to the dignity of philosophy (Plato, *Laws* VII, 789e–790a; Adriaan Peperzak, *Philosophy and Politics*, 131–32n112).

67. Hegel's criticism of Plato and Fichte recalls his much earlier response to Krug's demand to "deduce his pen." Krug had argued that transcendental philosophy, if it has truly deduced the system of representations, should also be able to "deduce his pen." Like in the *Philosophy of Right*, Hegel's ultimate answer to Krug in 1802 is that such "determinacies" are simply not "a proper topic of philosophical discussion." In other words, ordinarily empirical objects like pens, rocks, and bottles, lacking further connection to essential actuality, simply do not rise to the dignity of philosophy. Conversely, chemical elements like iron can, and must be, deduced and justified by philosophy as categories. And such categories do go some way towards explaining the existence of empirical objects like Krug's pen (Hegel, *Miscellaneous Writings*, 231–33/97–101). With what criterion we are to draw this line between the dignified and undignified phenomena remains, in my view, the most difficult and unanswered question in Hegelian metaphysics. It is perhaps *the* problem to which Hegel can give no presuppositionless response.

68. In addition to the six sections treated below, Hegel refers to institutions in three more sections of the *Philosophy of Right's* main text. All three occur in the sections on the state. In §287, he writes that the executive power upholds "existing laws, institutions [Einrichtungen], and arrangements [Anstalten]" to promote the state's universal interest (PR §287/GW 14,1:241); in §310, that the deputies of the estate assembly can be counted on having knowledge of the "institutions [Einrichtungen] and interests of the state and civil society" (PR §310/GW 14,1:255); and, in §338, that war ought not be waged on "internal institutions [institutions]" (PR §338/GW 14,1:272). These passages suggest that the constitutional powers (executive, legislature, the crown) are, strictly speaking, not themselves institutions, but uphold institutions; that there exists institutions not only "of" the state but also "of" civil society (and, by extension, "of" the family); and, finally, that institutions are in some way contained by particular states or ethical communities (all institutions are "internal institutions" in this sense).

### 2.3.2 The Concept of Institutions in the Remarks and Additions

The remarks and additions to the *Philosophy of Right* largely corroborate the concept of institutions sketched so far. However, they also shed light on the stability and normativity of institutions. There are too many instances of this kind to investigate all of them individually, so I treat them across five themes: objectivity (§3.2.1), the agent-level perspective (§3.2.2), stability (§3.2.3), method (§3.2.4), and normativity (§3.2.5).<sup>69</sup>

#### Institutions and Objectivity, Thought, and the Concrete (§5A, §5Z, §203A, §219A, §256A, §270A)

The most prominent feature of institutions is their objectivity. This remains true in remarks and additions. For example, Hegel writes that "institutions in general as rational are necessary in and of themselves" (PR §219A/GW 14,1:182–83), that the effects or functions of institutions, such as security, are "nothing but forms of universality and shapes assumed by rationality" (PR §203A/GW 14,1:171), and that "the laws that govern [the family and civil society] are the institutions of the rational that shines in them" (PR §263Z/W 7:411).

Institutions as objective are further connected with thought (*Denken*). Hegel writes that the state's "institutions [Einrichtungen] [...] are present essentially in the form of thought as law" (PR §270A/GW 14,1:218), that the state possesses "*knowledge*" regarding "the ethical, right, laws, and institutions [Institutionen]" such that it grasps the content of institutions not in the "form of feeling" but as "determinate thoughts," and that through the development of the modern state, "educated humanity won the actuality and consciousness of rational existence, of state institutions [Staatseinrichtungen], and of laws" (PR §270A/GW 14,1:215).

However, in the remarks and additions, Hegel also diagnoses the tendency in politics and religion to abjure the objectivity of institutions. He calls this standpoint fanaticism (*Fanatismus*). It names negative will insofar as it strives to realize "universal equality" (PR §5A/GW 14,1:32–33). Equality of this sort is impossible because "the positive actuality of this condition [...] at once gives rise to some kind of order, a particularization both of institutions [Einrichtungen] and of individuals" (*ibid.*).<sup>70</sup> Fanaticism also characterizes the French revolution's "fury of destruction" (*ibid.*): "[F]anaticism wills only what is abstract, not what is articulated, so that whenever differences emerge, it finds them incompatible with its own indeterminacy and cancels them. This is why the people, during the French Revolution, destroyed once more the institutions [Institutionen] they had themselves created, because every institution is incompatible with the abstract self-consciousness of equality" (PR §5Z/W 7:52).<sup>71</sup>

69. Hegel refers to the concept of institutions in eighteen remarks or additions. These are: PR §3, PR §5, PR §180, PR §203, PR §216, PR §219, PR §256, PR §258, PR §263, PR §265, PR §268, PR §270, PR §273, PR §281, PR §286, PR §295, PR §301, and PR §324.

70. Cf. §270A: "If [...] this negative attitude [...] turns [...] to the actual world and asserts itself within it, it leads to religious fanaticism, which like political fanaticism, repudiates all state institution [Staatseinrichtung] and legal order [gesetzliche Ordnung] as restrictive limitations on the inner emotions and as incommensurate with the infinity of these, and hence also rejects private property, marriage, the relationships and tasks of civil society, etc. as unworthy of love and the freedom of feeling" (GW 14,1:215). Yet fanaticism need not end in destruction: "But this disposition need not necessarily proceed to actualize itself in this way. With its negative standpoint, it may well retain its inward character, conform to institutions [Einrichtungen] and laws, and simply resign itself to these with sighs, or with contempt and longing" (PR §270A/GW 14,1:216).

71. Hegel already recognized the incompatibility between universal equality and objective institutions in *Phenomenology of Spirit's* critique of the French Revolution: "This movement [of universal self-consciousness] is thereby the interaction of consciousness with itself [Wechselwirkung des Bewußtseyns mit sich selbst] in which consciousness lets nothing break loose into a shape that would become a free-standing object confronting it. From this, it follows that consciousness cannot arrive at a positive work, neither to universal works of language nor to those of actuality, nor to the laws and the universal

Institutions are thus objective and particularizing. This brings us again to the role of institutions as the internal differentiation or concretization of ethical life, that which makes ethical life an "organic totality" (PR §256/GW 14,1:200). Hegel makes this point in §256A, writing that the "infinite form" of ethical life "contains it itself these two moments: (1) infinite differentiation to the point at which the interiority [Insichsein] of self-consciousness is for itself, and (2) the form of universality involved in education, the form of thought whereby spirit is objective and actual to itself as an organic totality in laws and institutions which are its will as thought" (PR §256A/GW 14,1:199–200).

### **Institutions and the Agent-Level Perspective (§265Z, §268Z)**

Hegel also uses the extra-scientific remarks and additions to further elaborate the ways in which institutions appear to particular individuals, as he had addressed with respect to the constitution in the main text. Two *Zusätze* are important in this regard. In §265Z, Hegel writes that, in institutions, the social world "appears as ethical" to agents and that institutions thereby "constitute the stability [Festigkeit] of the whole." The attitudes that agents have towards institutions, their "self-feeling [Selbstgefühl]," thus "constitutes the actuality of the state," without which "the state must hang in the air" (PR §265Z/W 7:412).

In §268Z, Hegel exemplifies, in rare fashion, just this stability produced by the agents' "feeling" (Gefühl) as itself being the effect of institutions:

It does not occur to someone who walks the streets in safety at night that this might be otherwise, for this habit of safety has become second nature, we scarcely stop to think that it is *solely the effect of particular institutions* [Institutionen]. Representation often imagines that the state is held together by force; but what holds it together is simply the *basic feeling of order* which everyone possesses. (PR §268Z/W 7:414, emphasis mine)

Hegel is therefore well-aware that the agent-level perspective is crucial for understanding how institutions function and maintain themselves.

### **Institutions and Stability (§180A, §270A, §273A)**

Institutional stability also emerges as a salient theme in the remarks and additions, usually in the form of its negation, the threat of instability. In §180A, Hegel observes the "terrible instability [Instabilität] of the most important institutions [Institutionen]" arising from the Roman juridical practice, which required the use of legal fictions to obviate the written law's most egregious injustices (PR §180A/GW 14,1:157). Similarly, Hegel tells us in §270A that if we rest the state *solely* on subjective feeling, like religion, then we "thereby expose the state, as an organism within which existing [bestehende] differences, laws, and institutions [Einrichtungen] have developed, to instability [Schwanken], insecurity, and disruption" (PR §270A/GW 14,1:215).<sup>72</sup> This situation is

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institutions [Einrichtungen] of conscious freedom, nor to the deeds and works of willing freedom" (PhG 342/GW 9:318).

72. "Religion is the relation to the absolute in the form of feeling, representational thought, and faith, and within its all-embracing centre, everything is merely accidental and transient. If, then, we also adhere to this form [of religious feeling] in relationship to the state and act as if it were the essentially valid and determining factor in this context, too, we thereby expose the state, as an organism within which lasting [bestehende] differences, laws, and institutions have developed, to instability, insecurity, and disruption. The objective and the universal, the laws, no longer have a lasting and valid determination, but take on a negative determination against that form which envelopes everything determinate and thereby becomes subjective" (PR §270A/GW 14,1:215).

unstable because in it institutions, "the objective and the universal," are felt by agents to *exclusively* stand over and above them, as pure might, foreclosing agents' capacity to identify with them. By contrast, a strong state—one which relies on the "inner rationality of its institutions [Institutionen]" and recognizes "its own principle as an objective institution [Institution] with a power of its own"—is stable enough to tolerate religious minorities (§270A/GW 14,1:217). Finally, in §273A, Hegel acknowledges the "alteration of institutions [Abänderung der Institutionen]" demanded by changes in the "condition of society [Zustand der Gesellschaft]" (PR §273A/GW 14,1:227). Only in simple conditions can ethical life withstand a disproportionality between these conditions and its institutions; in modern social life, institutions must be adequate to the prevailing social conditions on pain of instability.

### **Institutions and Method (§3A, §216A, §258Z, §270A)**

The supplementary texts also contain further reflections on method. Most important among these is Hegel's critique of the historical school of law (Gustav Hugo, Friedrich Carl von Savigny) in §3A. In this remark, Hegel distinguishes between mere historical explanation (*Erklärung*) and genuine philosophical comprehension (*Begreifen*). When considering "law or the institution of right [Rechtsinstitution]," comprehension ignores this institution's "historical emergence and the circumstances, eventualities, needs, and incidents that led to [its] introduction." Comprehending an institution consists simply in grasping the "concept of the thing [der Begriff der Sache]"; evaluating whether an institution is "rightful and rational" occurs "only through the concept [durch den Begriff]." The historical school, by contrast, puts "external appearances in place of the *Natur der Sache*" (PR §3A/GW 14,1:26–27). The method of Hegel's institutional theory thus requires him to reconstruct the concept or essence of each institution as a universal, not merely describe its empirical or positive existence: "In considering the idea of the state, we must not have any particular states or particular institutions [Institutionen] in mind, instead we should consider the idea, this actual God, for itself" (PR §258Z/W 7:403–4).<sup>73</sup> Positive institutions containing an injustice (*Unrecht*) or lacking rationality are "merely historical institutions [bloß historischen Institutionen]" (PR §216A/GW 14,1:180)<sup>74</sup>

By requiring his reconstructed institutions to correspond to the *Natur der Sache*, Hegel also underscores the "limits of philosophical right" (PR §3A/GW 14,1:25). The science of right cannot, in principle, produce a positive code of laws (*Gesetzbuch*), as positive law must deal with empirical matters that, as such, necessarily lie outside the concept. However, this does not mean that philosophical right conflicts with positive right. Instead, "their relation is like that between the Institutions [Institutionen] to the Pandects" in the *Corpus Juris Civilis*, i.e., between the *Corpus*'s first part, which lays out the general and foundational propositions, and its second, which specifies the

73. The *Zusatz* continues: "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 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 overlooked the inner organism of the state in favour of singular aspects. The state is not a work of art; it exists in the world, and hence in the sphere of arbitrariness, contingency, and error, and bad behaviour may disfigure it in many respects. But the ugliest man, the criminal, the invalid, or the cripple is still a living human being; the affirmative, life, survives in spite of such deficiencies, and it is with this affirmative aspect that we are here concerned" (PR §258Z/W 7:403–4).

74. "One of the main sources of the complexity of legislation is that the rational, i.e. that which is rightful in and for itself, may gradually infiltrate original institutions which contain an injustice and are therefore merely historical institutions, as with the Romans above (see Remarks to §180), and with the old feudal law [Lehensrechte], etc." (PR §216A/GW 14,1:180).

consequences of these foundational propositions in more concrete cases (§3A/GW 14,1:25–26).

As in preface, in §270A Hegel rejects the religious fanaticism that abjures "the labor of study" and, with the certainty of conscience, "[sees] through the nature of the laws and of state institutions [Staatseinrichtungen], [passes] judgement on them, and [lays] down what they should and must be." Like ultrawisdom, in such religious fanaticism the "feeling of oppression [Gefühl der Gedrücktheit]"—the feeling that irrational institutions stand over and against us—coincides with "self-conceit [Eigendünkel]"—the feeling that we can and ought to denounce them outright (PR §270A/GW 14,1:216).

Finally, that Hegel's science of right deals only with the institutional *Natur der Sache* also suggests these institutions are to be conceived at the meso level. Hegel comments that "Montesquieu stated [...] the genuinely philosophical viewpoint, that legislation in general and its particular determinations should not be treated in isolation and in the abstract, but rather as a dependent moment within *one* totality, in the context [Zusammenhänge] of all the other determinations which constitute the character of a nation and age; within this context they gain their true meaning, and hence also their justification [Rechtfertigung]" (PR §3A/GW 14,1:26). If these "particular determinations" refer generically to the meso-level institutions of ethical life, then Montesquieu agrees completely with Hegel. And, indeed, Montesquieu says precisely this in the *Defense of The Spirit of Laws*, as we saw in chapter 1.

### **Institutions and Normativity (§3A, §281A, §295A)**

Lastly, in the remarks and additions Hegel also continues to denounce bad institutions. We saw already this in some of the examples of institutions. But Hegel also holds imperfection to be a general and necessary feature of institutions.

So, in §3A Hegel again writes about Roman judges who, in concocting legal fictions, "dissociate themselves from unjust and abominable institutions [ungerechten und abscheulichen Institutionen]" (PR §3A/GW 14,1:30). But Hegel generalizes the point: "a determination of right may be shown to be entirely *grounded in* and *consistent with* the prevailing *circumstances* and *present* institutions of right [Rechtsinstitutionen], yet it may be contrary to right [unrechtlich] and irrational [unvernünftig] in and for itself, like numerous determinations of Roman civil law which followed quite consistently from such institutions [Institutionen] as Roman paternal authority and Roman matrimony" (PR §3A/GW 14,1:26). Institutions are not justified simply because they cohere with the totality; they must also give existence to the concept of the free will by being rational in and for themselves.

Hegel continues to generalize these views on bad or imperfect institutions in §295A and §281A. In §295A, he asserts that institutions reliant on officials by necessity expose themselves to empirical obstacles and will therefore at times demand external intervention. This is one of many ways in which we arrive at and rectify "imperfect institutions [unvollkommeneren Institutionen]" (PR §295A/GW 14,1:245).<sup>75</sup> In §281A, Hegel distinguishes between two ways of inferring that elective

75. "The conduct and education of the officials is the point at which the laws and decisions of the executive come into contact with singularity and are translated into actuality. [...] Because of the immediate and personality [Persönlichkeit] of such contact, control from above can attain its end in this respect only partially, and this end may also encounter obstacles in the shape of the common interest of the officials in maintaining solidarity amongst themselves in opposition to their subordinates and superiors. The need to remove such obstacles, especially in cases of otherwise imperfect institutions [unvollkommeneren Institutionen], calls for and justifies the higher intervention of sovereignty (as for the example of Frederick the Great in the notorious affair of Arnold the miller)" (PR §295A/GW 14,1:245).

monarchy is "the worst of institutions [schlechteste der Institutionen]" (PR §281A/GW 14,1:238). Either one sides with the understanding and ratiocinates from the institution's "ramifications [Folgen]," in which case the deficiencies appear only as "*possible*" or "*probable*" or one comprehends the institution from its concept, in which case the deficiencies show themselves to "lie essentially in this institution [Institution]" (ibid.). These two ways of normatively evaluating an institution can be applied to all the institutions of ethicality. But it is only the latter, conceptual kind of evaluation that constitutes genuinely philosophical institutional critique for Hegel.

### 2.3.3 Conclusion: Formal Indications from the Concept of Institutions in the *Philosophy of Right*

I have now recounted Hegel's use of the concept of institutions in the *Philosophy of Right*. From this consideration, one may discern seven formal indications. Again, these are provisional features of Hegel's institutional theory that require further elaboration. They are to be reconstructed in the subsequent chapters.

Three of these features can be helpfully combined. First, in PR §144 Hegel provides a general determination of institutions compatible with their ontological plurality, namely that institutions are *forms* (§3.1.3). Second, a consideration of this same section indicated Hegel's *institutionalization of ethical life*: that institutions pertain only to *Sittlichkeit* and to no other part of the system. Institutions are thus *social* for Hegel such that they express "spirit living and present as a world" (PR §151/GW 14,1:141). Third, institutions are, for Hegel, *rational* in an expanded sense that also entails their objectivity, actuality, and being-for-self (§3.1.1). We thus arrive at a general formulation for institutions: they are *rational social forms*.

Fourth, as the concrete differentiation of ethical life, the notion of an institution is, for Hegel, a *meso-level concept*. By meso-level, I mean that Hegel's institutions lie at a level of abstraction that sits between the preferences and motivations of individuals (the micro-level) and the general 'population structure' of society as such. It is not a coincidence that Hegel's meso-level use of the concept of institutions corresponds to common practice in contemporary social-scientific research.<sup>76</sup>

Fifth, we have also seen that Hegel's meso-level institutional theory by no means requires him to be silent about how institutions show up to individuals. I call this aspect of Hegel's institutional theory his account of the *agent-level perspective* on institutions. While the existence and validity of institutions as such are indeed independent of the subjective attitudes of individuals for Hegel, well-functioning or *good* institutions appear to consciousness as freedom-realizing.

Sixth, Hegel's institutional theory is not an exhaustive account of institutional reality as it excludes the positive (*das Positiv*): that which remains outside the concept and, as such, is not the proper object of philosophy. The most pressing example of positivity is the misplaced demand that the philosophical science of right should produce a code of laws (*Gesetzbuch*), a set of 'deduced' positive laws that accord *a priori* with the realization of freedom. Instead, Hegel's institutional theory concerns itself only with the *Natur der Sache*, the rational kernel of institutions that develops and manifests itself in history, but which cannot be explained historically, only philosophically or conceptually.

<sup>76</sup> Kurt Dopfer, John Foster, and Jason Potts, "Micro-Meso-Macro," *Journal of Evolutionary Economics* 14, no. 3 (2004): 263–79.

Finally, I note in passing what Hegel omits from his institutional theory.<sup>77</sup> Nowhere in his science of right does Hegel characterize institutions in terms of mutual recognition between interactants. To the degree that Hegel treats the consciousness of individual agents within his institutional theory, he does so not in reference to reciprocity between interactants but as an individual's acknowledging or being acknowledged by an institution, which is not an instance of *Anerkennung* (even a deficient one) because recognition pertains only to relations between consciousnesses. An institution is not the kind of thing with which I can be in a relation of mutual recognition. Nor does Hegel suggest that institutions are spheres or patterns of intersubjective recognition. Instead, Hegel takes every opportunity to remind his reader that institutions have an objectivity that cannot be accounted for in terms of the attitudes and normative statuses of individuals. This suggests a feature of Hegel's institutional ontology. For Hegel, consciousness of one's freedom being realized in an institution is only a *success condition* of this institution's rationality, not an *ontological condition* of its existence. In other words, an institution's existence and basic nature is independent of its being recognized by individuals. As Hegel puts the point, "the objective will is that which is rational in itself or its *concept*, whether or not it is recognized [erkannt] by individuals and willed at their discretion" (PR §258A/W 7:401).

## 2.4 Institutions in Hegel's Other Published Writings

I turn now to institutions in Hegel's publications after 1816. These writings can be categorized into two groups: those related to the *Encyclopaedia* and those commentating on contemporary political events. In these texts, Hegel's use of the concept of institutions generally coheres with those of the *Philosophy of Right*. But they also provide new insight into the nature of institutional change, stability, and critique, showing us that formal and informal institutions must 'hang together' in a shared social context, or what I will call the Montesquieu principle.

### 2.4.1 Institutions in the *Encyclopaedia*

The *Encyclopaedia* served as Hegel's textbook for his lectures in Heidelberg and Berlin. It systematically encompasses all of philosophy: logic, nature, and spirit. Spirit is further divided into subjective spirit, objective spirit, and absolute spirit. Seen from the *Encyclopaedia*, the *Philosophy of Right* is an expanded treatment of the part of the *Encyclopaedia* on objective spirit. The *Encyclopaedia* saw three editions: 1817, 1827, and 1830. The 1830 revisions to the 1827 edition are minor. I therefore treat only the 1817 and 1830 editions. I also treat simultaneously in these texts the examples of institutions and the concept of institutions.

Generally, institutions have a reduced role in the *Encyclopaedia* versions of *Sittlichkeit*. The functions attributed to institutions in the *Philosophy of Right* tend to be taken over by law (*Gesetz*) and custom (*Sitte*).

#### 1817 *Encyclopaedia*

Institutions have no explicit place in the 1817 *Encyclopaedia* account of *Sittlichkeit*. Neither *Institution* nor *Einrichtung* appear in the published text. This omission is odd since Hegel's 1817-

<sup>77</sup> The formal indications regarding institutional stability, change, and critique are addressed in §4.4.

18 lectures on natural right often mention institutions, including in the main body paragraphs. Nonetheless, institutions show up only on the margins of the 1817 *Encyclopaedia*. Two such appearances are noteworthy.

First, in handwritten notes for his lectures, Hegel acknowledges the objective and rational character of institutions. In a note to EG17 §390A, he cautions his listeners against the delusion that "*laws, education, and civic institutions [bürgerliche Einrichtungen] exist only because of the wicked, who do not follow their heart and feelings*" such that if everyone were to follow their practical feeling, these institutions "would be superfluous" (GW 13:401).<sup>78</sup> Rational thought must instead exhibit the "feeling of right and morality" in its universality, necessity, objectivity, and truth, i.e., in the form of institutions having an inherent determination above feeling (EG17 §390A/GW 13:218).<sup>79</sup> In another note, Hegel comments that "institutions [Einrichtungen]," if they are to govern and sustain human life, must in some sense be universal and rational, i.e., pertain to the "*universal idea*" or the "self-conscious concept" (GW 13:547).<sup>80</sup>

Second, Hegel's discussion of law and custom in the 1817 *Encyclopedia* corresponds to his institutional theory in the *Philosophy of Right*. In EG17 §437, Hegel writes that "*laws express the nature and determinations of the universal substance*" or "ethical spirit" (EG17 §441/GW 13:236), but that, as such, laws not only restrict the particular will of individuals but also serve to internally differentiated the "universal *work* [allgemeine Werk]" exhibited as "valid custom" (EG17 §437/GW 13:235; cf. EG §538/GW 20:509).<sup>81</sup> This is the theme of concretion we saw in the *Philosophy of Right*, but this time in terms of formal and informal institutions (law and custom). In EG17 §438, Hegel reiterates this point: "the abstract *essence* of the *laws* is the universal will existing *in and for itself*, but their actuality is the *living custom*" (EG17 §438/GW 13:235). Thus, custom, what Hegel calls "self-conscious freedom that has become nature" (EG17 §430/GW 13:233; cf. EG §513/GW 20:495), together with law, function similarly to institutions within the argument of the *Encyclopaedia*.

### 1830 *Encyclopaedia* (§393Z, §544A, §531A, §552A)

In contrast to the 1817 *Encyclopaedia*, institutions appear in the published text of the 1827 and 1830 editions. But their role remains minor. Hegel uses the term in only three sections and never in the main body paragraphs. These uses of the term can be divided into four groups.

First, in his critique of the jury-court (*Geschworenengericht*), Hegel reiterates that this is an undesirable "institution [Institution]" (EG §531A/GW 20:504). Trial-by-jury is thus another example of an institution regarding which philosophical science proffers critique.

Second, Hegel reiterates that institutions are in their nature rational. Their rationality entails that institutions must be grasped in accordance with the philosophical idea, not the understand-

78. "One thinks, for example, that *laws, education, and civic institutions* [exist] only because of the wicked, who *do not follow their heart and feelings*. If the princes, for example, judges only followed their natural heart and natural feelings, - everything else would be superfluous. On the contrary" (GW 13:401).

79. "The *rational*, which is in the shape of rationality when apprehended by thought, has the same content as practical feeling, but in its universality and necessity, its objectivity and truth" (EG17 §390A/GW 13:218).

80. "It is not the *particular* skills, ends, institutions [Einrichtungen], activities, etc., that sustain and govern the self-conscious universe and the singular subject, but the *universal idea* - which in nature is only as law [Gesetz], but in human beings is its self-conscious concept" (GW 13:547).

81. "The *laws* express the nature and the determinations of the universal substance; they *are*, in the first place, immediate, and thus restrictions on the independent self-will and the particular interest of the individual; in the *second* place, however, they are the absolute final purpose and the universal *work*, hence they are a product of the functions of the various *estates* which separate themselves more and more from the universal particularization (§433), and are brought forth through all the activity and private concerns of *singulars*, and are presented as valid custom" (EG17 §437/GW 13:235).



ing. So Hegel tells us that "to introduce the institution of the state [Einrichtung des Staats] as a mere representational constitution [Verstandes-Verfassung], that is, as the mechanism of a balance of powers external to each other in their interior, goes against the fundamental idea [Grundidee] of what a state is" (EG §544A/GW 20:522). Context clarifies that here Hegel does not mean to say that the state is an institution. Rather, Hegel intends to refute the contractarian's representation of the state's constitution being a matter of a conjectural agreement between the government and the people or among the people themselves.<sup>82</sup> It is the contractarian, not Hegel, who holds the state to be an institution; thus, this passage coheres with Hegel's distinction between institutions and spheres throughout the *Philosophy of Right*.

Third, Hegel reiterates that rational institutions realize freedom. He writes that "true freedom" consists in "obedience to the law and lawful state institutions [Staatseinrichtungen] [...] because the state is one's own, self-actualizing reason" and that only on the basis of ethical life can "right and morality be present" (EG §552A/W 10:359). In an earlier *Zusatz*, Hegel connects this freedom-realizing feature of institutions to world history, writing that in modern Europe, in contrast to the other world-historical peoples, "the state exhibits more or less the unfolding and actualization of freedom through rational institutions [Institutionen]" (EG §393Z/W 10:62–63).

Fourth, in the 1830 *Encyclopaedia* Hegel engages in further institutional critique. In §552A, a long remark on the connection between religion and the state that corresponds to §270A in the *Philosophy of Right*, Hegel argues that the institutions of ethical life cannot be separated from the religion prevailing therein. This inseparability can be seen to be a consequence of the connection between institutions and custom indicated in the 1817 *Encyclopaedia*. Thus, religions of "spiritual unfreedom" (exemplified for Hegel by Catholicism) belie rational institutions. Governments based on these religions cannot realize freedom and are therefore deficient. As Hegel puts it, "such governments, which hang together with institutions [mit Institutionen zusammenhängen], are grounded on the unfreedom of spirit that is supposed to legally and morally free [des rechtlich und sittlich frei sein sollenden Geistes], grounded, that is, on institutions of injustice [Institutionen des Unrechts] and a condition of ethical depravity and barbarism" (EG30 §552A/GW 20:534). Similarly, Hegel writes that "principles of rightful freedom can only be abstract and superficial, and state institutions [Staatsinstitutionen] derived from them must be for themselves untenable [unhaltbar], if the wisdom of those principles misunderstands religion so grossly that it is unaware that the principles of reason in actuality have their ultimate and supreme verification in religious conscience, in subsumption under the consciousness of absolute truth" (EG30 §552A/GW 20:536). Institutions derive from principles of freedom and rationality latent in its *Sittlichkeit*. Insofar as these principles are deficient, so are the institutions that emanate from them.

### 2.4.2 Institutions in Hegel's Political Writings

In his lifetime, Hegel published two essays in his name addressing ongoing political events. These are his review of the "Proceedings of the Estates Assembly of the Kingdom of Württemberg" (1817)

<sup>82</sup> Hegel above writes: "representations of a relation, in which it could be useful and indispensable to have in one's hands a means of coercion, are partly based on the false representation of a contractual relation [Vertragsverhältnisses] between government and people, and partly presuppose the possibility of such a divergence of spirit between the two by which the constitution and government as such are no longer thought" (EG §544A/GW 20:521).

and "On the English Reform Bill" (1831), Hegel's last published writing.<sup>83</sup> While often overlooked by commentators on *Philosophy of Right*, these two texts essentially supplement Hegel's *Rechtswissenschaft*. For one thing, there is strong evidence that Hegel developed his views on the estates, public officials, and internal functions of government through his study of the Württemberg Estates proceedings.<sup>84</sup> But, more importantly, these texts demonstrate Hegel's willingness to criticize institutions in a manner consistent with his science of right. That is, in these texts Hegel identifies institutions that genuinely count as institutions but fail to meet the standard of being rational and so are deficient. They therefore provide invaluable material for understanding his views on social and institutional critique, topics about which much interpretive debate persists.

More specifically, each essay deals with a form of institutional mismatch or inappropriateness. In spelling out this difference, it is helpful to use Hegel's notion of the spirit of a people (*Volkgeist*) (PR §33, PR §274, PR §340, PR §341, PR §352). In the "Württemberg Estates", Hegel takes up the spirit of the modern Germanic people as exemplified in the province of Württemberg. In this case, the existing institutions of Württemberg—the "good old *Recht*"—fail to cohere with the spirit of the people. By contrast, in the "English Reform Bill" Hegel argues that the institutions of England fit the spirit of its people but that these institutions are not "right and rational in and for themselves" (PW 238/GW 16:333–35). In other words, English institutions, while appropriate for its prevailing customs, are not rational. Both mismatches depict ways institutions can be deficient, and both call out for reform. But the second mismatch is more volatile in Hegel's estimation because it requires ameliorating both the *Volkgeist* and the existing institutions.

### ***Württemberg Estates (1817)***

Hegel published his review essay of the proceedings of the Württemberg Estates as a series in the *Heidebergische Jahrbücher der Litteratur* through the second half of 1817. The essay was published anonymously, but Hegel was quickly ousted as its author. The long essay—numbering 120 pages over eight issues in its original printing—mounts a polemic against the recently-recalled estates assembly of Württemberg to aid King Friedrich I in providing the province with a new, modernized constitution. Like Marx's *Eighteenth Brumaire*, Hegel narrates the inability of the upper echelons of the middle estate, the "bourgeois aristocracy" (HW 117–18/GW 15:108–10), to organize itself and assert its class interest in a coherent and politically strategic manner, not to mention the interests of the common good. Unable to "undertake and accomplish effective work on state institutions [Staatsinstitutionen]," the estates assembly is ultimately adjourned by the King (HW 87/GW 15:81). The guiding thread throughout Hegel's argument—which, following its sources, often diverges into a "historical approach" (HW 108/GW 15:100)—is the estates assembly's inability to articulate a set of institutions appropriate to the principle of modern freedom embodied in and desired by the Württemberg people. Instead, the assembly fruitlessly attempts to reinstate

83. To our knowledge, Hegel composed five political essays. The remaining three essays: *Confidential Letters on the Previous Constitutional Relation of Wädland to the City of Berne* (1798), *On the Recent Domestic Affairs of Württemberg* (1798), and *The German Constitution* (1799–1802). The latter two were never published and the former was an anonymous translation of an essay by the French revolutionary Jean-Jacques Cart (1748–1813).

84. See Christoph Jamme, "Die Erziehung der Stände durch sich selbst. Hegels Konzeption der neuständisch-bürgerlichen Repräsentation in Heidelberg 1817/18," in *Hegels Rechtsphilosophie im Zusammenhang der europäischen Verfassungsgeschichte*, eds. Hans-Christian Lucas and Otto Pöggeler (Stuttgart-Bad Cannstatt: Frommann-Holzboog, 1986), 147–74; the editors' introduction to Hegel, *Heidelberg Writings*, xvi–xxiv; Elias Buchetmann, *Hegel and the Representative Constitution*, 39–46; Jaeschke, *Hegel-Handbuch*, 236–38.

the old, outdated Feudal institutions to secure its special privileges. As such, the essay touches on three aspects of Hegel's institutional theory.

First, Hegel reminds us that institutions—in this case, political or 'state' institutions—are rational such that certain effects necessarily follow their nature. Thus "when it comes to the institutions [Einrichtungen] of the state, or of any rational organization [Veranstaltung], it is not the *contingent* that ought to be counted upon, but the question can only be what the *nature of the matter* [Natur der Sache] [...] involves" (HW 42–43/GW 15:39). Or, in other words, that "to earn the right to be called a state institution [Staatseinrichtung], it is not enough merely to *demand* that something should happen, to *hope* that it will happen, or to place limits on a few conditions which could impede it; to be a state institution is to make happen what ought to happen" (HW 49/GW 15:46).

Second, Hegel rehashes familiar institutional critique. He warns us again of the irrationality of "Roman institutions" [römischen Institute] (HW 36/GW 15:33) and against the "institution [Institution]" of the jury trial mistakenly revered in England and France as the "hallmark of freedom" (HW 109/GW 15:101). Most notably, though, Hegel details the many injustices of the notary institute (*Schreiberey-Institut*), an "institution [Institut] peculiar to Württemberg" and whose investigation "exposes legal, moral, and intellectual conditions that can only be described as a swamp" (HW 104–5/GW 15:97). The notaries extorted inordinate prices for the verification of municipal book-keeping and non-contentious jurisdiction such as marriage, contracts, and wills (HW 111–14/GW 15:103–6). And Hegel leaves no doubt regarding the depravity of the notaries, the "truly extraordinary and almost incredible nature of this famous Württembergian institution [Instituts]" (HW 108/GW 15:100), quoting approvingly that "a worse institution [Einrichtung] than this can hardly be imagined" (HW 114/GW 15:105–6). Moreover, Hegel indicates that the abuses of the institution were systematic, not personal: "[I]t is also obvious that the necessary dependency of the local councils, the municipalities, and [...] individual criticizes followed not from personalities [Persönlichkeiten], but from the institution [Einrichtungen] as such" (HW 116/GW 15:107). Yet despite there being widespread agreement among the assembly's members regarding the need to eradicate the notaries, because members stood to benefit from the institution, usually indirectly, they were prevented from taking collective action (HW 106/GW 15:98). The institution of the notaries thus provides us not only with another example of Hegel's institutional critique but also, and more interestingly, with an analysis of how a deficient institution temporarily perpetuates itself against the arc of world history.

Finally, the third contribution to Hegel's institutional theory made by the *Estates* essay is its discussion of the essential connection among particular institutions and between institutions and the conditions of life over which they are to govern (cf. PR §274A/GW 14,1:229).<sup>85</sup> Thus Hegel tells us that voting eligibility—in this case, for the election of deputies to the estate assembly—must be determined *not* by the "abstract principles of number, property, and age, principles which have so far been alien to German institutions [Institutionen]" (HW 47/GW 15:44), but "connected [zusammenhängt] with the other institutions [Institutionen] of the state" (HW 49/GW 15:46). Legislation must also cohere with institutions and custom, since "legal determinations [...] are insufficient to prevent what is entailed by the matter itself [die Sache selbst]" (HW 95–96/GW 15:89–90). It follows that under simple conditions, the institutions of ethical life should also

85. "The wish to give a people a constitution *a priori*, even if its content were more or less rational, is a notion which overlooks the very moment by virtue of which a constitution is more than a figment of thought [Gedankending]. Each people accordingly has the constitution appropriate and proper to it" (PR §274A/GW 14,1:229).

be simple: "[I]n a condition of undeveloped customs [...], the inner institution [Einrichtung] lies in the simple habits of the people and in the character of the chief" (HW 34/GW 15:31–32). Because institutions are rational only if they conform to the prevailing conditions, institutions that were rational in the past may become irrational under new conditions: "[I]t is exactly history which teaches us to recognize the conditions [Umstände] under which a particular constitutional determination was rational, and which leads us in the present example to the result that if the exclusion of crown officials was at one time rational, it is no longer so under other conditions" (HW 45–6/GW 15:42). Part of an institution's being rational is its coherence with other institutions, and another part is its being responsive or well-adapted to the prevailing circumstances, understood broadly.

### On the English Reform Bill (1831)

The *English Reform Bill* was the last of Hegel's writings to be published during his lifetime.<sup>86</sup> It was also censored.<sup>87</sup> The text contributes to reconstructing Hegel's institutional theory in two ways: it provides additional examples of institutions, and it further details the right kind of connection between institutions and the prevailing conditions.

Regarding the examples, Hegel speaks of the "positive character which predominates in English institutions [Institutionen] of constitutional and civil right" (PW 238/GW 16:333) and of "common law and constitutional institutions [Landrechte und staatsrechtliche Institutionen]" (PW 239/GW 16:336). Positive right, constitutional right, and civil right are not themselves institutions; they are the sorts of things constituted by institutions. Hegel also speaks of the English Church's instability despite its having "the institution [Einrichtung] of an episcopal hierarchy," an institution that proves ineffective in the English Church despite it being the appropriate means for settling succession disputes, according to Hegel (PW 244/GW 16:346). Finally, Hegel reminds us that "public order and actual freedom" is nothing more than "the operation of institutions" [Bethätigung der Institutionen] (PW 268/GW 16:401).

Moving now to the connection between institutions and the prevailing conditions, Hegel criticizes English institutions on novel grounds. Unlike the feudal institutions proposed by the Württemberg assembly, English institutions properly correspond to the nation's internal circumstances. The spirit of the English people is inequitable and positivistic, and so are its institutions. Hegel's critique thus does not target a disharmony between a people and its institutions, as it did in the Württemberg essay. Instead, English institutions are deficient because they conflict with what is "right and rational in and for [itself]" (PW 238/GW 16:334) or because they contradict the institutions "in the more civilized [civilisirten] states on the Continent" (PW 264/GW 16:391; cf. PW 239/GW 16:334), two formulations which, for Hegel, amount to the same thing. What Hegel depicts in the essay, then, is the nature and necessity of England's transformation from irrational to rational institutions.

There are four features of this transformation salient for Hegel's institutional theory. First, Hegel envisions England's required reform to be *institutional* in nature. He writes: "It will also

86. M. J. Petry, "Propaganda and Analysis: The Background to Hegel's Article on the English Reform Bill," in *The State and Civil Society*, ed. Z. A. Pelczynski, trans. H. Tudor and J. M. Tudor (Cambridge: Cambridge University Press, 1984), 145.

87. The last of the essay's four installments was not published by order of the king. See Petry, "Propaganda and Analysis," 146, 296n25.

be acknowledged that the right way to seek improvement is no longer to rely simply on such moral means as representations, admonitions, or associations of isolated individuals designed to counteract the system of corruption and to avoid becoming indebted to it, but to change the institutions [Veränderung der Institutionen]. The common prejudice of inertia, which clings on to the old faith in the good of an institution [Institution] even if the state of affairs to which the institution gives rise is totally corrupt, has thus finally given way" (PW 237/GW 16:330–31).

Second, Hegel *historicizes* England's needed reforms, emphasizing its lagging development relative to the other European nations. England has "not yet undergone the development and transformation which has been accomplished in the civilised states of the Continent" (PW 238/GW 16:333–35) and so drags "conspicuously behind the other civilised states of Europe in institutions based on genuine right" (PW 239/GW 16:336). Hegel diagnoses England's delayed development as stemming from its pride in "English freedom" (PW 238/GW 16:334; PW 249/GW 16:356), i.e., unjustifiably "formal freedom," which "in general prevents the English from studying and acquainting themselves with the advances made by other nations in developing their institutions of right [Rechtsinstitutionen]" and "[prevents] the English from grasping the essence of legislation and government through quiet reflection" (PW 251/GW 16:360).

Third, these needed reforms are *necessary*. The principles underlying the "more civilised states on the Continent" are principles "which, inasmuch as they are based on universal reason, cannot always remain so alien even to the English understanding as they have done hitherto" (PW 264/GW 16:391). England will inevitably undergo institutional change. The open questions concern when and how this change will be effected.

Finally, these needed reforms are *dangerous*. "England," Hegel writes, "may well have cause to fear the greatest disruption of its social and political fabric from the pressing demands of those principles and the call for their rapid implementation" (PW 264/GW 16:390–91). Because the Reform Bill is based "on principles of real [reellen] freedom," it is popular, provoking its parliamentary supporters to foolishly "look to the people for its strength." As Hegel memorably concludes—and which therefore stands as his last word on politics—the Bill may very well "inaugurate not a reform but a revolution" (PW 269–70/GW 16:403–4).

### 2.4.3 Conclusion: Formal Indications from Hegel's Other Published Writings

Four provisional conclusions stand out among Hegel's remarks on institutions in the *Encyclopaedia* and his political writings.

First, the *Encyclopaedia* indicates that, for Hegel, institutions include both *formal* and *informal* institutions, or, in Hegel's vocabulary, law and custom (cf. PR §150A; PR §151).

Second, Hegel's institutional analysis of the evils of the Württemberg notaries indicates that institutions operate *impersonally*, meaning that the institution's effects are not attributable to any particular person but only to the institution as a whole (cf. PR §328A/W 7:496). Officials, members, and representatives of an institution have their behavior regulated and evaluated not as isolated moral agents but according to their institutional role or, to use Marx's famous formulation, as personifications of the institution and bearers of its interests (MECW 35:10).

Third, Hegel elaborates his view of institutional critique in these texts, criticizing institutions in at least three different ways. First, there may be a mismatch between the institutions taken as a whole and the people. This was the case of the Württemberg estates assembly, which tried to

reinstate institutions that were disharmonious with the spirit of the people. Second, there may be a mismatch between one institution and all the others. Hegel exemplified this sort of institutional critique when he denounced the voting eligibility criteria introduced for electing deputies to the estates assembly, which were based on the "abstract principles of number, of property amount, and of age" and did not cohere with the prevailing customs (HW 49/GW 15:46). Finally, there may be a mismatch between institutions and what is rational in and for itself. This was the case with England, wherein the institutions cohered with one another and matched the spirit of the people but were nonetheless deficient because irrational. Only institutions that cohere in these three ways can be "institutions of real freedom [Institutionen der reellen Freyheit]" (PW 264/GW 16:390). Institutions that do not cohere can be subjected to institutional critique at the hands of the science of right.<sup>88</sup>

Finally, these texts indicate the nature of institutional *change* and *stability* in Hegel's view. While it is not always clear what Hegel's position is regarding the former, it is not implausible to say that Hegel posits a tendency towards rationality in the development of institutions. However, this tendency may be inhibited, as, for example, it was with the institution of the notary, which, despite its irrationality, perpetuated itself because its continued existence benefited those who held the power to changing it. But bad institutions like the notary and the "positive" institutions of England suffer from instability for precisely this reason. They lie at the intersection of an unfolding, progressive, and universal rationality and a conservative maintenance of the status quo based on merely particular interests. Irrational institutions are thus also unstable.

## 2.5 Formal Indications from the Excursus

I have now reviewed Hegel's use of institutions across all of his published writings related to the *Philosophy of Right*. This excursus has been necessary because no comprehensive study of institutions in Hegel's social and political philosophy has been undertaken in the scholarly literature despite widespread recognition that institutions are crucial thereto.

From this preliminary review, we have encountered several features of Hegel's institutional theory. Most importantly: among Hegel's institutions, we find neither the family, civil society, and the state nor abstract right, morality, and ethical life. These "spheres" are not institutions for Hegel but are rather "the stages in the development of the idea of freedom" (PR §30A/GW 14,1:46) and the shapes of this idea's existence (PR §32A/GW 14,1:47). These spheres thus occur at a higher level of abstraction than institutions. Hegel's distinction between a sphere and an institution has been unappreciated in nearly all commentaries on the *Philosophy of Right* from the last few decades. But it is not merely a verbal quibble. Commentators' failure to recognize the difference between the two has systematically led them to overlook the texture of Hegel's institutional theory, such as its pluralism and its being a meso-level theory, its view of institutional change, and its sophisticated account of institutional normativity. When Hegel speaks of the

88. The first and second kinds of coherence—coherence among institutions and between institutions and the people—may be called the *Montesquieu principle* or the *inseparability thesis*: institutions have their meaning and justification only in their total social context. Hegel summarizes this principle in PR §3A, quoted above. In PR §261A, Hegel reiterates this principle: "As has already been noted (in the Remarks to §3), it was above all *Montesquieu* who, in his celebrated work *Die Geist der Gesetze*, focused on and attempted to expound in detail the thought that laws, including those of civil law in particular, are dependent on the specific character of the state, and the philosophical view that the part should be considered only in its relationship to the whole" (PR §261A/GW 14,1:208).

"institutions of real freedom" or "the unfolding and actualization of freedom through rational institutions," he refers not to generic spheres like the family and morality, which, as spheres, are relatively invariant across historical time, but to the more specific ways in which these spheres are made concrete in accordance with the idea by being determined as particular forms, i.e., institutionalized. This oversight has also hindered commentators' capacity to give Hegel's theory a plausible defense against its immediate objections. For example, Hegel's claim that institutions are independent of individuals apparently flies in the face of common sense. One immediately rejoins that institutions could not exist without individuals, and so institutions are dependent on individuals in this minimal sense—a basic problem facing Hegel's view which has not been addressed by scholarship on the *Philosophy of Right*. Only by distinguishing between institution and sphere can we begin to broach these social-ontological issues in Hegel's institutional theory, and it is Hegel's ontologization of institutions as forms to which I turn in the next chapter.

## Chapter 3

# Ontology

Society's forms are culture's substance (Geertz 1973, 28).

### 3.1 Introduction

This chapter reconstructs Hegel's institutional ontology in the *Philosophy of Right*—that institutions are *forms*—and defends it against its most pressing objection, ontological over-institutionalization. Broadly put, this objection asserts that, ontologically speaking, Hegel wrongly prioritizes institutions over individuals and their interactions. I argue that Hegel indeed gives ontological priority to institutions relative to individuals and that he does so by making institutions ontologically independent of the representations that individuals have about these institutions. However, this is not the outlandish and implausible position that his critics take it to be. My strategy in defending Hegel will be to deflate concerns about *ontological dependence* in social ontology and demystify the *ontological objectivity* of Hegelian institutions, showing it to be similar to the objectivity we unproblematically ascribe to other social phenomena. In this way, I aim to prepare the way for the reception of Hegel's institutional theory as a plausible view in the context of contemporary social ontology, critical social theory, and the philosophy of social science, showing it not to suffer from a pernicious kind of ontological over-institutionalization.

Before proceeding, I would like to clarify what I mean by *ontology* and, more specifically, *institutional ontology*. Generally speaking, ontology is the part of metaphysics that concerns being as such. It gives us our most basic account of what, fundamentally, *is*. Accordingly, *institutional ontology* should tell us what institutions *are* in the social world. We can distinguish between three ways of concretizing this general formula.

