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HEGEL AND FICHTE ON INSTITUTIONAL CONTENT

1. Institutional Theory and Content

Hegel's interpreters often regard his turn toward an institutional analysis of society and politics to be among his most important contributions to philosophy. However, precisely how to understand this institutional turn in Hegel's thought and its success as a paradigm for social philosophy remain a matter of ongoing scholarly debate.¹ In this paper, I aim to further our understanding of Hegel's institutionalization of ethical life by reconstructing just one aspect of his institutional theory, namely, its account of institutional content as rational or *vernünftig*, insofar as it responds to Fichte's account of institutional content being the product of arbitrariness or *Willkür*.

Before moving on to Fichte and Hegel, I would like to clarify what I mean by institutional theory and content.

Institutional theory refers to a complete account of institutions in social life. Such theories typically aim to specify: 1) the general ontology of institutions—what institutions are, fundamentally; 2) the nature of institutional dynamics—their capacity to both change and preserve themselves; and 3) the normativity of institutions—that institutions ethically bind individuals and form the subject-matter of societal values and political ideals.²

Institutional content, by contrast, refers to the concrete norms, practices, concepts, and forms of life that fill in, as it were, the motivating principle underlying an institution. It can therefore be classified as part of the ontology of institutions, although it also bears upon institutional change and normativity. To take an example, the family is, we might say, an institution whose purpose is to organize kinship relations, including reproduction, within a common residence and with some degree of economic cooperation.³ However, this principle can be realized in multiple ways: hunter-gatherer, agricultural, bourgeois, extended, etc., each of which embodies different norms, practices, and physical materials—in short, *content*—for

¹ E.g., by Dieter Henrich, Terry Pinkard, Robert Pippin, Axel Honneth, Michael Theunissen, Benno Zabel, Kevin Thompson, and Jean-François Kervégan. Honneth, Henrich, and Theunissen object, respectively, to Hegel's "over-institutionalization," "strong institutionalism," and "repressed intersubjectivity" in the *Philosophy of Right*.

² Joseph Jupille and James Caporaso, *Theories of Institutions* (Cambridge, 2022), 1–15, 159–64.

³ George Murdock, *Social Structure* (New York: 1965), vii, 1–12.

realizing the same subtending institutional end. Such diverse institutional content not only develops historically within a given society (diachronically) but may also coexist simultaneously across different societies (synchronically).

This notion of institutional content can be further understood by relating it to similar distinctions in institutional jurisprudence and the philosophy of social science. In institutional jurisprudence, Maurice Hauriou calls these institution-defining principles “directing” or “guiding” ideas, which he distinguishes from 1) the determinate organizational *power*, divided into organs, that realizes the guiding ideas; 2) the resulting *functions* of this institutional power; and, 3) the *subjective effects* of the institutions on individuals and their attitudes toward the institution.⁴ In Hauriou’s framework, institutional content refers to these determinate organizational powers, functions, and subjective effects. Hauriou’s institutional theory thus enables us to question whether, from a philosophical standpoint, certain institutional content (the institution’s organizational powers) follows necessarily from institutional principle (the institution’s guiding idea).

In the philosophy of social science, two distinctions exist that, although helpful in investigating institutions, should not be confused with the distinction between institutional principle and content. The first of these is the type-token distinction, which distinguishes between token institutional entities, i.e., actual historical institutions that can be said to exist in a particular space and time, and their generic type, i.e., institutional genera that exist only as concepts.⁵ However, the difference between institutional principle and content is not that between type and token. It corresponds instead to the distinction between higher-level and lower-level types since institutional content concerns not the instantiation of a particular social kind but rather the further determination of this social kind from a philosophical standpoint.

Likewise, the notion of institutional content remains indifferent to another distinction common in contemporary social ontology, namely that between ontological and epistemic

⁴ Maurice Hauriou, “The Theory of the Institution and the Foundation: A Study in Social Vitalism,” in *The French Institutionalists*, trans. Mary Welling (Cambridge, 1970), 93–124. See Jean-François Kervégan, “The Institutions of *Sittlichkeit*,” in *Hegel’s Philosophy of Right*, eds. Dean Moyar, Kate Walsh, and Sebastian Rand (New York, 2022), 171–74; *The Actual and the Rational: Hegel and Objective Spirit*, trans. Daniela Ginsburg and Martin Shuster (Chicago, 2018), 279–82.