First, ontology may refer either to one's account of the *nature* of reality in general or to the *nature* of entities in the world. This essentialist sense of ontology is the one usually intended by "social ontology," and has a wide enough scope to include topics such as social change, normativity, and power. Institutional ontology, in this sense, would be tasked with disclosing to us the *nature* of institutions, accounting for their essential features, broadly understood, and their difference from other kinds of social entities.

Second, ontology may refer to one's account of which things *really exist* in the world. This usage of ontology—broadly Quinean—answers the question, "What is there?" In Quine's (1948) original



program, this was done by investigating the domain of entities existentially quantified by one's preferred scientific theories after these theories had been logically paraphrased, a domain Quine called the theories' "ontological commitment" (33). While contemporary metaphysicians have challenged certain features of Quine's program, this existential sense of ontology predominates in the field. Institutional ontology, so understood, attempts to determine *whether* institutions *really exist*, and, if so, whether institutions are ontologically self-sufficient or instead ontologically depend on other kinds of things.

Third, ontology may refer to one's account of beings as such and their predicates, where beings are understood as existing things insofar as we abstract from all of their particular features. This is the conception of *Ontologie* with which Hegel was familiar. For example, prominent definitions of ontology in circulation at the time included: "the science of the more general predicates of a being" (Baumgarten); "the part of philosophy that treats beings as such and the general properties of being" (Wolff); and "the highest universal concepts and principle of reason [made] a particular object, and the explanations, classifications, etc. that lead to them" (Platner).<sup>1</sup> We must note, then, that this traditional sense of ontology diverges from the Quinean and essentialist ones, as although it is a science of beings, it neither investigates the *existence* of these beings nor their *nature*.<sup>2</sup> Indeed, because ontology, in the traditional sense, is the science of the most abstract predicates of all beings, the idea of a specifically institutional ontology is unintelligible.

My reconstruction of Hegel's institutional ontology will blend the first and second senses of ontology. More specifically, the positive part of my reconstruction will try to uncover the nature of institutions, and my replies to objections will take up issues of existence. Nonetheless, institutional ontology remains quite an anachronistic title for this Chapter. I choose it anyway because it best coheres with contemporary usage in social ontology and critical social theory, fields for whom Hegel's institutional theory should be of abiding interest.

This Chapter will proceed in three sections. In §3.2, I will state the objection. In §3.3, I will reconstruct the ontology of institutions as forms in the *Philosophy of Right*. In §3.4, I will rehabilitate this ontology by showing its most serious objection, ontological over-institutionalization, to be misguided.

## 3.2 Ontological Over-Institutionalization

In this section, I set up the problem of ontological over-institutionalization at an intuitive level, showing it to take two distinct shapes (§3.2.1), one in terms of *recognition* (§3.2.3) and the other in terms of *ontological dependence* (§3.2.3). I delay the more rigorous specification of the problem until §3.4, as it requires unpacking social-ontological distinctions that are unnecessary for my present purpose.

1. De Boer has fruitfully examined the meaning of ontology in German philosophy immediately preceding Hegel; I have taken from her work the quotations from Baumgarten and Wolff. See De Boer (2011, 50–79; 2020, ch. 3). Platner's definition of ontology comes from §9 of his *Philosophische Aphorismen* and is reproduced in GA II/4,2:11.

2. Thus, when Hegel famously asserts that his logic "coincides" or "takes the place" of the former ontology, he does not thereby commit himself to proving the *existence* of any entities therein. If one adopts a Quinean construal of ontology, Hegel's indifference in his ontology to "existence questions" remains quite perplexing.

### 3.2.1 Two Varieties of Over-Institutionalization

Ontological over-institutionalization is a species of a more generic concern about the priority of institutions over individuals in Hegel's social and political philosophy. I would like to indicate two relevant features of this genus.

First, it captures the thought that institutions in Hegel's doctrine of objective spirit carry 'too much weight' or have an 'undue priority' relative to individuals and their interactions, standing 'over and above' them in an unacceptable manner. These are, of course, mere metaphors that must be given a concrete determination. One's preferred slogan for labeling this objection is unimportant. The term "over-institutionalization" is Axel Honneth's (2010, 63–80; 2001, 102–27), but it captures roughly the same thought as Michael Theunissen's "repressed intersubjectivity" (1991, 3–63; 1982, 317–81) and Dieter Henrich's "strong institutionalism" (1983, 30–38). One could also speak of the "alienation" of the individual will in its "absolutized" or forced identification with the institutional order.<sup>3</sup> Despite their vagueness, these formulations provide a helpful starting point for my statement of the worry.

Second, the objection, as I analyze it, comes in three varieties. Each variety corresponds to the ontology, dynamics, and normativity of institutions, i.e., according to the decomposition of institutional theory I defended in the Introduction. This means that one may charge Hegel with ontological over-institutionalization, dynamic over-institutionalization, and normative over-institutionalization. In this chapter, I deal only with ontological over-institutionalization.

I turn now to the specifically *ontological* kind of over-institutionalization. This objection concerns Hegel's institutional ontology, which, as I noted in §1, concerns the *nature* and *existence* of institutions in his institutional theory. This ontological variety of the objection can be stated in two ways, one in terms of recognition and the other in terms of ontological dependence.

### 3.2.2 Ontological Over-Institutionalization and Recognition (Honneth)

The statement of ontological over-institutionalization in terms of recognition comes from Axel Honneth in *The Pathologies of Individual Freedom*. Honneth's recognitive version of the objection, while admittedly quite vague in Honneth's text, can, I believe, be helpfully analyzed into two parts, one part concerning the *formality* of institutions in Hegel's theory, contra Hegel's account of the family, and the other their *lack of normativity*, contra Hegel's account of civil society.<sup>4</sup>

#### Legally Constituted Institutions

One part of Honneth's charge of over-institutionalization against Hegel's institutional ontology is directed at its insistence on legality. According to Honneth, Hegel admits in his institutional ontology only "legally constituted institutions" [rechtlich verfaßten Institutionen] (2010, 72; 2001, 115) or "legally based institutions" [rechtlich verankerte Institutionen] (2010, 76; 2001, 121), such that "only what has already been legally institutionalized can be admitted as part of *Sittlichkeit*"

3. This is Zabel's (2015) insightful manner of unifying Honneth's and Henrich's criticisms of Hegel's institutional theory (89–92). More polemically, Tugendhat (1989) infers the "totalitarian character of Hegel's philosophy of objective spirit" from this alienation of the individual will into its institutional order (321).

4. On Honneth's charge of over-institutionalization in this text, see Sperotto (2022, 123–35); Deranty (2009, 226–38). Teixeira (2017, 599–601) helpfully analyzes *The Pathologies of Individual Freedom* as a turning point in the development of Honneth's critical theory from the paradigm of recognition to social freedom.

(ibid.). By legally constituted institutions, Honneth has in mind institutions that receive an official designation or some other formal codification within the state's legal order. But this criterion for what is it to count as an institution is, as Honneth points out, too strict. On the authority of Arnold Gehlen, we know that some practices have sufficient stability, publicity, and universality to count as institutions even if they are not encoded in the lawbook of any state, as these practices can be transmitted, habitualized, and maintained through a system of informal sanctions and other non-state mechanisms (2010, 70). Friendship, language, and etiquette are likely institutions of this sort. Therefore, Honneth objects to Hegel's "privileging of legally institutionalized forms of ethical life" over those forms of ethicality that are not legal in nature but nonetheless express or realize an underlying normative principle.

These normative principles underlying the spheres of ethicality are, of course, "patterns of intersubjective action" or forms of reciprocal recognition (2010, 53). According to Honneth, it was Hegel's "formal intention" to identify in each of the three spheres of ethicality—the family, civil society, and the state—a unique kind of mutually-recognitive and practical activity and then to legitimize concrete institutions within each sphere on the basis of their capacity to express or realize this distinct form of recognition (2010, 76). The main piece of textual evidence that Honneth advances for this thesis is §7Z (2010, 13), wherein Hegel appears to give an account of the "concept of concrete freedom" through the intersubjective experience of "friendship and love":

Here, we are not one-sidedly within ourselves, but willingly limit ourselves with reference to an other, even while knowing ourselves in this limitation as ourselves. In this determinacy, the human being should not feel determined; on the contrary, he attains his self-awareness only by regarding the other as other. Thus, freedom lies neither in indeterminacy nor in determinacy, but is both at once (PR §7Z/W 7:57).<sup>5</sup>

By modeling concrete freedom on the intersubjectivity expressed in friendship and love, that is, in a relationship in which I am with myself only by putting myself in the right kind of relation with another consciousness, Hegel appears to recuperate—within his exposition of the free will in the *Philosophy of Right's* Introduction (§§1–30)—the "pure concept of recognition" from the *Phenomenology* and the Jena practical philosophy.

However, Hegel's actual account of ethicality in the *Philosophy of Right* (§§142–360) fails to live up to this promise from the Introduction, according to Honneth. This is because it legitimates only those institutions that are legally constituted, ignoring informal institutions. Honneth exemplifies this problem with Hegel's discussion of the family. As the sphere whose principle concerns the affective relations of love, tenderness, etc., friendship and romantic love should have been included within its purview (2010, 70–71). But these forms of reciprocal recognition find no place in Hegel's reconstruction of the family; only the "marriage contract" does, due to Hegel's perverse insistence on "positive legal institutionalization" (2010, 69–70). Hegel's is therefore a "reductionist" account of the family, reducing this sphere to only those legally constituted institutions (2010, 71). Hegel's institutional theory is thus ontologically over-institutionalized because it admits as institutions only those institutions that are legally constituted, but a reasonable criterion for counting as an institution by Hegel's own lights, such as being a concrete shape of substantial freedom or, on Honneth's reading of Hegel, being a form of reciprocal recognition, would admit of non-legal institutions. This part of Honneth's objection amounts to the assertion that Hegel excludes informal

5. Theunissen (1991, 8–9) also mobilizes this passage for a similar purpose.

institutions from his institutional ontology. Moreover, Honneth's disagreement with Hegel is not merely verbal, as his criticism is that, *given Hegel's conception of an institution*, Hegel should have incorporated informal institutions into his science of right.

### Descriptively Overloaded Institutions, Or: Hegel's Normative Deficit

The second part of Honneth's charge of over-institutionalization focuses on Hegel's account of civil society. According to Honneth, Hegel "overload[s]" (*überfracht*) civil society because within this sphere he includes two institutions that express two fundamentally different normative principles: the market and the corporation (2010, 77; 2001, 123)<sup>6</sup> This overloading violates Hegel's "formal intention" to reconstruct a single unifying normative principle in each sphere that would express a recognitive practice or pattern characteristic of this sphere (2010, 76). In civil society, Hegel forgets this formal intention when he combines the market—a set of institutions stemming from the normative-recognitive principle of instrumental action ("labor")—with the corporation—an institution that bears a richer ethical significance for Hegel, having at its basis communicative action ("interaction") (2010, 76).<sup>7</sup> Hegel thus fixes his eye "too firmly [...] on concrete institutional constructs," resulting in an institutional ontology that mixes together institutions that really express distinct normative principles and, consequently, incompatible patterns of recognition (2010, 77). In other words, Hegel over-institutionalizes because he fails to identify a single normative principle that unifies all the institutions within each sphere and instead lets the empirical coincidence of civil society's institutions mislead him into grouping these normatively diverse institutions together, hence descriptively overloading his institutional theory.

It is instructive to see how Honneth explains the genesis of Hegel's error. According to Honneth, Hegel's exposition of right as "the rational system of the will's determinations" (PR §19/GW 14,1) in fact amounts to *two tasks*: a "normative reconstruction" (or "normative structural analysis") of the *normative conditions* of individual freedom as these conditions have been realized in history and an "institutional analysis" of the contemporary *institutions* that satisfy these normative conditions. The first task produces normative principles that, although emergent in history, are, as principles, relatively ahistorical, whereas the second task legitimizes institutions in a certain place and time insofar as they realize these principles (2010, 77). Thus, these underlying normative principles (which, for Honneth, are abstract types of reciprocal recognition) are *multiply realizable*: the same principle can be realized by diverse concrete institutions.<sup>8</sup> By overlooking the ontological distinction between (normative-recognitive) principle and (empirical-concrete) institution, Hegel over-institutionalizes, mistakenly taking the concrete institutions of his own time for the fundamental normative principles he set out to identify in the Introduction, i.e., the rational system of the will's determination. Again, these principles are realized in history, but, as principles, they are quasi-ahistorical. The result is that Hegel's institutional theory fails to attain the right level of

6. For instance, Honneth writes that in his treatment of civil society, "Hegel [mistakenly] allocates a constitutive role in generating an ethical sphere to several differently conceived institutions; for in so doing he undermines the possibility of seeing each of these spheres as being characterized by a single pattern of interaction, so that it becomes impossible to translate them into more abstract terms" (2010, 76).

7. Honneth draws on Habermas's (1973) distinction in Hegel between *Arbeit* (instrumental action) and *Interaktion* (communicative action).

8. As Schaub (2015) puts the point, on the basis of Honneth's method of normative reconstruction "we have no reason to rule out *ex ante* the possibility that the same norm or form of recognition could be better realized by different social institutions" (128).

normativity because the institutions he analyzes are descriptively overloaded, tied too closely to their concrete existence and not to the abstract normative principles underlying them.

### 3.2.3 Ontological Over-Institutionalization and Ontological Dependence (Henrich)

While Honneth's criticism of Hegel's institutional ontology has proven to be the most influential, another aspect of the charge remains only latent in Honneth's presentation. This strand states the charge of over-institutionalization in terms of ontological dependence, and it is best known under Dieter Henrich's label "strong institutionalism." It objects that Hegel reverses the ontological priority between individuals and institutions, mistaking institutions as ontologically prior to the individuals who set them up and maintain them. To be sure, Henrich does not allege Hegel of holding that institutions could exist without there having been any people at all. Rather, Henrich disputes Hegel's claim that an institution can have an existence that is indifferent to the practices and subjective attitudes of the individual will or, in other words, an existence independent of individuals' representations about this institution.

In this section, I simply aim to examine this objection in Henrich's terms. In §4, I will argue that once we arrive at a better understanding of ontological dependence and ontological objectivity, we can affirm with Henrich that Hegel's is indeed strong institutionalism but that this is nonetheless a plausible social-ontological position.

#### Ontological Dependence: The "Without" Criterion and Mind Dependence

So far, I have not elaborated on what I mean by ontological dependence. It is a tricky notion. One way of capturing this dependency may be called the "without" criterion.<sup>9</sup> This criterion takes its name from slogans of the form "without (*ohne*) X, no Y" (alternatively: "no X, no Y"). Formulations of this kind are relatively common. Heidegger (1993), for example, writes in *What is Metaphysics* that "[w]ithout the original revelation of the nothing, no selfhood and no freedom" (103).<sup>10</sup> On this criterion, for X to be ontologically *dependent* on Y, it must be the case that X exists only if Y exists; conversely, for X to be ontologically *independent* of Y, it must be the case that X can exist without Y existing. Applied to over-institutionalization, we arrive at the following slogan for ontological dependence: "Without individuals' representations, no institutions." Institutions ontologically depend on individuals' representations about them, and it is inconceivable that it could be otherwise.

Contemporary philosophers attempt to pick out a similar feature of institutions with the notion of "mind dependence." This notion picks out those entities, properties, phenomena, or kinds whose existence would not be possible without the existence of the mental. Unlike natural objects like the sun, hydrogen molecules, etc., institutions are "mind dependent," so the ordinary line of reasoning goes, because their existence depends on the existence of minds, usually understood to be coterminous with the existence of human beings, but not necessarily so. While Hegel may view

9. By calling it the "without" criterion, I am inspired by Schelling's critique of Hegel. In his Munich lectures, Schelling distinguishes between a *negative* kind of ontological dependence of the world on logic—logic as "that *without* [*ohne*] which nothing could exist"—and a stronger, *positive* kind of ontological dependence of the world on logic—"that everything only exists *through* [*durch*]" logic (HMP 147/SW I,10:143–44). The "without" (*ohne*) criterion identifies the former, weaker sense of ontological dependence.

10. "Ohne ursprüngliche Offenbarkeit des Nichts kein Selbstsein und keine Freiheit" (Heidegger 1955, 35).

institutions to be, in a sense, ontologically independent of individuals (as I will argue below), he clearly does not think that institutions are "mind independent." His doctrine of objective spirit, which institutionalized *Sittlichkeit* "completes," mobilizes against this identification of ontological dependence on the representations of some individuals and "mind dependence." Indeed, it is a basic tenet of idealism that all that *is* is as idea, i.e., that even nature is mind-dependent insofar as it exhibits the rational structure of intelligibility in its externality. As Hegel puts it in the Heidelberg *Enzyklopädie*, "in nature, it is not an other that would be cognized as the idea, but rather [the idea] is in the form of *alienation*; in spirit, the same idea [is] as *being for itself* and *becoming in and for itself*" (EG17 §11A/GW 13:22).<sup>11</sup> Against some contemporary metaphysicians, then, Hegel does not hold "mind independence" to be a necessary condition of ontological objectivity. Objective spirit, or institutionalized human social life, is, for Hegel, ontologically objective in some other sense. But it is ontologically objective not because it aggregates inherently subjective phenomena into a social mass which, in virtue of its magnitude and complexity, merely *appears* to be an objective force, but because it is objective in itself, in its *form*.

I explain what I mean by an objective form below. But before moving to my reconstruction of Hegel's institutional ontology, it is helpful to review some criticisms in terms of ontological dependence raised in the scholarly literature on Hegel's *Philosophy of Right*.

### Ontological Dependence in the Scholarly Literature

The "without" criterion and "mind dependence" are thus two ways of expressing the objection of ontological over-institutionalization in terms of ontological dependence. Admittedly, one rarely encounters this objection in its pure form in the scholarly literature. But we can detect it in polemics—although even there only haphazardly—and in Dieter Henrich's notion of "strong institutionalism."

**Polemics: Haym, Popper, and the Textual Evidence** Ontological over-institutionalization is likely involved in many of the polemics against Hegel's *Philosophy of Right*. For example, Rudolf Haym (1857) raised this concern obliquely when he complained that in Hegel's *Rechtsphilosophie*, the individual "is sacrificed to harmony, to the whole in a systematic formation, to the substance that is only theoretically subjectivized" (383). Karl Popper (2013) gestured to it when he wrote that for Hegel, "the state is everything, and the individual nothing; for he owes everything to the state, his physical as well as his spiritual existence" (243)<sup>12</sup> And Adorno's caricature of Hegelian dialectic as devouring and crushing the individual (the nonconceptual and nonidentical) into the state (the conceptual) could also be read as advancing this objection.<sup>13</sup> Perhaps the plainest expression of this view within recent scholarship on Hegel would be Taylor's (1977) "cosmic spirit" reading, which posits Hegelian spirit to be a single, concretely existing entity that progressively develops itself in the world, proving itself to "[underlie] not just my own community but all of history, and

11. Hegel reiterates nature's mind-dependence in his 1829 *Lectures on the Proof of God's Existence*: "Nature is contained in spirit, is created by it; and, in spite of its appearance of immediate being and independent actuality, [nature] is intrinsically something *posited*, created, something *ideal* within spirit" (VBDG 80/GW 18:263).

12. "[T]he collectivist Hegel [...] visualizes the state as an organism; and [...] furnishes it with a conscious and thinking essence, its 'reason' or 'Spirit'. This Spirit, whose 'very essence is activity,' [...] is at the same time the collective Spirit of the Nation that forms the state" (Popper 2013, 251).

13. Adorno (1983, 11–12); Adorno (1993, 13, 17). See Basnett (2021, 44–5).

beyond this the whole universe" (464, cf. 44). For each of these authors, the defect of Hegel's institutional theory lies in part that it ontologically reduces individuals to a single, holistic entity, or at least makes their existence ontologically dependent upon it. In other words, they complain that Hegel denies the ontological self-standing of the individual, subordinating it to "Spirit," which, in the case of the social world, manifests itself in the shape of objectivity as institutions.<sup>14</sup>

Two points of clarification are helpful at this juncture. First, in this Chapter, I am uninterested in the normative component of this objection. Undeniably, these polemics are usually intended to express outrage at Hegel having depreciated the moral value of the individual in relation to that of the state or "the collective," that Hegel disparages individual conscience, etc. However, these normative concerns are not my focus in this chapter; I am instead trying to isolate the specifically ontological nature of the charge.

Second, while we are often quick to dismiss these sorts of anti-Hegelian polemics, we should acknowledge there is some textual basis for these critics' concerns. The strongest evidence in their favor, i.e., that draws from Hegel's published writings and not from the student lecture notes, comes from passages like §145,<sup>15</sup> §152,<sup>16</sup> and §258A,<sup>17</sup> wherein Hegel underscores the objectivity of his institutional ontology using the concepts of "might" [Macht] and "substance" [Substanz]. Once we parse Hegel's vocabulary and recognize that these "ethical might," "substantiality," and "objective spirit" and their corresponding "validity" refer primarily to institutions, Hegel's polemical critics appear to be correct in asserting that Hegel makes individuals ontologically dependent on institutions, as these passages indeed render the individual ontologically accidental relative to the institutional totality of ethicality. For critics like Popper and Haym, Hegel's reversal of the order of ontological priority between institutions and the individual's thoughts and subjective attitudes is simply unintelligible. I contend that we can render plausible Hegel's substance-first conception of human social life and its institutionalization by interpreting "ethical substance," the primary subject-matter of the *Philosophy of Right's* most general sections on ethicality (PR §§142–157), as a unified ensemble of institutional forms.<sup>18</sup>

**Strong Institutionalism: Henrich** But even if one dismisses these polemics and their quick reading of "ethical substance," there remains a serious worry regarding ontological dependency. One finds versions of it enunciated even by Hegel's most careful interpreters. Dieter Henrich's formula, "strong institutionalism" (*stark Institutionalismus*), has proven itself to be the most influential

14. Epstein (2015, ch. 1) nicely summarizes the social-theoretic worries surrounding "ontological holism" as associated with the post-Hegelian tradition's positing of collectivist "Spirits."

15. "The ethical [...] is [...] the will that exists in and for itself as the objective, as the circle of necessity, whose moments are the *ethical might*s [Mächte] that govern the lives of individuals, mights which have in these individuals [Individuen], as their accidents, their representation, phenomenal shape, and actuality. (PR §145/GW 14,1:137–38) Haym (1857, 378), for example, cites this passage.

16. "[In ethicality], *ethical substantiality* has attained its *right*, and the latter has attained *validity*. That is, the self-will [Eigenwilligkeit] and own conscience of the singular in its attempt to exist for itself and in opposition to the ethical substantiality, have disappeared; for the ethical character [i.e., the virtuous individual] knows that the end which moves it is the universal which [...] has developed through its determinations into actual rationality, and it cognizes that its own dignity and the whole continued existence of its particular ends are based upon and actualized within this universal. (PR §152/GW 14,1:141–42)

17. "Since the state is objective spirit, it is only through being a member of the state that the individual himself has objectivity, truth, and ethicality. *Unification* [Vereinigung] as such is itself the true content and end, and the determination of individuals [Individuen] is to lead a universal life; their further particular satisfaction, activity, and mode of conduct have this, that which is substantial and universally valid, as their point of departure and result." (PR §258A/GW 14,1:201–2)

18. Abazari (2020, ch. 3) nicely brings out the primacy of these sections in the *Philosophy of Right* and the decisive import, both critical and evaluative, of the notion of "substance" in Hegel's social theory.

and so is worth investigating in more detail.

Henrich (1983) articulates strong institutionalism in his introduction to one of the extant student transcripts of the 1819–1820 lectures on the philosophy of right, known in the GW as *Nachschrift Anonymous (Bloomington)*.<sup>19</sup> Contrary to the left-Hegelian tendency to separate the concrete institutions developed in the *Philosophy of Right* from its underlying method and conceptual framework, Henrich not only defends the necessary connection between the two but also seeks in this connection an explanation for Hegel's "vacillations" and "ambiguities" with respect to his treatment of these concrete institutions (e.g., the differing functions of monarchy throughout the various lecture presentations) (30, cf. 24). These vacillations are to be explained in part by ambiguities that intrinsically attach themselves to institutionalism and partly by external pressures (the censorship of the Carlsbad Decrees). The connection capable of this explanation should be sought in what Henrich calls the "Theorieform" or "systematische Form" underlying Hegel's *Philosophy of Right*, namely its "institutionalism" (30, cf. 12).

Henrich distinguishes between three kinds of institutionalism: minimal (*minimal*), moderate (*moderat*), and strong. Minimal institutionalism sets the baseline conditions for any political theory or theory of right to count as 'institutionalist' at all. For Henrich, a theory of right is minimally institutionalist if it acknowledges (1 — *life-order*) that the autonomy or freedom of the individual will depends upon a preexisting "order of life" in which this autonomy is to be realized and (2 — *objectivity*) that this life-order has its own existential and normative conditions that cannot be derived from the principle of autonomy, i.e., from the individual will as such.<sup>20</sup> Any institutionalism, then, must posit the freedom of the individual will as ontologically dependent on a life-order constituted by institutions—in other words, no social freedom without institutions.

To count as strongly institutionalist, a theory of right must satisfy two further conditions, according to Henrich. These are: (3 — *rationality*) that the external order in which the freedom of the individual is to be realized embodies rationality or has the form of the rational will, and (4 — *subsumption*) that, in the relation between the individual will and this order, the individual will is exhaustively subsumed, integrated, or incorporated into the order.<sup>21</sup> On strong institutionalism, the dependence of individuals on an institutionally constituted order posited by minimal institutionalism is made total and unidirectional. Such is Hegel's position on Henrich's reading.

Finally, moderate institutionalism seeks to retain the strongly institutionalist insight without entirely debasing the individual will. It does so by relaxing condition (4 — *subsumption*). Instead of (4), a moderately institutionalist theory of right must satisfy (5 — *reciprocity*): that although institutions have their own independent conditions of existence (2 — *objectivity*) and provide the wider conditions under which the individual's autonomy could be realized (1 — *life-order*), the existence of these institutions nonetheless also depends upon or is "bound back to" [zurückge-

19. The Wintersemester 1819–20 transcript in the GW combines this anonymous manuscript with the *Nachschrift Ringier* (GW 26,1:331–590).

20. "Minimal conditions for an institutionalism are fulfilled if it is accepted that a theory of right, which is grounded on the principle of the autonomous will, must also recognize conditions of their own kind and origin, on which depends the possibility of an order of life in which those principles [of the autonomous will] can be actualized in the first place" (Henrich 1983, 30–31).

21. "But Hegel's theory is that of a *strong* institutionalism: It teaches that the freedom of the individual will can be realized only in an order which, as objective itself, has the form of the rational will, and which in this respect *incorporates* [einbegreift] the individual will entirely into itself and *subsumes* it under its own conditions, however without alienation. The individual will, which Hegel calls the 'subjective,' is entirely *integrated* [eingebunden] into the order of institutions and is justified only insofar as these themselves are justified. That is why the individual's right, which is fulfilled in its institutionalization, can never be understood as a right against the institution as such" (Henrich 1983, 31, emphasis added).



bunden], the individual will itself.<sup>22</sup> Moderate institutionalism thus replaces the unidirectional dependence between the individual will and the institutional order posited by strong institutionalism with bidirectional or reciprocal dependence.

While moderate institutionalism is not Hegel's official position in objective spirit, it may be recovered from his doctrine of absolute spirit, according to Henrich. This is because the realms of art, religion, and philosophy, unlike the institutions of ethicality, are partially constituted by the attitudes and knowledge that members have about these realms.<sup>23</sup> Hegel articulates this unique knowledge-constituting feature of these realms when he calls the "diremption" of absolute spirit into art, religion, and philosophy the "judgment *in itself* and *in a knowledge* for which it is as such" (EG17 §455/GW 13:240) and speaks of these realms as "shape[s] of this knowledge" (EG17 §456/GW 13:241). Moderate institutionalism can thus be endorsed without abandoning the systematic foundations of Hegel's thinking, according to Henrich, so long as it is thought on the model of absolute spirit, not objective spirit.

At this juncture, one might rejoin that Henrich's objection to strong institutionalism is merely normative, i.e., that it consists primarily in rejecting the moral devaluation of the individual relative to the social whole. But there are two reasons why we should interpret strong institutionalism as a social-ontological problem, not merely a normative-ethical one. First of all, Henrich tells us as much, writing that the untenability of strong institutionalism arises not because it contradicts our "time-bound political convictions" but because it is deficient "in [itself] and for theoretical reasons" (32). Second, because Henrich expresses institutionalism in terms of the "individual will" and its relation to the "rational will," it is natural to understand this claim ontologically. Institutionalism asks whether the individual will, as autonomous and free, can *exist* independently of the objective will embodied in institutions, and thereby raises a question about ontological dependence. While all forms of institutionalism answer this question negatively, strong institutionalism, by "subsuming," "integrating," and "incorporating" the individual will to the institutionalized rational will, posits a one-way relation of ontological dependency between the two. What it is for the will to be free, and so what it is for the will to be what it truly is, is for the will to be subordinated to institutions. This is an ontological problem in addition to being a normative one.

**Responses to Strong Institutionalism** In response to strong institutionalism, Hegel's commentators have tended to take one of the following two routes. Either they have retreated to the philosophy of subjective spirit, reducing institutions or ethical substance to intersubjective recognition, or they have defended some version of moderate institutionalism, acknowledging the institutionalism of the *Philosophy of Right* but deflating its most egregious consequences. Among the former

22. "Besides minimal and strong institutionalism, another form of institutionalism can be thought, which could be called 'moderate'. It would be conceived from the idea that the individual will can only be realized in institutions appropriate to it with their own peculiar conditions of existence, but that these institutions, for their part, remain consistently bound back to the [individual] will incorporated in them and to its own right. Thus, the principle of the institution as such could not be derived from subjective willing, nor could it be completely released from subjective willing as an equally independent principle. Moderate institutionalism would therefore also be recognizable by the fact that it permits and demands that the rights of individuals vis-à-vis the institutions of their own actualization be defined without contradiction and as a distinguished [feature of the] actuality of the institution itself" (Henrich 1983, 32–33).

23. "It does not seem hopeless to wrest such moderate institutionalism from Hegel's overall theory without deforming it into unrecognizability. To do so, it would be necessary to tie the theory of right more than Hegel himself does to the continuity between philosophy of 'subjective' and 'absolute' spirit. Forms of absolute spirit are those in which the very essence of the real is known in its entirety and represented from knowledge. They all have in common with what in the theory of right is an 'institution' that they are not founded on individual consciousness; but at the same time they can only be founded with the inclusion of the knowledge of the individual in irreducible independence" (Henrich 1983, 33).

are the philosophers of recognition like Honneth, Pinkard, and Pippin, who read the *Philosophy of Right* as continuous with what they take to be the general aim of the *Phenomenology of Spirit* and the Jena practical philosophy: the realization of the pure concept of recognition.<sup>24</sup> Among the latter are commentators unconvinced by the recognitive interpretation of the *Philosophy of Right* but sensitive to the possibility of over-institutionalization. Most notable in this latter group is Kervégan (2018), but we may also include Zabel (2015) and Thompson (2019).<sup>25</sup> These commentators see in the *Philosophy of Right* a view much closer to moderate than strong institutionalism and so reject Henrich's attribution of strong institutionalism to Hegel.

Both of these alternatives provide much insight into Hegel's *Rechtsphilosophie*. Nonetheless, neither alternative, I submit, stands to be a satisfactory interpretation of Hegel nor proves to be a particularly attractive self-standing institutional theory. A complete account of their deficiencies in these two regards would take us too far afield from the reconstruction I wish to give here. But the following gestures shall suffice for our purposes.

As an interpretation of the *Philosophy of Right*, the recognitive reading fundamentally overlooks, sometimes purposefully, the structure of Hegel's system. Quite consistently, Hegel sees intersubjective recognition to be fulfilled by his accounts of consciousness and self-consciousness in the doctrine of subjective spirit (EG17 §§351–59), which was also the same object of the *Phenomenology of Spirit* (EG17 §307).<sup>26</sup> Recognition is therefore presupposed by the *Philosophy of Right*, not developed or extended therein. In his discussion of contract in abstract right, a moment in which the recognitive reading attempts to establish a foothold, Hegel writes, consistent with the above, that "[c]ontract presupposes that the contracting parties recognize [anerkennen] each other as persons and owners of property; and since [contract] is a relation of objective spirit, the moment of recognition is *already contained and presupposed* [vorausgesetzt] within it" (PR §71A/GW 14,1:76, emphasis mine). Recognition is "presupposed," like logic (§2A, §33A), because it is a principle of a previous moment of the system, viz. subjective spirit, and is therefore not operative in or developed by objective spirit; to reduce the latter to the former is to fail to see what is distinctive about objective spirit or what makes 'objective spirit' objective.

As an institutional theory, the recognitive paradigm suffers from two defects. The first defect lies in its assumption of what Burman calls the "consensus model" of institutions, a feature it shares, in her analysis, with the "standard model" of social ontology (Burman 2023, 1–15; cf. Brännmark 2019). This model overlooks *conflict*, using as its paradigm institutional cases with positive valences: cooperation, solidarity, love, trust, friendship, equality, and so on. Insofar as

24. Pippin (2000; 2008, part 3); Pinkard (1994, 274–331). Descombes (2014; 1994) and Brandom (2019) have also put forward influential recognitive readings of Hegel's institutional theory. While there are important differences in the treatment of recognition in the *Phenomenology* and the Jena writings, recognition remains central in both texts (see Nance 2017). For a critique of the textual basis of the recognitive reading of the *Philosophy of Right*, which, in my view, decides the matter, see De Boer (2013).

25. Neuhouser's (2000) influential reading of the *Philosophy of Right* would likely also fall into the moderately institutionalist camp, but he does not address the issue of institutionalism explicitly (46–49). An exception to the tendency to demure strong institutionalism is Wood (1990, 73–74), who endorses Hegel's strong institutionalism outright. However, Wood ignores the ontological dimension of Henrich's objection. Abazari (2020, ch. 3) provides an illuminating defense of the "totality" of ethical substance in Hegel but doesn't connect it to the problem of institutionalism.

26. Admittedly, EG17 §358A apparently suggests that Hegel sees ethical substance as intersubjectively constituted: "The universal reappearance of self-consciousness, the concept, which knows itself in its objectivity as a subjectivity identical with itself and therefore knows itself universally, is the *substance* of all essential spirituality, of the family, of the fatherland, of the state; as well as of all virtues, — love, friendship, bravery, honor, fame" (EG17 §358A/GW 13:203). But this passage need not be taken as asserting that ethical substance is constituted intersubjectively by individual consciousnesses. Rather, it tells us that ethical substance exhibits the internally differentiating *structure* of the concept and the self-relating *dynamics* of absolute negativity. On this duality of the Hegelian absolute idea, see Bowman (2013, ch. 1).

it admits of competition as embedded or expressed in institutions, as, for example, in Honneth's (2014, 176–252) normative reconstruction of the modern market economy, its focus remains on the positive benefits of such cooperation and not on the violent, destructive, and irrational institutional modalities in which these relations can also be expressed and the forms of power, domination, coercion, and irreducible conflict to which they give rise. Recent attempts by Honneth and others to bring conflict back into this model, uniting the struggle for recognition with the cognitive-expressivist model of institutions by articulating institutions as outcomes of "norm contestation" between social groups, have on the whole remained unconvincing.<sup>27</sup>

But the cognitive paradigm of institutional theory faces a further, more significant defect. Even if one were to successfully recuperate conflict back into the theory, rebasing it on, say, Burman's "contestation model" or "nonideal social ontology," the underlying nature of institutions, on its account, would still be ontologically subjective. That is, it would necessarily be the case that institutions ontologically depend on the attitudes or "mental states" that individuals have towards them. Whether this dependence is established through "collective acceptance by a significant portion of the population," "collective intentionality," "patterns of recognition," "norm contestation," or whatever, is immaterial. This is because it was Hegel's contribution to assert the opposite, namely the ontological objectivity of institutions. According to Hegel, the objective will embodied in institutions is what it is "whether or not it is recognized [erkannt] by individuals and willed by them at their discretion" (PR §258A/GW 14,1:203). Perhaps he was wrong. But to abandon this ontological objectivity is undoubtedly to part ways with Hegel in social ontology. This ontological objectivity is so basic to Hegel's position that it must be part of any "reactualization" of the *Philosophy of Right*, or even of social thought that considers itself to be "inspired" by Hegel. Given these textual and first-order theoretical problems, we should consider alternative interpretations of Hegel's institutional theory than that offered by the philosophers of recognition.

The moderately institutionalist interpretation of Hegel is on a better textual footing. However, it nonetheless faces its own difficulties. First of all, it cannot account for passages in which Hegel asserts the ontological objectivity of institutions, such as the one just quoted. That is, the reciprocal ontological dependence it posits between institutions and individual's subjective mental states is denied by Hegel as a condition of the existence of institutions as such. Although the moderately institutionalist interpretation is correct in holding that individual consciousness is crucial to the fulfillment of rational freedom in Hegel's view, it is mistaken to think this consciousness is an ontological condition of an institution's existence. Second, the moderate institutionalist would need to spell out more clearly the nature of the reciprocal ontological dependence purportedly obtaining between institutions and people's subjective attitudes. Hegel is generally skeptical that the concept of reciprocal interaction can resolve social-theoretical difficulties of this sort (EL §156Z). Given these two difficulties, it is worthwhile to investigate instead whether we can take Hegel's strong institutionalism at its face and reconstruct it.

Ultimately, standing in the way of a refutation of these two options is the existence of a compelling alternative. This alternative would need to reconstruct the institutions of ethicality as grounded neither on cognitive relations nor on a relation of reciprocal ontological dependence with individuals. Indeed, much of the impetus towards these two options has been the corresponding lack of any compelling reconstruction of Hegel's institutional theory as ontologically

27. Honneth (2017, 912–15); Bertram and Celikates (2015); Deranty (2012); Renault (2019, 94–133).

objective. Certainly, the renewed interest in intersubjective recognition in Hegel scholarship has been driven by an attempt to provide him with a social ontology that avoids the objections of ontological over-institutionalization. My aim in the next section is to develop such a reconstruction, one which defends Henrich's interpretation—Hegel's is strong institutionalism—but presents this view in a plausible manner and so avoids Henrich's denunciation of this position. Ontological over-institutionalization does not tarnish Hegel's institutional theory, and so it should remain a "live option" (to use James's [2014] phrase) in contemporary social ontology and critical social theory.

### 3.2.4 Conclusion

In this section, I have analyzed the charge of ontological over-institutionalization as consisting of three objections to Hegel's institutional ontology. Two of these objections come from Honneth and the last one from Henrich. They can be summarized as follows:

1. That Hegel's institutional ontology is *overly formal*, as it fails to account for informal institutions, i.e., institutions that are not legally constituted.
2. That Hegel's institutional ontology is *descriptively overloaded*, as it ties too closely to concrete reality and so fails to capture the normative principle underlying each institution, which should be recognitive in nature.
3. That Hegel's institutional ontology is *overly objective*, as it implausibly makes institutions entirely ontologically objective, i.e., ontologically independent of individuals' beliefs, attitudes, and mental states of individuals towards the institutions in question.

## 3.3 Reconstruction: Hegel's Institutional Ontology in the *Philosophy of Right*

I now turn to the positive and reconstructive part of this Chapter. My aim in this section is to give an account of Hegel's institutional theory as *rational social forms*, showing his account to have the right kind of ontological objectivity and to be plausible as an institutional ontology. Rather than treat each term of this formula to an equal degree, I focus in this Chapter on Hegel's institutional ontology as *social forms*. The *rationality* of institutions is developed in more detail in the next Chapter on institutional normativity.

If we focus on the concept of form, we notice that, throughout the sections on ethicality in the doctrine of objective spirit, Hegel associates institutions with "absolute form" (PR §152/GW 14,1:142; EG §552A) and "infinite form" (PR §144; PR §256A; PR §273A; EG §386; EG §512; EG §552A). In this section, I will argue that institutions are best understood as forms (*Formen*) in Hegel's social ontology. Hegel thus develops in the *Philosophy of Right* a novel social-ontological category for theorizing the nature of institutions. But to make sense of Hegel's concept of form and its qualification as infinite or absolute form, we must first examine its function in his logic and logic's relation to right.

### 3.3.1 Logic in the *Philosophy of Right*

Undoubtedly, form is a logical determination for Hegel. In order to understand my claim that institutions are, for him, forms, something must be said about the relationship between the sciences of logic and right in the system of philosophy (§3.1.1) and the concept of form (§3.1.2).

Famously, Hegel tells his readers in the *Philosophy of Right's* preface that the work "rests" [beruht] on the "logical spirit" [logischen Geiste] (PR 10/GW 14,1:6). Hegel proceeds to make occasional references to the science of logic (PR §31; PR §33A; PR §280A), especially in his transitions between the different stages of development (PR §141A). Hegel's remarks on the connection between the sciences of logic and right have long perplexed his commentators, who have often tried to piece together the precise relation between the *Science of Logic* and the *Encyclopedia Logic*, on the one hand, and the *Philosophy of Right*, on the other. No consensus has formed on how to understand this relationship within Hegel's system. It is not my intention in this Chapter to decide the matter. I aim only at a minimal account of this relation insofar as it is necessary for reconstructing Hegel's institutional ontology as forms.

That being said, the difficulties commentators face in addressing the relation between the sciences of logic and right are based, I contend, on a certain misunderstanding of Hegel's terse remarks on this connection in the *Philosophy of Right*. Hegel's remarks are ambiguous because they suggest—or at least have been understood by many of Hegel's commentators as suggesting—a fundamental rift between the science of logic, on the one hand, and the sciences of nature and spirit (the so-called *Realphilosophie*), on the other. On many readings of Hegel's system, the former is an *a priori* science, the science of intelligibility, thinking qua thinking, what it is to be at all, etc., and the latter is, if not an *a posteriori* science that depends upon empirical knowledge, then at least a science that bears some closer connection to empirical phenomena.<sup>28</sup> Because *Realphilosophie* mixes pure and empirical subject-matter, it necessarily adopts a fundamentally different method than logic, according to many readings.<sup>29</sup> But this rift between logic and the rest of the system posited by commentators is not merely incorrect as an interpretation of his system but disastrous when we try to understand the role of logic in the *Philosophy of Right*. This is primarily because it misleads commentators into searching for a 'logical foundation' for the arguments made in the science of right, when in fact, by Hegel's own philosophical method, no such external foundation could ever be given, as it is the nature of this method to be dictated by, or appropriate to, its subject-matter, what Hegel calls *die Sache selbst* or the *Natur der Sache*.<sup>30</sup> Put differently, the only

28. Elsewhere, I argue that Hegel abandons the *a priori/a posteriori* distinction ("Apriorism and Scientific Cooperation in Hegel"). See also Rand (2017, 387–89).

29. Hegel appears to posit such a rift in the *Science of Logic* when he writes, for example, that "logic as the *formal science* cannot also contain, nor should contain, that reality [diejenige Realität] which is the content of the other parts of philosophy, of the *sciences of nature and spirit*. These concrete sciences [...] attain to a more real form [reellern Form] of the idea than logic does." (WL 523/GW 12:25). But notice that by using a demonstrative pronoun ("that reality") and a comparative construction ("more real form"), Hegel tacitly asserts that logic indeed deals with reality, but to a lesser degree or of a different kind than the concrete sciences. Therefore, even in this passage Hegel denies that speculative logic is *a priori*, if by this we mean that its validity or ground would be independent of reality.

30. For example, compare the following two passages from the *Science of Logic* and the *Philosophy of Right*: "This spiritual movement, which in its simplicity gives itself its determinateness, and in this determinateness gives itself its self-equality – this movement, which is thus the immanent development of the concept, is the absolute method of the concept, the absolute method of cognition and at the same time the immanent soul of the content. – On this self-constructing path alone, I say, is philosophy capable of being objective, demonstrative science" (SL 10/GW 11:8); "This development of the idea as the activity of its own rationality is something which thought, since it is subjective, merely observes, without for its part adding anything extra to it. To consider something rationally means not to bring reason to bear on the object [Gegenstand] from outside in order to work upon it, for the object is itself rational for itself; it is spirit in its freedom, the highest apex of self-conscious reason, which here gives itself actuality and engenders itself as an existing world; and

foundation in Hegelian *Wissenschaft* lies in the objects of cognition themselves, determinations of thought that are simultaneously the necessary determinations of the idea, the concept that gives itself its reality (WL 707/GW 12:209).

One place to examine Hegel's views on system and method is in the *Encyclopedia*, whose full title tells us that it contains the "philosophical sciences in basic outline." In the *Encyclopedia's* general introduction, which, as the introduction to all of the philosophical sciences, applies univocally to those of logic, nature, and spirit, Hegel asserts the unity of science and philosophical method (E17 §§1–11; EL §§1–18). He writes, for example, that "in truth, [. . .] the whole of philosophy constitutes *one* science; but it may also be viewed as a whole composed of several particular sciences" (E17 §9A/GW 13:20) and that "the differences among the various philosophical sciences are only determinations of the idea itself, and it is thus only the idea that exhibits itself in these different elements" (E17 §11A/GW 13:22).<sup>31</sup> Accordingly, the sciences of logic, nature, and spirit are each, for Hegel, sciences of the idea, but sciences in which the idea is exhibited differently according to its three principal modalities: in and for itself (logic), in its otherness (nature), and in its return to itself from its otherness (spirit) (E17 §11/GW 13:22). While these sciences indeed differ from one another, there is no gap or rift between them that demands a change in method. In and for themselves, the system and method are unitary.

But while the system and method are essentially unitary, logic is not. In fact, logic bears two significations for Hegel. First, logic denotes the method of *all* philosophy. This is what Hegel means when he designates philosophical method, and not merely the method of logic, to be "absolute form" in the chapter on the absolute idea concluding the *Science of Logic*. So when Hegel writes in the *Philosophy of Right* that he "presupposes" a familiarity with "scientific method" or "scientific procedure in philosophy" (PR 10; PR §2A; §33A), he refers to this methodological signification of logic as absolute form. But the methodological sense of logic does not exhaust its meaning, as, secondly, logic also denotes a special science *within* philosophy, namely the *science* of logic. This science takes thought as its object, dealing directly with the forms of pure thinking as such, i.e., forms of thinking insofar as they are *about* thinking or insofar as they have thought itself, or thought-determinations, as their content. By contrast, the sciences of nature and spirit deal with thoughts *about* the natural and the spiritual. Unifying these two senses of logic (as method, as content) is thus their directedness towards *thinking*.

Hegel often tracks this dual signification of logic with a terminological distinction between *das Logische* ('the logical,' a substantive construction) and *die Logik* ('logic,' the ordinary noun).<sup>32</sup> *Das Logische* denotes the rational subject-matter of all philosophy or all philosophical science as that which is fundamentally amicable to conceptual comprehension, the intelligible. It thus recalls the

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science's sole business is to bring to consciousness this labor accomplished by the reason of the *Sache* itself" (PR §31A/GW 14,1:47). In first passage, Hegel tells us that *all* philosophical science adopts a unitary method, namely it observes the concept as it gives itself its existence, or, as he would later summarize it in the second edition of the *Science of Logic*, the adheres to the scientific imperative "to only take up *what is present at hand*" [nur aufzunehmen was vorhanden ist] (GW 21:55). In the second passage, Hegel restates this method, and thus clearly takes it to be operative in the *Philosophy of Right*.

31. Cf. also E17 §6 and §7: "Philosophy is the encyclopedia of the *philosophical sciences*, insofar as its entire scope is exhibited through the specific differentiation of its parts, and it is a *philosophical* encyclopedia insofar as the differentiation and the connection of its parts are exhibited according to the necessity of the concept" (E17 §6/GW 13:18); "Philosophy is also *essentially* encyclopedia, since the true can only exist as totality, and only through the differentiation and determination of its differences can it be the necessity of totality and the freedom of the whole. It is, therefore, necessarily *system*." (E17 §7/GW 13:19).

32. Hegel's distinction between *das Logische* and *die Logik* was first brought to our attention by Gadamer (1976, 78). For an illuminating discussion, see Ficara (2021, 12–18, 49). However, Hegel is inconsistent in applying this distinction, as, for instance, in E17 §§475–76/GW 13:246, in which Hegel uses *das Logische* as a synonym for *die Logik*.

ancient view of *logos*, in which the world as it truly is in itself remains open to human cognition. *Das Logische* is, in other words, the reason that rules the world.<sup>33</sup> As such, *das Logische* is the content of all philosophy. By contrast, *die Logik* refers to a "part of philosophy" (GW 13:5; E17 §11/GW 13:22, emphasis mine), the science of the "pure idea" (E17 §12/GW 13:23) specifically in contrast to the other philosophical sciences of the idea. Thus at the end of the Heidelberg *Encyclopedia*, Hegel consistently uses the wider *das Logische* to denote the subject-matter of philosophy: "This concept [of philosophy] is the *thinking* idea, the knowing truth, or the logical [das Logische] with the meaning that it is the universality *established* in the concrete content" (E17 §474/GW 13:246). We must be careful, then, to distinguish these two meanings of logic in Hegel's system, one methodological (*das Logische*), the other material (*die Logik*).

There is, however, one further clarification to be made regarding Hegel's distinction between *das Logische* and *die Logik* and the twofold meaning of logic. We must be careful to avoid accommodating this distinction too quickly to Hegel's somewhat orthogonal distinction between natural and speculative logic or between the natural logic of the understanding and the dialectical logic of reason. This is because one key feature of "natural logic" [natürliche Logik] or "natural understanding" [natürliche Verstand], by which Hegel means the thought-determinations and rules of inferences deposited in and underlying our ordinary reasoning, is that their development and operation is *unconscious* (GW 11:28; GW 12:106). But, as we have seen, the logical need not be unconscious, as it also describes the thought-determinations made explicit by science. Nature, for instance, by and large, lacks self-awareness, but it is still part of the logical, for Hegel (cf. GW 23,1:30).<sup>34</sup>

So far, I have argued that the subject-matter of all the philosophical sciences is, for Hegel, *das Logische*. I would now like to show its intrinsic connection to the concepts of form and method for Hegel. The key to this connection is Hegel's obscure concept of "absolute form," which he introduces at the end of all of his treatments of the science of logic. Absolute form denotes, simultaneously, the *form* and the *content* of *das Logische*. Regarding the latter, it entails that the content of *das Logische* is form itself, or what Hegel calls "the totality of form as determination" [die Totalität der Form als Bestimmung] (E17 §185/GW 13:108) and a "systematic totality" [systematische Totalität] (E17 §191/GW 13:110). On the side of the former, it tells us that the method of philosophy is conceptual exposition (*Darstellung*) of the nature of the matter itself (*die Nature der Sache, die Sache selbst*). Philosophy, as the science of absolute form, therefore exhibits the conceptual structure of actuality in an internally differentiated ("ideal") totality of forms, a system of form-determinations that inheres in the nature of this actuality itself.

As textual evidence for my proposed interpretation, we can look briefly at the 1817 *Encyclopedia* logic and the 1816 *Begriffslehre*, the two most salient texts for any interpretation of the 1820 *Philosophy of Right*, which was composed in outline much closer to 1817 than 1820. In the former, Hegel introduces absolute form as follows, what he here calls "pure form":<sup>35</sup>

33. This is Hegel's formula from his lectures on the Philosophy of World History (VWG 35, 43, 74, 150). Cf. E17 §18, EL §24.

34. I therefore disagree somewhat with Ficara (2021), who identifies *das Logische* with natural logic or the forms of thought insofar as they are unconscious (12–13, 41, 48–49, 135). In my view, Hegel holds that *das Logische* includes *both* unreflective natural human reasoning and scientific comprehension. Because Ficara's interest lies only in Hegel's logic, she does not account for the meaning of *das Logische* in the domains of nature and spirit.

35. That "pure form" means roughly the same thing as "absolute form" for Hegel can be seen in e.g. E17 §12A, wherein Hegel calls *das Logische* the "absolute form of truth" and "pure truth itself" (E17 §12A/GW 13:23–24).

For itself, the *absolute idea*, because there is no passing over nor presupposition, and absolutely no determinacy in it that is not fluid and transparent, is the *pure form* that sees *its content* as itself. It is itself *content* insofar as it is the ideal differentiation of itself from itself, and one of the things that is differentiated is the identity with itself, in which the totality of form is contained as determination. This content is *the logical* [das Logische]. As a form, nothing remains but the *method* of this content. (E17 §185/GW 13:108)

In the following sections (E17 §§186–91), Hegel articulates the methodological aspect of absolute form with respect to its beginning (§186), progression (§§187–88), and end (§189), concluding that "the method is not external form, but the soul and the concept of the content itself" (E17 §190/GW 13:110; cf. EL §243; VL 232/GW 23,2:807) and that "the difference between form or method and content makes itself disappear here" (E17 §191/GW 13:110). The content and method of all philosophy can therefore be understood as the conceptual exposition of *das Logische*, the systematic totality of forms constituting "infinite actuality" (E17 §192/GW 13:110).

Pure, infinite, or absolute form thus captures the content and method of *das Logische*. Hegel says much the same in a more extensive passage from the *Begriffslogik*:

The logical idea thus has itself, as the *infinite form*, for its content – form that constitutes the opposite of *content* inasmuch as the latter is the form determination [Formbestimmung] that has withdrawn into itself and has been so sublated in identity that this concrete identity stands over against the identity developed as form. [...] – More exactly, the absolute idea itself has only this for its content, namely that the form determination is its own completed totality [vollendete Totalität], the pure concept. Now the *determinacy* [Bestimmtheit] of the idea and the entire course traversed by this determinacy has constituted the subject-matter [Gegenstand] of logical science, and out of this course the absolute idea has come forth *for itself*; thus to be for itself, however, has shown itself to amount to this, namely that determinacy does not have the shape of a *content*, but that it is simply as *form*, and that accordingly the idea is the absolutely *universal idea*. What is left to be considered here, therefore, is thus not a content as such, but the universal of its form – that is, *method*. (WL 736/GW 12:237)

We cannot give a full account of this dense passage. Essential to our purpose is Hegel's assertion that the concept attains its determinacy as form or form-determination, where form refers to a self-determining "system of thought-determinations" (WL 42/GW 21:48), and that the logical is therefore absolute or infinite form with the doubled signification of specifying its content and method of exhibition.<sup>36</sup> Form in the *Science of Logic*, as in the 1817 *Encyclopedia*, thus denotes the way in which the concept attains its internal differentiation, especially insofar as this concept is also actuality, i.e., something which has objectivity in the world: "form is the soul of all objectivity and all otherwise determined content has its truth in form alone" (WL 736/GW 12:237). *Das*

36. "[I]f there was to be a real progress in philosophy, it was necessary that the interest of thought should be drawn to the consideration of the formal side, of the "I," of consciousness as such, that is, of the abstract reference of a subjective awareness to an object, and that in this way the path should be opened for the cognition of the *infinite form*, that is, of the concept. Yet, in order to arrive at this cognition, the finite determinateness in which that form is as "I," as consciousness, must be shed. The form, when thought out in its purity, will then have within itself the capacity to determine itself, that is, to give itself a content, and to give it as a necessary content – as a system of thought-determinations" (WL 41–42/GW 21:48). This passage is not present in the original 1812 edition of the *Science of Logic*.



*Logische* thus constitutes the subject-matter of all philosophy (*Form*) and its method (*Darstellung der Sache selbst*, the conceptual exhibition of the matter itself as a system of forms).

Given the unitary content and method of philosophy announced in Hegel's most general remarks on the nature of science, we should not be surprised, then, to find form-determinations populating the *Philosophy of Right*, as this is a mark of all philosophical science for Hegel. Right, in short, constitutes a part of *das Logische*. Thus despite their differences, the sciences of right and logic share a common object and method, which are combined in the notion of absolute form.<sup>37</sup> In summary, the subject-matter of all philosophy is *das Logische*, including the *Realphilosophie*; *das Logische*, as absolute form, has its determinacy in forms and thus must be exhibited in terms of these forms; the *Realphilosophie* is in the last instance an analysis of the logical forms of the idea, namely, the logical insofar as it shows itself in the realm of right, where right, in turn, is understood by Hegel as the existence of freedom.<sup>38</sup> Hegel's exhibition of ethical substance as *Sittlichkeit*, as that moment of right that best corresponds to the logic of the concept, thus develops a theory of society in the shape of an internally differentiated system of forms. These forms in the *Philosophy of Right* are institutions, as I shall argue in the next section by examining the concept of form in this text.

### 3.3.2 Form in the *Philosophy of Right*

Form is a central concept in the *Philosophy of Right*. For instance, Hegel writes that abstract right, morality, and ethicality are each "freedom in one of its forms" (PR §30A/GW 14,1:46) and that, in *Sittlichkeit*, spirit's development of itself is the "objectivization of itself, the movement through the form of its moments" (PR §157/GW 14,1:143). The centrality of form in the *Philosophy of Right* appears also in the book's opening section. In PR §1, Hegel tells us that the object of the "philosophical science of right" is the "idea of right," where the idea of right, like all ideas for Hegel, refers to the unity of the concept of right and this concept's actualization (PR §1/GW 14,1:23). Hegel then glosses this doubled structure of the idea of right by assimilating right's actualization to "shape" [Gestaltung] and its concept to "form" (PR §1A/GW 14,1:23). While the concrete shapes of right manifest in history are "essential for cognition of the concept itself" (ibid.),

37. One can also find moments in the *Science of Logic* in which Hegel stresses the continuity of all philosophical science insofar as it concerns *das Logische*: "Only after a more profound acquaintance with the other sciences does the logical rise for subjective spirit from a merely abstract universal to a universal that encompasses within itself the riches of the particular: [...] Thus the logical receives full appreciation of its value only when it comes as the result of the experience of the sciences; then it exhibits itself to spirit as the universal truth, not as a particular cognition alongside another material and realities, but as the essence rather of this further content" (SL 37/GW 11:28). By studying speculative logic, "thought [Gedanke] becomes at home in abstraction and in progression through concepts without sensual substrata, and thereby becomes the unconscious force to assimilate in rational form [vernünftige Form] the otherwise dispersed manifold of cognitions and sciences, to grasp and hold on to their essentiality, to strip them of the external and in this way to extract the logical [das Logische] from them - or what is the same thing, to fill the abstract basis of the logical [das Logische], previously acquired through study, with the content of all truth, and to bestow upon this content the value of a universal which no longer stands as a particular alongside other particulars, but extends beyond these particulars and is their essence, the absolute truth." (SL 37-38/GW 11:29; cf. GW 21:43 which differs slightly)

38. Again, Hegel asserts in the Berlin *Encyclopedia* that philosophy as a whole concerns itself with absolute form, such that absolute form is the subject-matter not merely of the part of science concerned with logic: "Philosophy accordingly determines itself into a cognition of the necessity of the content of the absolute representation [in religion]. [...] This cognition is thus the recognition [Anerkennen] of this content and its form, and liberation [Befreiung] from the one-sidedness of the forms [of poetry and revelation] and the elevation of them into the absolute form, which determines itself to the content and remains identical with the content, and is in this respect the cognition of that necessity that it is in and for itself. This movement, which philosophy is, finds itself already accomplished, when at the conclusion it grasps its own concept, i.e., only looks back on its knowledge" (E30 §573/GW 20:555). This passage is much the same in the Heidelberg *Encyclopedia* but omits mentioning absolute form (E17 §473/GW 13:245-46).

they are in principle distinct from the *forms* that they express. This is why Hegel is reported to have remarked in his lecture that "in considering the idea of the state, we must not have any particular states or particular institutions in mind; instead we should consider the idea [...] for itself" (PR §258Z/W 7:403). Moreover, because philosophical science in the last analysis addresses itself to the idea insofar as the idea is determined as a system of differentiated forms, and because the concrete shapes of right are also the subject-matter of non-philosophical sciences such as law and history, these form-determinations of the concept of right in fact constitute the book's primary subject-matter. The *Philosophy of Right* is, at bottom, a system of the forms of right.<sup>39</sup>

Hegel's loose association of "form" with "concept" in PR §1 makes it clear that these are connected notions. Indeed, there is a long list of Hegelian universals that appear to be roughly synonymous with the concept of form: thought-determinations, essences, essentialities, natures, and even ideas (as in the "idea of the state," a phrase Hegel uses several times in the *Philosophy of Right*, [e.g., §259/GW 14,1:205]). This terminological equivocality can be seen, for instance, in another context, namely Hegel's various definitions of the science of logic. Logic is the "science of the idea in and for itself" (E17 §11/GW 13:22; E30 §18/GW 20:60), the "science of the *pure idea*" (E17 §12/GW 13:23; E30 §19/GW 20:61), the "science of thinking in general" (GW 11:15; E17 §12A/GW 13:23; E30 §19/GW 20:61), the "science of pure thinking" (GW 11:30) (or the forms of thinking), the "science of *absolute form*" (GW 12:25, GW 12:27), "the *science of universals in cognition*" (GW 13:551), and "the science of *things* captured in *thoughts* that have counted as expressing the *essentialities* of things" (E30 §24/GW 20:67).<sup>40</sup> These definitions of logic apparently equivocate between thinking, ideas, universals, essences, and forms, and, at this level of abstraction, we can, without much violence to Hegel's text, understand form to be another name for thought-determination, concept, essence, idea, or universal.

The existence of this nominal plurality, in which each term roughly refers to the same thing from a high level of abstraction, should strike readers of Hegel as unsurprising. This is because it derives from Hegel's ecumenical argumentative strategy, which attempts to demonstrate the superiority of his system to all systems hitherto by showing it to be robust enough to recuperate all of the classical concepts of the Western philosophical tradition. According to Hegel, logic examines these classical notions and exposit their "nature and worth in and for themselves" (GW 13:32, cf. GW 13:25), and this examination constitutes their "critique" (WL 42/GW 21:49). It is for this reason that he takes himself not only to be entitled to use different logical categories to describe the same phenomenon but even takes it as evidence of the success of his system when he is able to bring together disparate metaphysical terminology within a single moment, often combining ancient and modern metaphysical vocabularies (e.g., substance and subjectivity in his discussion of ethical substance). While there remain important differences between these metaphysical terms for Hegel, these differences gain significance only within the local contexts of their deployment. So long as we deal only with near-empty abstractions, it makes no difference to Hegel whether we speak of essences, natures, concepts, or forms.

39. The systematicity of right is evident throughout the Introduction, in which Hegel variously calls the science of right the "system of right" [Rechtssystem] (PR §4/GW 14,1:31), the "rational system of spirit itself" (PR §27/GW 14,1:44) "the totality of [the idea's] system" (PR §28/GW 14,1:45) and the "rational system of the will's determinations" (PR §19/GW 14,1:40). That this system is a system of forms is justified by the above discussion of absolute form and Hegel's association of infinite form with institutions discussed below.

40. In his personal notes to E30 §24, Hegel reiterates the centrality of *das Logische* in defining the science of logic: "In §24, it is the proper universal concept of *das Logische* that is at issue - not the laws of thought" (GW 19:425).

Granting Hegel's ecumenical argumentative strategy, it is nonetheless helpful to single out form (*Form*), or, more specifically, form-determination (*Formbestimmung*) as the logical category that best captures Hegel's institutional ontology. This is because the concept of form brings into focus the *pluralism* and *meso-level structure* of Hegel's institutional theory and is supported by the text of the *Philosophy of Right* itself. In the following sections, I defend this superiority of form as designating the ontological status of institutions, firstly at a relatively high level of abstraction (§3.1.2.1), secondly against possible confusions of form (§3.1.2.2), and finally as a reading of the text of the *Philosophy of Right* (§3.1.2.3).

### Forms, Concepts, Essences, and Ideas

Viable alternatives to forms as the unit of Hegel's doctrine of ethicality include *concepts* (or thought-determination), *essences* (or essentialities, natures), and *ideas*. These units suffer, respectively, from being too subjective, too essentialist, and too broad to adequately capture Hegel's institutional ontology. Form's superiority as an ontological designation for institutions becomes evident when we contrast it with these alternatives.

First of all, classifying institutions as concepts or thought-determinations is undesirable for two reasons. It suggests, first, that institutions as concepts are merely ways in which we, as finite cognizers, happen to represent the social world. While it is true that, for Hegel, the true determinations of thinking are also the determinations of actuality, this unity of thought and being is a standpoint won only through scientific labor, and so horrifies ordinary cognition. Hegel quickly acknowledges this source of terminological confusion in the *Philosophy of Right*, warning in his remark to §1 that "philosophy has to do with ideas and therefore not with what are commonly described as *mere concepts*" (PR §1A/GW 14,1:23). Second, calling institutions concepts makes it seem as if their existence depends upon the attitudes or mental states that individuals have about them. But institutions are part of 'mind objective,' according to Hegel, and their objectivity entails that they are ontologically independent of individual mental states about them.<sup>41</sup> We can avoid this subjectivist confusion if we instead classify institutions as forms. Conversely, classifying institutions to be concepts or thought-determinations misleads us into viewing them as primarily subjective phenomena.

Second, one might consider calling institutions essences or natures in Hegel's sense of these terms. But this label is also deficient, as it renders Hegel's institutional theory too essentialist, seemingly grounding it on a philosophical anthropology or account of human nature. But this is not Hegel's view, evidenced by the fact that, despite his ecumenical argumentative strategy, he usually avoids the vocabulary of nature or essence in his institutional theory (with some notable exceptions, as, for example, in his discussion of marriage). The reason behind Hegel's avoidance of the vocabulary of essence in his institutional theory lies in his critique of natural law (*Naturrecht*), which, as a doctrine, suffers from an unavoidable two-fold ambiguity: on the one hand, "nature" in the natural law tradition refers to the natural immediacy of biological and undeveloped social life. This sense of nature is famously captured by the "state of nature" (*Zustand der Natur*), a hypothetical picture of humanity as pre-social and pre-institutional, as biologically and socially

41. Recall: "In opposition to the principle of the individual will, we should remember the fundamental concept according to which the objective will is rational in itself, i.e. in its *concept*, whether or not it is recognized by individuals and willed by them at their discretion" (PR §258A/GW 14,1:203).

undeveloped, as something simple and immediate. When natural law is understood in this state-of-nature sense, it indicates not rational law but the "absence of the concept of rationality and freedom" (PR §168A) and implies that society is something non-natural and artificial. In the language of Hegel's early essay on natural law, this sense *Naturrecht* is "empirical" natural law theory.

The second sense of natural law is, by contrast, rationalist. This is the sense of "nature" evoked when we speak of the nature of a thing and, in doing so, refer to its rational or well-functioning essence. Rationalist natural law thus refers to the rational kernel of right, distinct from right's contingent manifestations in particular lawbooks, and this sense of rationality explains why natural law is, or ought to be, universally recognized across different societies (the so-called law of nations or *ius gentium*). Hegel's critique of modern natural law theory thus consists, in part, in its hopeless conflation of these two distinct sense of "nature," to which correspond two incompatible senses of natural law.<sup>42</sup> These two senses of natural law cannot coincide because that which is rational is precisely that which develops itself out of natural immediacy and so no longer remains in its immediate state. By trying to infer rationalist "nature" from the immediate-empirical "state of nature," the modern natural law tradition unconsciously overlooks the very rationality to which it ought to have addressed itself, namely the rationality inherent in the living relations and institutional conditions of actual modern societies, which cannot be reduced to contract-relations (or deontic relations more generally) between individuals. Because of their Aristotelian biological heritage, essences share the same ambiguity as natures, as they can refer either to the rationality inherent to a thing or to the constitution of a thing in its immediate or natural condition. According to his *Wesenlogik*, the concept of essence is, in fact, necessarily a relation of opposition (*Reflexionbestimmung*) between an essence and an appearance, an inner and an outer, an explanandum and explanans, etc. We can therefore join Hegel in avoiding these ambiguities inherent in the concepts of essence and nature by preferring instead the concept of form.

Third, ideas (*Ideen*) also suggest themselves as a viable alternative. After all, we have already seen that, for Hegel, "philosophy has to do with ideas" (PR §1A/GW 14,1:23). Moreover, in the *Philosophy of Right* we find mention of many ideas: the idea of right (PR §1), the idea of the will (PR §33), the idea of the good (PR §33), the idea of conscience (PR §137A), the idea of freedom (PR §142), the idea of the state (PR §259), the idea of ethicality (PR §281A), and the idea of the world spirit (PR §345). However, these examples already suggest why ideas are inadequate to the task of institutional theory, namely that ideas are simply too broad to correspond to the meso-level ontology of institutions. By calling thought-determinations such as freedom and the state ideas, Hegel wishes to emphasize that they adhere to the idea-structure detailed in the logic of the concept, namely as the "unity of the concept and reality" (WL 672/GW 12:175) and that, as ideas, they do not correspond to the apprehension of finite objects of sense-perception by means of reflection (WL 670/GW 12:173). Institutions are not ideas in this sense. Rather, they fit within Hegel's system because they are that which make one idea—the idea of ethicality—*ideal*, or to have the property of *ideality*, in the first place (GW 11:88). As we have seen, for something to be *ideal* or *concrete* for Hegel is for it to exhibit the internally-differentiated structure of the

42. The second part of Hegel's critique of modern natural law theory is that it understands right (*Recht*) in terms of the rights (*Rechte*), namely in terms of the rights of isolated and atomic individuals. Because of this social-ontological error, modern natural law theory in turn falsely grounds right on relations of contract between these individuals, whereas true right, as the existence of freedom, need not, and, indeed, often does not, take the form of contract or agreement. On Hegel's critique of the modern natural law tradition, see Riedel (2010, 77–84).

concept, a unity within and through difference. This is precisely the role of institutions in Hegel's doctrine of objective spirit: they internally differentiate ethical substance (i.e., society), rendering it concrete and thereby conferring its subjectivity. Institutions, then, are not themselves ideas but the determinate structure of a single idea.

Forms are therefore the best social-ontological category in Hegel's lexicon for capturing the nature of institutions in his view. By calling institutions forms instead of concepts or essences, we emphasize that institutions, for Hegel, have an objective existence independent of individuals' representations, have a rational and developmental, rather than reductive, relation to natural human conditions, and, in their effects, differentiate social life.

One further point remains regarding the general relation between form and institution for Hegel. So far, I have argued two things: first, that forms are the unit of analysis throughout the *Philosophy of Right* and, second, that these forms count as institutions only in the context of *Sittlichkeit*. To put it in a slogan, we can say that, for Hegel, all institutions are forms, but not all forms are institutions. But what justifies excluding the forms exhibited in abstract right and morality—such as contract, property, crime, welfare, intention, and conscience—from being institutions in the same sense as the forms of ethicality? Why do we not find institutions in these other spheres and therefore speak of Hegel's exclusive *institutionalization of ethicality*? Hegel's reasoning in this regard can be understood in two ways. Systematically, Hegel excludes institutions from the other spheres because they do not correspond to the logic of the concept, and it is only in the *Begriffslogik* that existence corresponds to the concept, i.e., that existence takes the shape of an internally differentiated totality (ideality). Thus although each sphere gives existence to freedom, they do not do so in the same way.<sup>43</sup> Only in ethicality does freedom "exist as *substance*" (PR §33/GW 14,1:48) and becomes "the concept which exists for itself in the *form of the concept*" (PR §33A/GW 14,1:49). Thus, only in ethicality do the form-determinations of the idea of freedom exist as institutions.

Corresponding to Hegel's systematic justification for the exclusivity of institutions to ethicality is a social-ontological justification of the same. This social-ontological reason concerns the ontological objectivity of institutions and the lack of this ontological objectivity in the forms of abstract right and morality. In abstract right and morality, the forms of freedom remain *representation-dependent*, meaning that their existence depends upon the representations or mental states of the participants involved in their realization. This is obvious in the case of morality, as this sphere concerns my actions insofar as these actions express my purpose, intention, or conscience, or as Hegel puts it, insofar as the action is "known by me in its externality as mine" (PR §113). The existence of these determinations of action, as the forms of morality, therefore depends upon the representations that agents have about them. The same holds true of the categories of abstract right. Each of its categories—property, contract, and wrong—ontologically depends upon the representations that individuals have about this category. This is, again, rather obvious in the case of contract, where what is at stake is the mediation of two wills through an explicit acknowledgment of the other and the joint positing of a "*common will*" (PR §75).<sup>44</sup> The existence of a contract thus depends upon the representation held by each party about this particular contract and about the

43. The idea of the free will has three modes of existence: in abstract right, it exists in an immediate external thing (§33, §40); in morality, in the subjective will (§33, §105); and, in ethicality, in ethical substance differentiated into institutions (§33, §144).

44. See also PR §74: "The context of this mediation is one of identity, in that the one volition comes to a decision only in so far as the other volition is present"

category of contracting in general. In the case of wrong, right has its existence reduced to the "form of a *semblance* [Schein]" (PR §83), which, for Hegel, indicates the existential dependence of wrong on the representations of the perpetrator. This is why the difference between the kinds of wrong (unintentional wrong, deception, crime) depends upon the perpetrator's "point of view" and therefore upon her representations (§83Z). Finally, in the case of property, each of its moments (possession, use, alienation) also depends upon the representations of the owner. This is because, at bottom, property rights for Hegel derive from a distinction between, on the one hand, one's personality (*Persönlichkeit*), where personality refers to one's "capacity for right" [Rechtsfähigkeit] (PR §36) and "consciousness of [oneself] as a completely abstract I" (PR §35A), and, on the other hand, an external thing (*Sache*) that lacks personality.<sup>45</sup> Property first arises as possession (*Besitz*) when a person puts her will in a thing, taking it to be 'hers' (PR §44). This "mineness" existentially requires that the possessor represent the thing in the right way, namely as mine, and persists as a feature of property in each of its moments. In this way, the forms of property, like all the forms of abstract right and morality, are representation-dependent.<sup>46</sup> One cannot enter into a contract or own property without a representation of what a contract is or what property is, but one can certainly be married, be a member of an estate, or employ the power of agriculture without representing these institutions as such. Representation-dependence thus distinguishes between the non-institutional forms of right and morality, on the one hand, and ethicality's forms-as-institutions, on the other.<sup>47</sup>

It is worth noting that this existential dependence must hold for both individual *tokens* of contract and the *type* contract. That is, in order for the form to exist, agents must have the appropriate attitudes towards both the form's instance and the form itself. Let us again use contract as our model. Parties within a contract must correctly represent both the particular contract—say, to exchange twenty yards of linen for one coat—and the form of contract itself—what it means to exchange at all. Both of these representations must be held by each party for the contract to exist as a contract. If one is missing, e.g., one party fails to understand the nature of exchange, then the contract does not exist. This is mirrored in our legal practices, wherein we deem a contract entered in by a party who does not understand the meaning of contracting to be null and void. Again, things are otherwise with institutions, e.g., marriage. One can quite easily enter into a marriage relation without awareness of either the token or the type, and, in this case,

45. "[I]t is clear at least that *personality* alone confers a right to *things*, and consequently that personal right is in essence a *right of things* - thing [Sache] being understood in its general sense as everything external to my freedom, including even my body and my life. This right of things is the right of *personality as such*" (PR §40A/GW 14,1:53–54). Admittedly, Hegel appears to construe the forms of abstract right as representation-independent in PR §37: "In formal right, therefore, it is not a question of particular interests, of my advantage or welfare, and just as little of the particular grounds by which my will is determined, i.e. of my insight and intention" (PR §37). But Hegel is here not denying that personality's determinations are representation-dependent, but rather narrowing the relevant domain of representations determinative of personality.

46. Contemporary philosophers of institutions tend to use the forms of abstract right in their basic examples (e.g., Searle, Guala). It is no wonder, then, that they proceed to prove that institutions are ontologically subjective, i.e. existentially depend upon representations, as this is evident and unavoidable in such cases. But the more Hegelian inference from these data is rather that property *in abstracto* is not an institution.

47. One might object that institutions also depend upon representations in Hegel's doctrine of ethicality. For example, Hegel's account of the state makes constant reference to the way in which aspects of the state show up to the "consciousness" of individuals, i.e. affects and is affected by their representations (PR §257/GW 14,1:201), as also does Hegel's general description of ethicality (PR §142/GW 14,1:137; PR §143/GW 14,1:137). However, Hegel tacitly introduces a distinction in ethicality missing in the previous spheres, namely that between ontological and normative representation-dependence. For Hegel, institutions, as the forms of ethicality, are normatively, but not ontologically, constituted by consciousness. Although institutions exist independently of the representations individuals have about them, a good institution is one in which an individual attains explicit awareness of her freedom as being partially realized by it. This distinction between ontological and normative representation-dependence is missing in the forms of abstract right and morality. This is why, for example, a contract simply fails to be a contract if the parties lack the appropriate representations.

the marriage exists or attains validity independently of the representations of the partners. Of course, a good marriage would arise quite differently. But this objectivity, ontologically speaking, is part of what it means for marriage, as a form-determination, to be an institution for Hegel.

### Forms and Formalism: Avoiding some Possible Confusions

So far, I have argued that Hegelian institutions are, ontologically speaking, forms in the sense of being form-determinations of ethicality. However, classifying institutions as forms invites at least three possible confusions: first, that institutions, as forms, must be forms *of* something, such that Hegel's institutional theory remains hopelessly indeterminate so long as we have not specified this X; second, that Hegel's institutional theory merely recapitulates Aristotle's hylomorphism; and, third, that Hegel's institutional theory amounts to formalism in the pejorative sense that Hegel himself derides throughout the *Philosophy of Right*. In this section, I will try to explain why these are misunderstandings, not objections, to Hegel's institutional ontology. This ontology is better understood not as formalism or hylomorphism but as a *morphology*, that is, as a contentful theory of forms, structures, and their dynamism, akin to Goethe's natural science and Durkheim's sociology.<sup>48</sup>

First of all, when we designate institutions to be forms, it is quite natural to think that institutions must therefore be forms *of* something. We might think, for instance, that institutions-as-forms are forms of ethical life or forms of the idea of freedom or of the idea of the will. Alternatively, we might think that institutions are forms of interaction and, in this way, are various expressions or patterns of mutual recognition. However, I want to suggest that these are imperfect descriptions of Hegel's institutional ontology. Their primary defect is that they presuppose what we may call an expressivist-monist model of society: that there is only one underlying social substance or source of normativity, which is primary, that is subsequently expressed in different ways or modes, that is, by institutions. But, for Hegel, institutions-as-forms do not so much *express* a unitary and self-identical ethical substance or normative foundation so much as they *structure* it. Insofar as ethical substance cannot exist without being internally differentiated, institutions constitute it. Another defect of the expressivist-monist model is that it obscures the institutional *pluralism* identified in the previous chapter, namely that institutions, for Hegel, include many different kinds of being (relation, association, way of life, etc.) and therefore obscures the fact that institutions are instantiated across a diversity of material. While the expressivist-monist model is not, strictly speaking, incompatible with Hegel's institutional pluralism, we are nonetheless better off, I suggest, viewing Hegel's institutions-as-form on the model of the "*activity of form*" [Tätigkeit der Form] detailed in the logic (WL 394–95/GW 11:299–300), whereby the activity of form is "just as much the *movement that belongs to matter* itself" (WL 395/GW 11:299). On the *Formtätigkeit* model, institutions-as-forms are not forms *of* some subtending substance but designate the various dynamic structures immanent to the nature of society itself.

The next misunderstanding I would like to forestall emerges from the tendency to over-Aristotelianize Hegel, which, in this context, would entail attempting to coalesce Hegel's institutional ontology with Aristotle's hylomorphism.<sup>49</sup> This is primarily because they are theories of

48. On the idea of morphology in Goethe and its influence on Hegel and German idealism, see Förster (2012, 254–58, 289–91); Bowman, (2011). On Durkheimian morphology, see Andrews (1993); Némedi (2000); Neuhauser (2022, 205–9).

49. On Aristotle's Hylomorphism, see Shields (2014, 60–73); Ross (2004, 74–78, 183–85). For comparisons of Aristotle's and Hegel's concept of form, see Ng (2020, 128–32); Ferrarin (2006); Ficara (2021, 48–52).

two quite different object domains.<sup>50</sup> For Aristotle, hylomorphism is a doctrine about concretely existing finite things, namely, that any concretely existing thing is not a simple but a compound of matter and form.<sup>51</sup> Hegel's institutional ontology is not a doctrine concerning finite things but rather of the basic forms necessary for conceptually comprehending the social world of finite spirit. This is why Hegel warns us against taking empirical institutions as our ultimate standard in identifying these forms and their nature, as finite things are not the proper standard for science. Indeed, what it is for something to be *finite* for Hegel is for its being to be in principle distinct from its essence or standard, such that there persists an *ought-to-be* separating the thing's actual existence and its ideal existence.<sup>52</sup> Only in philosophy, i.e., in cognition of the infinite, do form and content come to be inseparable—Hegel writes in the preface, for instance, that "in science, the content is essentially inseparable from the *form*." But again, this scientific maxim does not entail that the thought-determinations of the *Philosophy of Right* are hylomorphic compounds. Rather, following the doubled significance of philosophy being the science of absolute form or *das Logische* outlined above, this maxim entails that form is the proper content of philosophy ('form as content') and that the scientific methodology proper to this content lies in exhibiting the nature of the matter (*die Natur der Sache*) in accordance with its immanent conceptual structure ('content as form'). Forms in Hegel's institutional ontology are, therefore, not halves of a hylomorphic compound waiting to be conjoined with the matter but dynamic structures immanent to an ethical substance (read: society) that exist *as forms*.

Finally,<sup>53</sup> we must also differentiate Hegel's institutional ontology of forms from the "*formalism*" [Formalismus] or "formal thinking" [formellen Denken] characteristic of abstract right and morality (PR §30/GW 14,1:46; PR §57A/GW 14,1:65). By formalism, Hegel refers to the understanding's proclivity to cling one-sidedly to abstractions, abstractions whose validity and meaning appear to it as fixed and universal but which are in fact relative and contextual.<sup>54</sup> Science provides a relative justification of these abstractions by showing them to be grounded in a higher, "*more concrete*" stage of development, which, in this context, is *Sittlichkeit*.<sup>55</sup> The relevant formalisms in *Rechtsphilosophie* are legal formalism, personified by the Roman law tradition (PR §175A/GW 14,1:154), and moral formalism, by Kantian ethics. The latter, what Hegel also calls "the formalism of unconditioned subjectivity," is particularly important for Hegel (PR §270A/GW 14,1:222). He writes: "[T]o cling

50. A second reason why we should distinguish between Aristotle's hylomorphism and Hegel's institutional ontology is the following. For Aristotle, form and matter are defined in relation to change: when a finite thing undergoes change, we call *form* that which alters and *matter* that which remains the same. But, for Hegel, form's relation to change inverted: *forms* are what persist across historical time and geographical space, whereas the societies, or social matter, that are structured by these forms are subject to change.

51. Aristotle also restricts the validity of hylomorphism when he acknowledges that, in some object-domains, we admit of "pure forms," i.e., forms which are intelligible without being composed with matter, as is the case with the "prime mover."

52. "The finite is that whose existence does not correspond to its concept" (VBDG 189/GW 18:273).

53. For a more dialectical reconstruction of formalism in Hegel, see Nuzzo (2018, 81–106); Comay and Ruda (2018, 11–14, 17).

54. "This *antinomy*, like all antinomies, is based on formal thinking, which fixes upon and asserts the two moments of an idea in separation from each other, so that both are lacking in truth and do not conform to the idea. The free spirit consists precisely in not having its being as mere concept or in itself, but in sublating this formalism [Formalismus] of itself and hence also its immediate natural existence, and in giving itself an existence which is purely its own, as free existence" (PR §57A/GW 14,1:65) Hegel also associates formalism with the liberal conception of freedom as non-interference: the *Vorstellung* "that freedom in general means freedom to do whatever one pleases" so far as one is unconstrained (PR §319A/GW 14,1:261–62, cf. PR §15A/GW 14,1:38).

55. "But the *formalism* [Formalismus] of right (and also of duty) arises from the differences in the development of the concept of freedom. Against the more formal, i.e. *more abstract* and hence more limited right, that sphere and stage of spirit in which spirit has determined and actualized within itself the further moments contained in its idea possesses a higher right, for it is the *more concrete* sphere, richer within itself and more truly universal" (PR §30/GW 14,1:46)



on to a merely moral standpoint without making the transition to the concept of ethicality reduces this gain to an *empty formalism*, and moral science to an empty rhetoric of *duty for duty's sake*. From this standpoint, no immanent theory of duties is possible" (PR §135A/GW 14,1:118). According to Hegel, Kantian morality construes duty "as *absence of contradiction*, as *formal correspondence with itself*" (ibid.), such that the criterion of universalizability, for example, on its own only tests whether a maxim is self-contradictory. Morality thus suffers from indeterminacy (*Unbestimmtheit*) because it cannot, *in abstracto*, determine the content of particular duties but only verify their being non-contradictory. One's duty to realize the common good or follow the dictates of one's conscience therefore fails to furnish any action-guiding maxims because whether an action satisfies this criterion can be determined only in reference to the social context of the action's signification. In other words, particular duties and rights attain full determinacy only when they are grounded in their social context (= ethicality), precisely in contradiction to universal Kantian morality and its *a priori* moral rules outlined in its "metaphysics of morals."<sup>56</sup>

It is not my aim to provide an interpretation or defense of Hegel's critique of Kant's formalism, which is a complicated matter. Essential for my aim is only the difference in Hegel's mind between the formalism of his institutional ontology and the pejorative formalism of right and morality. The former does not lapse into the latter for two reasons. The first reason is systematic: the institutions of ethicality are part of the "more concrete" stage of development of the idea of freedom. As I have argued, institutions are precisely that which make ethicality concrete because they internally differentiate ethical substance into an arrangement of distinct-but-unified rational forms. They therefore do not suffer from that indeterminacy pertaining to being part of an earlier, more abstract stage of development. Second and social-ontologically, Hegel's institutional ontology avoids the bad formalism of positive law and Kantian morality because it does not impose a form upon an arbitrary content but exhibits as its content the form inherent in *die Sache selbst*, or, put differently, it denies the indifference between form and content presupposed by bad formalism. In positive law, this indifference appears between the abstract form of being posited and the law's arbitrary content and, in morality, between the abstract form of self-consistency and the maxim's or action's arbitrary content. Institutions, as determinate forms inherent in ethicality, derive their content not from abstract features (having been posited, having been in accordance law of non-contradiction) but from the *Darstellung* of the nature of ethicality into a system of differentiated institutional forms.

Although it is true that Hegel's institutional ontology is, in a sense, formal, this ontology is nonetheless quite distinct from at least three common ways of thinking about form: as the form of something, as hylomorphism, and as formalism. Because Hegel's institutional ontology diverges from these ordinary conceptions, it is helpful to designate it not as formalism but as a social morphology, a logic or science of social forms as forms.

56. Hegel later proceeds to explode Kant's assumption that first-order ethics—answers to the question "What ought I to do?"—poses a genuine philosophical problem: "What a person has to do, *which* duties he has to fulfill to be virtuous, is easy to say in an ethical community - nothing else is to be done by him than what is prescribed, expressed, and known to him in his circumstances [Verhältnisse]" (PR §150A/GW 14,1:140). For Hegel, what remains of philosophical ethics is only an account of the rationality, meaning, and relative validity of the *conceptual terms* with which we practically deliberate as members of ethical communities and the institutions that imbue this meaning.

### Institutions as Forms in *Philosophy of Right*: Textual Evidence

Earlier, I claimed that form's superiority as the ontological status of Hegelian institutions also has a textual basis. In this section, I attempt to make good on this claim. The textual basis for my attribution lies in Hegel's passing designation of ethical substance in §144 and his reiteration of this designation in §256A. Admittedly, Hegel nowhere explicitly writes that institutions are forms, but this is because he nowhere explicitly tells us what institutions are in general. Any reconstruction of his institutional theory must therefore go beyond the letter of his text. When we place these two passages in their argumentative context, they provide plausible grounds for attribution. I will give a brisk reading of these two passages to support this claim. But this reconstruction, like any that extends beyond the letter of a text, can only be evaluated holistically, i.e., according to its coherence with the entire textual corpus and its non-textual appeal as a first-order philosophical position.

Let us begin with §144. Hegel writes:

( $\alpha$ ) The objectively ethical [Das objective Sittliche], which takes the place of the abstract good, is substance made *concrete* by subjectivity *as infinite form*. It therefore posits *distinctions* [Unterschiede] within itself which are thus determined by the concept. These distinctions give the ethical a fixed *content* [festen Inhalt] which is necessary for itself, and whose stable existence [Bestehen] is exalted above subjective opinions and preferences: they are *laws* and *institutions* [Einrichtungen] which have being in and for themselves. (PR §144/GW 14,1:137)

For the purpose of my argument, I suggest we understand this dense passage somewhat reductively and see it as making the following three assertions: (1) that, in ethicality, ethical substance takes on infinite form; (2) that taking on infinite form means embodying the structure of the concept, i.e., the positing of internal distinctions; and (3) that these distinctions, as that which make ethical substance have conceptual structure or infinite form, are institutions.<sup>57</sup> I take this to be a relatively straightforward reading of this passage if it is read carefully. The passage therefore discloses a *functional* definition of institutions for Hegel: institutions are *that which make* ethical substance count as concrete, ideal, or infinite form. In other words, institutions function to internally differentiate ethical substance, making it ideal or that which expresses ideality.

However, at least one aspect of Hegel's line of argumentation remains especially obscure: namely, his invocation of *subjectivity* and *infinite form* as the doubled name for this structuration ("ist durch die Subjectivität als *unendliche Form concrete Substanz*"), where Hegel's emphasis alerts us to the connection between subjectivity, this form's infinitude, and ethical substance's concreteness. A few sections later, we find a similar pronouncement: "Subjectivity is itself the absolute form and existent actuality of substance" (PR §152/GW 14,1:142). What are we to make of this intrusion of subjectivity at the heart of Hegel's account of institutions? Are we not dealing here with *objective* spirit, and have we not emphasized throughout our reconstruction the decisive objectivity of institutions in Hegel's view?

57. "Infinite form" and "the concept" are generally synonymous for Hegel, as in, e.g. WL 41–42/GW 21:48; WL 665/GW 12:168. As we saw earlier, infinite form and absolute form are also near synonyms. Throughout his changing terminology, Hegel's emphasis lies in his basic commitment, taken over from Hölderlin, that the idea-structure is internal differentiation or unity-within-and-through-difference.

The apparent tension can be resolved by distinguishing between four connected meanings of subjectivity at play in Hegel's *Philosophy of Right*. The first of these is *pejorative*; it is subjectivity as mere caprice or the arbitrary will, usually of the (fictitious) isolated and atomic individuals that Hegel associates with the contractarian tradition. Not unlike the relation of "form" and "formal," Hegel often uses the adjectival form to indicate his dismissive attitude to this sense of subjectivity, as, for example, in his discussion of "personality" in abstract right and "subjective opinion" as a moment of the pathology of conscience in §140A (GW 14,1:128). Second is subjectivity's *generic* meaning; it is subjectivity as identical with self-consciousness, the I, and the activity of thinking as such (e.g., PR §25). This sense of subjectivity appears seldom in the *Philosophy of Right*, functioning primarily in the introduction's exposition of the concept of the free will. Third is its *normative* meaning; it is subjectivity as evoked in "the right of subjectivity" (PR §125/GW 14,1:111) and the "right of subjective freedom" (PR §124A/GW 14,1:110).<sup>58</sup> This normative (but relative) right born by individuals to have their capacity as self-determining and thinking acknowledged, evident, for example, in the demand that restrictions on one's *Willkür* be publicly justified by authorities. Accordingly, Hegel identifies this normative subjectivity with the modern world, its principle being introduced by Protestant Christianity and, in particular, with Luther's individualizing and internalizing of one's personal salvation. Finally, there is a *logical* meaning of subjectivity; it is subjectivity as the structure of the concept, the shape of individuality and self-standing, as developed in the *Begriffslogik*—or what Hegel also names, tellingly, the "subjective logic." Put simply, this logical meaning of subjectivity expresses the structure of the idea: it is a totality that is internally differentiated into structural moments or forms that each in itself express this totality.

Without a doubt, these four senses of subjectivity interrelate. Practical self-determination is what it is in part because it expresses the logic of subjectivity, and subjectivity is, in this way, the essential determination and ground of the individual's normative claim to have her subjectivity acknowledged. But they are nonetheless relatively distinct, and their relative independence permits us to resolve the apparent tension by noting that, in §144, subjectivity bears only its logical and normative meanings.<sup>59</sup> When Hegel writes that "the objectively ethical [...] is substance made *concrete* by subjectivity *as infinite form*," he means in the first instance that ethical substance takes on the idea-structure of being internally differentiated by institutions and that these institutions ought to respect the subjective right of individuals, not an ontological claim about society being transformed by the subjective opinions held by individuals *qua* individuals.<sup>60</sup>

The significance of this internally differentiated structure of the concept at work in §144 can be elucidated by considering the paragraphs immediately surrounding it. In those preceding §144, Hegel tells us that ethicality is a mode of the "*idea of freedom*," one in which this idea has become constituted, on the one hand, as "the present world" [vorhanden Welt] and, on the other, as "self-consciousness" (PR §142/GW 14,1:137). As such, in ethicality "consciousness of the difference between these moments is present" (PR §143/GW 14,1:137). However, these are not isolated or partial moments, as, first, each moment is itself a self-standing totality ("[each] has become for

58. Hegel refers to the same subjectivity principle variously as the "right of *subjective freedom*" (PR §124A), the "principle of subjectivity" (PR §260), and the "*right of individuals to their subjective determination to freedom*" (PR §153).

59. Similarly, when Hegel elsewhere complains that Plato "could not work into his idea of the state the infinite form of subjectivity" (EG §552a, cf. PR 20–21), he refers simultaneously to the logical and normative meanings of subjectivity (but not to the pejorative and generic ones).