⁵ Francesco Guala, *Understanding Institutions: The Science of Living Together* (Princeton, 2016), xxi–xxii, 196–205.

objectivity. In this context, the debate has been between theorists of collective acceptance like John Searle, who hold institutions to be ontologically subjective but epistemically objective, and others who challenge this pairing, arguing that at least some of the most important institutional kinds are ontologically objective despite being mind-dependent.⁶ The notion of institutional content I deploy here is compatible with both ontologically subjective and objective accounts of institutions. In fact, I will argue that, roughly speaking, Fichte holds institutional content to be ontologically subjective, whereas Hegel holds it to be ontologically objective, in the sense that institutional content does not, for Hegel, depend for their existence on the attitudes, representations, or expectations that individuals have about or regarding the institution itself.

This distinction between principle and content is required to assess Hegel and Fichte's debate over the nature of institutions. This is because each agrees with the other that, at a high level of generality, modern institutions like the state, the family, civil society, law, etc., are necessary for our living among one another in a manner consistent with right and freedom, at least at our current historical juncture. Disagreement between the two arises only when we pose a further question, viz., whether philosophy can determine what *specific kind* of state, family, market, etc., realizes right and freedom. In other words, it is not a disagreement over institutions as such but the rationality and necessity of institutional content.

2. Fichte on Institutional Content⁷

For Fichte, *institutional content*—the determination of higher-level institutional types into lower-level types—is immediate in the sense of being indeterminate, unconstrained, or arbitrary. On the one hand, Fichte's immediacy view of institutional content follows from his general theory of institutions. While I cannot defend this view here, Fichte understands institutions as *congealed forms of consent*, that is, as embodiments of the express wills of individuals. One component of this institutional theory is Fichte's commitment to an account of institutions exclusively in terms of the interactions between individuals. But we need not

⁶ John Searle, *The Construction of Social Reality* (New York: 1995); Muhammad Ali Khalidi, "Three Kinds of Social Kinds," *Philosophy and Phenomenological Research* 90, no. 1 (2015): 96–112.

⁷ In this section, I focus on Fichte's *Foundations of Natural Right*, trans. Michael Baur (Cambridge, 2000) and *System of Ethics*, trans. Daniel Breazeale and Günter Zöller (Cambridge, 2005), hereafter GNR and SS, respectively, followed by the corresponding citation in *Sämtliche Werke*, ed. I. H. Fichte (Berlin, 1971). Citations of Hegel are to *Elements of the Philosophy of Right*, trans. H. B. Nisbet (Cambridge, 2011) by §, followed by A (*Anmerkung*) or Z (*Zusatz*), hereafter PR.

reconstruct Fichte's entire institutional theory to see why he must conceive of institutional content as determined by the arbitrary individual will and so as necessarily indeterminate. Instead, we need only recognize that Fichte identifies institutional content with the aggregate composition of individual wills and their volition with respect to that institution and, further, that the content of any particular will is ultimately freely and spontaneously determined by the agent, summarized by Fichte in the formula that "there is no will [Wille] without arbitrary choice [Willkür]."⁸ Institutional content must therefore be indeterminate from the standpoint of philosophy, determinable only by the arbitrary will of individuals within a given society.

Admittedly, this content-arbitrariness of Fichte's institutional theory appears to clash with his synthetic method in practical philosophy, which generally concerns itself with the *necessary* determinations of the will. For example, Fichte writes in the *Foundations* that "the problem of political right and (according to our proof) of the entire philosophy of right is *to find a will that cannot possibly be other than the common will.*"⁹ The will to which Fichte refers is one which would be *necessarily* identical to the common will. However, a closer look at Fichte's argument clarifies the issue.

Fichte's more precise argument in the *Foundations* is that, in relations of right (*Rechtsverhältnisse*), the will of each party is originally determined by the civil contract (*Staatsbürgervertrag*), Fichte's solution to the problem of right.¹⁰ But this common will expresses mere *hypothetical necessity*: *if* an individual wants to enter the realm of *Recht*, *then* her will must be identical to the one defined by the civil contract. Fichte, therefore, deduces in the *Foundations*

not exactly of the will that the individuals *actually* have, but rather of the will that they must have *if* they are to exist alongside one another; and this is so, even if not a single person should, in fact, have such a will (as one might well assume to be the case from time to time).¹¹

⁸ SS 151/SW 4:159.