60. I explain below that Hegel intends this to be a teleological condition of institutions, but not an ontological one.

itself the totality of the idea"), and second, each moment derives its content from the idea of freedom ("[each] has [the idea] as its foundation and content") (ibid.). Institutions, then, as the "distinctions" or "moments" of the idea of freedom as exhibited in ethicality, have the idea of freedom as their content, giving it existence in various forms, but each institution also expresses in itself the totality of ethical substance, that is, within each institution we do not discover an isolated content or set of rules, interchangeable with another content of the same type, but a necessary content that hangs together with the other institutions and the spirit of the people writ large (à la Montesquieu). This self-standingness and interconnectedness of institutions are further corroborated in the proceeding sections. In §145, we learn that the "*rationality*" of the ethical consists in it being the "*system* of these determinations of the idea," i.e., that institutions, as the determinations of the idea of freedom in ethicality, exist a systematical whole, and, in §146, that institutions "*are*" in "the highest sense of self-sufficiency" [Selbstständigkeit].<sup>61</sup>

Putting these threads in §§142–46 together, we arrive at the following social-ontological picture: society, taken to be a system of interlocking institutional forms, is ethical substance. But society, on the model of ethicality, is not a blob, i.e., mere uniformity or a static and subtending thing, but also essentially subjectivity, i.e., is internally differentiated, being composed of a system of interlocking institutions. Moreover, it is also essentially activity. As we will investigate later, this subjectivity of ethical substance further entails that this substance is processual, undergoing processes of social change, differing not only synchronically across societies but also to itself, diachronically, being non-identical to itself over time.

So much for our first piece of textual evidence. I now move to the second. In §256A, Hegel writes:

In the development of civil society, ethical substance takes on its *infinite* form, which contains within itself the following two moments: (1) infinite *differentiation* [Unterscheidung] to the point at which the *inward being* [Insichsein] of self-consciousness attains being-for-itself and (2) the form of *universality* which is present in education [Bildung], the form of *thought* whereby spirit is objective and actual to itself as an *organic* totality in *laws* and *institutions* [Institutionen], i.e. in its own *thoughtful* will. (PR §256A/GW 14,1:199–200)

Here, Hegel's theme remains the same as in §144.<sup>62</sup> Institutions are that which make ethical substance take on "infinite form," which produces substance's logical subjectivity (its internal differentiation into an organic totality of institutions), its normative subjectivity (institutions ought to underwrite the relative normative independence of the individual as being-for-itself), and its generic subjectivity (institutions express the form of thought). Moreover, I suggest we interpret Hegel's concatenation of "laws and institutions" as telling us that laws are a kind of institution. This reading of laws as a subcategory of institutions is supported by Hegel's 1819–20 lectures on the *Philosophy of Right*, where he reportedly dictated: "Dieses vernünftige ist dann: an und für sich es ist das was Gesetz [sic] ist – Einrichtungen" [The rational is thus: in and for itself it is what is law

61. In these two sections, Hegel discusses not only "laws" but also "powers" [Gewalten], and, notoriously, "ethical might" [sittlichen Mächte]. These laws, powers, and might are, on my reading, subcategories of institutions for Hegel.

62. It is important to not be misled into thinking this passage only concerns civil society. The general structure of its claim—that ethical substance garners infinite form by being differentiated into institutions—applies equally to the spheres of the family and the state, as these structure ethical substance in more or less similar ways. This is why the passage resonates so much with §144, a section which, because it appears in the introduction to ethicality, pertains to all of its spheres. In §256A, Hegel just happens to be focusing on civil society's transition to the state.

- institutions] (GW 26,1:424–25, see also preceding notes). Without much violence to Hegel, we may expand his concept of institutions to include other relevant social kinds like norms, practices, habits, customs, and forms of life.<sup>63</sup> Moreover, by defining institutions *functionally*, Hegel does not designate them to be any particular kind of thing, enabling his ontological pluralism about institutions (see §3.3 below). To conclude, §144 and §256A provide strong evidence that Hegel theorizes institutions to be forms in his technical vocabulary, namely, that institutions are the system of form-determinations that make up society as a substance-cum-subject.

### 3.3.3 Two Ontological Features of Institutions as Forms

So far, I have argued that Hegel defines institutions along the following functional-conceptual lines in the *Philosophy of Right*: institutions are the forms of the idea of freedom that concretize or internally differentiate ethical substance. In this section, I will further my account of Hegel's institutional ontology by developing two central ontological features that follow from Hegel's identification of institutions with infinite form—*institutional idealism* and *institutional pluralism*—with an eye toward their capacity to respond to the three variations of ontological over-institutionalization outlined in §2.

#### Institutional Idealism

Idealism is Hegel's technical term for conceptual comprehension that "goes beyond the *ought* [das Sollen] and the *infinite progress*" and "remains in the dualism [Dualismus] of existence and being-for-itself" (SL 131/GW 21:150). Idealism is, in other words, the name of philosophy that overcomes the dualism of *is* and *ought*, the descriptive and the normative, the actual and the rational, the ontological and the teleological.<sup>64</sup> Applied to institutions, idealism manifests in two ways. First, it permits us to distinguish between institutions' ontological and teleological conditions without committing to a dualism between them. Second, it enables us to conceive of particular institutions along similar lines, namely as combinations of a mode of being and a function or purpose, aspects of institutions that can be distinguished in principle without committing to a dualism of being and function. Such distinctions permeate the Hegelian corpus. Whether we consider that between 'for us' and the 'for consciousness' in the *Phenomenology of Spirit*, between 'an sich' and 'für sich'

63. In widening the concept of institutions so that it encompasses all the relevant social kinds, Hegel here again recalls Montesquieu: "[T]he object of this work is the laws, customs, and various ways of all the peoples of the earth. One can say that its subject is immense since it embraces all the institutions [institutions] that are received among men" (Montesquieu 2020, 238, emphasis in the original).

64. Much more could be said about Hegel's concept of idealism. We limit our overview to three points. First, Hegel sees idealism to be latent even in dogmatism, and so it is incorrect to speak of "idealism" as a species of philosophy. "Every philosophy," Hegel writes, "is essentially idealism or at least has idealism for its principle" (SL 124), "every true philosophy is [...] idealism" (EL §95A), and "even in our ordinary consciousness, this idealism already occurs," albeit only dimly (EL §32Z). Second, Hegel distinguishes his absolute idealism from the merely formal or subjective idealism of Kant and Fichte, an idealism that remains stuck in this very dualism of the finite and the infinite, according to Hegel. Finally, idealism involves, for Hegel, the *dereification* of thought and things, i.e., the viewing them as having a merely relative (or holistic) justification and existence. As Hegel clarifies in two *Zusätze*: "The dogmatism of the metaphysics of the understanding consists in holding on to one-sided thought-determinations in their isolation, whereas the idealism of the speculative philosophy, by contrast, has the principle of totality and shows itself to reach beyond the one-sidedness of the abstract determinations of the understanding. Thus idealism will say: the soul is neither wholly finite nor wholly infinite; instead it is essentially the one as well as the other and thus neither the one nor the other; that is to say, such determinations in their isolation are invalid, and they are valid only qua sublated" (EL §33Z); "the standpoint of the concept is in general that of absolute idealism, and philosophy is comprehending cognition. It is conceptual knowing insofar as everything that ordinary consciousness regards as an entity, and in its immediacy as independent, is known merely as an ideal moment in it" (EL §160Z).

in the logic, or 'the concept' and 'its existence' of the *Philosophy of Right*, Hegel regularly helps himself to this sort of distinction, one that is not to be held fast but nonetheless retains a certain context-delimited validity for distinguishing between *Dasein* and *Fürsichsein*, i.e., between being and function or between ontology and teleology. We have this sort of dialectical distinction in mind in entertaining a separation between the ontological and the normative in Hegel.

I will now develop these two parts of Hegel's institutional idealism in turn. The first part I have in mind concerns a distinction Hegel implicitly draws between ontological (or existential) and teleological (or normative) conditions of institutions, which pertains to Hegel's general institutional theory. Although inseparable in actual institutions, these two kinds of conditions are nonetheless conceptually distinct for Hegel. Once we recognize this distinction, we can see that Hegel omits many of the *teleological* conditions of modern institutions, i.e., their requirements for being "institutions of real freedom," from being *ontological* conditions of their existence, especially those conditions concerning "self-consciousness," i.e., the transparency of institutions to our subjective awareness. This separation of teleological conditions of institutions from ontological ones then dissipates much of the difficulty of interpreting his view of their ontological objectivity. This is because it minimizes the set of ontological conditions of institutions, thereby softening the demandingness of their being ontologically objective (i.e., their ability to exist independently of subjective consciousness about them).

The contours of this distinction are best appreciated by considering some of the ongoing debate over Hegel's notion of objective spirit. In a compelling article, Alznauer (2016) distinguishes between three conceptions of objective spirit: sociological, quasi-transcendental, and teleological. According to the first, objective spirit amounts to an empirical reconstruction of our social conditions (Dilthey-inspired readings); according to the second, it is an account of the social conditions necessary for the possibility of human consciousness or recognizably human behavior (Wittgenstein-inspired readings);<sup>65</sup> and, according to the third, it is a teleological description of the social conditions required to actualize our human essence (Aristotle-inspired readings). For Alznauer, the teleological-Aristotelian version of objective spirit not only better coheres with the text of the *Philosophy of Right*, but supplies a more original and compelling portrayal of objective spirit and its argumentative function within Hegel's system. We do not disagree with Alznauer that teleology plays an essential role in Hegel's account of objective spirit and, indeed, one generally overlooked by interpreters committed to non-metaphysical readings of Hegel. Yet despite its many insights, Alznauer's article makes, in my view, one decisive misstep: it assumes that these are indeed three *rival* versions of objective spirit, i.e., conceptions that are necessarily incompatible with one another.<sup>66</sup> Alznauer's presupposition, in my view, overlooks the key insight to be drawn from Hegel's institutional idealism as I am developing it, namely that it combines (while simultaneously distinguishing between) reconstructive, ontological, and teleological dimensions of insti-

65. The "quasi" in quasi-transcendental comes from Rose (2009) and is intended to designate that, unlike traditional transcendental arguments, this argument neither (i) concerns the fundamental categories of human thinking as such nor (ii) defends knowledge of some kind from skeptical attack.

66. We also note that Alznauer's proposed reading of objective spirit as exclusively teleological—i.e., as the set of social conditions required for realizing one's human essence in history, independent of empirical, social-scientific, and quasi-transcendental concerns—risks lapsing into the very one-sidedness of the *Sollen* that Hegelian institutional idealism intends to overcome. However, Alznauer's teleological reading has the advantage of explaining extreme cases in which human beings are prevented from participating in right but remain recognizably human (his example Hegel's views on slavery), which is apparently inexplicable if abstract right is a condition of human consciousness, as the quasi-transcendental reading holds.

tutions. More specifically, there is no incompatibility between holding that there being *some* set of institutions in place at all in a society is a quasi-transcendental condition of human consciousness and maintaining at the same time that *this* set of institutions is the best possible set because it best realizes our human *telos*. For Hegel, all societies are composed of institutions, no matter how deficient these institutions are and how poorly they cohere (the ontological condition of institutions), yet there nonetheless exists an ideal set of institutions, developed throughout world history and so to be rationally reconstructed out of modern sociopolitical conditions, that best corresponds to the realization of our human freedom (the teleological condition of institutions). I submit that this two-sided-yet-unified view of Hegelian institutional idealism best corresponds to Hegel's general argument in *Sittlichkeit*, if not objective spirit as a whole.

Two more remarks can be made regarding how Hegel's institutional idealism distinguishes and unifies the teleological and ontological conditions of institutions. First, we observe that these two kinds of conditions lend themselves to mutually supporting one another from a Hegelian point of view. Suppose the existence of an ensemble of institutions is a quasi-transcendental condition of human consciousness. In that case, it is not unreasonable to infer that the quality of its realization has a minimally teleological structure such that this ensemble would develop more satisfactory shapes of human freedom over time. Conversely, if institutions form part of the human *telos*, it is similarly unsurprising that their existence in some minimal shape also forms part of the "conditions of actuality" of recognizably human life. This latter phrase has been helpfully developed by Kervégan to capture the unity of ontological and teleological institutional conditions active in Hegel's *Philosophy of Right*. It transforms the traditional locus of transcendental philosophy, viz., the mere conditions of the possibility of consciousness, into a properly speculative one, as the concept of actuality, for Hegel, dialectically unifies essence and concrete existence and has its truth in absolute necessity (E17 §91). On Hegel's institutional idealism, the ontological and teleological conditions of institutions constitute a significant part of these "conditions of actuality" required for realizing our "substantial freedom" (PR §149).

My second remark concerns how Hegel nonetheless distinguishes between these ontological and teleological conditions of institutions in his institutional theory. This distinction is particularly evident in Hegel's *Lectures on the Philosophy of World History*. In Hegel's account of the world-historical *Volkgeister* therein (e.g., Chinese, Indian, Persian, Greek, Roman, German, etc.), each is necessarily composed of a set of institutions, but each institutional set is further shown to be necessarily insufficient for realizing the *telos* of human consciousness and freedom (except perhaps the final, Germanic kind). Hegel notes a similar separation between ontological and teleological institutional conditions in the *Philosophy of Right*, writing: "The principles of the *Volkgeister* are in general of a limited nature because of that particularity in which they have their objective actuality and self-consciousness as *existent* individuals" (PR §340). This "dialectic of the finitude of these spirits" (*ibid.*) consists in each *Volkgeister* being oriented towards the concept of freedom yet remaining incommensurate with it. Hegel's institutional idealism requires us to exhibit institutional actuality as a unity of ontological and teleological institutional conditions while distinguishing between them in view of the finitude of each *Volkgeist*.

I now turn to the second part of Hegel's institutional idealism, namely that it enables us to distinguish (within a unity) two moments within each particular institution: its particular way of *being* and its particular *function* or purpose in ethical substance. We should understand this

distinction to concern the ontological constitution of *particular* institutions. As we saw in Chapter 2, Hegel regularly uses the being-function distinction in his exposition of particular institutions. To recall a couple of examples: marriage *is* a kind of relation (*Verhältniß*), but *functions* to unify, spiritually and naturally, two spouses. Ethicality also exhibits other "substantial" relations, sharing the same kind of being, but these serve different functions. Likewise, the corporation *is* a group or association (*Genossenschaft*) but serves the *function* of maintaining internal order, including the common good, among its members. Ethicality exhibits other groups and associations, but these uphold different functions or purposes. On Hegel's institutional idealism, an institution is thus individuated by the combination of its way of being and its function.

However, as was the case of the ontology-teleology distinction, this being-function distinction is not intended as dualism, as it arguably was seen by Parsons (e.g., 1971, 4–8). Instead, Hegel intends the two moments of each institution to be united in the same way that he unites the ontological and teleological conditions of institutions, namely, as conditions of the actuality of that particular institution. Hegel's being-function distinction within particular institutions is thus not an isolated or surface-level feature of his institutional theory but deeply connected to his foundational commitment to idealism in the realm of right.

### **Institutional Pluralism**

The second feature of Hegel's institutional ontology is its pluralism. In brief, this pluralism consists in there being, on the one hand, a variety of *kinds of things* that may count as an institution and, on the other, a variety of ways in which these things *come to count as* an institution. In this way, Hegel's pluralism holds not only ontologically vis-a-vis institutional kinds but also with respect to the mechanisms by which an institution "counts as" or is validated as an institution. The first of these two aspects is straightforward. Because institutions are defined functionally for Hegel, viz., as that which subjectivizes or concretizes society by shaping it into distinct-yet-unified forms, it follows that many different sorts of material or physical configurations can satisfy this definition so long as they actualize this same society-concretizing function. Such pluralism is precisely what Hegel demonstrates in the *Philosophy of Right*. As we saw in Chapter 2, Hegel explicitly considers relations, powers, associations, systems, and unities all to be institutions, and we may add this list further social kinds from politics, economics, law, and so on. In effect, Hegel puts no limits on what sorts of stuff can, in principle, count as an institution, and, conversely, that something counts as an institution in Hegel's sense tells us nothing about what particular kind of material thing it is.

To be sure, this sort of institutional pluralism is rather mundane and can be found in many other influential definitions of what it is to be an institution. For example, John Searle defines an institution as Y-terms in the formula: "X counts as Y in context C." One paradigmatic example is money: this green paper bill (= non-institutional X-term) counts as money (= institutional Y-term) in the United States. So defined, institutions can, for Searle, also be imputed onto nearly any kind of physical thing. So far, Hegel and Searle agree with one another.

But Hegel's institutional pluralism runs deeper than Searle's, bringing us to its second aspect. For Searle, the underlying mechanism for a type to "count as" an institution always remains the same: collective acceptance or collective recognition. (Institutional tokens, however, need not always be collectively recognized in Searle's view, as in the case of the dollar bill lying beneath the



floorboard of the treasury, which counts as money despite no one believing it to be such).<sup>67</sup> When we question Searle why some physical thing (or fact) counts as an institution (or institutional fact), we always receive the same answer: because the relevant social members (or some sufficient proportion thereof) collectively agreed to it or recognized it as being such-and-such. Whereas, for Hegel, how an institution is validated, i.e., the way in which it comes to be or count as an institution as such, is also plural and need not rest on agreement, implicit or otherwise, nor always on legal recognition, as Honneth contends.

To glimpse this pluralism of validating mechanism, consider the examples of the institutions of agriculture and the estates from Chapter 2. Agriculture is a power or resource (*Vermögen*) in "the natural products of the *soil*" that functions to provide for the external existence of a person or family through this cultivation of nature (PR §203/GW 14,1:171). Instances of the institution of agriculture therefore come to "count" as such whenever this resource exists and is put to this use, and this can happen independently of any people representing this resource and its associated practices as agriculture as such. To be sure, representations of agriculture are likely to become central in societies for which this institution predominates as a means of obtaining the necessities of life. Hegel acknowledges this likelihood. On Creuzer's authority, Hegel recounts the mythical representational consciousness of agriculture in antiquity: "In the consciousness of the ancients, the introduction of agriculture and the institutions associated with it were divine deeds, and they were accordingly treated with religious veneration" (PR §203A/GW 14,1:171). Hegel's story about the origins of agriculture identifies a validating mechanism, namely, the organized and systematic use of a particular kind of material resource to maintain one's bodily existence and that of one's family, a mechanism that does not depend on being collectively recognized.

The estates exhibit a similar validating mechanism as agriculture. As the systems or ways of life that function to socially stratify the regulated satisfaction of needs (i.e., civil society), the estates "count as" an institution within a particular society or *Volkgeist* when such a stratification comes into existence and has a regulatory effect on the society in question. Hegel's relatively loose determination of the estates permits him, for example, to classify the Indian caste system as a deficient form of this institution, as it is nonetheless a system that functions to stratify this society and provide it with a social division of labor (VWG 144–47; cf. Hegel's Humboldt-Rezension, esp. GW 16:37). Accordingly, Hegel identifies a pluralism of validating mechanism by which an instance of the estates comes to 'count' as an institution, one religious—the Indian estate mechanism—and the other grounded in secular particularity and one's "choice of estate"—the Germanic estate mechanism (PR §185A).

At this point, friends of Searle's institutional theory could object that these validating mechanisms are all just different ways of expressing collective agreement or recognition. But this, I believe, is not possible on Searle's definition of collective acceptance. For Searle, the collective acceptance of an institution necessitates that at least some people involved have representations (or what he calls intentional mental states) towards the institution in question.<sup>68</sup> But at least some of the validating mechanisms I have indicated in Hegel do not *require* such representations (although they are not incompatible with having them, and, indeed, a good institution will be validated as

67. On the epistemic opacity of token institutions, see Searle (1995, 32); Khalidi (2015, 98).

68. For a criticism of Searle's attempt to reduce the apparent variety of validating mechanisms to the single one of collective acceptance, see Guala (2016, 102–9). Guala argues that this program is implausible because it is likely the case that at least some institutions arise without collective intentionality. For a defense of Searle's collective acceptance as a necessary and sufficient condition of institutionality, see Mäkelä, Hakli, and Amadae (2018).

an institution in a self-consciousness manner, exemplified by the modern idea of *choosing* one's estate). Nonetheless, it is clear that Hegel's institutional ontology remains pluralistic with respect to the material things that can count as institutions and to the ways in which these material things come to do so.

### 3.4 Rehabilitation: Hegel's Institutional Ontology Defended

So much for my reconstruction of Hegel's institutional ontology. I now turn to its rehabilitation, the negative task of removing the most serious obstacles to its plausibility as a social-ontological position. I do not intend in this Chapter to demonstrate that Hegel's institutional ontology ranks among the best available today but only to show that it does not rest on a mistaken basis, one which, if true, would doom the project of Hegel's institutional theory from the start. The attractiveness of Hegel's institutional ontology and the institutional theory it undergirds can only be fully appreciated with the whole in view, and so only at the conclusion of our study.

As I argued in §2, this most pressing obstacle can be summarized as the charge of ontological over-institutionalization. This charge can be analyzed into three coordinating objections: (1) that Hegel's institutional ontology is *overly formal* or legalistic; (2) that it is *descriptively overloaded* or fails to reconstruct the normative principles underlying distinct kinds of social interaction; and, finally, (3) that it is *overly objective* because it makes institutions ontologically independent of the representations that individuals have about them. With the rudiments of Hegel's institutional ontology now in view, we can dispatch with the first and second parts of the objection. The third part of the objection, however, is more difficult and will accordingly require a more thorough examination of the notion of ontological dependence.

#### 3.4.1 Contra Over-Formalization

Let us begin with Hegel's purported dismissal of informal or non-legally constituted institutions from the purview of *Sittlichkeit*. If I am correct in asserting that institutions are, for Hegel, the concrete forms by which society is internally differentiated, rendering ethical substance as subject, then I see no principled reason why informal institutions should be excluded from being such forms. Hegel's institutional pluralism bears this out—it easily encompasses the idea that customs, mores, habits, and ways of life could be institutions in the relevant sense. Furthermore, the textual evidence adduced in the forgoing chapters supports this more expansive view. In Chapter 1, we saw that Hegel endorses Montesquieu's institutional pluralism—which won him the criticism of Gustav Hugo for taking the concept of institutions in "the french sense" and so explicitly counting as institutions "the laws, customs, and various ways of all the peoples of the earth," as Montesquieu puts it. In Chapter 2, we saw that many, if not all, of Hegel's five examples of institutions have an essentially extra-legal kind of being. This evidence suggests that Hegel's institutional theory accommodates formal and informal institutions to an equal degree.

Yet Honneth's concern is not without basis in the *Philosophy of Right*, although this basis cannot, in my view, be found in Hegel's account of marriage, as Honneth contends. Its systematic and textual basis lies instead in Hegel's insistence that the *telos* of right in the modern state is to have its existence expressed as written and codified law. For instance, Hegel writes:

[T]he state, too, has its doctrine, for its institutions [Einrichtungen] and whatever it recognizes as valid in relation to right, to the constitution, etc. are present essentially in the form of *thought* as law (PR §270A/GW 14,1:218)

and that, once "ethical substances takes on its *infinite* form," it comes to contain within itself the form of *universality* which is present in education, the form of *thought* whereby the spirit is objective and actual to itself as an *organic* totality in *laws* and *institutions*, i.e. in its own will as *thought*. (PR §256A/GW 14,1:199–200)

These two passages indicate that Hegel saw the legal recognition of informal institutions and their codification into the written word of the law as elevating them to the form of universality and thought—and an advance of freedom. Legally codified institutions, it seems, make explicit what is merely implicit in custom and habit, thereby elevating this unconscious sociality into thought. Informal institutions, then, indeed appear to have a lower standing vis-a-vis their legally constituted counterparts. That we find such a view in Hegel should hardly surprise us. After all, Hegel ardently sided with Thibaut in the *Kodifikationsstreit* of this day, calling for the composition of a unified legal code for the provinces of Germany on the model of the *Code Napoléon*, against their romantic opponent Savigny,<sup>69</sup> and, in his review of the *Proceedings of the Estates Assembly of the Kingdom of Württemberg*, Hegel polemicized against the Assembly's resistance to the King's desire, upon the evacuation of the French, to install a new systematic constitution in the place of the legal hodgepodge known generally as "the good old *Recht*." There can be no doubt that Hegel was a proponent of codification, both politically and philosophically.

How, then, are we to reconcile this apparent opposition, latent in Honneth's objection, between Hegel's institutional pluralism and its indifference in principle to the formality of institutions, on the one hand, and Hegel's commitment to the legal codification of institutions as a condition of their rationalization, on the other? The resolution, I suggest, lies in Hegel's institutional idealism and its distinction between teleological and ontological conditions of institutions. Put simply, it is a *teleological* condition for institutions to be legally constituted but not an *ontological* one. This distinction is evident, for instance, in Hegel's critique of the Indian and Chinese *Volkgeister* for failing to recognize that freedom must be written down and codified—given the form of thought—if this freedom is to be fully realized and raised to spirit's self-consciousness. These societies remain constituted by a system of institutional form-determinations, but they have not realized their *telos* insofar as these institutions eschew legal codification. Informal institutions are thus by no means excluded from Hegel's institutional ontology.

However, Hegel's teleological view of institutional formality is not as simple as I have so far suggested. If it were, then the heart of Honneth's criticism—that Hegel "privileges" formal institutions over informal ones—would still, by and large, hold true, as informal institutions would simply be teleological inferior relative to formalized ones. But Hegel is not a codification freak. Hegel's demand for rational codification neither comes at the cost of excluding the informal aspects of institutions nor entails denying their importance or necessity. Instead, Hegel validates informal institutions and the informal moments of mixed institutions, even in the modern context, so far as they accord with *Natur der Sache* vis-a-vis the institution in question. This validation

69. The texts of the *Kodifikationsstreit* are collected in Stern (2002). Savigny rejected the need for a code in Germany, insisting that its informal customs, gradually and organically formed, should be the basis of the legal order. See Savigny (1831, 29–30 50–51, 154, 167).

of the institutionally informal is especially evident if we reconsider Honneth's two examples, marriage and friendship.

Marriage is a particularly interesting case. Contra Honneth's exposition, Hegel does not defend a legalistic interpretation of the so-called "marriage contract" [Ehevertrag] as a "state-sanctioned contract" [staatlich sanktionierten Vertrag] (69–70, 72/111–12, 115). In fact, the most natural way of reading Hegel's account of the formality of marriage is as establishing a middle way between overly-legalistic ones (e.g., Kant's)<sup>70</sup> and those dispensing with formality altogether (e.g., Schlegel's and Schleiermacher's).<sup>71</sup> In §75A, Hegel even dismisses Kant's legalistic theory of marriage outright: "*Marriage* cannot [...] be subsumed under the concept of contract; this subsumption - in all its shamefulness, one must say - is presented by Kant (*Metaphysische Anfangsgründe der Rechtslehre*)" (GW 14,1:78). Hegel pushes back against the "intrusion" [Einmischung] of overly-legalized concepts of marriage in the same way that he resists the liberal-contractarian tendency to rest the state, normatively speaking, on the "relations of private property in general" (ibid.). If we examine Hegel's conceptual exhibition of marriage in *Sittlichkeit*, we find him again resisting overly formal accounts of this institution. Against those who give pride of place to marriage's "legal determinations" [gesetzlichen Bestimmungen], i.e., those who view it as merely a "civil or ecclesiastical precept," Hegel insists, repeatedly, that what is essential to marriage is instead its "ethical determination" [sittliche Bestimmung], which he also calls its substantiality, i.e., its objective sociality, over and above its legal recognition by the state (PR §164A/GW 14,1:147–48). So, although the *telos* of marriage includes the publicity of the ceremony and its being recognized by the state and one's community, Hegel ultimately sides with the romantics in separating marriage from legal and contractual relations. As such, the notion of an *Ehevertrag* is foreign to him, *pace* Honneth.<sup>72</sup>

But what about friendship? This is the second side of Honneth's worry about Hegel's "legally constituted institutions," viz., that Hegel omits this and other important informal institutions from his institutional ontology. For instance, Honneth complains that

in the Addition to §7, [Hegel] wrote that "friendship," at the level of feeling, represented the exemplary case of a relationship that showed how a subject could reach complete freedom only through "limitation" to another subject; however, in the chapter on "the family," which is concerned with the plane of "feeling" (§ 166) within ethical life, "friendship" does not occur in the text at all, and the analysis of the realization of

70. Infamously, Kant defines marriage in the *Doctrine of Right* precisely as a "contract" for the reciprocal and life-long possession of the other person's "sexual attributes" (§24). In defining marriage this way, Kant acknowledges this "this *right against a person* is also *akin to a right to a thing*" (§25).

71. Cf. §164Z: "Friedrich von Schlegel in his *Lucinde* and a follower of his in the anonymous Letters (Lübeck and Leipzig, 1800) [i.e., Schleiermacher] have argued that the marriage ceremony [Zeremonie der Schließung] is superfluous and a formality which could be dispensed with, on the grounds that love is the substantial element [das Substantielle] and that its value may even be diminished by this celebration. These writers represent the physical surrender as necessary in order to prove the freedom and intensity of love. [...] [By contrast,] what is [...] required is that love takes the shape of marriage, and that the different moments that are in love attain their truly rational relation to each other" (W 7:317–16).

72. It is certainly surprising that Honneth overlooks, textually and systematically, Hegel's rejection of the idea of an *Ehevertrag*, given Honneth's otherwise breathtaking erudition with respect to Hegel's opus and philosophical spirit. The closest Hegel comes to articulating such a notion is in his handwritten notes to §80, a section in which he endorses Kant's classification of contracts. Regarding the third kind of contract, the completion of a contract by giving a pledge (*cautio*), in which Kant locates his marriage contract, Hegel wrote: "Ebenso zu scheiden reine Verträge - und vermischte, d. h. mit höherem sittlichen Wert - Vertrag *auch* bei Ehe, aber nur *auch*" [Likewise, a distinction must be made between pure contracts - and mixed ones, i.e., those with a higher ethical value - contract [obtains] *also* in marriage, but only also] (W 7:169). In this note, Hegel concedes that contract may be part of marriage, but that, such cases, it is a "mixed contract" which has further, and more important, ethical determinations.

freedom is restricted to the interior of the bourgeois nuclear family.

According to Honneth, we can best explain this omission of friendship from *Sittlichkeit* as a consequence of Hegel's "privileging of legally institutionalized forms of ethical life," a privileging that compels Hegel, according to Honneth, to acknowledge as institutional, i.e., durable, reliable, and implementable as requirements of social freedom, only those social phenomena that are institutionalized through positive law.<sup>73</sup> But in doing so, Honneth fails to consider the possibility that Hegel could have been justified in excluding friendship from the purview of objective spirit in general and *Sittlichkeit* in particular. If we consider this possibility, we can see that Hegel's justification for excluding friendship has nothing to do with its informality.

To put the point differently, on the reading of Hegel I am advancing, we do not evaluate whether a certain social phenomenon (or pattern of interaction) rises to the level of an institution by examining its formality (per Hegel's institutional pluralism), but by determining whether it functions to internally differentiated ethical substance as one of its social forms, hanging together with its others as infinite form. In the case of friendship, there are, I think, good Hegelian reasons for responding in the negative. First of all, we note that not everything social must fit into objective spirit. Indeed, to hold this view, common in the literature, is to overly diminish the import of subjective spirit in Hegel's system, which is essential for Hegel's account of social life. This unfortunate yet common oversight is happily being redressed by a revitalization of research on Hegel's *Encyclopedia* anthropology, phenomenology, and psychology that stresses their import for his social thought. (Recall that, for Hegel, ethicality exhibits the *unity* of objective *and* subjective spirit, not merely that of objective spirit alone.) Second, if we examine subjective spirit in the *Encyclopedia*, we find already in its Phenomenology the treatment of friendship among the other interpersonal relations that constitute consciousness's progressively better attempts to realize, as universal self-consciousness, the norm of reciprocity, or what Hegel calls in the *Encyclopedia* "real universality as mutuality" [reelle Allgemeinheit als Gegenseitigkeit] (EG §436/GW 20:432). Hegel places friendship in this context of subjective spirit, writing in this section's *Anmerkung* that

This universal mirroring of self-consciousness, the concept that is aware of itself in its objectivity as subjectivity identical with itself and therefore universal, is the form of consciousness of the *substance* of every essential spirituality, of the family, of the fatherland, of the state, as well as of all virtues, of love, friendship, courage, of honour, of fame. But this *appearance* [Erscheinen] of the substantial may also be separated from the substantial, and be maintained for itself in empty honour, vain fame, etc. (EG §436A/GW 20:433; cf. E17 §358A/GW 13:203)

Friendship, then, like other personal relations (such as relations of domination and subordination, *Herr* and *Knecht*), are more-or-less successful attempts to gain consciousness of universal substance. Yet, as such, they are still subjective phenomena in the relevant sense and thus justifiably

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73. "Hegel seems to have drawn the conclusion that the only interactional relations in modern societies that can be understood as social elements of ethical life are those that fall under the organizational authority of the state and can therefore be institutionalized in terms of positive laws; for without such a possibility of state control the spheres in question would not possess the foundation of durability, reliability, and implementability that was necessary to make them a condition of freedom that was available to us and under our control. That is why [...] all the modern communicative relationships concerned with the reciprocity of inclination and love, only what has already been legally institutionalized can be admitted as part of ethical life" (Honneth 2010, 69).

excluded from objective spirit.<sup>74</sup> This is why in them the appearance of substance may fail to correspond to substance itself, that is, how society shows up to individuals, not its nature as such (again, these two perspectives can, and should, correspond, but need not do so for institutions to exist as such). Friendship is, in other words, a *form of consciousness* of ethical substance but not a *form* of ethical substance as such, which, incidentally, corresponds to our unified distinction between teleological and ontological institutional conditions. Therefore, Hegel's institutional pluralism is compatible with his excluding friendship from his institutional ontology on the grounds of its subjectivity, not its informality.

With this behind us, we can safely lay aside Honneth's concern about Hegel's overly legalistic institutionalization of *Sittlichkeit*. Hegel's systematic commitments to institutional pluralism and idealism alleviate this worry. But from these episodes of marriage and friendship, we may draw two general conclusions for Hegel's institutional theory. The first is that not everything *social* need show up in the doctrine of objective spirit. For Hegel, certain social phenomena are proper objects of the philosophy of subjective spirit, such as interpersonal relations of recognition in love and friendship, but also those of misrecognition—lordship and bondage, for instance. A complete account of the social world as we now understand it requires the philosophy of objective *and* subjective spirit. It follows that language because it forms part of subjective spirit, is not an institution for Hegel. Thus, despite the attempts of many commentators to unify Wittgensteinian and Hegelian institutions, there remains a fundamental difference between the two regarding the fundamentality they ascribe to language.

Second, we must not interpret Hegel's insistence that right take the form of thought and universality in laws and institutions (which is a teleological, but not ontological, institutional condition) to be an endorsement of formalizing and regulating all aspects of social life. It is not a legalistic injunction, but an *epistemic* one: it is the telos of institutions to attain the shape of self-consciousness, to become known by spirit in thought, i.e., to be given an adequate conceptual vocabulary, a system of thought-determination that accurately portray the reality of spirit's social life. For Hegel, philosophy, in cooperation with social science, contributes to this epistemic end by immanently developing the institutional conceptual structure from within its shape of life. But this knowledge, if it is truly to become spirit's, must also become the common knowledge of the masses, which, for Hegel, is the only proof of the validity of a world-historical self-understanding. Marriage ceremonies, agricultural practices, social stratifications, and so on do not need to be legally regulated for one to come to know what they are and how they work in one's society, i.e., for them to satisfy their institutional telos of being raised to the form of thought. Hegel's calls for legal codification, a rational constitution, and other state reforms are thus in no way in tension with his critique of over-legalization and over-formalization in social life (e.g., Kant's), but are part and parcel with his popularization of *Rechtsphilosophie* as a condition of the actualization of freedom.

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74. Elsewhere in the *Encyclopedia*, Hegel further underscores the subjectivity of friendship, contrasting it to substantial-ethical relations, again, not because of its informality, but because of its inability to attain actuality in the world, its ideological function as a mere ideal: "The youth turns, in general, to the substantial universal. [...] But in the youth this ideal still has a more or less subjective shape, whether it lives in him as an ideal of love and friendship or as an ideal of a universal state of the world. In this subjectivity of the substantial content of such an ideal lies not only its opposition to the present world, but also the drive to sublimate this opposition by actualizing the ideal. The content of the ideal instills into the youth the feeling of energy; he therefore fancies himself called and qualified to transform [umzugestalten] the world, or at least to readjust [einzurichten] the world that seems to him to be out of joint" (EG §396Z/W 10:83).

### 3.4.2 Contra Over-Description

We now turn to the second part of the charge of ontological over-institutionalization: that Hegel's institutional theory is descriptively overloaded or normatively deficient. As we saw in §2.2.2, this charge objects that Hegel gives too much weight to the existing institutions of his time and overlooks the task of recovering the normative foundations of these institutions. According to Honneth, Hegelian *Rechtsphilosophie* consists of two tasks: a *normative reconstruction* of the cognitive principles underlying an institutional sphere that discloses the normative conditions for the realization of social freedom, and an *institutional analysis* of existing institutions that evaluates their legitimacy to the degree that they satisfy these normative conditions. Hegel's institutional theory, Honneth contends, attempts the latter without having done the former.

This concern about Hegel's institutional ontology being overly descriptive can be resolved by briefly considering the methodological, ontological, and normative presuppositions of this part of Honneth's objection. Hegel's institutional idealism and pluralism suffice as a response. I will not here provide a full account of institutional normativity; this is my task in the next Chapter.

First of all, nothing in the *Philosophy of Right's* Introduction commits Hegel to the method of "normative reconstruction," as Honneth understands it. Rather, Hegel sets himself the task of exhibiting the concept as a system of self-unfolding thought-determinations in the realm of right. While such a scientific system will have some normative implications insofar as it discloses the teleological conditions of institutions (e.g., their existence in the form of universality and thought, as we have seen), these normative demands are secondary in the science of right, which concerns in the first instance only the dialectic of the concept or of the categories of right, and will be of a limited nature and scope relative to the demands of social critique. But by limiting scientific critique in this way, Hegel makes room for *political* or *extra-scientific* critique, and so cannot be accused of accommodationism writ large.

Second, ontologically speaking, nothing in Hegel's text suggests that recognition or cognitive status is foundational to his institutional theory. I have provided an alternative institutional ontology, according to which Hegelian institutions are the forms serving to differentiate society as a rational whole, giving ethical substance subjectivity or the idea-structure of being a concrete unity. As forms of the idea of freedom, they need not be recognized in any sense of this notion in order to exist and function as institutions—recognition is not one of their ontological conditions (but is, perhaps, a teleological one). Conversely, if institutions were fundamentally constituted by cognitive statuses for Hegel, it would be almost impossible to comprehend the objectivity he takes to be at stake in his institutional theory.<sup>75</sup> Particular institutions are individuated for Hegel by their specific kind of social being and function; spheres (the family, civil society, the state) are constituted by sets of institutions that sufficiently hang together, forming a meaningful unit, and differentiated according to the *Natur der Sache* (naturalness and immediacy, externality and need, universality and self-consciousness). Neither particular institutions nor their spheres require a

75. This objectivity in Hegel's institutional theory is most evident in passages such as: "In opposition to the principle of the individual will, we should remember the fundamental concept according to which the objective will is. rational in itself, i.e., in its *concept* whether or not it is recognized by singulars and willed by them at their discretion" (PR §258A/GW 14,1:203); "This movement [of universal self-consciousness in Terror] is thereby the reciprocity of consciousness with itself [Wechselwirkung des Bewußtseyns mit sich selbst] in which consciousness lets nothing break loose into a shape that would become a free-standing object confronting it. From this, it follows that consciousness cannot arrive at a positive work, neither to universal works of language nor to those of actuality, nor to the laws and the universal institutions of conscious freedom, nor to the deeds and works of willing freedom." (PhG ¶342/GW 9:318).

unique recognitive pattern for their specification.

Finally, regarding the teleological side of institutions for Hegel, it need not have the structure Honneth suggests: latent normative-recognitive principle, manifest concrete institution. It is clear enough that Hegel is not merely recapitulating historical reality. Hegel's state does not correspond to any existing state. Hegel's corporations, for example, were entirely without prototype.<sup>76</sup> We have already quoted Hegel's dismissal that any existing state serves as a model for the *Philosophy of Right*.<sup>77</sup> To comprehend one's time in thoughts is to grasp the *Sache selbst*, which in the case of right is, at its core, to develop the system of institutions that constitute ethicality. This development is, in a sense, a reconstruction of the rational state, not out of the abstract demands of right (a la Fichte), but out of the rudiments of one's present, and, again, not to prove that this present is a catastrophe (again, a la Fichte), but to unearth its institutional teleology: its tendency to rationalization and self-awareness. There is no reason to think that Hegel's task requires Honneth's two-step procedure (normative reconstruction, institutional analysis), nor is there reason to think that Hegel's task requires identifying a set of distinct normative principles underlying certain groups of institutions. It is, therefore, true that Hegel does not distill modern social life into distinct normative-recognitive principles, but we should not conclude from this omission that Hegel perniciously over-institutionalizes in the *Philosophy of Right*.

### 3.4.3 Contra Strong Institutionalism

I now turn to the final version of the ontological over-institutionalization objection, viz., strong institutionalism. This is the most pressing of the three, so addressing it will require more work than the prior two varieties. I contend that Hegel's is indeed a strong institutionalism, but this does not *ipso facto* diminish his institutional theory. That is, it does not entail the existence of "a super mind floating over individual minds," as Searle puts it (1995, 25). As we saw above, this objection can be expressed in slogans such as "no individuals, no institutions," "institutions are mind dependent," and "institutions are nothing over and above individuals." But the attractiveness of such slogans presumes that they assert something meaningful or insightful, ontologically speaking. In the remainder of this Chapter, I will contend that they do not. This will, I hope, dispel the cloud of obscurity supposedly surrounding Hegel's institutional ontology, as it will turn out to be no more obscure than the competing theories. Hegel's institutional ontology cannot be ruled *prima facie* implausible.

My argument will proceed in two moves. First, I will draw on contemporary work in metaphysics to interpret these slogans and Henrich's distinction between minimal, moderate, and strong institutionalism as claims about ontological dependence (§4.3.1). Hegel's strong institutionalism, I will conclude, should be reframed as a question concerning ontological objectivity,

76. On the question of the historicity of Hegel's estates, see the excellent work of Yeomans (2017; 2023).

77. "By the idea of the state, one must not have any particular states [besondere Staaten] or particular institutions [besondere Institutionen] in mind; instead we should consider the idea, this actual God, for itself" (PR §258Z/W 7:404). At least one of Hegel's contemporaries could not identify a particular state to which the state of the *Philosophy of Right* was supposed to correspond. In von Thaden's letter to Hegel (see note above), he wrote: "You have described the state as the actuality of right, as actualized freedom. But in which state are your doctrines institutions? For not all states seem to have acceded to this honor. The Turkish state is in particular censored on account of the Pashas, while the free state of North America is not even mentioned. Do you perhaps mean the Russian, Austrian, or Prussian state? I suspect it is Prussia, for in 1817 in other circumstances you described the institutions of the then state of Württemberg" (L 463/B 2:279). Notice that von Thaden assumes Hegel refers to the Prussian state *only because Hegel had previously written about his home state in 1817*, and could not identify this state based on Hegel's doctrines.



not ontological dependence. Second, I will examine ontological objectivity in the context of contemporary social ontology (§4.3.2.). Once so reframed, we can see that although Hegel's institutional ontology is mind-dependent, it is nevertheless ontologically objective in the relevant sense. Therefore, Hegel's institutional ontology can be understood as extending this literature's already-existing account of some institutions to all institutions.

### Ontological Dependence

In this subsection, I will interpret slogans such as "no individuals, no institutions" as claims about ontological dependence (usually glossed as ontological non-self-sufficiency)<sup>78</sup> as it is conceived in contemporary social ontology and social metaphysics. While there are other candidates for interpreting these sorts of metaphysical assertions, such as grounding (usually glossed as metaphysical explanation), supervenience (usually glossed as property covariation),<sup>79</sup> or ontological priority (usually glossed in terms of metaphysical fundamentality),<sup>80</sup> ontological dependence is likely the best among them. This is so, first because grounding and supervenience tend to be construed in terms of *facts* or *states of affairs* (Fine 2012, 38, 43; Epstein 2015, 58), e.g., Searle's view that institutional facts, such as "Joe Biden is the President of the United States," supervene on facts about individual people, namely facts about our attitudes towards Joe Biden taken *en masse* (what Searle calls our "collective intention"); second, because the 'levels of reality' model supposed by ontological priority is less compelling in the social sciences compared to, say, describing the relations between the natural sciences (physics, e.g., occurring on a 'more fundamental level' than chemistry, etc.) and, furthermore, this 'levels' model has little in common with Hegel's doctrine of objective spirit.<sup>81</sup> Ontological dependence, by contrast, naturally deals with objects or entities, which better suits our subject matter: institutions taken as forms of ethical substance, on the one hand, and individuals taken as agents with a purposive teleology towards freedom, on the other.

Turning to ontological dependence, let us try to specify a more concrete interpretation of the assertion that "institutions cannot exist unless individuals do." Doing so will require us to introduce several distinctions.<sup>82</sup>

The first question we must answer is whether it is necessary to take "institutions" and "individuals" in the plural, to which we must respond in the affirmative. For Hegel's part, it follows from his institutional idealism that institutions come together as a package, as it were, within the systematic context of their differentiation of ethical substance. However, most social ontologists would agree with Hegel that it makes little sense to posit the existence of a singular institution, either because each institution depends on an *ur*-institution (*language*, in Searle's case, or *the state*

78. Ontological dependence is said to be an "objective metaphysical relation between entities" (Tahko and Lowe, 2020).

79. See McLaughlin and Bennett (2023); Epstein (2015, 33–4, 72, 110–11); Correia (2008, 1027–29). For a compelling application of supervenience to interpretive issues in German idealism, see Wolf (2021, 279–80).

80. See Tahko (2015, 105).

81. I thus disagree with Wolff (2020), who attributes a 'levels of reality' picture to Hegel: "Hegel reconstructs the sprouts of the *scala naturae*—the Great Chain of Being, or series of natural orders—[...] as forms of expression of a system of categories which presents the order of nature as a system of levels or stages of reality" (204). More Hegelian in my view is the picture given to us by Ionel (2022), who, in the context of subjective spirit, rejects the "ladder" metaphor central to metaphysical fundamentality, invoking instead the image of a synchronic development of a singular phenomenon (in his case, the individual human spirit).

82. Elsewhere ("Hegel and Fichte on Institutional Content") I provide an alternative articulation of these distinctions in terms of the difference between institutional *content* and institutional *principle*, whereas these principles are understood as the motivating, "directing," or "guiding" idea underlying an institution *a la* Maurice Hauriou (1970). On the relation of Hauriou's institutionalism to Hegel's, see Kervégan (2022, 171–74; 2018, 278–82).

that inaugurates *societas* as such in the case of classical contractarianism), an institution that itself appears to necessitate the existence of institutions (could a society with *just* language or a civil condition really exist?), or for other reasons of sociality. We can thus presume general agreement that it follows from the concept of institutions that an institution cannot exist alone and that there must instead exist a simultaneous plurality of institutions within a given society. We have already captured this necessary plurality of institutions by calling it a "meso-level" concept, which indicates that it cannot be a genus that is exhausted by a single species because, in that case, it could not perform any meso-level conceptual work. That there exists a plurality of interrelated institutions is therefore, on Hegel's view, one of their ontological conditions.

What about individuals? At first glance, there appears here to be even less room for disagreement. Surely, we must speak of individuals in the plural when we consider the ontological constitution of institutions. Indeed, this assumption of a plurality of individuals has become social-ontological common sense when defining social phenomena, often captured by the phrase "two or more individuals" in the relevant definitions (or two or more people, agents, or persons—there is no meaningful difference between these terms for our purposes).<sup>83</sup> The institutional (or the social) would apparently obtain only if two or more individuals are in some way involved. But we should note that things are not so simple; twoness is neither necessary nor sufficient for demarcating the institutional. Regarding twoness's insufficiency, we recall Weber's influential argument that the colliding of cyclists and the simultaneous opening of umbrellas do not denote social phenomena because, in these cases, each agent is indifferent to the "subjectively intended meaning" (or "subjectively understandable meaning") of the other agent's behavior (Weber 2019, 99–100, 84). Contemporary social ontologists similarly qualify their definitions of the institutional when they require that the two or more individuals in question must constitute, e.g., a "we-attitude" or a shared sense of doing something together. More controversially, twoness may not be necessary for institutions to exist. Hauswald, for example, imagines a "mass extinction event" after which only one adult human being survives but who otherwise has her behavior regulated by social kinds.<sup>84</sup> Alternatively, consider the figure of Robinson Crusoe, central to the history of social thought, who continues his practice of double-entry bookkeeping while marooned by himself on an island. While there is certainly room for debate on this issue, it would not be outlandish to say that institutions continue to exist for these two solitary individuals and, therefore, that twoness is not an ontological condition for institutions.<sup>85</sup>

With these two basic questions answered, I will draw two distinctions necessary for interpreting slogans like "no institutions, no individuals" regarding ontological dependence. The first is a distinction between *different kinds of dependence*. It is common to distinguish between at least three such kinds: causal, metaphysical, and logical.<sup>86</sup> Metaphysical dependence (of which ontological

83. See Tuomela (2002, 11, 17, 34, 87); Gilbert (1996, 2); Searle (1995, 23–26, 39). While we can equally well speak of two or more persons, people, and so on, the term "individual" has stuck, at least since debates over methodological individualism in the early twentieth century.

84. See Hauswald (2018, 595n1). For Hauswald, in the scenario of the now-solitary individual, institutions (or institutional kinds) do not exist but social kinds do. Examples of institutionally regulated behavior of solitary individuals cast doubt on the comprehensiveness of the game-theoretic approach to institutions, which logically presuppose the participation of at least two individuals.

85. For his part, Hegel does not consider these sorts of edge cases in his institutional theory, as such edge cases are useful only for formal thought and do not pertain to the philosophical comprehension of actuality. But nonetheless there remains some reason to think that Hegel would not consider twoness to be essential to the ontology of institutions. He could therefore countenance an institutionalized solitary individual, albeit only as an extremely teleological deficient form of *Sittlichkeit*.

86. See Tahko (2015, 93, 113); Correia (2008, 1022). Correia, for example, distinguishes between five kinds of dependence:

dependence is a species) is therefore intended to be *non-causal*, replacing the notion of cause with that of *determination* (sometimes called a "constitutive form of determination" or "constitutive determination"). For example, while smoking *causes* lung cancer, smoking tells us nothing about the metaphysical *determination* or *constitution* of lung cancer, which is instead constituted by the multiplication of bad cells in a region of the body, etc. While there remains debate about whether causation and determination can truly be separated, it is often assumed that the distinction between them is *prima facie* plausible. I will, therefore, interpret our slogan metaphysically and not causally or logically.<sup>87</sup>

The second distinction is that between *institutional types and tokens*. Institutional *tokens* are physical instantiations of institutions in a specific space and time, such as a particular marriage or a piece of money. Institutional *types* are the abstract categories or kinds under which these tokens fall and which exist only as concepts (Guala 2016, xxi–xxii, 196–205; Thomasson 2003, 274–75). Anticipating another distinction we will make later, institutional tokens are *rigid* because their existence depends on the existence of *specific* objects, whereas institutional types are *generic* because their existence depends only on the existence of some *kinds* of objects. Like the causality-determination distinction, the institutional type-token distinction is disputed.<sup>88</sup> The type-token distinction can be made more fine-grained by distinguishing between higher-level, relatively ahistorical types (such as marriage and the system of the estates) and lower-level, historical types (Roman marriage, the Indian caste system). While Hegel acknowledges all these of these levels, he primarily concerns his institutional theory in the *Philosophy of Right* with high-level types—recall Hegel's methodological dictum to reconstruct the institutions of *Sittlichkeit* without having "particular institutions" in mind (PR §258Z/W 7:404). Strong institutionalism, then, likely concerns these higher-level institutional types, not institutional tokens or lower-level types.<sup>89</sup>

We now turn specifically to ontological dependence as the relevant kind of metaphysical dependence. Within this genus, social metaphysicians typically distinguish three species: *existential* ontological dependence, *essential* ontological dependence, and *explanatory* ontological dependence. Each of these is, at first blush, a candidate for interpreting our slogan, and we will therefore need to attempt each of them. However, one further distinction must first be introduced, namely that between rigid and generic dependence. *Rigid* dependence is the stricter of the two, denoting dependence on a specific object, whereas *generic* dependence is looser, denoting only dependence on there being something that is of a certain kind. For example, a set *rigidly* depends on its members,

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causal, metaphysical, logical, conceptual, and natural.

87. Two further remarks about this distinction between metaphysical and causal dependence can be made. First, we note that it is quite Hegelian to distinguish between causation and determination. Throughout his writings, Hegel reminds us that philosophy is not involved in the business of *explaining* things but rather of *comprehending* them and of the finitude of the category of causality. Most memorably, this occurs in "Force and the Understanding" in the *Phenomenology of Spirit*, where Hegel, somewhat dismissively, shows explanation (*Erklärung*) in its dialectic to be merely the "enjoyment" of consciousness with itself (PhG ¶163, cf. ¶¶154–55). Determination, by contrast, remains a constant companion of Hegelian philosophy, being Hegel's preferred term for denoting, in a metaphysically non-committal manner, that something *is* this way rather than some other way. Second, this distinction between the causal and metaphysical realms is the point at which contemporary social ontology part ways with twentieth-century debates over methodological individualism. Methodological individualism combines two distinct claims, one causally explanatory ("explanatory individualism") and the other ontological-metaphysical ("ontological individualism"), and assumes, quite contestable, that the latter, ontological individualism, implies the former, explanatory individualism. Certainly, Hegel was not concerned (at least in the first instance) with explanation as we understand it today, and so his institutional theory is best evaluated as a position regarding ontological individualism, not methodological individualism. See Epstein, *The Ant Trap*, 21–23; Joseph Heath, "Methodological Individualism," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Summer 2020.

88. See Hauswald (2018, 596–99); Epstein (2016, 168–70). For a defense of the type-token distinction, see Guala (2018, 640–43).

89. By contrast, "Searle's theory is essentially a theory of tokens" (Guala 2018, 639).

whereas electricity *generically* depends on electrons. This is because a set's existence requires each of its particular elements to exist (rigid), but electricity exists so long as some electrons exist, indifferently to which particular electrons (generic). In social ontology, we are generally interested only in generic dependence, as particular institutions and individuals tend to be immaterial to our concerns. This also holds in the case of strong institutionalism.

Let us now try to interpret our slogan as a claim regarding ontological dependence using the three varieties of generic ontological dependence.

**Slogan:** An institution cannot exist unless individuals exist. No individuals, no institution.

We immediately note that this slogan fails to capture the nature of the dispute. At issue in Hegel's strong institutionalism is not the dependence of institutions on individuals there being any individuals as such—something which strong institutionalism need not deny—but rather their dependence on the *representations* held by individuals, and, in particular, whether these individuals represent ("cognize") these institutions as the institutions that they are. Recall that, for Henrich, strong institutionalism indeed subsumes the individual will into the institutionalized objective will, but, in doing so, it posits only a dependence of the individual will on the institutional life-order, not the independence of the institutional vis-a-vis the existence of *all* individuals as such. We can therefore revise the slogan to concern institutional representations:

**Revised slogan:** An institution cannot exist unless individuals exist and these individuals have representations about that institution. No institutional representations, no institutions.

With this revised slogan and our tools, we can now define the positions of Henrich's minimal, moderate, and strong institutionalism. Admittedly, these definitions abstract away from the normative texture of Henrich's tripartite distinction, capturing only its ontological core. Nonetheless, these stripped-down renditions aid in clarifying the ontological charge against Hegel. They are:<sup>90</sup>

**Minimal institutionalism:** (1) Necessarily, an individual exists only if some institutions exist.<sup>91</sup>

**Moderate institutionalism:** (1) Necessarily, an individual exists only if some institutions exist; (2) necessarily, an institution exists only if some individuals exist and these individuals have representations about that institution.<sup>92</sup>

**Strong institutionalism:** (1) Necessarily, an individual exists only if some institutions exist; (3) it is not the case that, necessarily, an institution exists only if some individuals exist and these individuals have representations about that institution.<sup>93</sup>

Refuting Hegel's strong institutionalism thus requires demonstrating that either (1) or (3) is false or that (2) is true. Each of these three claims concerns ontological dependence. However, it is only

90. Let  $Ins$  = "is an institution";  $Ind$  = "is an individual";  $R$  = "has representations about";  $\rightarrow$  = metaphysical necessity operator;  $x$  = essence operator ("it pertains to the essence of  $x$  that...");  $\rightarrow$  = material implication. For the sake of simplicity, I ignore the plurality constraint in the logical interpretations (i.e., "at least two individuals/institutions").

91.  $(x Ind_x \rightarrow y Ins_y)$

92.  $(x Ind_x \rightarrow y Ins_y) \& (x Ins_x \rightarrow y Ind_y \& R_{yx})$

93.  $(x Ind_x \rightarrow y Ins_y) \& \neg (x Ins_x \rightarrow y Ind_y \& R_{yx})$

(2)—or its negation in (3)—that has been controversial, as almost all of Hegel’s commentators, including Henrich, grant the validity of (1). So, showing Hegel’s strong institutional not to be patently false only requires arguing the implausibility of (2). And indeed, that not all institutions require for their existence their being represented by some individuals has already been suggested in the literature on social ontology. But in order to evaluate (2), we should examine it more closely.

So far, we have expressed (2) in terms of existential dependence. But it can also be expressed as essential and explanatory dependence:

(2<sub>exs</sub>) **Generic existential ontological dependence:** Necessarily, an institution exists only if some individuals have representations about that institution.<sup>94</sup>

(2<sub>ess</sub>) **Generic essential ontological dependence:** Necessarily, it pertains to the *essence* of an institution that it exists only if some individuals have representations about that institution.<sup>95</sup>

(2<sub>exp</sub>) **Generic explanatory ontological dependence:** Necessarily, an institution exists only *because* some individuals have representations about that institution.<sup>96</sup>

Two remarks should be made about these definitions.

At first blush, generic *existential* ontological dependence appears to be the most natural way of interpreting the revised slogan. If it were true, it would seem to capture precisely the kind of dependence that refutes strong institutionalism. However, existential dependence faces several serious challenges as a conception of ontological dependence. In short, it would tell us that institutions also ontologically depend on all necessary existents. For instance, if we suppose that the number 2 necessarily exists, then institutions ontologically depend on the number 2, as it is necessarily the case that 2 exists if an institution does (Fine 1995, 271–74; Tahko 2015, 98–99). This concern has been taken by contemporary metaphysicians to undermine the utility of existential ontological dependence, leading them to develop non-modal alternatives to ontological dependence such as essential and explanatory dependence.

But when we examine the essentialist and explanatory varieties of (2), we notice that they involve more metaphysical baggage than we first anticipated. The first variety requires that we provide a further account of the *essence* of institutions, a task which presumably would be uncongenial to the critic of strong institutionalism. The second variety is less metaphysically inflationary and, admittedly, plausible but still increases the burden on the critic. She must now establish a non-causal and metaphysically explanatory connection between the existence of an institution and the representations that individuals have about it. If that can be doubted in some important cases, then strong institutionalism remains a live option in social ontology. I aim to show that this is indeed the case in the next section.

Second, we note that Hegel rejects each of these iterations of moderate institutionalism and is therefore properly classified by Henrich as a strong institutionalist. According to Hegel, an institution can exist even if no one has a representation about it. This, of course, contradicts (2<sub>exs</sub>). But he also rejects (2<sub>ess</sub>) and (2<sub>exp</sub>). Regarding (2<sub>ess</sub>), although it is part of the teleological essence of an institution, for Hegel, that individuals represent it in the right way, this is not an ontological

94.  $(x \text{ Ins}_x \rightarrow y \text{ Ind}_y \ \& \ R_{yx})$

95.  $x (x \text{ Ins}_x \rightarrow y \text{ Ind}_y \ \& \ R_{yx})$

96.  $(x \text{ Ins}_x \rightarrow y \text{ Ind}_y \ \& \ R_{yx} \ \& \ E_x \text{ in virtue of the fact that } R_{yx})$

condition of its existence, per his institutional idealism. This commitment contradicts ( $z_{\text{ess}}$ ). Hegel also rejects ( $z_{\text{exp}}$ ). In addition to rejecting that explanation pertains to philosophy, Hegel does not derive his institutional ontology from a plurality of individuals and their interrelations, as, for example, a contractarian would. Instead, he derives it categorially, i.e., as a logic of the forms of freedom that differentiate society into an ideal system of these forms, as I argued in §3.

The upshot of these considerations is that, given the state of the art in social metaphysics, making meaning of the slogan "no individuals, no institutions" requires taking on additional metaphysical baggage. Furthermore, it shows us that strong institutionalism's implausibility rests on institutions necessarily being ontologically subjective, i.e., that institutions ontologically depend on the representations held about them by at least some individuals. I turn in the next section to examining whether institutions (or at least some of them) may instead be ontologically objective.

### Ontological Objectivity

In the philosophy of social science, the relevant notion of ontological objectivity has been most influentially developed by Muhammad Ali Khalidi and Amie Thomasson.<sup>97</sup> They have aimed to challenge collective acceptance theorists, such as Searle, who hold institutions to be epistemically objective but ontologically subjective.<sup>98</sup> They challenge this pairing by arguing that at least some important institutions are ontologically objective despite being mind-dependent—the two terms are not co-extensive, as many traditional metaphysicians have assumed.<sup>99</sup> Hegel radicalizes Khalidi and Thomasson's position since he holds *all* institutions to be ontologically objective in the sense that *all* institutions do not ontologically depend—either existentially, essentially, or explanatory—on the mental states, subjective attitudes, representations, or expectations that individuals have about the institution itself.

In this final stage of my rehabilitation, I try to render plausible Hegel's institutional ontology by analogy. I consider the two examples of ontologically objective social phenomena advanced by Khalidi, Thomasson, and Burman (viz., recession and racism) and argue that they are plausible interpretations of these phenomena. I then suggest that Hegelian institutions are all ontologically objective in a similar manner. If I can show, by dint of the appeal of these interpretations, that at least some institutions do not ontologically depend on subjective representations about them, then it is not so implausible that this could be extended to all Hegelian institutions, bearing in

97. Muhammad Ali Khalidi, "Three Kinds of Social Kinds," *Philosophy and Phenomenological Research* 90, no. 1 (2015): 96–112; Amie Thomasson, "Foundations for a Social Ontology," *ProtoSociology* 18/19 (2003): 269–90; Amie Thomasson, "Realism and Human Kinds," *Philosophy and Phenomenological Research* 67, no. 3 (2003): 580–609. Burman helpfully calls this the "standard model" of social ontology. See Burman, *Nonideal Social Ontology*, 46–50. Another important influence against the collective acceptance view has been the work of evolutionary game theorists, such as Ken Binmore, who argue that game-theoretic theories of institutions do not require collective acceptance. See Ken Binmore, "Do Conventions Need to be Common Knowledge?," *Topoi* 27 (2008): 17–27.

98. Ásta nicely summarizes ontological and epistemic subjectivity as follows: "A phenomenon is *ontologically subjective* if the existence of the phenomenon depends on subjects in some way, including their beliefs, thoughts, and practices. A phenomenon is *epistemically subjective* if the truth value of statements about those phenomena depends on subjects in some way, including their beliefs, tastes, and opinions." Ontological and epistemic *objectivity* consists in not so being subjective. See Ásta, "Social Kinds," 293.

99. This position is known in the literature as "realism" about social kinds. See Ásta, "Social Kinds," 295–96; Thomasson, "Realism and Human Kinds," 604–5; Guala, "On the Nature of Social Kinds," 59–60. Khalidi, following Thomasson, argues that it is "a mistake to ground realism in mind-dependence" (Khalidi, "Three Kinds of Social Kinds," 109, cf. 108–111). As Haslanger reminds us, realism about social kinds entails that they "can affect us without influencing our self-understanding or without our even being aware of it" (Haslanger, *Resisting Reality*, 128).

mind that Hegel has already excluded from his institutional ontology the social phenomena of abstract right and morality (e.g., property and contract). That this is at least debatable will be sufficient for my having succeeded in rendering Hegel's strong institutionalism, viz., the view that *all* institutions are ontologically objective, to be, ontologically speaking, a live option.

To begin, Khalidi distinguishes between three kinds of institutions by asking two questions: first, whether the institutional *type* existentially ontologically depends on individuals having representations about the type; second, whether *tokens* of this institutional type existentially ontologically depend on individuals having representations about the token.<sup>100</sup> These questions permit three possible sets of answers, which are here portrayed by an increasing degree of ontological objectivity (where the dependence throughout is representational):<sup>101</sup>

	Token dependence?	Type dependence?	Examples
Dependent institutions	Yes	Yes	permanent resident, prime minister,
Weakly independent institutions	No	Yes	war, money
Strongly independent institutions	No	No	recessions, racism, power structures

The first group of institutions includes those whose type as such and their instances both depend on the representations that individuals have about that type and token. Examples of such institutions include political categories such as citizen, permanent resident, and prime minister, as these are institutions (or, if you prefer, institutional classifications) that could not exist unless individuals represent them as such and their instances. Justin Trudeau, for instance, cannot be the prime minister of Canada without there being at least some individuals who have subjective attitudes about (1) what it is to be the prime minister of Canada at all (type dependence) and about (2) Justin Trudeau as satisfying these conditions (token dependence). Such *dependent* institutions tend to be the more formal ones, as they follow explicit rules or procedures in being

The second group of institutions includes those whose existence as a type or kind depends on being represented as such by individuals but whose particular instances can exist without being represented.<sup>102</sup> This group includes institutions such as war and money. The institution of war as a type, on this view, ontologically depends on there being declarations of war, evaluations of just and unjust wars, and other practices involving the concept of war. But this does not rule out that a particular conflict could escalate into a war without anyone knowing it had done so. As Khalidi (2015) illustrates, "we may find that a border skirmish between Ruritania and Lusitania, which took place without a declaration of war on the part of either country, escalated and dragged on to the point that it could be considered a war, though no one considered it to be a war at the time" (100). The institution of money is similar. The institutional *type* money depends upon representations about this type, as there could be no money without people knowing what money is and how it can be used. Nonetheless particular tokens may exist, i.e., be instances of money, without anyone knowing about them (famously, the bill that has fallen through the cracks of the Bureau of Printing and Engraving). For standard social ontologists like Searle, this

100. Khalidi, "Three Kinds of Social Kinds," 103–4. While Khalidi calls these three kinds of social kinds, there is for my argument no important difference between social kinds and institutions. See the helpful discussions of Khalidi's tripartite scheme in Ásta, "Social Kinds," 293–95; Burman, *Nonideal Social Ontology*, 7–8, 158–62.

101. There are only three possibilities, not four, because token representational dependence entails type representational dependence. These labels are mine; Khalidi simply calls them the first, second, and third kind of social kinds.

102. Thomasson accordingly calls this second group of institutions *epistemically opaque*. See also Burman (2023, 48–50, 164n2).

second group is the largest and most important of the three, as its token-independence makes its institutions "epistemically objective," not only because there can be tokens that exist but haven't been recognized in any way (the fallen bill), but also because not only some but even *all* individuals can be *wrong* about whether a token of the institutions really is such a token (the border skirmish), despite this being impossible about the type (war).<sup>102</sup>

The final group of institutions includes those whose existence as both an institutional type and their respective tokens do not ontologically depend on being represented as such a type or token. This group is exemplified by recessions, racism, sexism, economic classes, and other power structures studied by the social sciences. To characterize institutions in this group, we may say that although they do not ontologically depend on representations *about* them, this does not entail that they are independent of representations. However, specifying this residual connection to representation is not easy. Thomasson (2003, 289), for example, considers these sorts of institutions to be "by-products" of the social activity orchestrated by other, more representationally-dependent institutions. But this sort of description already concedes too much to the critic of strong institutionalism, as it renders these strongly independent institutions to be ontologically derivative of the more dependent ones. We need an account of these strongly independent institutions as being objective *sui generis*.

Before connecting this demand to Hegel's institutional ontology of social forms, it is helpful to lay out these two prominent examples (Thomasson 2003, 276; Khalidi 2015, 98–9). If a recession consists of two consecutive quarters of negative economic growth, then it is clear that this economic state of affairs can obtain even if no one regards it as such (token independence). But it can also obtain even if no one regards *anything* to be a recession, i.e., without anyone having representations about recessions as such (type independence). This is why a social scientist would be justified, for example, if she, in her explanation of a historical phenomenon, were to classify the economy of, say, an ancient Greek *polis*, as being in a recession, even though no one at the time had any representations about recessions. Racism can be understood similarly. As Thomasson puts it, "racism is [a] social phenomenon that depends on certain beliefs (e.g. about the abilities and appropriate roles of people of differing races) and practices (such as differential legal, housing, or employment practices). But something or someone can be racist without anyone regarding anything as racist." Although it is possible that racism ontologically depends on at least some individuals having representations about *race*, certainly they need not have any representations about *racism*. Presumably, this is part of what we mean when we decry *systemic* racism. Racism, sexism, class domination—these are all social phenomena that, like recessions, do not ontologically depend on individuals having representations about them, and so are ontologically objective in the relevant sense.

However, critics of strong institutionalism may rejoin that recessions are not proper institutions but "systematic consequences" of certain institutional arrangements and that these other institutions depend on individuals' representations about them (Searle 2010, 23–24, 116–17). Strongly independent institutions would then appear to be ontologically parasitic on dependent institutions, undermining their purported ontological primacy. This sort of response really has two parts: first, that phenomena like recessions and racism are not really institutions at all, and so we need not capture them in our institutional ontology; second, that even if we grant that recessions and racism are real institutions, they are in some way derivative of the representationally



dependent institutions, and so, again, are not the proper target of our institutional ontology.

I grant that it does not cohere with our social-scientific conceptual practice to speak of economic recessions to be institutions and that the label coheres only slightly better when applied to racism and sexism. But this incoherence is only accidental. As a matter of fact, we do call marriage, agriculture, corporations, etc., institutions, and Hegel's contention, in my proposed reading, is that these institutions function similarly to recessions and racism so described. The second part of the rejoinder is more serious. Let us see whether we can make sense of these institutions being, ontologically speaking, non-derivative vis-a-vis the representationally dependent institutions of abstract right and morality.

Let us not doubt whether Hegel's five exemplary institutions—marriage, sovereignty, the estates, the corporation, and agriculture—are "epistemically objective" in the sense of being at least weakly independent institutions according to Khalidi's tripartite scheme. Granting Hegel that these are genuine institutions, could these belong to the group of strongly independent institutions?

Let us consider marriage. By granting its epistemic objectivity, we have already conceded that two people can be married without them knowing it and without anyone else knowing it (token independence). That is just what it is to be subject to the kind of epistemic opacity defining this group. But what about the next, stronger kind of opacity: could there be marriages in a society where no individual had a representation about marriage? The answer seems to me to be: Yes. Let us take Hegel's perspective. According to Hegel, the ancient Greeks, for example, attained consciousness of marriage only through their mythology, which, among other things, narrated the establishment of marriage and agriculture (VPWG 227–28/W 12:280). Presumably, Hegel does not think that this consciousness was required for the institution of marriage to exist in ancient Greek societies at all and that the institutions of marriage "existed"—functioned to differentiate Greek ethical substance—prior to the development of their mythology. And I see no reason to disagree with Hegel. If we today take marriage to be, say, the institution constituted by an attempt to resolve "a cluster of problems, including problems of procreation, problems of education, issues of economic cooperation, and mutual emotional and affective support" (Guala 2016, 198) then there it is plausible that this institution can exist without anyone having representations about it, so long as there exists a distinct *form* of human sociality which addresses, or attempts to address, this cluster of problems.

However, this does not yet address the further question: does this form of human sociality not itself ontologically depend on other, less representationally independent institutions? I think not. Certainly, people will have representations about procreation, education, conflict, and cooperation, as having such representations is vital to one's everyday existence. But, in Hegel's vocabulary, this is merely the domain of subjective spirit. Indeed, it remains open to Hegel to assert either a reciprocal or even reverse ontological dependence between this domain and that of objective spirit: these features of subjective spirit could not themselves arise without a minimal form of ethicality already being in place. We need not concede, as Thomasson does, that the strongly independent institutions are mere "by products" of the weaker ones.

My contention has been analogical. *All* of Hegel's institutions are ontologically objective in the way that recessions and racism are. The task set forward in this section has been modest: to merely demonstrate that this strong ontological institutionalism is *plausible* according to the

social-ontological state of the art. Having considered the most influential accounts of ontological dependence and ontological objectivity, I see no reason why Hegel's institutional ontology must be deemed antithetical to our contemporary social-ontological thinking, as Henrich denounced it. Hegel's theory of institutions remains a live option.

### 3.5 Conclusion

This chapter has accomplished two basic tasks, each necessary for coming to grips with the foundations of Hegel's institutional theory. First, it reconstructed the basic outlines of his institutional ontology, showing that institutions are, for Hegel, forms of ethical substance, understood as the ways in which this substance is internally differentiated—made concrete or subjectivized—into a unified ensemble of meso-level dynamic structures that, taken together, Hegel calls "infinite form." The two most salient features of this ontology were shown to be Hegel's institutional pluralism and his institutional idealism—the former asserting that institutions can, in principle, be actualized by any physical thing or 'be' in any way so long as this material corresponds the form's function, and the latter that institutions have both ontological and teleological conditions and that these kinds of conditions are conceptually distinct despite being unified in actuality.

The second accomplished task was to show that this institutional ontology is not obviously mistaken. This task required articulating and responding to three varieties of an objection I called "ontological over-institutionalization." At its core, this objection gets something essentially right about Hegel's institutional ontology, viz., that institutions are ontologically objective for him, and this is indeed strong institutionalism. Nevertheless, I showed that each of its variations—that Hegel's institutional ontology is overly legalistic or formal, that it is normatively deficient or overly descriptive, and that it is overly ontologically independent of individuals' subjective attitudes—is either mistaken (first and second varieties) or debatable (third variety). The charge of ontological over-institutionalization thus does not provide sufficient reason to abandon Hegel's institutional theory. Moreover, because Hegel's institutional theory has some decisive advantages for understanding institutions (as I hope to bring out in the following Chapter), it should continue to inspire contemporary views in social ontology and critical social theory.

# Chapter 4

## Normativity

'Tis with our judgments as our watches, none  
Go just alike, yet each believes his own.  
—Alexander Pope, *An Essay on Criticism*

### 4.1 Problematizing Normativity in Hegel

This final chapter investigates the relation between institutions and *normativity* in the *Philosophy of Right*. By normativity, I mean the *social ought* or *Sollen*, evaluations of the sort: 'England has bad institutions; it ought to improve them' or 'unregulated civil society is bad; it ought to be regulated by the police and a judiciary system'.<sup>1</sup> Such evaluations are often taken to be different in kind from non-normative or descriptive judgments, such as 'England has a parliamentary legislature' or 'civil society involves the satisfaction of needs'.<sup>2</sup> This definition will need to be qualified and developed in the foregoing, but provides a satisfactory starting point.<sup>3</sup> So understood, normativity's status in Hegel's practical philosophy has come to be central in debates over the interpretation of the *Philosophy of Right*. This is because normativity poses a fundamental problem, whose basic form can be stated in the following way.

On the one hand, Hegel banishes the *Sollen* from philosophy. To cite only the most famous pronouncements:

This treatise [...] in so far as it deals with *Staatswissenschaft*, should [soll] be nothing other than an attempt to *comprehend and exposit the state as something rational in itself*. As a philosophical writing, it must distance itself as far as possible from the obligation to construct a *state as it ought to be* [einen Staat, wie er seyn soll, construiren zu sollen];

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1. For example, Apel (2004) defines the "question of the *ought*" as "the question concerning normatively binding orientation for action, as well as that concerning the normatively binding legitimation of social institutions and positive legal norms" (65).

2. Most discussions of normativity in contemporary philosophy begins with this basic distinction between fact and norm. See Thomson (2008, 1–2); Copp and Morton (2022); Darwall (2001).

3. In some philosophical circles, one encounters an expanded sense of normativity, in which it is identified with the *ought simpliciter*, without the qualification "social" or "moral." Construed this way, I 'ought' to *believe* that the length of a right triangle's hypotenuse is equal to the sum of the squares of the other two sides in just the same way that I 'ought' to *act* in accordance with the rules of morality. This idea that theoretical and practical normativity share a unified ground is defended by Brandom (1994) and Raz (1999), the former reducing them to "discursivity" and the latter to "reasons." However, my interest in this chapter lies in explicating the social or practical dimensions of normativity, not its theoretical dimension, which I leave to the side. For a careful analysis of some of the different senses of 'ought', see Laitinen (2020).

such instruction as it may contain cannot be to instruct the state how it ought to be, but rather to show how the state, as the ethical universe, should [soll] be cognized. (PR 21/GW 14,1:15)<sup>4</sup>

Who would not have enough good sense to see much around him that is indeed not as it should [soll] be? But this cleverness is in the wrong when it fancies itself to have the interest of the philosophical science at heart with such objects and their ought [Sollen]. Philosophical science deals solely with the idea which is not so impotent as to demand that it merely ought [sollen] to be actual without being so and, hence, it deals with an actuality of which those objects [...] are only the superficial exterior. (EL §6A/GW 20:45–46)

If his theory does indeed transcend his own time, if it builds itself a world *as it ought [soll] to be*, then it certainly exists, but only within his opinions - a pliant element in which the imagination can construct anything it pleases. (PR 21/GW 14,1:15)

A further word on the subject of *issuing instructions* on how the world ought [soll] to be: philosophy, at any rate, always comes too late to perform this function. As the *thought* of the world, it appears only at a time when actuality has gone through its formative process and attained its completed state. [...] When philosophy paints its grey in grey, a shape of life has grown old, and it cannot be rejuvenated, but only recognized, by the grey in grey of philosophy; the owl of Minerva begins its flight only with the onset of dusk. (PR 23/GW 14,1:16)

In these passages, Hegel identifies philosophy with the science of the actual world—comprehension of the state, thought, God, etc. as they *are*, not merely as they *ought* to be. To concern oneself with normativity—with what merely *ought* to be the case—is to descend from science to the realm of mere opinion. Consequently, the science of right must be essentially retrospective, comprehending the idea only as it has actualized itself in history, i.e., in concretely existing traditions of theory and practice. Normativity would thus appear to have no place in Hegel's practical philosophy.

On the other hand, normative evaluations litter Hegel's corpus, as we saw in chapter 2. While it may be expected that Hegel would denounce existing institutions and current affairs in his *political* writings, it would be erroneous to assume that such evaluations are absent from his *scientific* works.<sup>5</sup> In the *Philosophy of Right*, for example, Hegel denounces not only the "unjust and abominable institutions" of Roman law, such as the *patria potestas* (PR §3A/GW 14,1:30), but also condemns institutions of his own time. He judges elective monarchy to be "the worst of institutions" (PR §281A/GW 14,1:238), and criticizes the "imperfect institutions" of Prussia's legal system, which infamously mishandled the case of Arnold the Miller in the 1770s (PR §295A/GW 14,1:245). There can be no doubt that normative evaluations concerning institutions and other states of affairs populate the pages of the *Philosophy of Right*.

4. Readers will notice that this passage denouncing the *Sollen* also already pronounces another *ought* in a different sense, namely that philosophical treatises on the state *ought* to exposit its inherent rationality. The contemporary literature on normativity occasionally distinguishes "directives" of this kind (he ought to clean the kitchen) from "evaluatives" (he is a good or bad roommate). Yet this distinction is quite foreign to Hegel. Below I explain why this passage contains no performative contradiction.

5. Recall, for example, Hegel's denunciation of the Württemberg notaries ("a worse institution than this can hardly be imagined" [HW 114/GW 15:105–6]) and English legal institutions (whose "*positive* character [...] contradict[s] a rational constitutional law" [PS 238–39/GW 16:333–36]).

We have, then, an apparent tension, if not an outright inconsistency, in Hegel's text: in principle, Hegel excludes normativity from philosophy; nevertheless, normative evaluations are found within it.

One straightforward approach to resolving this dilemma would be to carve off these normative moments of Hegel's text—call them the merely "historical" parts—and exclude them from the science of right as such. Hegel offers us this interpretive option because in many of his writings he contrasts "system" to "history," reminding us that his remarks, prefaces, and explanations, and even his chapter divisions and headings, are merely "historical" (e.g., PR §33A/GW 14,1:47; EL §79A/GW 20:118; SL 34/GW 21:38–39; E17 §4/GW 13:17).<sup>6</sup> These bonus parts of the text are, strictly speaking, extra-scientific, not part of the system itself. The fact that most of the examples of normative evaluations in Hegel's *Philosophy of Right* are found in the remarks supports this line of interpretation.

Yet it would be a mistake to think that Hegelian science can say *nothing* about either the nature of normativity or the normative evaluation of existing institutions and states of affairs. Indeed, given the centrality of normativity in human life, it would be downright odd if it must remain silent about it. This outcome would surely impoverish Hegel's science of right. Instead, what is demanded by these considerations is a systematic interpretation of normativity in Hegel's practical philosophy that avoids the quietist consequences suggested by the quoted passages, and that explains Hegel's *modest* critique of institutions in science and his *immodest* critique of institutions in politics. Such an interpretation would need to further specify why *institutions* are central to the problem of normativity in Hegel's philosophy. It should also illuminate the enduring centrality of institutions in theories of normativity in contemporary philosophy.

Before advancing an interpretation of Hegelian normativity that I believe meets these desiderata, let me approach once again the problem of normativity in Hegel, but now in terms of social critique, which is perhaps a more familiar version of the story. The dilemma for Hegelian social critique can be stated as follows.<sup>7</sup>

On the one hand, social critique requires an *internal* standard or normative foundation, one that derives from the nature of the social entity, institution, or circumstances themselves. Without an internal standard, social critique is *arbitrary*, as any introduced external standard would lack justification vis-à-vis alternative standards. Since there can be no further, second-order standard to adjudicate between possible first-order ones, external standards can only be asserted against one another, but never justified. Hegel accordingly calls this kind of external social critique mere "opinion" (PR 14/W 7:17) "external reflection," and "external purposiveness" (EL §205/GW 20:211). The standard if it is to be justified must instead be immanent, deriving from "the concept of the *Sache* itself" (PR 14/W 7:17).

Yet, on the other hand, some *transcendence* remains necessary for social critique if it is to obtain the critical distance required for deeming a social entity or circumstance bad in the first place, or if it is to envision an alternative or future in which society is arranged differently. One way to

6. For example, in preface to the *Philosophy of Right*, Hegel reminds us that these "historical" parts of the text, including the preface itself, remains "external and subjective" vis-à-vis the standpoint of the system itself (PR 22/GW 14,1:17).

7. By social critique, I mean the theoretical exposition or normative evaluation of any aspect of society (institutions, laws, practices, norms, forms of life, etc.) that seeks to unearth its interconnectedness with the social totality and expose its hidden contribution to social domination with the practical aim of realizing universal human emancipation. A helpful overview of social critique and its division into internal, external, and immanent critique can be found in Stahl (2013, 4–7). In this chapter, I make no use of the difference between immanent and internal critique.

fail to obtain this required transcendence is to seek the standard of social critique within the transcendental conditions of possible human sociality. If, for example, one identifies the institutions of language and rule-following as the basic normative foundations of human sociality in this transcendental manner, then these foundations certainly provide an internal standard for assessing the rightness or wrongness of an action—does it follow our rules, the way we do things around here?—but it provides no grounds for evaluating whether these rules are good or bad rules in themselves, whether the way we do things around here is good or not. In short, the transcendental standard inevitably becomes ensnared in *accommodationism*, becoming mere apology for the status quo. Indeed, from Haym to Tugendhat, it has been Hegel's alleged "quietism," seemingly inextricable from his *Doppelsatz*, which has brought upon him the most impassioned polemics.

One now-common way of resolving this tension between the competing demands for an internal and transcendent standard for social critique is to turn to Hegel's notion of *teleology*. Despite the notorious difficulty of this concept in Hegel, its motivating idea is simple: if the social entity or circumstance is constituted in part by a *telos*—a concept, nature, internal purpose, or end, or what contemporary philosophers call a 'constitutive norm'—then this *telos* would provide an *internal* standard for assessing the social entity or circumstance while also ensuring the desired *critical distance*. The standard would be internal because it derives from the nature of the thing itself; but the standard would also be distanced from the thing because a thing's *telos* cannot be read off, as it were, from its mere existence but only comprehended from its essence or concept,<sup>8</sup> which in turn can be grasped only through the mediation of the thing by thought, a mediation which would enable criticizing even the best instance of a kind insofar as it remains non-identical to its concept.

Teleology thus provides a powerful solution to the dilemma of social critique, one which will indeed prove to be our path forward. But we must immediately acknowledge that recourse to teleology throws up several obstacles which can quickly lead to gross distortions of Hegel's account of institutional normativity. The notion of a *telos* must, in other words, be understood in the right way. The first danger is that of a *maximalist ahistoricism*. If by the *telos* of right we understand an *a priori* account of the "rational state," which can then be used to criticize the "actual state" insofar as it fails to correspond to this rational standard, then we have certainly taken a wrong turn. No reader of the *Philosophy of Right* could confuse its method with that of Fichte's or Kant's, whose accounts of the "rational state" or the "rightful condition" are derived in this *a priori* manner.<sup>9</sup> This conception of teleology is *ahistorical* because it establishes a standard for counting as a 'good' state that is intended to be valid at all times and in all places. To be sure, the transcendental path to ensuring the internalness of social critique is *also* ahistorical, but *minimally* so. It asks: what is the minimal set of conditions required for the possibility of recognizably human form of life? By contrast, the 'rational state' path to ensuring the required distance is *maximally* ahistorical because it seeks to determine so far as possible within the bounds of mere reason the entire set of conditions for establishing the rational state. Yet constructing this sort of eternal rational state clearly contradicts Hegel's pronouncement that philosophy is "*one's time comprehended in thoughts*" (PR 21/GW 14,1:15) and eradicates any difference between Hegel's method and that of Kant and Fichte. Hegel thus needs a means for determining a thing's *telos* without committing him to a

8. "The concept in its determinacy cannot be read off [aufgefaßt] from existence itself" (E17 §293A/GW 13:170)

9. For Fichte, see CCS 87–89/FW 397–98. For Kant, see the discussion of the *Rechtslehre* in chapter 1.

maximal ahistoricism.

The second danger pertaining to any recourse to teleology is essentialism. Does it not commit Hegel to the Aristotelian position that each social category or institution, such as the state or marriage, has an inherent essence or nature that determinately specifies its end, a nature that is pre-performative, not to mention universal and eternal? Certainly, this cannot be Hegel's view, although it admittedly has its defenders among commentators. Our dissolution of this problematic essentialism will hinge on Hegel's transformation of Aristotelian essences or natures into *concepts*, which, in Hegel's technical vocabulary and method, are obtained only through a process of conceptual transformation of the universals (*Allgemeinen*) of empirical science and the representations (*Vorstellungen*) of experience, and are therefore historical, empirically informed (although not empiricist), and open to modification. Without this dynamic theory of concepts, Hegel's recourse to teleology to resolve the dilemma of social critique would indeed lapse into an indefensible essentialism.<sup>10</sup>

Summing up, we can now recognize these tensions surrounding social critique implicit in our previous discussion of Alznauer's insightful distinction between quasi-transcendental and teleological versions of objective spirit. The *quasi-transcendental* version of objective spirit, according to which objective spirit discloses the social conditions always already in place for us to be the kind of rational agents that we are, is afflicted with accommodationism. It cannot distinguish between good and bad forms of habituated rule-following without introducing an external standard, but this external standard would be essentially arbitrary. On the other hand, the *teleological* version of objective spirit, according to which objective spirit discloses the ideal set of institutions and social conditions within which right would be actualized, grants us an internal and critically distanced standard, but one which is true for all times and places, and is therefore too ahistorical. If Hegel's institutional theory is to provide us with a compelling account of social critique or normativity, it must avoid both the pitfalls of accommodationism and maximalist ahistoricism, while also explaining why these two theoretical extremes are ineliminable moments of its dialectic.

My aim in this chapter is to disentangle the many knots surrounding the status of normativity in Hegel's practical philosophy. To do so, I will distinguish three kinds of normativity in Hegel: deontic, transcendental, and telic. Institutional normativity, for Hegel, involves the latter two kinds. Institutions are both transcendental conditions of human society (*institutionality*) and have as their telos the realization of human freedom (*institutional rationality*). The latter kind of normativity grounds a weaker, reformist kind of institutional critique deriving from *the concept* of the institution in question (*scientific* critique). But Hegel also legitimates a wider-sweeping kind of institutional critique deriving from one's *membership* in an ethical community (*political* critique), one which is always contestable by other members, and so cannot achieve certainty. Hegel limits science to make room for politics.

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10. For a full defense of my interpretation of Hegelian philosophy as a process of conceptual transformation, see Matthew Delhey, "Apriorism and Scientific Cooperation in Hegel," *Hegel Bulletin* (forthcoming); Matthew Delhey, "Schelling's Metametaphysical Critique of Hegel" *International Journal of Philosophical Studies* (forthcoming), §3.

## 4.2 Three Kinds of Normativity and Their Connection to Institutions

To make progress on Hegel's theory of normativity and its connection to institutions, we must draw some distinctions. Hegel, I submit, understands practical or spiritual normativity as coming in three distinct kinds: deontic, telic, and transcendental. *Deontic* normativity pertains to the class of oughts deriving from rights and duties; *telic* normativity to the class of oughts deriving from being a good or bad instance of one's kind, that is, existing in accordance with one's concept; and *transcendental* normativity to not a class of norms at all but the set of conditions which make oughts possible in the first place.<sup>11</sup>

Clearly, the first two kinds of normativity differ from the third by being different species of normativity, i.e., different kinds or sources of normative evaluations. But the third kind of normativity is not a mode of normativity in this sense, but is rather an account of what makes normativity possible or an explanation of what Raz (1999) calls "the normativity of all that is normative" (67). Properly understanding these three kinds of normativity will ultimately enable us to resolve the problem of normativity in Hegel and will explain the essential connection between normativity and institutions in his science of right. In doing so, I will develop the notion of the teleological conditions of institutions introduced in chapter 3.

### 4.2.1 Deontic and Telic Normativity

Let us begin with deontic and telic normativity.<sup>12</sup> Deontic normativity will be familiar to philosophers. Broadly speaking, it encompasses the discourse of rights and duties, including associated deontic powers and immunities, that arise from an individual's relations to the rights and duties of others. These deontic rights, duties, and powers are often referred to as "Hohfeldian incidents," as Hohfeld (1913, 1917) proposed a conceptual scheme exhausting all possible deontic relations between two people.<sup>13</sup> Such a view of deontic normativity lays the foundation for many institutional theories, such as Searle's, wherein institutions can be understood as "stable and structured distributions of Hohfeldian incidents" (Brännmark 2019a, 1056).

In Hegel's science of right, deontic normativity has its place in the chapters on abstract right and morality. While I will not elaborate on this point in detail, Hegel takes this kind of normativity to be incomplete, and therefore deficient, as an account of right and freedom.<sup>14</sup> One way to understand the defectiveness of deontic normativity is to observe that it is intrinsically non-institutional. We can comprehend the discourse of rights and duties without reference to

11. Surely, more distinctions within Hegel's theory of normativity can be drawn. For example, Pinkard (2012, 26) distinguishes in Hegel between animal normativity (which is merely *an sich*) and human normativity (which is *an sich* and *für sich*). Alznauer (2016) further develops this distinction, identifying three kinds of normativity in Hegel—logical, natural, and spiritual—each of which is a variation of constitutive normativity, i.e., a norm deriving from the constitution of a thing or concept. In this chapter, I am only interested in spiritual normativity, normativity within the realm of spirit. I leave aside whether spiritual normativity differs fundamentally from natural and logical normativity, as, for example, Alznauer, Pinkard, and Rand (2015) contend.

12. In distinguishing between deontic and telic normativity, I follow recent work in nonideal social ontology, in particular that of Brännmark (2019a, 2019b) and Burman (2023).

13. See also Brännmark (2019a, 1052–54); Burman (2023, 134–40).

14. Hegel's claim is in fact even stronger: deontic normativity *depends* on telic and transcendental normativity. Thus despite its *appearance* of primacy in modern natural law theory, which posits a list of human rights, generating corresponding duties, deontic normativity is, in truth, derivative vis-à-vis institutional normativity for Hegel. But I will not explore this issue further.



institutions; as a theory, it posits only normative relations between individuals. It is this non-institutionality that enables deontic relations and powers to serve as an external conceptual and normative ground for institutional theory, as they do for Searle. As I showed in chapter 2, institutions, for Hegel, have no place in the spheres of abstract right and morality; they arise instead only in ethicality, a fact which underwrites our speaking of Hegel's institutionalization of *Sittlichkeit*. For Hegel, it is a conceptual error to hold that personality, property, and contract (in abstract right) or intention, responsibility, and the good (in morality) are institutional phenomena. Rather, these determinations of right can be exhibited non-institutionally. Yet, this is also a sign of their deficiency and abstractness: mere deontic normativity lacks the objectivity and concreteness that can only be satisfied through institutionalization.

This brings us to telic normativity, the kind of normativity that arises from the demand to be a good instance of one's kind or to correspond to one's concept.<sup>15</sup> Unlike deontic normativity, telic normativity need not be restricted to agents (either as moral subjects or legal persons) and their interrelations. Rather, it encompasses everything spiritual that admits of a concept or nature. While this form of normativity pervades the entirety of objective spirit, it comes to the forefront in *Sittlichkeit*. This is because, as I argued in chapter 3, in *Sittlichkeit* Hegel moves from treating phenomena that are ontologically subjective, i.e., which exist only in virtue of being represented as such, to ones that are ontologically objective, i.e., exist independently of being represented as such, but have as their telos their existence for self-consciousness. The relevant phenomena that meet this latter criterion are institutions, not moral or legal relations, and it is therefore institutions that admit of a robust set of teleological conditions in addition to their ontological ones. Hegel's complex understanding of these teleological conditions I summarize under the title *institutional rationality*, an idea I develop below.