⁹ GNR 134/SW 3:151.

¹⁰ See Michael Nance, "Freedom, Coercion, and the Relation of Right," in *Fichte's Foundations of Natural Right*, ed. Gabriel Gottlieb (Cambridge, 2016), 196–217.

¹¹ GNR 16/SW 3:16, emphasis mine.

The necessity of which Fichte speaks is hypothetical, not categorical. Even when arguing for the “necessity” of the state, Fichte reminds us that individuals are always permitted to decline to enter into relations of right with others by refusing to join the commonwealth. Individuals may rightly remain in the state of nature, but, in so doing, they also give up their subsequent rights to property and security because these rights are exclusive to human society and cooperation (i.e., the community of those who have agreed to mutually limit each other’s freedom).¹²

Fichte’s hypothetical view of institutions posits a *gap* between actually existing institutional content, composed arbitrarily and so contingently, and the necessary institutional principles of *Recht* and *Sittlichkeit*. For Fichte, this gap becomes a source of unending conflict between the institutional world as it is against how it ought to be. This non-identity is why, for example, Fichte distinguishes in his appendix on family right between the institutional principle that arises “originally,” i.e., necessarily in accordance with right, from the conglomerate of opinions that informs “our institutions” of the family.¹³ Fichte’s hypothetical account of institutions only spells out the shape that institutions *ought* to take *if* we wish to abide by the principles of right and morality, and so cannot, on the basis of his commitment to the role of *Willkür* in practical life, provide an account of institutional content—what institutions will concretely look like—in actual societies in which lower-level institutional types do not always embody these principles.

3. Hegel on Institutional Content

Hegel argues that the institutional architecture of ethical life bears *rationality*. For example, he writes that “legal and political institutions in general are rational in character, they are necessary in and for themselves”; that, in the institutions of ethical life, “spirit is present as [...] the power of the rational in necessity”; and that ethical life’s institutions “together form the *constitution*, that is, developed and actualized rationality, in the realm of *particularity*, and [...] hence the union of freedom and necessity is present *in itself* within these institutions.”¹⁴ While this ascription of institutional rationality has wide-ranging implications for Hegel’s social thought, it entails, for our purposes, two features about institutional content: first, that institutional content

¹² GNR 11–12/SW 3:11; GNR 132/SW 3:148; SS 65–6/SW 4:64.

¹³ GNR 308/SW 3:357.

¹⁴ PR §219A/GW 14,1:183; PR §263/GW 14,1:210; PR §265/GW 14,1:211. Cf. also PR §145/GW 14,1:137.

is *necessary* because it is determined by a non-contingent “substantial essence”;¹⁵ and second, that institutional content is *developmental*, progressing through conceptual stages of maturation.¹⁶

These two features respond to Fichte’s account of institutional content as founded on *Willkür*. However, for reasons of space, I deal here only with the necessity of institutional content, leaving aside its developmental aspect. As we have seen, Fichte denies the necessity of institutional content. If institutional content derives from the wills of individuals, and the content of each individual will is determined by the agent’s arbitrary choice, then the congealed institutional content must also in principle be indeterminate and arbitrary, subject to the caprice of individuals *en masse*. Hegel levies two criticisms against Fichte’s view.

First, it is implausible from a social-scientific perspective. If institutional content were truly arbitrary in the fashion that Fichte claims, then we would expect to observe near-patternless heterogeneity in lower-level institutional kinds across communities, both diachronically and synchronically. While historical human communities show a great deal of institutional diversity, there nonetheless remains an important degree of *institutional universality* inexplicable from Fichte’s standpoint.¹⁷ Hegel, by contrast, acknowledges the ubiquity of certain institutional content by grounding its emergence in reason. The determinate, lower-level shapes taken on by higher-level institutional types like agriculture and marriage are not products of agreement or spontaneous volition but “forms of universality and shapes assumed by rationality [...] as it asserts itself in these objects.”¹⁸ This is in part because an institution always forms the “*universal* aspect of [individuals’] particular interests which has being in itself” and so cannot be reduced to the sum of individual wills and their particular interests vis-a-vis the institution.¹⁹ The universality of some institutional arrangements and not others is thus one fact of social life that Hegel wishes to account for with his attribution of rationality to institutional content.