#### 4.2.2 Transcendental Normativity

The final kind of normativity is transcendental. Transcendental normativity seeks to explain the source of social normativity as such. Admittedly, it is not obvious at first glance that this project aligns with Hegel's in the *Philosophy of Right*. Its prevalence, sometime only implicit, among contemporary commentators derives from its storied past in the history of twentieth-century philosophy from which these commentators often draw inspiration. Of these sources of inspiration, surely Wittgenstein's analysis in the *Philosophical Investigations* of intentionality and rule-following as essentially institutional, especially dependent upon the "institution of language," has been the most influential (Wittgenstein 2009, 153).<sup>16</sup> This line of interpretation has been recently defended by Descombes, who interprets Hegel's objective spirit as exemplifying "anthropological holism," committed to the idea that there exists an interconnected set of institutions, which are "as much ways of thinking as [...] ways of acting," that is prior to intersubjective and deontic relations and is the source of shared linguistic meaning (Descombes 2014, 295–303).<sup>17</sup> Descombes's is an

15. One can also accordingly define *telic power*: the power that one has (or does not have) in virtue of being a good (or bad) instance of a kind. This kind of power contrasts with *deontic power*, the power I have in virtue of my rights and duties with regard to others.

16. One could also include Heidegger's discussion of *Mitsein* in *Being and Time* as another source of inspiration for this transcendental approach to institutional normativity. See, e.g., Brandom (1983, 396–99).

17. The label "anthropological holism" comes from Fodor and Lepore (1992, 6), who are critical of it.

investigation into transcendental normativity.<sup>18</sup>

This productive interconnection of Hegelian objective spirit, transcendental normativity, and institutions has also been endorsed by critical theorists. Luc Boltanski, for example, understands institutions as "bodiless beings" that resolve the fundamental issue of interpretive instability by establishing fixed referents or definitions, a process he names the "semantic function of institutions" (Boltanski and Honneth 2014, 577; Boltanski 2011, 74–77). In conceiving of institutions semantically (by which he refers not just to language but to all "symbolic expressions studied by semiotics"), Boltanski draws explicitly from Wittgenstein's 1914–16 *Notebooks* (Boltanski 2011, 75). In a published discussion with Boltanski, Honneth rightly notices that Boltanski's understanding of institutional normativity is transcendental: by establishing fixed sources of meaning, institutions apply to *everyone* in the same way, regardless of one's station in society, and these institutional constraints on the meaning of our utterances and actions are equally inescapable so long as one participates in a recognizably human form of life—"we all suffer from the enclosure of institutions" (Boltanski and Honneth 2014, 582, 586–87).<sup>19</sup> The appeal of these transcendental approaches to institutional normativity is clear: it simultaneously explains the centrality of institutions in sociological theory and justifies methodological holism for investigating them.

The question remains whether this transcendental approach to normativity, common as it is in contemporary institutional theories, has a basis in Hegel's text, a challenge which has been justifiably raised by careful readers of Hegel. In §3, I will argue that it does—transcendental normativity is not only active in Hegel's account of abstract right and morality, but is present even in *Sittlichkeit*, the most historically sensitive moment of Hegel's science of right. Transcendental normativity expresses the sense in which the Hegel's exposition of the basic categorial structure of objective and subjective spirit appears universally valid, and helps explain why it is no historical accident that some basic ideas about right, morality, and the state appear to have purchase nearly everywhere. Yet proponents of transcendental normativity in Hegel have often overplayed their hand. They usually suppose that the transcendental or semantic function of institutions *exhausts* their contribution to Hegel's theory of normativity. But this surely overlooks the important role of telic normativity in Hegel. To resolve this issue, we will pay careful attention to Hegel's distinction between spheres (*Sphäre*) and institutions in developing a position I call *institutionality*.

18. A similarly transcendental approach to normativity is Apel's "transcendental semiotics" or "meaning-critical" analysis of the conditions of rational argumentation (Apel 2004, 69). Such an analysis, according to Apel, reflects "on the validity claims that [...] are already presupposed in our understanding of the meaning of argumentation and cannot be contested by either party to the argument without incurring a *pragmatic self-contradiction*" (67). Disagreement about a particular ethical norm, then, "already presupposes a sufficiently clear understanding of the implicit validity claims of the acts of argumentation. [...] Both partners of the argument must already be able to understand what it means to assert something, to place something under discussion, to question something, to doubt something, and so forth" (67). These validity conditions of argumentation, as Apel rightly indicates, are unambiguously normative (69–70) or are "*normative conditions of the possibility of argumentation*" (72).

19. Honneth proceeds to distinguish the semantic function of institutions their *normative* one, which he understands deontologically, i.e., in terms of institutions determining one's "status" or rights and duties ("Institutions fix people's normative status and link them to sanction"). Unlike the semantic dimension of institutions, the normative dimension disproportionately affects some groups more than others. However, in so dividing the conceptual space, Honneth lapses into a view of institutions no different from Searle's, viz., that institutions, normatively speaking, are distributions of deontic rights and powers. In my view, Honneth's division overlooks Hegel's insight that institutional normativity cannot be grounded on deontic relations between individuals, but must instead have its basis in a given institution's internal teleology.

### 4.2.3 Their Connection to Institutions

However, before turning to reconstructing this notion of institutionality in Hegel's text, we should notice the essential connection forming between institutions and normativity. Deontic normativity, the subject-matter of abstract right and morality, is non-institutional and, as such, lacks the objectivity and concreteness required for the actualization of freedom. Hegel's institutionalization of ethicality thus develops telic and transcendental normativity, but not deontic. It develops telic normativity by taking *institutions* as its subject-matter, which, for Hegel, are the way in which the idea of freedom comes to be internally differentiated into its meso-level structures. As concrete, these institutions are historically situated and have determinate teleological conditions that derive from their corresponding concepts, providing broad standards for the normative evaluation of existing institutions. On the other hand, ethicality also develops transcendental normativity because it provides an account of the three *spheres* of human life-activity that are genuinely universal conditions of the possibility of human sociality and agency (the family, civil society, and the state).<sup>20</sup> There is a necessary connection between institutions and normativity for Hegel; we can neither specify the problem normativity nor its resolution in his thought in non-institutional terms.

But there is another way in which institutions are connected to Hegel's theory of normativity. Institutions not only make normativity possible in general and disclose the internal standards for their evaluation, but they also drive widespread social change, according to Hegel. This makes institutions, *not* the actions of officials or general states of affairs, the proper target of social critique, a topic to which we will return in §5 on institutional critique.

Looking ahead, two tasks remain for this chapter. First, I must show *that, how, and why* Hegel's account of institutional normativity combines the ideas of *institutionality* and *institutional rationality*. Second, I must explain how this combined account of institutional normativity entails a theory of social critique that centers on the critique of institutions, and why such a theory should be appealing to us today.

## 4.3 Institutionalality

Institutionality captures the basic idea that there is no recognizably human social behavior without institutions. Institutions, in other words, are always already in place when we embark on philosophical reflection on social life—there is no 'outside' of institutions. They therefore rank among the transcendental conditions of human sociality.

Understood this way, institutionality can be seen to connect to the issue of *objective validity* (*objektive Gültigkeit*) in Kant and post-Kantian idealism. In Kant's first *Critique*, the problem of ob-

20. In an excellent article, Herrmann-Sinai (2020) develops a similar distinction between what she calls "social normativity" and the "normativity of right." These map onto what I am calling transcendental normativity (institutionality) and telic normativity (institutional rationality). According to Herrmann-Sinai, "social normativity" requires only mere habituation to conventions, good or bad, whereas the "normativity of right" demands *ethical* habituation to *good* norms; the former ensures that the *form* of our action is free or self-determining, whereas the latter makes it possible for the *content* of our action to also be raised to freedom. Herrmann-Sinai further observes—rightly, I believe—that social normativity is thus *already* occurring in subjective spirit, and it cannot be the contribution of objective spirit, or, in other words, it cannot be that which makes objective spirit *objective*. As she puts it: "objectivity cannot be explained by an inner transformation within the subject" (Herrmann-Sinai 2020, 132). However, Herrmann-Sinai ultimately explains the objectivity of objective spirit in terms of its transformation of the conditions of ethical *action*, namely as the objective conditions under which the world will be hospitable to our self-determined actions. But I aim to explain the objectivity of objective spirit in terms of institutions, prior to their downstream effects on our actions.

jective validity is to show the *a priori* necessity and universality of the categories as applicable to all possible objects of intuition (e.g., A35/B52; A91/B123–24; A93/B126). Having demonstrated that the categories, along with the two forms of intuition, are the conditions of the possible experience of objects in the Transcendental Deduction, Kant can then impute these objectively valid categories to all conscious beings as such. By contrast, concepts are merely subjectively valid if I arrive at them empirically and contingently, i.e., through association; for this reason, merely subjectively valid concepts cannot be imputed to everyone (e.g., B140–42).<sup>21</sup> Analogously, institutionality concerns the objective validity of the *meaning* of our norms and linguistic utterances. How is it that others come to understand the meaning of my words and actions, not merely subjectively and contingently through association (say, by observing my behavior in response to various stimuli), but as a matter of objective fact or as bearing their meaning necessarily, perhaps even against my intentions? Hegel's answer is that meaning's objective validity derives ultimately from our shared institutions.<sup>22</sup>

More specifically, institutionality in Hegel's hands consists of three interrelated claims: first, that the objective validity of meaning requires that agents already have some normative capacities—language, drives, habituation to norms, etc.; second, that although these capacities appear to be pre-institutional, they can in fact only be actualized if there is some institutional structure in place; third, that the science of right determines a loose set of constraints on what this structure must be, or, in other words, it determines the basic way the social world must be if meaning's objective validity is to be secured. The first question concerns the philosophy of subjective spirit and the third question the philosophy of right and world history; the second question is addressed in the transition from the former to the latter.

### 4.3.1 Philosophy of Subjective Spirit

In Hegel's philosophy of subjective spirit, there are three moments that display Hegel's commitment to institutionality.<sup>23</sup> These moments occur in the sections on self-consciousness, theoretical spirit, and practical spirit. Hegel's 1817 philosophy of subjective spirit has three principal divisions: the soul, consciousness, and spirit, corresponding to what Hegel later calls anthropology, phenomenology, and psychology. Subjective spirit concerns spirit "in itself" (E17 §304) or "in its concept" (E17 §307), whereas objective spirit considers spirit insofar as it is actualized as an existing world or, alternatively, insofar as spirit generates its world as self-positing rather than as presupposed (E17 §305A). We have already observed that Hegel closely links his treatment of subjective and objective spirit, joining together both with his notion of "finite spirit" (E17 §305),

21. See Eisler, *Kant-Lexikon* (1984), 181–82.

22. Institutionality is advanced as an interpretation of Hegel's *Philosophy of Right*, for example, by Pippin (2001, 2008), for whom institutions are the "conditions of the possibility of practical rationality," and Pinkard (1994, 294–343), for whom institutional rule-following transcendently determines "the way we do things." In a later work, Pinkard lessens the transcendence of his earlier view, placing spirit, and thus *Sittlichkeit*, as lying between the unconditioned ("the unconditional necessity of submitting all our claims to reflective justification") and the conditioned ("the fact of our contingency and the perspectival nature of all our conceptual contents" or the "necessary situatedness of any agent"). See Pinkard (2011, 104–5). On transcendental normativity's pragmatist background in relation to Kant and Hegel, see Redding (2007, 62–69; 2011, 211–19). As Redding (2011) puts the point, "Hegel [appeals] to the fundamentally *social* nature of rules. [...] To be a rule-following agent is to have been inducted into *communal* rule-following practices, and to hold oneself to a rule presupposes that one *already* belongs to a community of rule-following agents *by* whom one's transgressions are likely to be corrected" (213).

23. In accordance with our textual method outlined in chapter 0, our focus is on Hegel's philosophy of spirit in the 1817 *Encyclopedia*, not the 1830 edition. This is because the 1817 edition is more tightly connected to Hegel's *Philosophy of Right*.

which opposes "infinite" or absolute spirit, the realms of art, religion, and philosophy as modes of elevation over finite spirit. *Sittlichkeit*, as we saw, does not merely conclude objective spirit, but is the *unity* of objective *and* subjective spirit (E17 §430). It is no surprise, then, that subjective spirit must play some role in Hegel's theory of institutional normativity in the *Philosophy of Right*, which, qua system, is merely a more detailed presentation of objective spirit. Let us examine, then, these three moments in more detail.

### Self-Consciousness—Mutual Recognition

Beginning with self-consciousness, we should first recall the determination of consciousness in general and how self-consciousness differs from the other two moments of consciousness, viz., consciousness proper and reason. Consciousness in general refers to spirit as inherently reflexive or relational, "spirit as the identical reflection into itself and into others" (E17 §307). It is, in other words, spirit insofar as it is essentially contrasted with an object, where 'object' is taken in the broadest sense (E17 §328). In consciousness proper, the object to which consciousness is related is an external object of knowledge, first a perceived empirical object and then an imperceptible but intelligible object. In self-consciousness, by contrast, consciousness is its own object. But rather than leading to solipsism, Hegelian self-consciousness turns its reflexivity outwards to *other* self-consciousnesses, which renders self-consciousness inherently intersubjective. In self-consciousness, the object of my desire becomes my standing in the eyes of others. Reason makes an advance on self-consciousness by unifying *both* the dualism of "object" and "self" implicit in the concept of consciousness *and* the plurality of self-consciousnesses dispersed through the process of mutual recognition. This is because reason's defining features are, first, to be one and the same for everyone (E17 §360) and, second, to assert the identity of thought and being (E17 §361).<sup>24</sup> This transformation of sensuous consciousness into socialized reason thus captures the movement of consciousness in Hegel's philosophy of spirit.

Self-consciousness, then, is *already* social for Hegel. Its sociality is constituted by what he calls the "process of recognition" (E17 §352) and whose immediate form is the *struggle* (*Kampf*) for recognition (E17 §§353–54).<sup>25</sup> This recognitive and intersubjective sociality amounts to a pre-institutional transcendental condition of human "communal life" [*Zusammenleben*] which complements the telic normativity of institutions (E17 §355/GW 13:202). This recognitive normativity is thus not prior to the institutional rationality of objective spirit, and is certainly not its normative foundation, but is instead *contemporaneous* with it:

The struggle of recognition and submission to a master is the *phenomenon* in which the coexistence of human beings [*Zusammenleben der Menschen*], as a beginning of states, emerges. (E17 §355A/GW 13:202)<sup>26</sup>

This universal-transcendental dimension of normativity, typical of subjective spirit, thus contributes to, rather than competes with, Hegel's theory of normativity in *Sittlichkeit*.<sup>27</sup> It forms

24. Hegel earlier defines reason as "the unity of consciousness and self-consciousness, where spirit sees itself as the content of the object and as in and for itself determinate" (E17 §334).

25. For a contrary view that mutual recognition is not inherently social, see Renault 2011.

26. Hegel continues: "*Violence*, which is the ground of this phenomenon, is thus not the basis of *right*, but only the *necessary* and *justified* moment in the transition from the condition of self-consciousness mired in desire and singularity into the condition of universal self-consciousness" (E17 §355A/GW 13:202).

27. On subjective spirit as Hegel's account of transcendental or "social" normativity, see Hermann-Sinai (2020, 119–24).

what we might call its normative *substance*, in contrast to the normative *subjectivity* of institutions, which teleologically *develop* this normativity through concretizing institutions. Hegel suggests this relationship between institutionality and institutional rationality when he writes that "the universal reappearance of self-consciousness [...] is the *substance* of all essential spirituality, the family, the fatherland, the state; as well as of all virtues - love, friendship, bravery, honor, and fame" (E17 §358A/GW 13:203). Mutual recognition and institutional rationality thus unproblematically coexist in Hegel as they are theories of two different kinds of things, viz., two kinds of institutional normativity.

### Theoretical Spirit—Language

Moving now to psychology or spirit proper, we can observe that Hegel allocates a similar transcendental function to theoretical spirit (intelligence) and practical spirit (the will). In psychology, spirit is no longer immediate or natural (as it was in "the soul" of anthropology) nor object-relational (as it was in the "consciousness" of phenomenology), but *self-productive* or *self-generating*. Spirit as such "originates [...] only from its own being, and only relates itself to its own determinations" (E17 §363/GW 13:205). Another way that Hegel characterizes this *sui generis* nature of spirit qua subjective spirit is to say that spirit produces its own *world*.<sup>28</sup> Yet this is also how Hegel describes *objective* spirit (PR §4/GW 14,1:31; PR §31A/GW 14,1:47; PR §151/GW 14,1:141). The difference between the two descriptions is that subjective spirit's world-generation is *formal* in the sense of being indifferent to its content, whereas objective spirit's world bears rational form *and content*. This content-indifference of subjective spirit's world further corroborates our contention that at stake in the normativity of subjective spirit is *transcendental* normativity, not *telic*, as the latter essentially concerns the *content* of the will insofar as this will is also the social world.

More specifically, this transcendental normativity can be seen in two moments in theoretical and practical spirit. In theoretical spirit, it occurs in Hegel's treatment of *language* within his discussion of representation (E17 §§379–83), a phenomenon central to many contemporary institutional theories.<sup>29</sup> Like all categories, Hegel understands language dynamically or processually: it shapes intuitions into "independent representations" in the "sign" (*Zeichen*), which are given temporal existence in "sound" (*Ton*), made determinate in "speech" (*Rede*), and systematized in "language" [*Sprache*] as such (E17 §§379–80/GW 13:215). For our purposes, what is important about language for Hegel is that it imbues representations with objective "validity" (*Gültigkeit*) or "meaning" (*Bedeutung*), such that language becomes a constitutive part of the possibility of social normativity as such (E17 §383/GW 13:215). Language is thus not a contingent tool for facilitating cooperation among human beings but is grasped in its "necessity and interconnection [*Zusammenhang*] in the system of the activity of intelligence" (E17 §379A/GW 13:214). Put negatively, if one *fails* to elevate her representations to the form of language, remaining, say, at the level of non-linguistic "feeling," then she exits the "community of rationality" and forecloses the possibility of attaining rational human agency, remaining stuck in her private language.<sup>30</sup> Language is

28. "The production of the theoretical spirit is only of its ideal world, whereas the production of the practical spirit is of formal material and the content of its own world." (E17 §367/GW 13:206)

29. Some architectonic background: theoretical spirit is composed of (1) intuition, (2) representation, and (3) thinking. Representation in turn unfolds (a) recollection, (b) imagination, and (c) memory. For Hegel, language falls within memory, and is therefore a moment of representation and theoretical spirit.

30. "If someone refers on any topic not to the nature and the concept of the issue, least of all to reasons or to the generalities of common sense, but one's own feeling, the only thing to do is to leave them alone, because by their

therefore a transcendental source of normativity for Hegel.

### Practical Spirit—Practical Feeling and the *Sollen*

Another source of transcendental normativity can be found in Hegel's treatment of practical spirit or the will. The fundamental determination of the will is to be free or self-determining (E17 §387/GW 13:217); the dialectical problem it faces is the formalism of its content—how is the content of my will to be determined given its self-determining form? Hegel addresses this formalism problem across three progressive attempts at its resolution: by practical feeling, by drive and inclination, and by happiness and choice (*Willkür*).<sup>31</sup> In practical feeling, the will's content comes from "nature" (E17 §389/GW 13:217) and is therefore "contingent and subjective" (E17 §390/GW 13:218); in the interplay of drives, these practical feelings are concretized into a plurality of independent and particularized forms or "limited determinations" (E17 §392/GW 13:220), but are thereby "afflicted by the same contingency [...] and unfree necessity" (E17 §393/GW 13:220); in happiness and choice, *all* the drives are to be satisfied either by optimally *balancing* of them (E17 §396/GW 13:222) or by *electing* to satisfy one drive over the others (E17 §397/GW 13:222). Clearly, none of these proposed solutions provide a non-arbitrary determination of the content of the self-determining will, and the will's formalism reduces its content to the bad infinite of the alternating partial gratifications of the drives (E17 §398/GW 13:222). Objective spirit, then, resolves this formalism by providing *objective* grounds for the self-determination of the content of the will,<sup>32</sup> namely grounds that derive from social *structure* (the institutions of *Sittlichkeit*) rather than social *interaction* (mutual recognition, language)

There are two features of practical spirit or the will, as the transition from subjective to objective spirit, that are worthy of further attention. The first of these features is that, in practical feeling, Hegel first introduces the problem of the *Sollen* in his practical philosophy.<sup>33</sup> Hegel writes:

Practical feeling, as the self-determination of the thinking subject in general contains the *ought* [das Sollen], the concrete free universality as existing *in itself* but as *related* to an *existing* singularity, which is determined as *in itself* nothing, and only in the identity with the universality as truth existing for itself. (E17 §391/GW 13:218–19)

Two observations help elucidate this passage. First of all, for Hegel, *all* self-determined willing must pass through practical feeling. Practical feeling thus denotes one's fundamental practical disposition to normatively evaluate something as good or bad, independently of whether this evaluation is justified.<sup>34</sup> Hegel's assertion that practical feeling is "the self-determination of the

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behavior they reject the community of rationality [Gemeinschaft der Vernünftigkeit], and shut themselves up in their own isolated subjectivity, their private and particular selves" (E17 §370A/GW 13:210; cf. EG §447A)

31. This argument will be familiar to readers of the *Philosophy of Right*, as Hegel recapitulates it in the *Philosophy of Right's* Introduction, especially in §§5–8 and §§10–20. Nevertheless, this argument has its true systematic place in the philosophy of subjective spirit and the transition to objective spirit. See Hermann-Sinai (2020, 121–23); Thompson (2019, 48–63).

32. "Objective spirit is [...] *free will* which for itself is as *free will*, once the formalism, contingency, and subjectivity of its practical activity are sublated" (E17 §400/GW 13:224).

33. The *ought* as such first arises in Hegel's system in logic, specifically in his treatment of the "limit" (*Schranke*) in the *Science of Logic* (GW 11:73–75) and in the dialectic of the finite and the infinite, corresponding to the "bad infinite," in the *Encyclopedia* (E17 §46/GW 13:42). While there are important connections between the logical and the practical ought, addressing them would lead us too far astray from Hegel's theory of institutions.

34. As Thompson puts it: "Practical feeling, for Hegel, denotes the most rudimentary kind of moral intuition, the spontaneous affective appraisal whereby an agent finds certain sorts of deeds or principles to be good or bad. [...] What distinguishes *practical* feeling from *theoretical* feeling is [...] its intrinsic normativity: practical feelings are always marked by an 'ought', Hegel says, that no other form of sensuous intuition displays. To feel cold is to register the fact of that

thinking subject in general" expresses, for him, a truism about human motivation and action. Hegel makes the same point with respect to interest (*Interesse*), a cognate notion: for agents, "nothing comes about without interest" (E17 §394/GW 13:221). Science, however, is not concerned with assessing people's interests or feelings. Qua science, the relevant questions concerning practical feeling are: Whence the content of practical feeling? What are the conditions under which it is justified? The search for sufficient answers to these two questions precipitates the transition to objective spirit.

Second, Hegel tersely describes in this passage *the logic of the practical ought* in general. Unpacked, this logic is roughly: the will's ought demands that the will realize the *ideal* of self-determination ("the concrete free universality as existing *in itself*"), and it relates this ideal to an *external world* opposing it ("an *existing* singularity"), deeming this world to be inherently "nothing," mere material for the construction of its ideal; this external world is only "true" to the extent that it corresponds to the will's ideal (it "is determined [...] only in the identity with the universality as truth existing for itself"). In short, the ought expresses a drive to alter one's world; "evil," then, is simply the "incongruity of *Sein* to *Sollen*" (E17 §391A/GW 13:219).<sup>35</sup> For this reason, the ought is, on the one hand, *infinitely manifold*,<sup>36</sup> and, on the other, felt by the will as *a negation of itself*, a negation which ought to be overcome.<sup>37</sup>

This brings us to the second feature of the will relevant to institutionality, namely that the logic of the ought cannot be satisfactorily realized from within the standpoint of practical feeling, but instead requires a transition to the realm of objective spirit; or, put negatively, that practical feeling, because of its immediacy, cannot bring the ought and is into a necessary identity.<sup>38</sup> Hegel says as much in his technical vocabulary, but also leaves it in no uncertain terms in two lengthy remarks. He writes:

The *rational*, which exists in the shape of rationality when it is apprehended by thought, has the same content as practical feeling, but in its universality and necessity, in its objectivity and truth. Thus it is *foolish* [...] to suppose that in the transition from feeling to, for example, right and duty, that there is any loss of content and excellence; - it is this transition which first brings feeling to its truth. [...] [I]t is misplaced in the consideration of feelings to deal with anything more than their *form* and to consider their content, since this content, as thought, is precisely the self-determinations of spirit in its universality and necessity, its rights and duties (E17 §390A/GW 13:218)

The same holds for *inclinations* as for feelings; they are self-determinations of the free

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bodily condition, but to have a sense of what is right—for instance, to have a feeling for sociability or justice—is already to experience such a state of affairs as demanding to be realized. Practical feelings are thus inherently and ineliminably imperative. Normativity thus first appears in Hegel's account as a distinctive feature of practical feeling." (Thompson 2019, 49)

35. By contrast, in *Sittlichkeit*, the "absolute *Sollen* is just as much as *Sein* is" (E17 §431/GW 13:233). Or: the "absolute *Sollen* is *Sein*" (E30 §514/GW 20:495).

36. "Delight, joy, pain, and so on, shame, repentance, contentment, and so on, are partly only modifications of formal practical feeling in general, but also partly differentiated through their content that constitutes the determinacy of the ought [die Bestimmtheit des Sollens]. [...] But this ought has many meanings, and since contingent purposes likewise have the form of the ought [Form des Sollens], infinitely many meanings" (E17 §391A/GW 13:219).

37. "The practical *ought* is (2) real judgment. The immediacy of feeling is, for the self-determination of the will, a negation; it [the immediacy of feeling] thus constitutes the subjectivity of the will, which ought [soll] to be sublated so that the will may be identical with itself" (E17 §392/GW 13:219–20).

38. "Practical feeling in its *immediate* singularity, with its *ought* applied to the determinacy that only *is*, yields, since in this immediacy they [viz., the 'ought' and the 'is'] do not yet have a necessary identity, the *feeling* of the *pleasant* or *unpleasant*" (E17 §391/GW 13:218).



will *in itself*, but which is not yet free *for itself* in the *content* of its self-determination as intelligence, not yet universal and objective. [...] The *formal* rationality of the drives and inclination consists only in their universal drive not to be subjective, but rather to be realized. But their true rationality can not reveal itself from a consideration of *external* reflection [i.e., within subjective spirit], partly because this reflection presupposes that they are fixed as self-sufficient natural determinations and immediate drives, and partly because it is rather the immanent reflection of spirit itself to go beyond their particularity and immediacy, and to give them the form of rationality and objectivity, wherein they are as necessary relations of rights and duties. It is this objectification itself that exhibits [aufzeigt] their content [Gehalt], as well as their relation to one another, and their truth in general. As *Plato* showed, what *justice* is in and for itself in a true sense [...] can only be exposed [darstellen] in the *objective* shape of justice, namely, the construction of *the state* as *ethical life* [sittlichen Lebens]. - Thus, what the *good*, rational inclinations are and their hierarchical ordering [...] is transformed into the exposition [Darstellung] of the relations that spirit produces when it *sublates* its *subjectivity* and realizes itself; - an objectivity in which its self-determinations in general lose the form of inclinations, just as the *content* of loses subjectivity, contingency, or arbitrariness [Willkühr]. (E17 §393A/GW 13:220–21)

In these two pages, Hegel contends that the formal manner of determining the content of the will - paradigmatically, *willkürlich* - fails to be genuinely self-determining because this content cannot be made fully determinate or objective in the absence of a legally, morally, and institutionally constituted *Sittlichkeit*, and therefore cannot satisfy the will's universal drive to translate itself into actuality.<sup>39</sup> Taking an even further step back, the crucial point that Hegel is making is that the transcendental normativity posited by language, mutual recognition, and practical feeling, the kind of normativity constitutive of one's human sociality as such, depends on a *further* transcendental condition, namely there be an *objective* order which is universal and necessary in and for itself or, as Hegel later puts it, that the drives, Hegel's minimal philosophical anthropology, become "the rational system of the will's determination" (PR §19/GW 14,1:40).

We can now see why we are justified in assimilating these manifestations of transcendental normativity to the idea of *institutionality*. Although mutual recognition, language, and practical feeling are *pre-institutional* sources of normative evaluation, being the minimum capacities that agents must have to engage in distinctly human life, these capacities have as the condition of their actuality the further existence of *some* institutional arrangement or other, even a bad one. Without such an objective arrangement, these determinations of subjective spirit would be too formal to determine the content of any particular will, and so too indeterminate to bring about any particular action. There being *some* institutional arrangement at all is thus a transcendental condition of human sociality in Hegel's view.

39. One notices an obvious parallel between Hegel's resolution of the ought of practical feeling with the ought of Kantian morality in objective spirit, which similarly dissolves the question *What ought I to do?* (or: which action should I take?) into the scientific exposition of *Sittlichkeit*. Moral philosophy's attempt to determine the good, rational *actions* are transformed into the exposition of the rational *institutions* of ethicality. Hegel writes, for example: "The all-around contradiction expressed by this repeated ought is the most abstract analysis of spirit, its deepest introspection. The pure relationship of the self-contradictory determinations is the abstract certainty of itself, the *infinity* of subjectivity, for which the universal will, the good, right and duty are as much as they are not and which knows itself as electing and deciding" (E17 §426/GW 13:231)

Yet we must also avoid the mistake of inferring that institutionality *exhausts* institutional normativity for Hegel. This becomes evident when we consider the nature of the ought encompassed by institutionality. Institutionality is not a class of oughts per se, but the set of minimal conditions for such oughts to be efficacious in the first place. In other words, if meaning is to obtain objective validity, there must already be in place some subjective capacities and institutions. The transcendental conditions disclosed by institutionality are accordingly *formal*. Science discerns that one must have *a* language, *some* practical feeling, *some* intersubjective recognition, etc., but cannot determine the specific content of these transcendental conditions nor can it evaluate whether one has *a good* language or practical feeling. If this were *all* that Hegel's science of right could say about normativity, then it would indeed suggest accommodationism, smacking of the very formalism with which Hegel charged Kant. Some determination of the *content* of institutional normativity must also be possible on pain of empty formalism.

But before examining this normatively contentful side of Hegel's institutional theory, let us move to the third task in this section, viz., the minimal social structure that Hegel establishes as a transcendental condition of the objective validity of meaning.

### 4.3.2 Philosophy of World History

Transcendental normativity, I have argued, is primarily developed by Hegel in the philosophy of subjective spirit, not objective spirit. Given the abstractness of Hegel's discussion of spirit "in itself," this transcendental reading of subjective spirit strikes most commentators as at least plausible, even if they reject such an approach in the final analysis. But transcendental normativity is also at issue in objective spirit, albeit less centrally. It arises in the following way: there must be *some* objective structure, even a *bad* one, for there to be recognizably human sociality. Objective spirit discloses this basic objective structure, namely the three *spheres of Sittlichkeit*: the family, civil society, and the state. Hegel believes that being a member of such a tripartite "ethical substance" is a transcendental condition of human sociality.<sup>40</sup>

The reasons for accepting my proposed interpretation are twofold.

*Systematically*, it explains the sense in which Hegel's science of right is universal and "eternal" in a manner that is compatible with Hegel's historicism.<sup>41</sup> The three spheres of *Sittlichkeit* form the transcendental horizon of human sociality, but the concrete internal differentiation of these spheres, i.e., their institutionalization, results from the historical unfolding of the telos or concept of each institution. My interpretation also fulfills Hegel's promise that the transcendental normative capacities of subjective spirit are to be grounded in something objective, which must also be a transcendental condition of the same. If this objective order were strictly historical, say *modern*, then it could not be the ground of those normative capacities which clearly predate modernity,

40. I leave aside whether abstract right and morality are also transcendental conditions. On the one hand, these spheres are formal and abstract vis-à-vis *Sittlichkeit* - Hegel even suggests that they are 'worldless' (PR §33) - and so appear to be prime candidates for transcendentality. But, on the other hand, Hegel stresses the historicity of these spheres, associating the former with Roman law and the latter with *modern* Kantian subjectivity. Neuhausser, for instance, holds that *Sittlichkeit* is transcendental while denying this status to *Moralität*, which for him expositively specifically *modern* subjectivity. On Neuhausser's view, Antigone is a member of *Sittlichkeit* but is *not* a moral subject (Neuhausser 2000, 300n1). Because Hegel's institutional theory is localized to *Sittlichkeit*, we need only concern ourselves with its status.

41. In the *Philosophy of Right*, Hegel variously tells us that the science of right grasps "the eternal which is present" (PR 20/GW 14,1:14); "the eternal and necessary being of spirit in and of itself" (PR §258A/GW 14,1:202); the state as "the image of eternal reason" (PR §272/GW 143,1:225), and the "eternal and substantial principles of justice" which are at the same time the "true content and product of the entire constitution and legislation and of the universal condition in general" (PR §317/GW 14,1:259).

such as language and mutual recognition, even if these receive their fullest fulfillment in modernity. Because *Sittlichkeit* is the regressive ground of these sources of transcendental normativity, if there is to be any such normativity at all in Hegel's practical philosophy, it would have to also appear in the three spheres of *Sittlichkeit*.

*Textually*, my proposed interpretation fits Hegel's practice of applying these spheres when characterizing *all* the nations of world history and coheres with his provocative claim that world history begins only with the introduction of states. Hegel is justified in applying these spheres to all nations because they are not historical achievements but the transcendental horizon of normativity as such, and he is justified in holding world history to begin only with the introduction of states because before this moment human sociality as such did not, and could not, exist.

To summarize, my interpretation consists of two claims: (1) that Hegel systematically distinguishes between spheres (which are historically invariant) and institutions (which are not) in the *Philosophy of Right*; (2) that Hegel holds spheres, not institutions, to be transcendental conditions of human sociality. The first claim was defended in chapter 2. But further evidence for it and the second claim comes from Hegel's application of these spheres in the philosophy of world history.

Hegel's philosophy of world history forms the third and final part of his doctrine of the state. It appears systematically and in highly abbreviated form at the end of Hegel's *Philosophy of Right* and verbosely but looser in his *Lectures on the Philosophy of World History*. Broadly put, this part of philosophy charts the movement of the "world spirit" (*Weltgeist*) through the Oriental, Greek, Roman, and German "realms" [Reiche] or "states" (PR §§355–59), culminating in the modern state in which "reconciliation" has "become objective" (PR §360). Two features of Hegel's philosophy of world history corroborate our transcendental interpretation.

First and at a high level of abstraction, *all* states, for Hegel, exhibit some version of each sphere, as we noted already. In general terms, it pertains to the very idea of objective spirit for Hegel that it be differentiated into its spheres. As Hegel puts it, "objectivity immediately contains the emergence of differences, which are the totality of the differentiated spheres of objective spirit in general" (VWG 53/W 12:73). These differentiated spheres are the three spheres of *Sittlichkeit*. Now, obviously Hegel does not mindlessly attribute his vision of the modern *Rechtsstaat*, with its complex social differentiation, to ancient states. He clearly thinks, for example, that ancient states lack the principle of particularity and therefore do not fully correspond to the concept of the state as it is explicated in the *Philosophy of Right* (PR §185A). Yet, these concessions do not vitiate the transcendentalism of the three spheres of ethical substance. They rather show us that Hegel also has a view of *undeveloped* ethical substance, namely a society that *lacks* sphere differentiation or in which "the family is not yet at all separated [geschieden] from civil society and the state" (VWG 42/W 12:61). But in running together its three spheres, undeveloped ethical substance does not thereby shed its implicit transcendental constitution as state, family, and civil society, but is rather only a state *in itself*, a civil society *in itself*, etc., lacking the moment of being *for itself*, of consciousness or being posited.<sup>42</sup> Hegel therefore justifiably holds that these three spheres are transcendental conditions of human sociality while also detailing their diverging institutionalizations within each determine *Volkgeist* of world-history.

Second and more concretely, this dynamic between transcendental and historical dimensions

42. I take this to be the meaning of Hegel's perplexing claim that although "a people at first is not a state" nonetheless such a people is "ethical substance [...] in itself" (PR §349/GW 14,1:277).

of ethical substance exhibits itself most clearly in the estates. Recall from chapter 2 that the estates are Hegel's institutionalization of *social stratification*. As an institution, the estates *are* a plurality of ways of life originating from civil society and *function* to differentiate civil society and uphold the state's formal freedom in the legislature. At first glance, the estates in appear to be both the most historically specific and the most antiquated part of Hegel's science of right, a moment in which Hegel seems to embed the dying structure of feudal society into the concept of the state as such. Yet historically antiquating the estates is to overlook its more generic and quite sophisticated role in Hegel's institutional theory.<sup>43</sup> In truth, the institution of the estates denotes for Hegel the historically specific divisions of the sphere of civil society. While each *Volksgeist*, as a historical shape of ethical substance, will determine this division uniquely in accordance with its overall spirit, *that* there be social stratification at all in the sphere of civil society is a transcendental condition of human sociality.

This historical dynamic—the historicity of the estates and the transcendentalism of civil society—is evident in Hegel's discussion of "caste" (*Kaste*) in the oriental realm, especially in India (but briefer discussions appear pertaining to China, Egypt, and Persia) as a deficient historical form of the estates. Hegel even mentions this connection in the abbreviated version of world history in the *Philosophy of Right*: in the oriental state, "the division into estates hardens into a natural fixity of castes" (PR §355/GW 14,1:279). As Hegel details in his lectures (W 12:181–84), the Indian caste system is "natural" in a manner in which the systems of estates of Chinese, Greek, and medieval European states are not, and, in general, we see much diversity across these estate systems.<sup>44</sup> Yet despite this historical variety in the institution of the estates and the threat of their ossification into castes, *that* there be a sphere of civil society at all with *some* social stratification or another remains a transcendental condition of human sociality. Tellingly, Hegel, when discussing the Indian caste system, says:

[W]e cognize *a priori* that the differentiation of the estates can only take place within a people; that in every people the various occupations must be found since they belong to the objectivity of spirit, and that it is essential for one estate to presuppose the other and that the emergence of castes is only the result of living together [Resultat des Zusammenlebens]. [...] Estates cannot be formed externally, but only inwardly; they come from within, not from without. (VWG 146/W 12:182–83)

The institution of the estates, and, by extension, civil society, relate to "living together" as both necessary consequence and presupposition. They are, in other words, transcendental conditions of the same, and this holds equally for the two other spheres of *Sittlichkeit*.

### 4.3.3 Objections

Two significant objections have been raised against interpreting the spheres of *Sittlichkeit* transcendently.

43. See Yeomans (2017; 2023, 184–215). As Yeomans puts it, "the estates constitute conditions for the possibility of human agency as such" (Yeomans 2017, 469).

44. In the *Humboldt-Rezension*, Hegel comments that the "law of caste" [Gesetz der Kaste] is "that institution [Institution] which has made and continues to make *Sittlichkeit* and true education impossible among the Indians" (GW 16:37). The context makes it clear that *Sittlichkeit* here is to be taken in the colloquial sense of good manners and morals.

According to the first objection, the transcendental interpretation overlooks the specific *modernity* of Hegel's *Sittlichkeit*, a point which Hegel himself stresses throughout the *Philosophy of Right*'s remarks and additions (e.g., §260Z, §273A). This modernity appears in the sharpest relief in Hegel's discussion of civil society—*bürgerliche Gesellschaft*, bourgeois society—and political economy, which are self-consciously modern social phenomena.<sup>45</sup> How could a modern, market-based civil society be a transcendental condition of human sociality?

The second objection observes that the alleged transcendentalism of *Sittlichkeit* is contradicted in Hegel's *Lectures on the Philosophy of World History*, and in particular Hegel's dismal comments on Africa and slavery. In these lectures, Hegel thoughtlessly denies the nations of Africa statehood and slaves personhood, but nonetheless holds Africans and slaves to be human. State membership and personality, then, cannot be transcendental conditions of human sociality in his eyes.<sup>46</sup>

In response to the first objection, we can note that we have already begun to undermine the purported modernity of civil society for Hegel in our discussion of the estates. The plausibility of this first objection turns, I think, on Hegel's somewhat misleading use of a genuinely modern label—*bürgerliche Gesellschaft*/to describe a transcendental phenomenon. As we know, Hegel does not hold philosophy hostage to the meaning that words have for the understanding (even if philosophy often rescues the meaning of /its words from ordinary language). The same must be said of civil society. Although it is true that Hegel draws *inspiration* from modern market-based societies in coming to this social-theoretical insight, this insight is not restricted to modernity. Instead, Hegel's doctrine of civil society in many ways parallels Marx's conceptual framework for comprehending the concept of capital. For Hegel, the most basic determination of civil society is what he calls the "system of needs," which more or less capture what Marx meant by "mode of production" [Produktionsweise] and "relations of production" [Produktionsverhältnisse]. Like Marx, Hegel holds that *any* human society must, in some way, determine the manner in which it will satisfy human needs (which can never be cleanly divided into natural, social, and spiritual needs, or separated into true needs on one side and luxuries on the other), and, additionally, establish, usually unconsciously, an order of social stratification that enables this manner of needs-satisfaction (as no such manner can arise spontaneously and without discipline). In a more complex society, the manner of needs-satisfaction will also diversify, generating further needs for regulation and control—call this the police and the administration of justice—as well as for forming localized associations, and so on. This process of satisfying needs just is civil society for Hegel, no matter how simple or complex it may turn out to be. Membership in such a sphere is, he thinks, a transcendental condition of human sociality, required for the possible realization of our normative capacities.

The second objection is, I think, more serious. Two mutually exclusive avenues could be pursued in defending my proposed interpretation, both of which have a basis in Hegel's texts. The first avenue bites the bullet: Hegel, regrettably, thinks that any *Volk* without statehood and any agent without personhood is *ipso facto* barred from recognizably human sociality, including, then, the peoples of Africa and slaves. Sadly, one can point to Hegel's unjustifiable dehumanization of these *Völker* as "mere nature" and "animalistic" in, e.g., the parts of the philosophy of world history dealing with Africa. On this line of defense, statehood remains a transcendental condition

45. Riedel (1984; 1975) has perhaps most strongly emphasized the *modernity* of Hegel's account of civil society, but this is an important theme in many other commentaries on the *Philosophy of Right*, such as Pinkard (1994); Neuhauser (2000); Pippin (2008).

46. See Alznauer 2016, 218–21.

of human sociality on Hegel's view, but at the price of excluding many human beings from participating in it. Certainly, such a cost devalues the meaning of institutionality, lessening our interest in it.

The second avenue would be to assimilate Hegel's notion of an undeveloped state from PR §349, what Hegel often calls a "tribe" (*Stamm*), which is only a state *an sich* and to pursue a similar notion for personhood. Here, the textual evidence lies in the many occasions on which Hegel tells us that the people of Africa *do* constitute human social collectivities such as tribes. Like the previous, this tack softens the notion of a transcendental condition of human sociality because it loosens the already minimal structure that Hegel wishes to impose upon ethical substance. Nonetheless, it is the more promising of the two avenues not only because it imputes to Hegel a much more plausible, although still thoroughly condemnable, view of human social life in Africa, but more importantly because it captures the desired universality motivating Hegel's recourse to a transcendental and regressive ground to the problem of contentful self-determination in the first place.

Although these two avenues are mutually exclusive and face their respective challenges, either, I submit, would suffice for justifying a transcendental interpretation of Hegelian institutional normativity when considered on balance with the textual and argumentative evidence. The alternative, abandoning institutionality altogether and adopting an exclusively teleological view of institutional normativity, poses serious problems for the understanding of Hegel's philosophy of subjective spirit and its dialectical transition to objective spirit. It would be enigmatic, for example, how language and practical feeling could be teleological features of our sociality, i.e., features that pertain to the development of sociality or to its concept but not necessarily to any instance of it. It is better to muddle through Hegel's quite ambiguous remarks on this matter along the two transcendentially oriented paths I have suggested.

With these objections now behind us, we can confidently conclude that Hegel has a robust theory of transcendental normativity, a theory that can justifiably call *institutionality* since it asserts that some degree of institutionalization is a transcendental condition of human sociality as such, i.e., for the objective validity of meaning. In his philosophy of subjective spirit, Hegel argues that three of our normative capacities are transcendental conditions of human sociality—mutual recognition, language, and practical feeling. In the transition from subjective to objective spirit, Hegel argues that although these normative capacities can be specified pre-institutionally as *forms* of self-determination, they are indeterminate regarding their *content*. In order for these capacities to be what they are, i.e., to have determinate content, they must have as their further transcendental ground membership in ethical substance. In the philosophy of right and world history, Hegel argues that this ethical substance must be differentiated—at minimum and possibly only implicitly—into three spheres: the family (minimally, kinship), civil society (minimally, needs-satisfaction), and the state (minimally, collective organization and social stratification).

## 4.4 Institutional Rationality

Institutional rationality captures the role of telic normativity in Hegel's institutional theory. It expresses the extent to which the institutions of ethical substance correspond to their concept.

Whereas institutionality was *all or nothing*—either the transcendental conditions of human so-

ciality are in place or they are not—and hence was relatively minimal in its demandingness, institutional rationality comes in *degrees* and thus establishes more normatively demanding standards. Although rationality has many meanings in Hegel's practical philosophy, they are united by being connected to *freedom*.<sup>47</sup> More specifically, there are two dimensions of freedom that are central to Hegel's account of institutional rationality, one practical, the other theoretical. Practically, institutional rationality refers to the capacity for institutions to *bring about* the freedom of individuals and to thereby have rationalizing, i.e., freedom-educing *effects*—the rationality of institutions *for themselves*. Theoretically, institutional rationality refers to institutions as *bearers* of rationality, a property they possess to the degree that they correspond to their telos—the rationality of institutions *in themselves*. When, for example, Hegel speaks of the "institutions of real freedom" (PS 264/GW 16:390-91), "rational institutions" (HS 42-43/GW 15:39), and the "unfolding and actualization of freedom through rational institutions" (EG §393Z/W 10:62-63), he intends to refer both to the practical and to the theoretical dimensions of institutional rationality, that is, to institutions that are rational in and for themselves.

#### 4.4.1 Practice

My focus in reconstructing Hegel's account of institutional rationality is on its theoretical dimension. This is because this dimension most significantly contributes to resolving the problem of normativity and social critique, since it justifies a modest domain of critique from within the science of right. Nonetheless, let me first stay something about the practical dimension of institutional normativity. In this regard, Hegel's basic point is this: *the quality of my freedom is proportional to the degree of rationality embodied in the institutions governing my society*. Such a view of freedom naturally faces skepticism from within the liberal tradition: why should I understand the extent of my freedom as being modified by anything other than interference or external constraint? Does Hegel not fall into the hands of Hobbes, clamoring for the liberty that he so manifestly enjoys?<sup>48</sup>

In the final analysis, perhaps Hegel's theory of freedom cannot be fully defended. But Hegel does provide an argument to justify that freedom is proportional to the rationality of existing institutions. This argument parallels his earlier one for institutionality. According to that earlier argument, the "universality" (read: objective validity qua meaning) of the will's *content* required the existence of some institutional arrangement or other. For Hegel's proportionality argument to work, he need only add that (1) this content because it is the institutional content of *Sittlichkeit* as the "rational system of the will's determination" (PR §19/GW 14,1:40) and the "rational system of spirit itself" (PR §27/GW 14,1:44), is inherently teleological and (2) its telos is the realization of

47. Hegel connects the *rationality* of institutions with a litany of other desirable accolades: objectivity (PR §263/GW 14,1:210; PR §350/GW 14,1:277), universality (PR §203A/GW 14,1:171), actuality (PR §256A/GW 14,1:199-200), rightfulness (PR §216A/GW 14,1:180), necessity (PR §219A/GW 14,1:182-83), organicity (PR §286A/GW 14,1:240), systematicity (PR §145/GW 14,1:137), and conceptuality (PR §3A/GW 14,1:26-27). It is unclear what relation Hegel intends these properties to stand to one another. In opting to put *freedom* at the center of Hegel's account of institutional rationality, I follow Neuhauser. He writes: "Hegel's answer to the question, What makes the rational social order rational? is surprisingly simple. It can be captured in a single word: *freedom*. Thus, formulated in the most general terms possible, Hegel recognizes the family, civil society, and the constitutional state as rational institutions because they play essential roles in realizing the central value of freedom" (Neuhauser 2000, 4). However, I object to Neuhauser's assimilation of Hegel's ethical spheres to "institutions" because this renders these spheres ineligible as candidates for being transcendental conditions of human sociality. For Neuhauser, Hegel's account of institutional normativity is strictly telic.

48. "For if wee take Liberty in the proper sense, for corporall Liberty; that is to say, freedome from chains, and prison, it were very absurd for men to clamor as they doe, for the Liberty they so manifestly enjoy" (Hobbes, *Leviathan*, Ch. 21, p. 147).

human freedom or that this content "is only in thinking and through thinking" (for Hegel, to *be* in thought is already to be oriented towards the realization of freedom).<sup>49</sup> Realizing freedom, then, is not an *ontological* condition for the will or institutions to exist, but it is a *teleological* one. Put differently, if freedom is the self-determination of the will in both its form *and* content, then the determinacy of the will's content, precisely because it cannot be merely formal while remaining what it is, unfolds itself into a system of institutions, then, because of the teleological nature of this unfolded content, the will's determinacy inherits this content's telos. The will's content thus not only has the requisite universality for participation in human sociality, but also has within it an internal standard by which it can be evaluated as good or bad, which, in the case of the self-determining will, corresponds to the extent of its freedom.

Nor does the proportionality of freedom to institutional rationality eradicate subjectivity, as one might worry. This is because "substantial freedom," i.e., the freedom realized in *Sittlichkeit*, *preserves* the subjective freedom of choice articulated in abstract right and morality in sublating them (PR §257/GW 14,1:201). Rational institutions, in other words, *fulfill* the circumscribed "right of subjective freedom" (PR §124/GW 14,1:109–10) or "*right of individuals*" [Recht der Individuen]: "The *right of individuals* to their *subjective determination to freedom* has its fulfillment [Erfüllung] in so far as they belong to ethical actuality; [...] it is the ethical that they *actually* possess *their own* essence and their *inner* universality" (PR §153/GW 14,1:142).<sup>50</sup> Hegel's favorite example of *Sittlichkeit*'s fulfillment of subjective freedom is its legitimation, as a teleological condition of the estates inherit in its concept, of *choosing* one's estate (*Stand*) or profession (*Bestimmung*), by which Hegel means not that everyone is entitled to the job she desires, but rather that each profession should be in principle open to all, such that admittance is determined by skill and merit and not by extraneous factors, e.g., belonging to the aristocracy (PR §185A/GW 14,1:161; PR §262/GW 14,1:210).<sup>51</sup> Rational institutions *fulfill* choice (*Willkür*) by enabling us to choose among *substantial* options.

Finally, we should note that the practical dimension of institutional normativity is importantly linked to Hegel's philosophy of action and habit or second nature. "Rationality," Hegel writes, "receives its activation [Betätigung] through action [Handeln] in conformity with the institution within the state" (PR §268/GW 14,1:211). Both action and habit, for Hegel, implicate individuals in a process of mutual transformation with institutions, wherein institutions (re)form the constitution of subjective dispositions, which in turn transform institutions through action (although rarely with conscious intent).<sup>52</sup> Such a loop between agents and institutions effectively "endogenizes" subjectivity within the fold of institutional theory, which is really another way of saying that in

49. A representative passage: "True freedom as *Sittlichkeit* is this: that the will has for its purposes universal content, not subjective, i.e. self-centered [eigensüchtige] content; but such content is only in thinking and through thinking; it is nothing less than absurd to want to exclude thinking from ethicality, religiosity, rightfulness, etc." (EG §469A/GW 20:466)

50. The individual's right is *circumscribed* because, for Hegel, all rights are relative and therefore trumpable by a "higher right" attained by a more concrete stage of spirit (PR §30/GW 14,1:46)—"only the right of the world spirit is absolute in an unlimited sense" (PR §30A/GW 14,1:46). Thompson calls this circumscription of rights "the axiom of the hierarchy of right" (Thompson 2019, 73–76).

51. Hegel thus contradicts Fichte, who steadfastly holds that the choice of one's estate is to be determined by agreement or "reciprocal interaction" between myself and society, whereby "society has the right to turn me down," if, for instance, joining my desired estate would offset the state's economic equilibrium (SS 261/FW 4:273). See also GNR 187/FW 3:214–15; CCS 109–11/FW 3:421–24.

52. On the sociality of habit in Hegel, see McCumber 1990; Malabou 2005; Novakovic 2017; Boldyrev 2020. While most discussion of Hegel's philosophy of action eschews causality in favor of interpretation models, it is not unreasonable to understand Hegel as *also* identifying in action and habit a causal mechanism for explaining social change. Hegel's vocabulary of the "activation" (*Betätigung*) of rationality approximates in institutionalized form "enactivism" in cognitive science. On this productive connection between Hegelian habit and enactivism, see Testa 2021.



*Sittlichkeit* objective and subjective spirit are united.

#### 4.4.2 Theory

Let us move now to the theoretical dimension of institutional normativity. This dimension concerns institutions as bearers of rationality, i.e., as each having a concept to which it *ought* to correspond. An institution's concept therefore discloses its *teleological conditions*, i.e., the conditions that must be satisfied if the institution is to be a good instance of its kind.

These teleological conditions are of two sorts: some are *general*, pertaining to all institutions qua institutions, while others are *specific*, deriving from the institution's particular *function* (independently of its kind of being). Most prominent among the former is the *condition of self-consciousness*: that the institution become transparent to consciousness, known by all as what it truly is, and raised to the form of thought and universality (PR §270/GW 14,1:212–13). From this basic teleological condition of self-consciousness, Hegel derives the demand for the legal codification of *all* institutions to the extent *appropriate* to that institution as only in this way do the institutions become "present essentially in the form of *thought* as law," i.e., satisfy this general teleological condition (PR §270A/GW 14,1:218). An institution without the appropriate degree of legal codification remains an institution, albeit a bad one.

For an example of institution-specific teleological conditions, consider Hegel's account of the institution of marriage. It follows from the *concept* of marriage, according to Hegel, that it is uncoerced, monogamous, and exogamous. Marriage "essentially" [wesentlich] *is* this way; marriage otherwise is "contrary to the concept" [dem Begriffe zuwider] (PR §§167–68/GW 14,1:149–50). Hegel, of course, does not deny the *existence* of coerced marriages, but judges, *from within the standpoint of science*, that they do not live up to the concept of marriage as such. That marriage is uncoerced, monogamous, and exogamous—that these are determinations of the concept of marriage as such, that they constitute its teleological conditions deriving from its nature as an institution—is established by Hegel from considering its specific *function*, viz., of spiritually unifying two people of different sexes into a new person. Clearly, then, much hangs on not only *which* concepts are elevated into institutions by the philosophical science of right, but more importantly *how* these concepts attain their determinacy and function, given their important normative consequences.

Summing up, two sets of questions must be addressed regarding Hegel's account of institutional rationality. First are general ones: What are concepts for Hegel? Why are they a source of normativity? How do we come to know them? Second, are institution-specific questions: Are institutions concepts in Hegel's technical sense? How do we come to know these institutional concepts? What teleological conditions follow from them? Hegel's answers to both sorts of questions, I will suggest, are *deflationary*, metaphysically and normatively. I anticipate that they are unlikely to appease many readers. We will not get a philosophical denunciation of capitalism or heteropatriarchy from Hegel, for example. His will be a *critical theory* of society in another, much more modest sense. However, Hegel's account of institutional rationality is not his last word on critique. Rather, he believes that we have open to us another avenue for well-founded critique, but one that is grounded in our membership in an ethical community, not our grasp of the presuppositionless system of science, and which therefore does *not* have "the interest of philosophical science at heart" (EL §6A/GW 20:46), but instead the *emancipatory interest* of political action, and

which, unlike scientific critique, can legitimately *transcend* the actuality of one's time.

### 4.4.3 Concepts

Hegel's answer to the first set of questions, posed above, concerning the nature of concepts in general constitutes what we may call his 'philosophy of science,' wherein philosophy amounts to a process of *conceptual transformation* of our ordinary and empirical-scientific notions. Considering Hegel's philosophy of science will show us what concepts are, for him, how philosophy arrives at them, and their normative significance.

Hegel articulates his philosophy of science in the Introduction (§§1–18) of the 1830 *Encyclopedia*.<sup>53</sup> Because this view occurs in the Introduction, it pertains univocally to all the philosophical sciences. Although modern editions often include this Introduction as part of the *Encyclopedia* logic, it lies outside of and prior to the particular philosophical sciences of logic, nature, and spirit—it is the introduction to the entire system of philosophy.<sup>54</sup> What Hegel says in this Introduction applies univocally to each of the philosophical sciences, including the science of right.

In these sections of the Introduction, Hegel develops a deeply processual theory of concepts. Concepts, he tells us, are the terminus of a three-step procedure that consists of the "modification" (*Veränderung*) of thinking (*Denken*) through its three moments: representations (*Vorstellungen*), thoughts (*Gedanken*), and concepts (*Begriffe*). Representations, thoughts, and concepts are, as Hegel also puts it, the different *forms* of the determinate content that fills consciousness, or, in short, the three *forms* of thinking as such (EL §3/GW 20:41–42). These forms of thinking constitute a progressive series, moving from 'immediate' representations to fully 'mediated' and self-developed concepts. Each also corresponds to a distinct "manner of cognizing" (*Erkenntnisweise*): sense-perception, empirical science, and philosophical science (EL §4/GW 20:43; EL §10/GW 20:50). Thus, only the last stage, the transformation of thoughts into concepts, is distinctly philosophical.

From this basic picture of Hegel's theory of concepts, two consequences follow. First, concepts are, for Hegel, the fundamental *unit* of philosophy. Philosophy is thus the science of concepts, and the thought-determinations that populate Hegel's system, from 'being' to 'organism' to 'the state', are concepts in Hegel's technical sense.<sup>55</sup> Second, philosophy comes to its concepts only by *conceptual transforming* the thinking already taking place in sense-experience and, most importantly, empirical science. Thus, philosophical concepts in some sense *depend* on the empirical-scientific notions which they transform. The nature of this dependence is, I suggest, that of *cooperation*

53. Another important text for Hegel's scientific cooperation is the *Encyclopedia* logic's *Vorbegriff* (§§19–83), especially the "Second Position of Thought towards Objectivity" (§§37–60), which I omit here for reasons of space. Hegel first introduces these sections in his heavily revised 1827 edition of the *Encyclopedia*, where they are very similar, if not identical, to the corresponding sections in the 1830 edition. Consequently, Hegel does *not* explicitly articulate his view of philosophy as conceptual transformation in the 1817 *Encyclopedia*. Indeed, empirical science is generally absent from this earliest edition, showing up systematically only in §10A. In this passage, Hegel tells us that a *subset* of positive sciences have a "rational ground and beginning," and *this* part of them, the part that exposit their "basic concepts" [Grundbegriffe] (E17 §9/GW 13:20), "belongs to philosophy" (E17 §10A/GW 13:20). Renault (2019) argues that such alterations in the 1827 edition reflect a change of opinion by Hegel on the relation between philosophy and experience. However, I see nothing in the Hegel of 1817–1821 that *contradicts* the view of philosophy as conceptual transformation that I present here, so no change of opinion need be posited to accommodate Hegel's more detailed treatment of this issue in the 1827 edition.

54. As Hegel reminds us later in the *Encyclopedia*, in the Introduction he addresses "the relation of philosophy to the empirical [dem Empirischen]" in general (EN §248A/GW 20:236).

55. On the concept-centric view of Hegelian philosophy as it pertains to the logic, see Alznauer 2023. The view of Hegel's philosophy as a *Kategorienlehre* comes to us through the work and influence of Klaus Hartmann and his "non-metaphysical" view of Hegel. Yet the non-metaphysical interpretation of Hegel was arguably already advanced by Schelling with his sloganized critique of Hegelian philosophy as "still logical" (*noch logische*). See Hartmann 1972, Brinkmann 1976, and Matthew Delhey, "Schelling's Metametaphysical Critique of Hegel," n.d.

between philosophy and empirical science. To better explain this dependency, let us examine Hegel's views on scientific cooperation and the three forms of thinking in more detail.

#### 4.4.4 Scientific Cooperation

In examining Hegel's views on scientific cooperation, we take as our point of departure his characterization of philosophical science as a *conceptual modification* of empirical science:

To that extent, the relationship of the speculative to the other sciences is merely this, namely that the former does not simply set aside the empirical content of the latter, but instead recognizes [anerkennt] and uses it; that it likewise recognizes and utilizes as its own content the universal produced by these sciences, such as their laws, genera, etc.; and furthermore that it introduces into those categories others as well and validates them. In this respect, the difference between them concerns solely this modification [Veränderung] of the categories. (EL §9A/GW 20:49)

In this passage, Hegel construes philosophy as cooperating with empirical science in five ways. On the one hand, empirical science lends to philosophy its (1) empirical content and (2) its universals distilled thereof, which are "used" and "recognized" by philosophy. On the other hand, philosophy contributes to empirical science (3) additional concepts, such as freedom, spirit, and God (EL §8/GW 20:48), and (4) validates or justifies its use of these and other concepts. To these four cooperative moments, we may add a fifth, as Hegel tells us in the next sentence that logic "further builds and forms" the universals of the former metaphysics, which, if we generalize this to be a feature of philosophy's relation to empirical science as such, indicates that (5) philosophy modifies the meaning or conceptual content of empirical science's universals. Philosophy differs from empirical science, then, neither because it is independent of experience nor because it sets aside the latter's empirical data, but because it embodies a distinct kind of conceptual transformation of the latter's categories.

As we saw, this process of conceptual transformation divides into three moments: representations, thoughts, and concepts. *Vorstellungen*—perceptions, feelings, intuitions, images, ends, duties, desires, volitions—are the universals cognized immediately in ordinary sense-perception. Representations are thus Hegel's way of denoting what we ordinarily mean by concepts, such as 'red', 'rose', 'house', and 'plant' (EL §24Z/W 8:83; EG §456Z/W 10:266). These terms are universals, but they involve no conscious reflection or 'processing' on the part of the subject who deploys them. Instead, in representational thinking the cognizer has "immediate consciousness of this content" (EL §6) and naturally uses representations to refer immediately to things in the world or their kinds and properties. But because these representations are implicitly universals, they have meaning only insofar as they implicitly refer to concepts. This is why our ordinary consciousness, according to Hegel, necessarily involves intermixing sensuous content with universal categories (EL §3A/GW 20:42f).

*Gedanken* are cognized in empirical science. Thoughts, or "finite thought-determinations" (EL §25/GW 20:68), distill representations into pure universals through a process of *analysis*, isolating from representations that content that no longer refers directly to sense-experience (EL §38Z/W 8:109). Examples of *Gedanken* include genera, species, laws, forces, matter, faculties, activities, and

theories (EL §7/GW 20:46; EL §9/GW 20:49; EL §38/GW 20:75f; EL §80Z/W 8:169; GW 18:237). Two remarks can be made regarding thoughts (*Gedanken*) as a form of thinking (*Denken*).

First of all, empirical science, for Hegel, *already* involves itself with pure universals and does *not* rely upon philosophy to rise to this level of abstraction. This is why Hegel writes in our guiding passage that philosophy "recognizes and utilizes as its own content the universal produced by these sciences" (EL §9A/GW 20:49). For Hegel, this is because empirical-scientific cognition includes the process of reflection that he calls *Nachdenken*. *Nachdenken* differs from representational thinking because it is a form of thinking that takes thoughts explicitly as its subject-matter. As Hegel puts it, *Nachdenken* is "reflective thinking which has *thoughts* as such for its *content* and brings them as such to consciousness (EL §2A/GW 20:40). *Nachdenken* has two notable features. First, Hegel characterizes it as a process of conceptual transformation, writing that in *Nachdenken* "the true *content* of our consciousness is *preserved* in its translation to the form of thought [Form des Gedankens] and the concept, and indeed only then placed in its proper light. [...] *Nachdenken* has at least this effect, namely, that of transforming [verwandeln] the feelings, representations, etc. into *thoughts*" (EL §5/GW 20:43). Second, *Nachdenken* is quite broad, encompassing, in a differentiated manner, both empirical science's analysis of the content of thinking and philosophy's conceptual exhibition of the same. Hegel writes that philosophy's "*Nachdenken* is both the *same* as and *different* from the first *Nachdenken* [viz., empirical science's] and, as such, it possesses in addition to the shared ones *its own peculiar forms*, of which the *concept* is the universal one" (EL §9/GW 20:49). The difference between empirical and philosophical science can thus be expressed as that between a first and second *Nachdenken*, i.e., of a first- and second-order transformation in the form of thinking of one and the same content.

This brings us at last to *Begriffe*, or true thought-determinations, cognized in philosophical science. Conceptual comprehension is well-known to Hegel's readers; this is what he sets out to achieve in his philosophical writings. I focus, then, only on two ways concepts are superior to thoughts, according to Hegel (EL §§7–10).<sup>56</sup>

First of all, concepts encompass a larger domain of objects than do thoughts, including within its sphere not only the finite objects of the sense-perception and empirical science but also *infinite* or "absolute" objects (EL §10/GW 20:50), i.e., objects that "in terms of their *content* [...] immediately present themselves as infinite" (EL §8/GW 20:48). Hegel's examples of such infinite objects are freedom, spirit, and God (ibid.). These infinite objects are excluded from empirical science *not* because they transcend possible experience, but because empirical science researches only *finite* domains, according to Hegel.<sup>57</sup> Infinite objects are made valid subjects of inquiry by philosophy if they can be exhibited as moments of philosophy's distinct conceptual transformation.

Second, philosophy gives its *Begriffe* the form of necessity, whereas empirical science's *Gedanken* are unsatisfactorily contingent in at least two ways (EL §9/GW 20:49). Regarding the first source of contingency, empirical science's universals are contingent because of its atomistic methodology.<sup>58</sup> According to Hegel, this atomism causes three deficiencies; he writes that, in empirical

56. Hegel elsewhere identifies additional ways concepts are superior to *Gedanken* (e.g. EL §16A, §12A, §25). But these are inessential for our purposes.

57. Hegel writes: "The reason why they cannot be found in that sphere is not that they are supposedly not a part of experience; they are not experienced by way of the senses, it is true, but whatever is present in consciousness is being experienced. [...] Rather, they are not found in that sphere because in terms of their *content* these objects immediately present themselves as infinite" (EL §8/GW 13:19). The finite/infinite distinction is orthogonal to the experiential/non-experiential distinction.

58. Cf. Posch (2011, 189–92)

science, "the *universal* that it contains (such as the genus, etc.), is [...] left indeterminate for itself and is not for itself connected to the *particular*; instead, both are external and contingent in relation to each other, as are likewise the combined particularities vis-à-vis each other in their reciprocal relationship" (ibid.). That is, empirical science's methodological atomism entails, first, that the particulars are left mutually external to one another—they are treated as isolated bits of data with no essential interconnection; second, that empirical sciences' laws and genera are left mutually external to the particulars over which they are intended to generalize—they are merely abstract universals, excluding the forms of particularity and singularity as such; and, third, that, as abstract universals, they fail to reach the level of explicitness demanded by conceptual comprehension and so are indeterminate. In short, empirical science's atomism prevents it from demonstrating that *these* laws and *these* genera are necessary features of the world's intelligibility, although it does prove that, *given the existence of certain laws*, relevant events and genera necessarily follow. The second source of contingency concerns the beginnings or *archai* of each empirical science. According to Hegel, empirical science cannot justify or prove these beginnings but must instead assume them as "*immediacies, found things, presuppositions*" (ibid.). Because it cannot demonstrate the necessity of its starting-points, empirical science remains vulnerable to skepticism about its soundness and therefore shows itself to be inadequate to the "form of necessity" proper to science (ibid.).

Philosophy's second *Nachdenken* resolves both of these deficiencies by way of self-development (EL §§10–12). That is, in philosophical science spirit develops out of itself the same content of empirical science, but now in the form of thinking as such or as "spirit [coming] to itself" (EL §11/GW 20:51). Philosophy's self-developmental method bestows necessity upon its system of concepts because, on the one hand, it eliminates the givenness of its starting-points by showing science to be a self-completing circle (EL §§15, 17; cf. SL 49/GW 21:57f), and because, on the other hand, it demonstrates the interconnectedness of its concepts by determining their content in the form of a self-unfolding system (EL §14/GW 20:55). This method also includes infinite objects within its domain ("such as the absolute, God") because, by turning to the form of thinking as such, it includes a moment of "*elevating*" itself above our "natural" and "sensuous" consciousness, negating this immediacy, and so making possible our comprehension of the "*universal* essence of these appearances" (EL §12/GW 20:52). In this way, philosophy preserves the content of the empirical sciences while transforming the form of its being thought from *Gedanken* to *Begriffe*.<sup>59</sup>

In sum, in Hegel's philosophy of science philosophy is essentially a process of transforming the universals of the empirical sciences into concepts. This conceptual-transformative interpretation of philosophy makes the best sense of important claims in §§1–18, such as:

[O]nly by passing through the process of representing and by turning towards it, does thinking spirit progress to thinking cognition and to comprehension. (EL §1/GW 20:39)

It can be said quite generally that philosophy replaces [setzt an die Stelle] representa-

59. Hegel describes this self-developmental as follows: "Such development consists on the one hand merely in taking up the content and its exhibited [vorgelegten] determinations and at the same time giving them, on the other hand, the shape of emerging freely in the sense of original thinking [ursprünglichen Denkens] only in accordance with the necessity of the subject-matter itself [die Sache selbst]" (EL §12/GW 20:52). As Hegel clarifies in the *Anmerkung* to this passage, he intends his view of philosophy as conceptual transformation to overcome the *a priori-a posteriori* distinction. Insofar as its conceptual development is the self-determination of the concept as it unfolds itself across its concrete determinations, it is *free* and *a priori*, but insofar as this same development is constrained by its subject-matter (*die Sache*), which holds true for all thinking insofar as it is "objective thinking" (GW 11:21), it is also *necessary* and *a posteriori*.

tions with *thoughts* [Gedanken] and *categories*, but more specifically with *concepts*. (EL §3A/GW 20:42)<sup>60</sup>

[T]he empirical sciences do not stand still with the perception of the *singularities* of appearances; instead, in thinking they have readied [gearbeitet] this material for philosophy by discovering its universal determinations, genera, and laws. In this way, they prepare [vorbereiten] this content of the particular so that it can be taken up [aufgenommen] into philosophy. (EL §12A/GW 20:54)

Philosophical science, including the science of right, is differentiated from empirical science not by being experience-independent but by the nature of its conceptual transformation—namely, this transformation's mode (necessity), cardinality (greater), and order (second). This is what Hegel means when he writes that "the difference between them concerns solely this modification of the categories" (EL §9A/GW 20:49). Consequently, the philosopher should adopt an *expository attitude* towards empirical science, taking its theories as her starting-point when for the development of her conceptual scheme.<sup>61</sup>

#### 4.4.5 Conceptual Normativity

Once philosophy has developed its system of concepts, it is relatively straightforward to see how these concepts provide a normative standard for evaluating their instances. These evaluations take the form of what Hegel calls the "judgment of the concept," and, more specifically, an apodictic judgment (E17 §§125–127/GW 13:81–82; SL 581–87/GW 12:84–89; EL §§178–180/GW 20:189–91).<sup>62</sup> Judgment, for Hegel, is the internal differentiation of the concept, its moment of logical negativity. Speculative logic treats judgment by unfolding the various ways in which it connects a subject to a predicate using the copula 'is'. In the judgment of the concept, a singular term is related to its *concept* as a predicate. Conceptual judgments can either be immediately asserted ("This house is good"—assertoric judgment), asserted in a contingent manner ("This house, contingent on its constitution, is good"—problematic judgment), or asserted according to their actuality ("This house, so-and-so constituted, is good"—apodictic judgment). Thus in apodictic judgments, the *constitution* [Beschaffenheit] of a singular thing is compared with its concept, "the universal, or what it *ought to be*", and is evaluated as *good* or *bad* (correct or false, beautiful or ugly, etc.) to the extent that it corresponds to it (SL 585/GW 12:87).<sup>63</sup> Telic normativity thus derives from the these

60. See also EL §20A: "[I]t can generally be said that philosophy does nothing but transform [verwandeln] representations into thoughts [Gedanken] — and, indeed, beyond that, mere thoughts [Gedanken] into the concept" (GW 20:64).

61. As Buchdahl puts it: "In Hegel's view, the primary purpose of philosophizing is to elucidate these concepts [of empirical science] by constructive criticism, by integrating them into the more permanent framework of the overall methodological structure" (1993, 62).

62. On the judgment of the concept in Hegel, see Zambrana (2017, 305); Longuenesse (2007, 213–14); Winfield (2006, 92–94, 102–4); Ng (2020, 178–218); Redding (2007, 181–89, 194–95). As Longuenesse (2007) helpfully clarifies, there is a crucial difference underlying Hegel and Kant on judgments, despite their superficial similarities: namely, that, for Kant, *any* discursive judgment is analyzable into its quantity, quality, modality, and relation between the assertion and its condition, whereas, for Hegel, the judgment of the concept refers to one *kind* of judgment, which, for him, exhausts the relation between the subject and the predicate, and is therefore incompatible with the other kinds of judgment (209–10).

63. At issue in judgments of the concept is *normativity* in a very general sense, encompassing one's preferred vocabulary: beautiful or ugly, correct or incorrect, just or unjust, etc. As Hegel clarifies, this normativity is not the *abstract* ought of morality or the bad infinite. Rather, in the apodictic judgment, "such a universal, like 'good', 'fitting', 'right', etc., has an *ought* for its ground, and contains at the same time the *correspondence of existence*; [this universal] is not the ought [...] by itself, but this *correspondence* which is the *universality* that constitutes the predicate of the apodictic judgment" (SL 585–86/GW 12:88). The judgment of the concept is thus "*truly objective*" and its content "*concrete universality*" (ibid.)

apodictic conceptual judgments. For any singular thing, if we possess its concept, we possess an internal standard by which we can judge it as a good or bad exemplar of its kind.

Again, such a theory of conceptual normativity puts all the normative weight on *what* the concept of the thing is. An important limitation of such concepts is that they cannot be external to the thing, but it must rather *constitute* it, or, as Hegel puts it, concepts are 'that by means of which it is what it is'. Concepts and judgments thus have nothing to do with psychology, but pertain to the conceptual structure of the object itself:

Neither the concept nor the judgment are merely occurrences in our head and are not fashioned merely by us. The concept is something that dwells within the things themselves, by means of which they are what they are, and to comprehend an object means accordingly to become conscious of its concept. If we then take the next step to judging the object, it is not our subjective doing that accounts for attributing this or that predicate to the object. Instead we consider the object in the determinacy posited by its concept (EL §166Z)

Thus, Hegelian concepts are not normative because they distribute rights and duties, nor because they disclose transcendental conditions of consciousness or sociality (although they can also do this). Rather, concepts are normative vis-à-vis their instances because they constitute these instances as their telos. For this same reason, Hegel calls the syllogism, which is the unity of the concept and judgment, "the *rational* and *everything* rational" (E17 §128/GW 13:82; cf. EG §181/GW 20:191; SL 351–52/GW 12:90), as any singular thing, comprehended in such a syllogistic unity, is grasped as having an existence or objectivity that corresponds to its concept,<sup>64</sup> unlike the judgment, wherein the evaluated singular thing may or may not be adequate to its concept and is accordingly grasped as "finite" (E17 §126; cf. EL §179).<sup>65</sup> The kind of conceptual normativity that Hegel sees at work throughout all the philosophical sciences is therefore telic normativity, as we saw before.

#### 4.4.6 Institutions

We are now in a position to answer the set of *institution-specific* questions posed above: Are institutions concepts? How do we come to know them? What teleological conditions follow from them? Our answers here will be quite broad, sufficient only to grasp the nature of institutional normativity for Hegel. A more detailed treatment of these issues will take place in the following section on institutional critique.

In answering the first of these questions, we should begin by acknowledging its seriousness. A theme throughout Hegel's writings is his insistence that what we *ordinarily* call concepts are in fact mere representations, and these representations must not be artificially elevated to the status of concept, i.e., without having gone through the process of their philosophical transformation. "What we usually call concepts," Hegel warns us, "and, indeed, determinate concepts, e.g., human

64. "'What is rational' is an actual individual existence presenting a particular constitution that manifests the presence of the concept, or I, or thought, determining everything that is according to its own norm of what *ought to be*" (Longuenesse 2007, 216–17)

65. As Hegel puts it in his lectures on logic, finite things "are their own judgment, [...] for their properties are separable from them" (VL 16)

being, house, animal, etc., are simple determinations and abstract representations."<sup>66</sup> Thus, for example, Hegel's objection to Kant's critique of the ontological proof of God's existence largely turns on Kant's infamous example, the concept of the hundred dollars whose *existence*, while certainly impacting my financial situation, is indifferent to the concept's meaning or "content" as such, a separation of thought and being that Kant analogously attributes to the concept of God, forestalling any transition from God's concept to his existence. Hegel rejoins: "This so-called concept of a hundred dollars is however a *false concept* [falscher Begriff]; the form of simple self-reference does not belong to such a limited, finite content itself; it is a form on loan to it, like a dress, by a subjective understanding; a 'hundred dollars' is nothing self-referring but something alterable and perishable" (SL 65/GW 21:75; cf. SL 625–27/GW 12:127–29).<sup>67</sup> The moral of the ontological proof, Hegel concludes, is precisely that the concept of God and the concept of a hundred dollars fundamentally differ from one another, the latter being *finite*, in which concept and being diverge, and the former *infinite*, and so exhibiting their convergence (SL 66/GW 21:77).<sup>68</sup> In the *Encyclopedia*, Hegel generalizes this insight. He tell us that it is the task of philosophy to examine our representations and, in the process of transforming them, determine whether, for example, "being, existence, finitude, simplicity, composition, etc." are "*true concepts in and for themselves*," and so bear within them the self-referring form of the concept and its structuration into singularity, particularity, and universality, or whether these are mere representations lacking conceptual form and therefore of a much more limited domain of validity (E17 §22A; cf. EL §33A; EL §62).

Now, there is an obvious tension in Hegel's view of the judgment of the concept as presented. Hegel's example throughout his treatment of this kind of judgment is a singular *house* ('*this house*' as he puts it), which stands in the subject position. This subject is then in the judgment compared with its predicate, the *concept of a house*. But among Hegel's mere representations, i.e., false concepts, is that of a house! The representation of a house would apparently lack the *internally teleological* structure that makes the telic normativity expressed in the judgment of the concept possible in the first place, viz., the structure of being *constituted* by its concept. While the house may certainly serve a purpose *for me*, this utility is merely external purposiveness and does not, on its own, warrant attributing this purposiveness to the nature of the house as such, just as we rebuke inferring that the inner purpose of cork trees is to produce wine stoppers, despite this being among their useful purposes for us (EL §205Z), an inference Hegel calls "*external reflection*" (SL 582/GW 12:84) and "*external teleology*." This problem has led some interpreters to assume that only a subset of singular objects are candidates for being subjects in normative conceptual

66. Hegel continues: "- abstractions that, taking only the factor of universality from the concept while omitting the particularity and individuality, are thus not developed in themselves and accordingly abstract precisely from the concept" (EG §164A/GW 20:181; cf. E17 §113A/GW 13:74). In the *Science of Logic*, Hegel tells us that these ordinary representations are merely abstract universals: "The abstract universal is indeed the *concept*, but the *unconceptualized* concept, the concept not posited as such. When we speak of the *determinate concept*, what we ordinarily mean is precisely just this *abstract universal*" (SL 537/GW 12:40).

67. As Hegel puts the point in his 1831 lectures on the Ontological Proof: "[I]t is already very crooked [schief] to call every bad existence [schlechte Existenz] a concept. [...] When Kant says that reality cannot be extracted from the concept, then the concept is conceived as finite." (VBDG 190–91/5:273–74). Another lecture transcription reports Hegel as saying: "In common life a representation of 100 thalers is called a concept; - that is not a concept, just a determination of content [Inhaltsbestimmung]. - An abstract sensuous representation, such as blue, - or a determinacy of the understanding [Verstandesbestimmtheit] that is in my head, can of course lack being. But that cannot be called a concept" (GW 29,II:64).

68. *Critique*, in its most generic signification, is nothing other than the exposition of concepts as they are in and for themselves: "The true critique of the categories and of reason is just this: to acquaint cognition with this distinction and to prevent it from applying to God the determinations and the relations of the finite" (SL 66/GW 21:77). See the discussion of scientific critique in the next section.



judgments, namely those that exhibit *internal* teleology, such as living organisms.<sup>69</sup> But a more natural reading of Hegel's text, I believe, is to grant to Hegel that *all* finite things can be subjects in normative conceptual judgments, but that such judgments obtain different levels of validity depending on whether the universal (the standard or rule) is a representation or a concept.<sup>70</sup> In the former case, the judgment garners only *subjective validity* as the standard is externally imposed and therefore arbitrarily, but, in the latter, it obtains *objective* or *scientific validity* because the standard really derives from the concept of the thing itself. Using Hegel's vocabulary, we could say that representations permit assertoric and problematic judgments, but only concepts permit of apodictic ones, judgments that are generally binding on others.

All of this is to say that before assimilating Hegelian institutions to his general views of about philosophical concepts, we must first ensure that institutions are not merely finite representations, i.e., false or untrue concepts, but are instead concepts in his technical sense, capable of underwriting a *scientific* species of institutional critique.

There are four reasons to think that this is the case. First is a formal-systematic reason: institutions are concepts in Hegel's technical sense because they occupy a similar position to terms uncontroversially considered to be concepts within his architectonic. Hegel not only speaks of the concept of the state—a concept if there ever was one for Hegel—but also the concepts of princely power, contract, crime, and marriage. Hegel also alludes to institutions when discussing the "concept of the thing" (*der Begriff der Sache*), making it quite clear that he takes institutions to be concepts in his technical sense.

The second reason is a functional one. Institutions, as rational social forms or the meso-level structures that internally differentiate ethical substance, *perform the philosophical work* that concepts are supposed to perform for Hegel. They raise our representations of the social world into a *system* of concepts bearing the form of necessity. This can be seen in Hegel's most programmatic statement on institutional rationality, where he writes: "That the ethical is the *system* of these determinations of the idea constitutes its *rationality*" (PR §145/GW 14,1:137).<sup>71</sup> These systematic determinations of *Sittlichkeit* that constitute its rationality are none other than the institutions ("ethical might") that "govern the lives of individuals." Institutions, by bestowing necessity and systematic rationality, not to mention freedom-inducing objectivity, to *Sittlichkeit*, function as concepts therein.

The third reason is a substantial one: each institution of *Sittlichkeit* embodies the structure of the concept in its totality, exhibiting the moments of universality, particularity, and singularity. As we saw, one of the main defects of representations, according to Hegel, is that they disavow the moments of singularity and particularity, making them *abstract* rather than concrete universals. In a concrete universal, each determination of the concept "shines" through or inflects itself in the others, such that the concept's universality, for example, comes to be *modulated* by its singular instances and its particular species, and is not *indifferent* to them, as it is in an abstract universal. On the model of concrete universality, a singular instance is capable of exhibiting the universality

69. See Kreines (2015, 98–100).

70. In his 1831 lectures on logic, Hegel uses looser vocabulary, writing that, in the judgment of the concept, the subject need only be compared with its "determination" (*Bestimmung*), a way of speaking which encompasses both representations and concepts.

71. Hegel continues: "In this way, the ethical is freedom, or the will which has being in and for itself as objectivity, as a circle of necessity whose moments are the *ethical might* which govern [regieren] the lives of individuals." In §150A, Hegel similarly characterizes *Sittlichkeit* as the "free system of self-sufficient development and objectivity."

and particularity of a concept *in its very singularity*, as, for example, when an exemplary work of art discloses to us a truth that simultaneously connects the artwork and the artist (singularity), its style and genre (particularity), and beauty itself (universality). Institutions, to be sure, are no works of art.<sup>72</sup> But they do exhibit this conceptual structure, even if Hegel rarely makes this explicit in his discussion of them in the *Philosophy of Right*. In very condensed form, we can reconstruct this conceptual structure in the following way: their *universality* consists in the concept of the institution as such, which, according to our reconstruction in chapters 2 and 3, takes the general form of being the unity of a social-ontological kind of being and function (e.g., the institution of marriage as *being* a relation that *functions* to spiritually unify two spouses); their *particularity* consists in the specific character of the institution in a localized time, place, and social stratification (e.g., English marriage, ancient marriage, bourgeois marriage);<sup>73</sup> their *singularity* consists in their modulated existence as instances or tokens (e.g., the marriage between Odysseus and Penelope). A second feature of concrete universality is its capacity to undergo change in its universality by virtue of changes in its particularity and its singularity. If no such *indirect* change to its universality were possible, then this universality would indeed be 'indifferent' to its particularity and singularity. And this is precisely how Hegel conceives them. He is committed not only to the general idea that institutional change is possible and desirable, but more specifically that reform to instances and species can also impact the genus, that the concept of the institution itself is susceptible to change. So understood, institutions satisfy the requirement for being *concrete* universals, first, because they embody the three moments of the concept in their totality and, second, because their universal determination can be altered through changes in their particularity and singularity. This supports our contention that institutions are concepts in Hegel's technical sense.

Finally, Hegelian institutions can be seen to be concepts, not mere representations, because they gain their determinacy not immediately but only through having undergone a process of conceptual transformation. That is, Hegel does not lift his institutions from representation and common sense, but philosophically transforms the institutions given to him by empirical social science, sometimes quite radically. This conceptual-transformative method is what gives the *Philosophy of Right* its peculiar character, one that can be so difficult to summarize to the uninitiated: on the one hand, the work appears almost as a piece of sociology, analyzing and re-describing 'modern' institutions as ideal types, distilling empirical social phenomena into graspable and unified structures; on the other hand, the work is shot-through not merely with normative pronouncements, but, more puzzling, expositions of institutions that do not quite exist in Hegel's milieu but are nonetheless *linked* to *similar* institutions that either exist or existed in living memory. Such conceptual-transformative dynamics are most obvious (and well-documented) in the cases of the estates and the corporations, neither of which functioned in historical reality at all as they do in Hegel's *Sittlichkeit*. Hegel's conceptual *rejuvenation* of the institutions of the estates and the cooperation through a process of conceptual transformation, then, also supports our general thesis that institutions are concepts in his technical sense.

This glimpse into Hegel's conceptual-transformative method in the *Philosophy of Right* leads

72. "The state," Hegel reminds us, "is not a work of art; it exists in the world, and hence in the sphere of arbitrariness, contingency, and error, and bad behavior may disfigure it in many respects" (PR §258Z) Institutions are no different.

73. Hegelian particularity also accommodates *intersectionality*, e.g., English bourgeois marriage, etc., and so legitimates the analysis of interaction effects between different species or classifications.

us to Hegel's answer to the second question, viz., how we come to know these institutions as concepts. Since institutions are concepts in Hegel's technical sense, it follows from his general view on scientific cooperation that the selection of which institutions are to be reconstructed in the *Philosophy of Right* as well as their content result, like all philosophical concepts, from philosophy's conceptual transformation of the "thoughts" (*Gedanke*) of the relevant empirical sciences.

Addressing how this transformation works *in concreto* would take us too far afield from the issue at hand. For now, I only wish to indicate that this conceptual-transformative method is borne out in Hegel's philosophical science of right, which not only engages with a wealth of empirical-scientific theories and research, but also actively transforms this material in the process. One should appreciate the breadth of Hegel's engagement with the empirical social science of his day. While there was in Hegel's time, of course, no such disciplinary marker as 'social science,' a number of empirical disciplines had established themselves as relevant to Hegel's project. Thus, among the pages of the *Philosophy of Right*, we encounter not only the natural law theories of the philosophers (Schmid, Hufeland, Fichte, Rousseau, and Hobbes), but a number of allusions, sometimes implicit, to empirical works. These include: jurisprudence or *Rechtswissenschaft* (Heineccius, Hugo, Savigny, Runde, Thibaut), political economy (Say, Ricardo, Stuart, Sismondi), political science or *Staatswissenschaft* (Haller, Harl), international relations (Grotius), history and mythology (Creuzer, Gibbon, Tittmann), criminology (Feuerbach, Grolman, Henke, Klein, Kleinschrod, Quistorp), and religion, literature, and philology (A. Schlegel). Hegel's method of conceptual transformation enables him to arrive at his set of rational institutions not *a priori* or with Kantian 'purity' but from the best institutional theories present in the empirical sciences, which in turn bestows upon the philosophical science of right a deep historical dynamism, capable of adapting itself as these empirical sciences, and, indeed, experience itself, changes.<sup>74</sup>

To conclude, we can now see why institutional rationality is the proper name for Hegel's theory of institutional normativity. Institutions are rational not in an instrumental sense, i.e., because they most efficiently realize some desired end, but because they constitute the very element of the objectivity of our human freedom. Practically, this theory asserts that an agent's freedom is proportional to the degree of rationality embodied in her society's institutions. Theoretically, it holds that institutions bear rationality to the extent that they correspond to their concept. It therefore provides a normative framework for evaluating the quality of my freedom and my society's institutions *within* philosophical science. The standard to which an institution is compared is an *internal* standard because it is simply the concept of the institution itself. In the case of institutions, this concept is a *genuine* one, not a mere representation; thus, the comparison underwrites an ob-

74. Occasionally, Hegel observes that *experience* itself changes as our concepts are transformed. Most famously: "All revolutions, in the sciences no less than in world history, originate solely from the fact that Spirit, in order to understand and comprehend itself with a view to possessing itself, has changed its categories" (EN §246Z). Regarding history, for example, Hegel says: "Even the ordinary, run-of-the-mill historian who believes and professes that his attitude is entirely receptive, that he is dedicated to the facts, is by no means passive in his thinking; he brings his categories with him, and they influence his vision of the data he has before him. [...] Whoever looks at the world rationally will find that it in turn assumes a rational aspect. [...] We find that the world takes on an aspect corresponding to the way in which we look at it. Anyone who views the world purely subjectively will see it in terms of his own nature; he will know everything better than everyone else, and see how things ought to have been done and what course events ought to have taken. But the overall content of world history is rational. [...] Our aim must be to discern this substance, and to do so, we must bring with us a rational consciousness. [...] [W]e must see with the eye of the concept, the eye of reason, which penetrates the surface and finds its way through the complex and confusing turmoil of events" (VG 29–30; cf. W 12:23). Philosophy's transformation of our concepts thus enables us to not only re-experience our lifeworld, but to obtain the requisite objectivity required to undertake science in the first place. This apparently radical conclusion is really a logical consequence of Hegel's conceptual-transformative method and his view of the categoriality of experience.

jective valid or apodictic normative judgment. The institution's concept is determined through a process of conceptual transformation of empirical science, and is therefore in principle open to historical institutional change (on the part of agents) and modest conceptual rejuvenation (on the part of philosophers). We now turn, then, to these two avenues of enacting institutional change, or, at least, advocating for it.

## 4.5 Institutional Critique

Hegel, like the mature Marx, advocates for the *disunity* of theory and practice. This disunity is a necessary consequence of any theory of social critique that wishes to assert itself as *wissenschaftlich*, as both Hegel and Marx do. If by theory we mean the task of *understanding* the world and practice that of *changing* it, then this disunity consists in their being a fundamental difference in the ways in which understanding-oriented activity (philosophical science) justifies its normative evaluations compared to how change-oriented activity (ethical and political action) does the same.<sup>75</sup> This difference in justifying normative standards is multifaceted, but perhaps the primary point of divergence lies in the *epistemic* character of their respective *standards* of social critique: science aims in principle at *certainty* and *consensus* in its critical standards, whereas political action is constituted in principle by the *uncertainty* of its standards, that they are inherently *contestable* and, in a more modest sense than Carl Schmitt, essentially *oppositional*.<sup>76</sup>

There is obviously much to say about this basic division in Hegel's theory of social critique.<sup>77</sup> In this chapter, I will only partially develop it in order to illuminate Hegel's theory of institutional normativity and its contribution to resolving the problem of Hegelian normativity. The first order of business, then, is to explain the connection between social critique and the critique of institutions.

### 4.5.1 Critique of Institutions

Social critique, as defined above,<sup>78</sup> can target any aspect of society: norms, relations, practices, material conditions, forms of life, states of affairs, modes of production, etc. Institutional critique is a species of social critique, namely social critique directed at institutions.<sup>79</sup> Hegel, I have suggested, thinks that institutions should be the locus of social critique, or, in other words, that all social critique should be institutional critique. He thinks this for two reasons.

First of all, his focus on institutions follows from his conceptual-transformative method. If philosophy is fundamentally about concepts, then in *Sittlichkeit* it must identify a conceptual domain

75. A similar division of social critique can be found in Thompson (2019, 86–95). Thompson distinguishes between "systematic" and "extra-systematic" uses of reason in Hegel, on the model of Kant's distinction between "public" and "private" use of reason in the *Aufklärung* essay.

76. Failure to appreciate this difference between science and politics constitutes the pathology of *hypocrisy*: passing off one's normatively contestable evaluations as incontestable, or, more weakly, as matters of mere technical efficiency, depoliticizing the essentially political. On the danger of critique lapsing into hypocrisy, see Koselleck (1988, ch. 8). On Schmitt, see Strauss (1995, 91–119).

77. Two immediate qualifications: I do not mean to suggest a dualism. Science *can* indirectly contribute to practice, but *need* not do so, according to Hegel. He merely denies that theory and practice are organically unified or speculatively synthesized. Nor is Hegel endorsing "necognitivism" or "emotivism" about ethical and political action. Thinking, after all, pervades all of our life and activity. He merely denies that the normative evaluations undergirding this action rank among the subject-matter of philosophy.