¹⁵ PR §19/GW 14,1:40.

¹⁶ PR §30/GW 14,1:46; PR §346/GW 14,1:275.

¹⁷ See Pascal Boyer and Michael Petersen, “The Naturalness of (Many) Social Institutions: Evolved Cognition as Their Foundation,” *Journal of Institutional Economics* 8, no. 1 (2012): 1–25; Murdock, *Social Structure*, 1–16, 41–44, 79.

¹⁸ PR §203A/GW 14,1:171.

¹⁹ PR §264/GW 14,1:210–11.

Second, in addition to being empirically implausible, Fichte's voluntarist account of institutional content overlooks the freedom-realizing function of institutions. In Hegel's view, institutions are not mere instruments for facilitating cooperation and security but instead constitute essential components of "concrete freedom."²⁰ Reason's connection to concrete freedom entails, for Hegel, that the *Vernünftigkeit* of institutional content "consists in the unity of *objective freedom*, i.e., of the universal substantial will, and *subjective freedom* as individual knowledge and its will seeking a particular end."²¹ Because institutional content must give concrete existence to both subjective and objective freedom, it can only take on specific shapes since only a small subset of possible institutional content successfully actualizes freedom and therefore counts as "rational" in Hegel's sense. These constraints on institutional content include not only spiritual requirements, such as conforming with the conditions of self-determination, but also natural ones, like cohering with the inclinations and desires of the natural will.²² Rational institutional content, in its essence, actualizes our freedom as living human beings and exhibits its deficiency when it fails to do so.

Hegel thus attributes a stronger form of rationality to institutional content than Fichte. While Fichte also deems institutional content rational, he does so only in an external and relative way. For Fichte, institutional content is rational insofar as it functions as a *means* for realizing the ends of rational beings; however, these moral ends are determined independently from and prior to the institution that realizes them. Fichte's institutional content is rational only in this instrumental sense; it bears rationality, not because of its nature but solely because it is the product of the spontaneous "absolute freedom" of rational beings.²³ On the other hand, institutional necessity in Hegel should not be misunderstood as a claim about the necessity of institutional *tokens*. Hegel claims neither that a single set of institutions can be found in all societies nor that one should expect a one-to-one correspondence between institutional principles and historical institutional reality. As Hegel often reminds us, it is the philosophical concept—

²⁰ PR §260/GW 14,1:208.

²¹ PR §258A/GW 14,1:202, emphasis mine.

²² PR §11/GW 14,1:36.

²³ GNR 8–9/SW 3:7–9.

the nature of the *Sache*—not historical genesis, that grounds institutional content.²⁴ Hegel’s vocabulary of “ethical substance” suggests instead that he adopts a type-token model, wherein necessity pertains only to the self-differentiation of institutional principles (higher-level types, e.g., marriage, the state) into institutional content (lower-level types, e.g., bourgeois marriage, constitutional monarchy). This specific institutional content forms the ethical substance, and this substance is, in turn, empirically instantiated and so subject to contingency. Hegel’s “ethical substance” as an institutional model thus captures the observed empirical diversity of institutional tokens while remaining robust enough to explain the ubiquity and freedom-realizing function of certain institutional principles and content.

So much for my sketch of Hegel and Fichte on institutional content. I have tried to show how Hegel’s account of institutional content comes into strongest relief when reconstructed as an immanent critique of Fichte’s, such that any satisfactory account of Hegel’s critique of Fichte’s practical philosophy would have to attend to their divergent institutional theories. When developed, this comparative perspective casts doubt on recognitive readings of Hegel’s *Philosophy of Right* put forward by critics like Honneth and Theunissen, who, in rejecting Hegel’s privileging of institutions over individuals, seek instead to identify an intersubjective foundation for Hegel’s institutionalization of ethical life. This comparison demonstrates that Hegel develops his institutional theory precisely to combat the Fichtean view of institutions as distinct spheres of intersubjective interaction. It invites us to recall that the objective will embodied in institutions retains its rationality “whether or not it is recognized [*erkannt*] by individuals and willed by them at their discretion.”²⁵

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²⁴ PR §3A/GW 14,1:26–7; PR §216A/GW 14,1:180; PR §219A/GW 14,1:182–83.

²⁵ PR §258A/GW 14,1:203.