78. See the definition of social critique in note 8.

79. This distinction is relatively orthogonal to the one between scientific and political critique.

that attains the required objectivity and systematicity required to satisfy the argumentative structure set out at the beginning of the *Philosophy of Right* and at the end of Subjective Spirit, namely that the will's content become the system of the determinations of right. Such a subject-matter would have to "elude the common choice between objectivism (primacy of law) and subjectivism (primacy of rights)," as Kervégan puts it (2022, 174). The only conceptual domain that could satisfy this desideratum is that of institutions.

This sort of systematic justification for placing institutions at the center of social critique is, of course, question-begging for those who reject Hegel's systematic project in the first place. But Hegel has another, less systematic and thus more independently assessable reason for shifting our focus to the institutional: namely, that institutions are, he thinks, the drivers of social change.

This is in some sense an empirical claim, or at least a social-theoretical one, whose satisfactory defense would have to extend beyond textual and argumentative analysis. But even within this frame, we can see our tacit agreement with Hegel on this point if we consider our common explanations of social change. When we wish to explain the change, say, of a state from one fundamental kind of internal organization to another kind (e.g., the collapse of Soviet Russia between 1989 and 1991), it does little good to rest our explanation on the agency of a single individual or influential group. Nor does it satisfy reason to examine the breakdown in the state's form of life or the blockages in its capacity for critical self-reflection. Breakdowns in the learning process of one's form of life or the conditions obstructing transformative self-reflection—the two most sophisticated accounts on offer in critical theory today concerning the proper targets of social critique<sup>80</sup> are clearly too broad to account for social change of this nature, in addition to being unable to satisfy Hegel's systematic desideratum, and the great-figure approach is even less compelling. In such a scenario, we seek instead meso-level explanations, namely, those couched in terms of institutions and institutional change. We tacitly accept that institutions are the driver of social change.

We can see Hegel's institutionalist view of social change active in his writings on the philosophy of world history.<sup>81</sup> Take, for instance, Hegel's all-too-brief account of the world spirit's movement through the Oriental, Greek, Roman, and German "realms" discussed above (PR §§355–60). Hegel analyzes each of these transitions in terms of meso-level institutional change: the estates, the internal organization of sovereignty, the legal transformations of civil society, such as of legal equality and personhood, and the interaction of these meso-level structures with changes in religion, art, and philosophy. In his *Lectures on the Philosophy of World History*, Hegel expands his institution-centric account of social change, constantly re-examining the particular ways in which the three spheres of *Sittlichkeit* are variously institutionalized in each *Volksgeist*. This centering of institutions reflects Hegel's ontological commitment that institutions are the ideality of ethical substance, its concretization into distinct forms, and therefore also the proper locus of social critique. Hegel's institutional theory, then, helpfully narrows the target of social critique to institutions.

80. See Jaeggi (2018) and Celikates (2018). Of course, Jaeggi and Celikates do not desire to theorize *only* social change, but are primarily interested in smaller social movements. This difference accounts for the awkwardness of their theories at the level of world history. Nonetheless, I do not think I am guilty of having applied their theories inappropriately because they neither rule out such application nor does the superiority of the institutional approach falter at the smaller scale of social movements.

81. That Hegel holds an institutionalist view of history and politics is clear enough in Hegel's political writings, as I showed in chapter 2.

### 4.5.2 Hegel on Critique

Hegel, of course, does not speak about critique, social or otherwise, in the ways that I have attributed to him. In the first instance, critique for Hegel means: the critique of concepts and categories. The categoriality of critique nicely buttresses our interpretation of his philosophy as conceptual transformation. In *Sittlichkeit*, the critique of concepts becomes the critique of institutions. To better understand Hegelian institutional critique, we should note two generic features of Hegelian critique, viz., its *expository* and *affirmative* nature.

These two features can be gleaned from Hegel's most programmatic statement on critique, which is to be found in the Introduction to his *Science of Logic*. There, Hegel writes:

The objective logic is [...] the true critique of such determinations - a critique that considers [betrachtet] them [...] in themselves according to their particular content (SL 42/GW 11:32; cf. GW 21:49)<sup>82</sup>

What Hegel says he about objective logic holds for *all* of philosophy vis-à-vis its particular domain. Each philosophical science is the "true critique" of the pre-philosophical representations and thoughts pertaining to its subject-matter. This critique "considers" these concepts in themselves, an activity which Hegel understands as investing the concept's "value" (*Wert*) and "validity" (*Geltung*), by which he means the determination of the concept's proper *meaning* as well as the localized *domain* of its applicability.<sup>83</sup> To employ concepts "uncritically" (*ohne Kritik*) then, is to use them "without the previous investigation [Untersuchung] of whether and how they could be the determinations of [...] the rational" (*ibid.*).<sup>84</sup>

What is the nature of philosophy's "investigation" of the concepts, their validity, value, and rationality, or of philosophical critique? It is, I suggest, nothing but the subjection of the representational core of the notions from ordinary consciousness and traditional metaphysics to philosophy's process of conceptual transformation. This is expressed in the fact that, besides consideration (*Betrachtung*), Hegel's preferred word for describing philosophy's critical activity vis-à-vis sense-experience and empirical science is *exposition* (*Darstellung* and, occasionally, *Aus-* and *Darlegung*). Critique, the examination of concepts in themselves, is exposition for Hegel because it is not principally an evaluation of these concepts as good or bad, useful or ineffective, etc., but the dialectical unfolding of what they are in themselves through their own negativity, that is, through an appreciation of each concept's "internal contradiction" (EL §33A). But what each concept is *in itself* cannot be independent of experience (as is often supposed) since this would violate Hegel's basic principle that philosophy preserves the content of ordinary representations and scientific theories when it uplifts their form into that of the concept. Critique as exposition

82. And again in the *Doctrine of the Concept*: "To have called attention to this uncritical procedure [unkritische Verfahren] has been the infinite merit of the Kantian philosophy, and in so doing to have given the impetus to the restoration of logic and dialectic in the sense of the consideration [Betrachtung] of *thought determinations in and for themselves*." (SL 743/GW 12:243-44)

83. Thus notwithstanding Hegel's own misleading assertions that "being, existence, etc., are as logical determinations the predicates of *everything* in general" and that "a category, according to the etymology of the word and Aristotle's definition of it, is what is said and asserted of every existent," the categories of even the logic cannot be said to apply to all existing things, as, for example, it is false to predicate teleology to mechanical objects (SL 355/GW 11:259).

84. Two examples of misapplication of logical concepts: the calculus — "As long as mathematics [...] fails to master the metaphysics and critique of the infinite, it cannot determine the scope of its application and cannot secure itself against the misuse of it" — and chemistry — "In his *Textbook of Chemistry*, [Berzelius] outfit[s] [his theory] with a metaphysics typical of uncritical reflection. [...] The theory departs from experience and does both, fabricates sensuous representations such as are not given in experience itself and applies thought determinations, in either case exposing itself to logical critique" (SL 312/GW 21:356-57).

instead presupposes on the part of the philosopher an attitude of respect towards this empirical content, and the activity of critique is nothing but the expositing of this content *in its essential truth*.

The expository nature of critique is closely connected to critique's second generic feature, viz., that it always includes an *affirmative* dimension along with its negativity. We know that Hegel is a fierce critic of mere affirmation in all spheres of philosophy and culture, and that his system ultimately privileges absolute negativity over the merely positive. Nonetheless, it would be a mistake to overlook the affirmativity of critique in Hegel's hands and its import for institutional critique.

One way to understand this affirmativity is that Hegel does not aim to "debunk" representation, but to help it achieve its ultimate end, namely, to know and will itself as free in actuality. But unlike other self-actualization views of freedom in the history of philosophy, Hegel's includes the additional criterion that agents must be able to see themselves in this clarified end, that they ultimately, i.e., after having experienced the initial loss of their original end, come to feel "at home" with themselves in their return to themselves. Any sort of "debunking" view of our ordinary representations, what we know today as ideology critique, would violate this basic feature of Hegel's theory of freedom.<sup>85</sup>

In the *Philosophy of Right*, this sort of non-debunking, affirmative, and expository kind of critique clearly informs the conceptual-transformative method underlying Hegel's institutionalization of *Sittlichkeit*. Hegel details this connection in an important *Zusatz* on method (PR §258Z/W 7:403–4). In it, he tells us that the science of right deals with "the affirmative" (*das Affirmative*), which he contrasts with two alternatives. On the one hand, the affirmative is distinct from the deficient forms of *Sittlichkeit* that present themselves in the "sphere of arbitrariness, contingency, and error"; it is instead the concept of these forms—it is the true that is "the standard both of itself and the false," as Spinoza would put it.<sup>86</sup> On the other hand, the affirmative of *Sittlichkeit* is equally non-identical to "any particular states or particular institutions [Institutionen]" that happen to exist (or used to exist). It is again the concept of the same. The affirmative, then, is quite different from what Hegel calls *das Positiv*, which for him refers to the immediacy of what is present to consciousness or in history without concern for its inner conceptuality and truth (PR §3).

Three consequences for institutional critique follow from its affirmativity in Hegel's hand. First, institutional critique becomes a two-step procedure. One must first exposit the system of *Sittlichkeit* before one can criticize a particular institution. Institutional critique, then, is *primarily*

85. Two further ways to understand the affirmativity of critique in Hegel are as follows. First, it is connected with Hegel's theory of reconciliation (*Versöhnung*), the "highest goal" (*höchsten Endzweck*) of philosophy (EL §6/GW 20:44). Hegel writes, for instance, that in philosophy, "the evil in the world in general [...] should be comprehended, the thinking spirit reconciled with the negative. [...] This reconciliation can only be achieved through the cognition of the affirmative. [...] For the affirmative is not merely in the enjoyment of emotion, of fantasy, but is something which belongs to actuality and belongs to us or to which we belong" (VG 42–43/48–49). Critique must also be a means of reconciliation.

Second, the affirmativity of critique also serves as a remedy for the vanity or vacuity (*Eitelkeit*) that attaches to merely negative critique. In chapter 2, we traced Hegel's analysis of the vanity of opinion in the *Philosophy of Right's* preface. In his *Lectures on the Proof of God's Existence*, Hegel makes a similar point: "We have distanced ourselves, in the exposition [Darlegung] of the so-called metaphysical proofs of the existence of God, from having to strike out in only a negative manner [negatives Verhalten] towards them. Critique that leads only to a negative result is not only a sorry business, but also, in confining itself to showing that a content is vain, is itself a vain act, an exercise in vanity. In critique, we should simultaneously gain an affirmative content [affirmativen Gehalt]" (VBDG 69/GW 18:255). Without an affirmative content, critique lapses into the vanity of opinion, namely, the circumstance of having no objectively valid standard for evaluating a *Sache* as good or bad that derives from the concept of the *Sache* itself.

86. Spinoza, *Ethics*, Part II, P43S. Hegel's rendition of Spinoza's maxim: "It is not philosophy's business [...] to take what is bad for the nature of the matter" (EG §445A).

social theory, and only *secondarily* normative evaluation, i.e., the judgment wherein it is compared it to its concept. Second, affirmativity places constraints on philosophy's conceptual exposition of *Sittlichkeit* because it requires that the concept of the institution *affirm* actuality, namely that it *reconcile* us with it and avoid the vacuity of opinion by being *objective*. But, third, the notion of "constraint" here is already misleading, as Hegel views critique-as-exposition not as a limitation of philosophy but the "preparation" of its very element.<sup>87</sup> Philosophy does not enter into combat with our pre-philosophical and social-scientific understandings of institutions, but enhances and uplifts them.

The purpose of our remarks on critique in Hegel has primarily been to display some of its intricate texture. We have observed that, for Hegel, critique involves neither abstract denunciation (as we typically understand it today) nor abstract restriction (as it was for Kant), but rather exposition and affirmation, understood as a basic concern with unearthing the concepts underlying appearances. Critique and exposition can, on our purposed reading, be understood as an alternative vocabulary Hegel uses for describing the process of conceptual transformation that sustains philosophizing.

That being said, the vocabulary of critique and exposition not only recapitulates this conceptual-transformative view, but also sheds new light on it. In his early essay on critique, Hegel interestingly ties the task of philosophical critique back to the dialectic of the immanence of the *standard* of critique, the problem with which we began this chapter. He writes:

Critique, in whichever area of art or science it is practiced, demands a standard [Maßstab] which, equally independent of the person judging and of what he judges, is derived neither from the singular appearance nor the particularity of the subject, but from the eternal and immutable original model of the matter itself [Urbild der Sache selbst]. (WK 275/W 2:172)

As this passage shows, quite early in his career Hegel had already expressed the basic idea underlying all of his practical philosophy, one which persists throughout its expression in the vocabularies of critique and conceptual transformation, viz., that the legitimacy—the objective validity—of any normative evaluation can only derive from the immanence of the standard to the *Sache selbst*. Any other standard is mere opinion, and any other science hypocrisy.

The basic view I have presented here holds, I believe, at a high level of generality as an interpretation of Hegel's account of institutional normativity. In what remains of this chapter, I will try to spell out Hegel's views on scientific and political critique more determinately and will then in the conclusion return to showing that this distinction resolves the problem of normativity in Hegel. The success of this resolution, however, does not depend much on the adequacy of the concrete presentation of these two kinds of critique, which will admittedly remain sketchy. Because of the abstract formulation of the problem—is it possible to derive an immanent standard for the critique of an institution, an institutional ought, from a purely expository philosophical science of right?—its solution can be spelled out in equally abstract terms, ones which we have already provided. Future research on the issue of institutional normativity in Hegel would further our understanding of this aspect of his thought and enrich contemporary thinking about the relation between fact and norm.

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<sup>87</sup> As Hegel puts the point in the 1802 essay on critique, for critique to have "a true effect," it cannot be merely a "negative smashing of [...] limitations," but rather a "preparation" [Wegbereitung] for "true philosophy" (WK 285/W 2:185).



### 4.5.3 Scientific Critique

"[N]othing comes about without interest," Hegel told us (E17 §394/GW 13:221). Critique is no exception. Scientific and political critique are, in Hegel's view, driven by two distinct interests: the *interest of comprehension* in the former and the *interest of emancipation* in the latter. To be sure, these are two sides of a more basic interest in freedom. But these special interests in grasping and realizing freedom take on quite radically different expressions in theory and practice for Hegel. They do not form an organic whole. Let us here summarize Hegel's approach to the scientific critique of institutions. As in the case of institutional rationality, it is helpful to approach this issue first practically and then theoretically.

Practically, the interest of comprehension—or what Hegel variously names the "interest of philosophical science," the "interest of the idea," and so on—is the defining mark of the philosopher.<sup>88</sup> It is the drive to seek the truth for truth's sake,<sup>89</sup> not only rigorously and systematically, but also in a manner that can be communicated, directed in its perlocution to what Kant called the "learned community" (*gelehrten gemeinen Wesen*) or the republic of letters (AA 7:17).

The interest of comprehension is therefore unpopular, even elitist. It is not felt by everyone. Famously, in the preface, Hegel reserves "rational insight" only to those who have "received the inner call *to comprehend*" (PR 22). In 1831, he adds to the front matter of the new edition of the *Wesenlogik* an elitist quip from Cicero: "For philosophy is satisfied with a few judges, and of her own accord industriously avoids the multitude, who are jealous of it, and utterly displeased with it" (GW 21:4; C. D. Yonge, 1877). And, at the end of his *Lectures on the Philosophy of Religion*, Hegel even likens philosophers to monks, laboring for truth (in prayer?) as a caste apart, indifferent to ethical and political affairs: "[P]hilosophy is a separate sanctuary, and its servants form an isolated priesthood that is not allowed to interact with the world and must guard the possession of truth. How the temporal, empirical present finds its way out of its dichotomy, how it shapes itself, is left to it and is not the *immediate* practical matter and concern of philosophy" (W 17:343–42).

All of this sounds so far quite dreary and perhaps conservative. But we need not receive it this way. Hegel's limiting of scientific critique has, I suggest, four redeeming features.

First of all, in limiting scientific critique, Hegel recuperates something that is often forgotten in the history of philosophy, namely the subjectivity (and subject-position) of the philosopher herself. We should not overlook that Hegel is identifying a special interest peculiar to philosophers, one which is capable of explaining, at least in part, why some particular human beings exhibit a drive for knowledge, often in a devotional way and at great costs to themselves, and he also poses the question: what are the conditions under which some human beings win the opportunity and resources to undertake such reflection? Hegel submits scientific interest ("we thinkers") to the same action-theoretic analysis that he does to other interests; scientific-intellectual activity expresses the same striving to translate our thoughts into reality that characterizes all drives.<sup>90</sup> Thinkers, in short, also act on interest.<sup>91</sup>

88. "It is [...] the desire [Verlangen] for rational insight, for cognition, [...] that is to be assumed as the subjective need [Bedürfnis] in the study of science" (VG 28–29/30).

89. "The sciences should not really be measured this subordinate criterion of usefulness; [...] they are an end in and for themselves, an ultimate end [letzter Zweck] in themselves" (VG 112/134).

90. "Even when we, the thinkers [die Denkenden], strive to realize our concepts, this striving of the ideal to rid itself of its one-sidedness and to translate itself into reality becomes apparent." (GW 29,2:268)

91. Hegel thus anticipates Weber's insight that *science* is itself a value and that our "belief in the value of scientific truth" is culturally relative and a historical achievement. See Weber (2012, 137–38).

Second, Hegel by no means rules out the philosopher *also* taking a world-changing interest in addition to her comprehension-seeking one. Hegel alludes to this possibility in the quoted passage above when he qualifies that world-changing is not the "*immediate*" concern of philosophy, which, of course, suggests that such activity could become *mediately* its concern. I take Hegel to mean here that, on the one hand, philosophy *can* contribute *indirectly* to certain political ends, but only as a byproduct of its truth-seeking activity, in the same way that a mathematical result may turn out to have practical applications, but this has no bearing on the scientific value of the result as such, which it retains even if it produced no such practical consequences, and, on the other hand, that the philosopher is, of course, permitted to express her interest in political and ethical affairs, but in doing so, she must participate only as a member of her community, never as a scientist. Several instances of such extra-scientific activity populate Hegel's biography. One memorable example is Hegel's advocacy and support for Leopold von Henning, one of the editors of the first edition of Hegel's lectures, who was imprisoned in part for supporting liberal reforms. Under the cover of darkness, Hegel visited the imprisoned von Henning by boat outside his holding tower, expressing, in Latin, so to avoid being overheard by the guards, his solidarity with von Henning's cause, and exerted his influence so far as possible to aid in von Henning's release.<sup>92</sup> Hegel does not rule out political action of this kind; he rather limits science to make room for it; yet it would be *hypocritical* for Hegel to declare that his acting in this manner was justified by the concept.

Third, Hegel's strict separation of politics from philosophy is motivated by an *ethical* appreciation of the virtue of humility and a *philosophical* appreciation of the rigors exacted by the demand for an immanence standard for normative evaluation. Without this humility, science risks hypocrisy: passing off one's problematic judgments as apodictic ones, one's representations as concepts. Such hypocrisy is not only wrong in itself, but also endangers the legitimacy of the scientific project in the eyes of the public.

Finally, despite all of these qualifications, Hegel *does* permit us to endeavour in scientific institutional critique, but only as a secondary and more limited project within science. Let us turn to that form of critique now.

As we have seen, the legitimacy of scientific institutional critique turns on the immanence of its standard. This standard, I have argued, is the concept of the institution itself, *die Begriff der Sache*. Each institution, therefore, has its own concept. We come to know this concept by conceptually transforming the corresponding "thought" (*Gedanke*) prepared by empirical science, which has distilled the relevant empirical material into theories and universals. This transformation process constitutes the "critique" of this empirical-scientific "thought" insofar as its exposition also discloses the true meaning of the particular concept. Each institution's concept subsequently provides us with a set of institution-specific teleological conditions with which we can normatively evaluate token instances of the institution, including the very token institutions that served as empirical 'inputs' into the conceptual-transformative process in the first place, as these need not be, and likely are not, given their finitude, identical to their concept. At the end of this conceptual-transformative procedure, we are in a position to make objectively valid judgments, within the purview of the science of right, that an institution is good or bad, and, if bad, to further justify imperatives that it should be improved. In making such apodictic conceptual-normative judgments,

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92. See Pinkard (2000, 449–50)

we do so with certainty and demand consensus in principle from our scientific audience, even if we rarely encounter this consensus in fact.

We should reflect on the historical-temporal orientation of this procedure of scientific institutional critique, which is speculatively presentist. It produces a synchronic snapshot, as it were, of the institution in question at our moment in time. Given the systematic nature of this procedure for Hegel, i.e., that it exhausts its object domain and is presuppositionless, we can assume two things: first, that the concept of the institution in question cannot be an isolated one but must be explicated in a *systematic totality*, that it "hang together" with the others; and second, that this system of institutional concepts for any given time slice is a *closed* one, inescapability of modification or development. Yet this procedure is not one-shot. Unlike our system of concepts, circumstances *can* change, including the institutions themselves. It is even possible for the institutions to change *because* of the influence of the scientific institutional critique—philosophy's *mediated* concern with praxis we observed above. The process of conceptual transformation must be undertaken anew. Historicity and openness, then, are baked into the very idea of philosophy as the conceptual transformation of empirical-scientific universals; it really is our own time comprehended in thoughts. But this procedure also contemplates the eternity of the absolute idea because, at any moment in time we have grasped the rational as a systematically necessitated and closed totality, which could not be otherwise and remains forever identical with itself, having resolved its contradictions. And at no point have we issued instructions on how the world ought to be.

Let us now suppose we have a system of concepts in hand, obtained from the hard philosophical work of conceptual transformation. The owl of Minerva has flown over our society, and we have cognized its rational institutional structure. As Hegelians, we have open to us at least three species of scientific institutional critique.

The first species are those normative evaluations pertaining to what we have called the institution's teleological conditions. Some of these, such as legal codification, apply more or less to all institutions, whereas others, such as the shedding of selfishness regarding property in marriage, are institution-specific. These apply straightforwardly to tokens: the institution is deficient insofar as it does not meet the condition. We know this species well from the *Philosophy of Right*, wherein Hegel denounces all sorts of bad institutions in precisely this manner. In these cases, we can say that the institution or institutions in question do not correspond to what is "right and rational in and for itself," as Hegel says of English institutions, even if these institutions *do* match up with the people whom they govern (PW 238/GW 16:333–35).

This brings us to the second species of scientific institutional critique, what we might call Montesquieuan mismatches. These are cases in which the institution or institutions, while not necessarily irrational in themselves, nevertheless fail to cohere in some way with the prevailing conditions. Hegel announces this general principle thusly:

Since [...] the state, as the spirit of a people, is at the same time the law [Gesetz] that permeates all its relations, the customs [Sitten] and the consciousness of its individuals, the constitution of a determinate people in general depends on the manner [Weise] and education [Bildung] of its self-consciousness. (PR §274/GW 14,1:229)

It is obvious that, in enunciating this principle, Hegel has Montesquieu in mind, as Montesquieu was a lover of republics but did not think this form of government was appropriate for all nations.

Thus, even *rational* institutions are not appropriate for all peoples.<sup>93</sup>

But not all mismatches are the same; we can distinguish two kinds of operatives in Hegel. One kind of Montesquieuan mismatch arises in the *incoherence* between a single institution and the rest of a society's institutions. Hegel's early critique of the popular vote takes this shape. Mass elections are deemed desirable in themselves but are shown to be incoherent with the prevailing institutions of Germany at the time (PW 5).<sup>94</sup> Another way in which a Montesquieuan mismatch can arise is as *misalignment* between an institution, or a set of institutions, with the people. In chapter 2, we saw that Hegel's influential critique of the existing institutions of Württemberg, the "good old *Recht*," took this shape, as the old feudal institutions failed to cohere with the spirit of a modern people (although Hegel *also* held that these were bad institutions in themselves). Even better is Hegel's example of misalignment in the *Zusatz* to §274. Here, Hegel insists that even the Napoleonic code, the gold standard for rational constitutions in its time, could be scientifically criticized for being misapplied to the Spanish people, as the Spanish had not yet reached a sufficient degree of *Bildung* appropriate to it.<sup>95</sup> With our system of institutional concepts, then, we can also levy scientific critique of those institutions that fail 'to match' up in various ways.

Finally, the third species of scientific institutional critique concerns functional breakdowns. Call these institutional pathologies. Institutional pathologies arise when a particular institution becomes functionally disharmonious with the whole. Hegel, of course, helps himself to organicism in social theory. The three spheres of *Sittlichkeit*, for Hegel, form an organism, not metaphorically but logically; *Sittlichkeit* exhibits both the logical concept of life and the natural concept of an organism.<sup>96</sup> According to these concepts, pathology or disease (*Krankheit*) arises when the organism's parts or "organic moments" fall into a state of "isolation and existence-for-self [Fürsich-bestehen]" (PR §278A/GW 14,1:231). Or, as Hegel elaborates in the *Encyclopedia*, the organism "finds itself in a state of *pathology* when one of its systems or organs is stimulated into conflict with an inorganic potency, establishes itself for itself and persists in its particular activity against the activity of the whole, whose fluidity and process of passing through all of its moments is thereby inhibited" (E17 §294/GW 13:172; cf. EN §371/GW 20:37–71).<sup>97</sup> Thus institutional pathology, as a species of scientific institutional critique, evaluates whether a particular institution, through exposure to external stimuli, has had its function become *isolated* from the other institutional functions, which, given the required coordination among organs, is tantamount to coming into *conflict* with them, effectively ossifying society, or at least inhibiting the other institutions from proper functioning.

Institutional pathologies are thus similar to Montesquieuan mismatches, as both concern the fit of part to whole. But the two species importantly differ in their temporality. Montesquieuan

93. This consequence is made explicit by Hegel in the Addition: "To wish to give a people a constitution *a priori*, even if its content is more or less rational, - this fancy overlooks the very moment by which a constitution is more than a fiction a thought [Gedankending]. Each people accordingly has the constitution that is appropriate to it and belongs to it" (PR §274/GW 14,1:229).

94. Of course, in the *Philosophy of Right*, Hegel argues against this thesis (PR §311A/GW 14,1:257).

95. "Napoleon, for example, tried to give the Spanish a constitution *a priori*, but the consequences were bad enough. [...] What Napoleon gave to the Spanish was more rational than what they had before, and yet they rejected it as something alien, because they were not yet sufficiently cultivated" (PR §274Z).

96. Only organisms, i.e., those entities that exhibit the logic of life, can have functional breakdowns, according to Hegel. "A stone cannot become diseased" (EN §371Z).

97. Another way Hegel characterizes pathology is when one organ, precisely because it takes itself as being-for-self, becomes a "*singularized* activity" that attempts to *stand in as* "the course of the totality" (E17 §295/GW 13:172). Abuses of executive power are good examples of this kind of pathology and can therefore be criticized scientifically.

mismatches have a synchronic flavor; they assess the within-and-between fit between institutions and the people at a given moment in time. By contrast, institutional pathologies, as functional breakdowns, are a form of diachronic assessment. As Hegel puts it, pathologies are breakdowns in the "*successive* course of the life-movement [Lebensbewegung]" of the organism, meaning that they give rise to specifically *dynamic-halting* conflicts, conflicts that inhibit the very fluidity that, in a healthy organism, would resolve the "disharmony" (*Zwiespalt*) (EN §371).<sup>98</sup> For institutions, these haltings would include inhibitions to the "activations" of rationality through action and habit that we identified as part of the practical dimension of Hegelian institutional normativity.

So understood, institutional dysfunctions may appear to be external to the concept of the organism itself (*Sittlichkeit*) as the pathologies arising from its organs (institutions) becoming isolated and breaking down are *reactions* to external stimuli ("stimulated into conflict," as Hegel says). Yet Hegel insists that when we normatively evaluate institutions as pathological, we are not doing so externally but with respect to their immanent concept, or, in other words, that pathology occurs when a singular organism does not correspond to its concept; institutional pathology is thus a judgment of the concept.<sup>99</sup> Hegel thinks such pathological assessments are immanent because the possibility of pathology for the organism in general and the organism's susceptibility to *these* particular stimuli are both determinations of its concept. "Because of the externality of its existence," Hegel writes, "the singular organism may not correspond to its determination" (E17 §294/GW 13:172) and, in pathology, we observe "the overcoming and passing over of the singular inadequacy of the animal individual compared to its concept" (E17 §297/GW 13:174)<sup>100</sup>

These various threads come together in Hegel's example of an institutional pathology in the *Philosophy of Right*. In §216A (GW 14,1:180), Hegel criticizes any administration of justice that would fail to pass and uphold new laws, say, laws regulating new technologies and social relations, on the grounds that doing so would render its legal code incomplete and imperfect in this area.<sup>101</sup> In Hegel's example, the external stimuli responsible for causing this breakdown include not only the changing social and technological conditions, but also the usurpation of "true common sense," which aligns with speculative insight, by the understanding and its "empty ratiocination," caused in turn by the rising prominence of the understanding as a way of thinking within modern culture (*ibid.*). In any society, Hegel thinks, "there is a constant need for new legal determinations," but this becomes especially true with the advent of market-driven forms of civil society and their acceleration of technological and social change (PR §216/GW 14,1:180). Unable to withstand these disturbances to its institutional functioning and therefore unable to legally regulate new expressions of civil society, the administration of justice would undoubtedly break down, causing problems not only for itself and civil society but for the other spheres of *Sittlichkeit* as well. Like

98. At the same time, pathology for Hegel is not a quantitative disequilibrium but a *functional* disproportion. "Talk of [...] quantitative contrast [Gegensatz der Größe] must be immediately suspect" (EN §371Z/W 9:521).

99. "The concept of the animal has the concept itself as its essence, because it is the actuality of the idea of life. The nature of its *universality* makes it possible for it to have a simpler and more developed existence, as well as an existence that more or less corresponding to it. [...] The classes in which it appears developed and fully exhibited in its moments appear as a particular *existence* in relation to the others, and even in those it can have a *bad* existence. But this judgment whether the existence is *bad* already presupposed the judgment the concept." (E17 §293A/GW 13:170)

100. In recovering from pathology, the organism "proves its *simple identity* with itself as its true essence against a particular bias [Befangenheit] of the singularities of one of its systems with specific irritants" (E17 §296A/GW 13:174)

101. It is a "pathology," and one that is "a predominately *German* pathology," Hegel tells us, "to demand that a legal code be complete, that it should be absolutely finished, incapable of any further determination [...] and, on the grounds that it cannot be so complete, not to allow it to become, i.e., not to actualize, something so-called imperfect" (PR §216A/GW 14,1:180)

all conceptual-normative judgments, we can conclude not only that an administration of justice so constituted is bad (an evaluative), but also that, all things being equal, we should act to resist these breakdowns to the extent that they can be prevented or forestalled (an imperative).

These three species of scientific institutional critique—teleological conditions, Montesquieuan mismatches, and functional pathologies—detail ways in which an institution can fail to correspond to its concept. Each is thus an instance of telic normativity. Moreover, because this concept is objective, the normative evaluations that they support are apodictic judgments demanding universal consent. These judgments are nevertheless consistent with Hegel's exclusion of the ought from philosophical science because they derive from the concept of the thing itself, the unity of *Sein* and *Sollen* in actuality. Despite the modesty of its domain, scientific critique proves to be a variegated and lively theoretical field, one that, through further research, could be extended to complement contemporary theories of social critique.

#### 4.5.4 Political Critique

Politics is the realm of social opposition.<sup>102</sup> It is the clash of competing visions of the secular world (*Weltanschauungen*) informed not by the idea but by representation.<sup>103</sup> It is therefore grounded in experience, usually negative.<sup>104</sup> Political *critique*, then, is the normative evaluation of such visions and the assertion of new ones. The difference between it and scientific critique is not that the former asks the question, *What ought I to do?*, and the latter ignores it. As we have seen, philosophy, too, answers this question, albeit only occasionally and in limited ways. Rather, it lies in the *source* of their normative standards, the *scope* of their efficaciousness, and their *epistemic status*.

Hegel does not elaborate a theory of political critique. In omitting it, he acts consistently. Political critique cannot be part of philosophy because it remains representational. Nevertheless, Hegel must account for the possibility of political critique within *Sittlichkeit*, as it is a basic normative capacity exercised by agents. Just like other types of purportedly justified action, political critique must be explained according to its interest and its source of normative standards.

The interest of political critique is the *interest of emancipation* (*Befreiung*).<sup>105</sup> It is not the interest of *freedom* because, as we have seen, freedom is no less at stake in the philosophical search for truth as it is in politics for Hegel. Moreover, the interest of political critique lies in *becoming* free, improving the status quo into something better. In modernity, Hegel thinks that the only form in which this interest can become efficacious is as *universal* emancipation, summed up in the dictum that "*all are free*."<sup>106</sup> The interest of political critique as we know it is therefore the interest of universal human emancipation. This interest in emancipation has its expression in ethical and political *action* directed to modifying the spiritual world, changing how we do things around here.

102. We could just as well speak of *ethics* and *ethical* critique, by which we would have in mind smaller-scale endeavors to world-changing action. I here focus on *politics* and larger-scale *political* action because its status in Hegel is more contested in the literature. Nonetheless, on my purposed interpretation, Hegel accounts for ethical and political action in exactly the same way. Thus ethical action is *also* essentially conflictual for Hegel.

103. Hegel speaks of *Weltanschauungen* in PR §355/GW 14,1:279 and PR 140A/GW 14,1:129.

104. For the thesis that politics usually begins with negative experience, see Honneth 1992.

105. On the the interest of emancipation in Hegelian critical theory, see Honneth (2017); Menke (2018).

106. The famous passage reads: "World history is the cultivation of the unrestrained natural will to general and subjective freedom. The Orient knew and knows only that one is free, the Greek and Roman world that some are free, the Germanic world knows that *all* are free" (VWG 104/W 7:134).

A pressing question now arises: how does one decide among competing visions of emancipation? Or, insofar as ethical and political action is justified, how is this possible? It is a pressing question for Hegel because he has argued that such action, as representational, cannot be justified from a scientific standpoint. Yet some source of a standard must be forthcoming or else political critique will be nothing but the assertion and counter-assertion of arbitrary opinions. This lack of objectivity rules out, for example, the standard of practical feeling. Any moral intuition can with equal justification be counter-posed by its opposite, and no back-and-forth reflection on these intuitions, even if it were to reach a point of equilibrium, could ever justify a corresponding normative evaluation. Hegel's answer, I suggest, is that the relevant representational standard for political critique derives not from the concept, nor from practical feeling, but from one's "ethical community" (*sittlichen Gemeinwesen*). But unlike science's objectively valid standard, this representational standard is in principle uncertain and contestable.

Hegel's most detailed—and infamous—account of this standard is found in the opening sections of the chapter on *Sittlichkeit* and, in particular, §150. Here, Hegel mobilizes the ethical vocabulary of virtue and rectitude (*Rechtsschaffenheit*) to provide his most general answer to Kant's question "What ought I do?" (*Was soll ich tun?*) (A805/B833). Hegel replies: "one must do nothing else than what is prescribed, pronounced, and familiar to one in one's relations" (*es ist nichts anderes von ihm zu thun, als was ihm in seinen Verhältnissen vorgezeichnet, ausgesprochen und bekannt ist*) (PR §150A/GW 14,1:140). No doubt cryptic, Hegel's answer can, with sufficient interpretative care, be unfolded into his account of the practice of political critique as a whole, at least in outline. Let us analyze it, somewhat artificially, into five aspects.

We must first notice that Hegel alludes here to representation. The standard for political critique will be something "familiar" (*bekannt*), "pronounced" (*ausgesprochen*), and "prescribed" (*vorgezeichnet*). Familiarity denotes, for Hegel, our pre-philosophical acquaintance with objects prior to our conceptual grasp of them, our representations before they have been transformed into concepts.<sup>107</sup> Language (*Sprache*) and signs (*Zeichen*) are, as we saw, parts of our pre-institutional normative capacities and which, in the context of Hegel's psychology, are moments of representation. The representationality of this standard is what makes it "simple" (*einfach*) and "easy" (*leicht*) to "say" (*sagen*) what ought to be done, not as a matter of our biological or psychological makeup as if we were, say, evaluation-making animals, but necessarily and in accordance with the logical structure of representation as such.

Second, the scope of Hegel's answer, as characteristic of representation as such, extends beyond the narrow ethical context in which it raised. Hegel's readers have sometimes thought that, by virtue and rectitude, Hegel envisions matters of mere etiquette or politeness: Should I give way to an oncomer? How should I decline this innovation? But this is not the case. As Hegel makes clear, rectitude (of which virtue is merely its inwardly reflected expression) is not restricted to mores and manners, as Montesquieu puts it, but is what can be universally and normatively demanded of someone in general.<sup>108</sup> Hegel's answer holds equally for the most trivial and the most consequential of normative situations.

107. "Philosophy thus may definitely presuppose a *familiarity* with its objects, indeed it must do so, [...] if only because chronologically speaking consciousness produces for itself *representations* of objects prior to generating *concepts* of them." (EL §1/W 8:41; GW 11:15).

108. "Rectitude is the universal that can be demanded of one, either rightly or ethically [theils rechtlich, theils sittlich]" (PR §150A/GW 14,1:140). Rectitude is relatively underdeveloped in the *Philosophy of Right*; Hegel discusses it again only in relation to the corporation (§207, §252, §253A).

Third, these considerations make it evident that, for Hegel, the kind of normativity involved in political critique is deontic. This kind of normativity assesses whether our action accords with what is in our right or duty to do or not do. This deonticity can also be detected in Hegel's vocabulary. We are to act within our "relations" (*Verhältnisse*), which, although usually translated into English as "circumstances," in this context also reminds us that the relevant standard here derives from our deontic relations to others, not the *Begriff der Sache*. "Rectitude", Hegel tells us, is the "agreement of the individual to the duties of the relations [Verhältnisse] to which the individual belongs" (PR §150/GW 14,1:140). Politically and ethically justified action can, on this model, be understood as action that accords with one's rights and duties. Political critique consists in assessing evaluatives and imperatives using the deontic standards established by one's community.

Fourth, politics differs from science not only because its standard is deontic (relating the action to the agent's rights and duties) rather than telic (relating the action to the concept of the agent or that which is acted upon), but also with respect to the source of its standard. The telic standard of science derives from ethicality (*Sittlichkeit*), its three universal spheres, and its historically specific system of rational institutions grasped as concepts. But the deontic standard of politics derives from what Hegel calls "an ethical community" (*eine sittliche Gemeinwesen*) and, in particular, one's membership in this community (PR §150A/GW 14,1:140). By using the term *sittliche Gemeinwesen* instead of *Sittlichkeit*, Hegel is alerting us to the fact that political action justifies its normative standard not through its accordance with the system of rational institutions explicated by the science of right but in political contests structured and situated by this system. As a result, political action and contest are directed towards all members of one's community, and participation in them is open to everyone. We are a long way from philosophy as a caste apart.

Finally, we now arrive at the most interesting, even surprising, feature of Hegel's implicit theory of social critique, viz., its *conflictual* nature. Slyly, Hegel already suggests the necessity of conflict and contestation in his answer to Kant's question. By emphasizing the representational and thus *contingent* nature of the standards of political judgments, Hegel also signals that *they can be otherwise*. This is brought out even by the word Hegel chooses to express the standard's imperative nature, "prescribed" (*vorgezeichnet*). *Vorgezeichnet* means in this context not only something that is pre-planned or pre-established in the sense of being temporally prior, but also something that is provisional, subject to change, merely sketched and so mutable and impermanent. What is "prescribed, pronounced, and familiar" within one's ethical community is thus subject to *direct* modification through my practical involvement precisely *because* what is prescribed, pronounced, and familiar is what it is without bearing the necessity of the concept but only the evanescence of representation. In Hegel's analysis, such a normative field can lead only to the *necessity* of "collisions" (*Collisionen*). Even in "an existing ethical condition, the relations of which are *fully developed and actualized*" (!) Hegel warns us, one *must* expect "collisions [Collisionen] between those relations" (PR §150/GW 14,1:140, emphasis added). For politics, at least, there is no speculative resolution of the dialectical-deontological struggle.

If we examine Hegel's notion of collision or conflict, we can see that it is a dialectical one, in the sense that the conflict is to be grasped not as an accidental happening or arbitrarily, but as necessary in and for itself. The conflicts to which politics gives rise are not merely ones that "moral reflection can create," which can just as well exist as not exist, but conflicts that derive from



the logical structure of representation as such. Political conflict is thus "true *collision*" (ibid.).<sup>109</sup>

Hegel's notion of a necessary conflict over the standards of political critique can accommodate, I think, two leading paradigms for theorizing conflictual normativity in contemporary (or near-contemporary) critical theory. These are, first, the model of discourse ethics advanced by Apel and Habermas, and, second, the model of mutual recognition as norm-contestation advanced by Honneth, Bertram, and Celikates.<sup>110</sup> Both of these models nicely express the sort of normative conflict I am trying to capture here, namely one that is ineliminable, distinctly normative, and independent of philosophical disputes among experts. Yet despite the compatibility I am asserting between these models and Hegel's implicit account of political critique in §150, these models understand *themselves* to be ultimately at odds with the Hegel of the *Philosophy of Right*, even if, at the same time, they are inspired by Hegel in other ways. This is because, at a very high level of abstraction, these models attempt to connect transcendental normativity with deontic normativity *directly*, leaping over the realm of science and telic normativity altogether. Each model attempts to do this by identifying a normative capacity that it takes to constitute the transcendental horizon of human sociality, a capacity for language and communication, in the case of discourse ethics, and a capacity for conflict and norm-contestation, in the case of the recognitive theory. It then argues that blockages or breakdowns in the *conditions* required for fully exercising these capacities constitute sources for justified and objective standards for political judgments, namely judgments of the sort that the obstacles to exercising these basic normative capacities are bad and ought to be removed.

This is clearly not Hegel's line of argument in the *Philosophy of Right*. But it is also the point at which his rather unique account of institutional normativity can serve as a helpful provocation for reorientation within critical theory. The problem facing these contemporary approaches is formalism. In Hegel's parlance, these contemporary approaches seek an objective content for the will's self-determination from within subjective spirit. Hegel's challenge is that such a standard must always remain entangled in representation and cannot be objectively valid. To be sure, this by no way means that we should abandon political critique or even that scientific and political critique compete with one another. We can, and must, do both, as Hegel also did. But it does mean that there lurks a danger for critical theory: on the one hand, it may attempt to pass off its representations as objectively valid under the guise of being mere form; and, on the other hand, it may neglect the opportunity to become genuine social theory, to really engage with the empirical sciences by subjecting their basic concepts to systematic critical exposition. Only this last option carries with it the possibility of a truly objective standard for social critique.

#### 4.5.5 Resolving the Problem of Normativity in Hegel

Hegel's theory of institutional normativity, as reconstructed, provides an elegant solution to the problem of normativity in his practical philosophy. To conclude the chapter, I will review its resolution of this problem.

109. Hegel's discussion of the dialectic of the drives provides a helpful model for the necessity of conflict that arises from the arbitrariness of the relevant standard: "That contradiction which is the arbitrary will makes its *appearance* as a *dialectic* of drives and inclinations which conflict with each other in such a way that the satisfaction of one demands that the satisfaction of the other be subordinated or sacrificed, and so on; and since a drive is merely the simple direction of its own determinacy and therefore has no yardstick within itself, this determination that it should be subordinated or sacrificed is the contingent decision of arbitrariness" (PR §17/GW 14,1:39–40). See also PR §30A on the "*collision*" of rights as being possible only on account of their basic equality (GW 14,1:46).

110. See Apel (2004); Habermas (1990, 195–215); Honneth (2017); Bertram and Celikates (2015).

Normativity, we suggested, has three meanings in Hegel's hands: deontic, telic, and transcendental. Institutional normativity concerns only the latter two meanings.

The problem of normativity, then, can be articulated in two ways. First, it can appear as the problem of the *Sollen*. Normativity, identified here with the *Sollen*, would appear to be excluded by Hegel from the purview of philosophy, as philosophy is not in the business of issuing instructions on how the world ought to be. This exclusion of the *Sollen* is not the product of some arbitrary decision by Hegel but a structural feature of *Wissenschaft* as such.

Institutionality and institutional rationality work together to resolve this problem in the following way. With institutionality, Hegel makes the *Sollen* a structural moment of the will, along with its other pre-institutional normative capacities like language, recognition, and practical feeling. The *Sollen*, as an expression of transcendental normativity, achieves its identity with *Sein*, and thus sheds its character as mere *Sollen*, through the institutionalization of the will's content in *Sittlichkeit*. In this way, institutionality explains the incapability of the *Sollen* in the very process of its expulsion. With institutional rationality, Hegel mobilizes telic normativity to show us how to justify certain normative evaluations scientifically, namely by comparing them (in various ways) with their concept. The normative evaluations of institutions populating Hegel's writings are neither extra-scientific, i.e., merely political, nor are they performative contradictions, unavoidable regressions to the abstract *Sollen* he intended to expunge from philosophy. They are rather justified by the science of right. Yet, these normative evaluations also have a secondary position within this science, with its primary task being the conceptually-transformative exposition of the system of institutions comprising ethical substance. The *Sollen*, as an ineliminable moment of finite spirit, is expunged in its problematic use—mere assertion against counter-assertion—but maintained in its apodictic use—assertions underwritten by the concept.

The second guise of the normativity problem is the problem of social critique. This formation of the problem turns on the justifiability of what I have called, following Hegel, the standard (*Maßstab*) of critique. If the critique is to be well-founded, the standard must be internal to that which is criticized (as external criteria, assurances, intuitions, etc., amount to nothing more than mere opinion and always admit of counter-assertions), yet if it is to be efficacious, it must also have some distance vis-à-vis the same. Hegel's solution is to identify the *Begriff der Sache* as the relevant standard, which, in the case of institutional critique, is the concept of the institution itself obtained through the process of conceptual transformation. Within his account of institutional normativity we can discern three increasing levels or degrees of possible critique. Qua institutionality, no critique is possible (and here strictly transcendental readings of objective spirit really do face the threat of accommodationism); qua institutional rationality, a small band of scientific critique is possible but open only to a small group; and qua politics, a wide band of critique is available to everyone. Thus, while Hegel integrates institutional critique—understood as normative evaluations of existing institutions—within the fold of the science of right, his principal aim is to reorient philosophers back to actuality, to remind them that genuine critique is the exposition of representation in its truth.

In dealing with the *Sollen* in his peculiar manner, Hegel should be appreciated as trying to navigate a difficult balance that besets all social and political philosophy—a perennial challenge, if you will. Like Hobbes, he understood that, on one side, lies the danger of "too great Liberty," that philosophy, in an act of hubris, might attempt to overleap its own function in the world

and, in doing so, lose sight of the reality that vitalizes it; but, on the other side, hides the risk of "too much Authority," that philosophy, lacking confidence, seek refuge in what is familiar, in our fixed ways of thinking—the understanding (Kant)—or, alternatively, in the immediacy, our moral intuitions—faith (Jacobi). With Hegel, we, too, endeavor to "passe between the points of both unwounded."<sup>111</sup>

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111. Hobbes, *Leviathan*, 3.