Hegel on law, women and contract

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Introduction

Hegel is infamous for his view that in properly constituted societies women are confined to the family and excluded from the public spheres of work and politics. In his very well-known discussion of the matter in his *Elements of the Philosophy of Right*, published in 1821, he claims that:

The one [that is, the male sex] ... divides itself up into personal self-sufficiency with being for itself and the knowledge and volition of free universality, that is, into the self-consciousness of conceptual thought and the volition of the objective and ultimate end. And the other [that is, the female sex] ... maintains itself in unity as knowledge and volition of the substantial in the form of concrete individuality and feeling ... [T]he former is powerful and active, the latter passive and subjective. Man therefore has his actual substantial life in the state, in science, etc., and otherwise in work and struggle ... so that it is only through his division that he fights his way to self-sufficient unity with himself. In the family, he has a peaceful intuition of this unity, and an emotive and subjective ethical life. Woman, however, has her substantial vocation in the family, and her ethical disposition consists in this piety. (Hegel, 1991: §166, 206)

Hegel thinks, then, that women's role is to tend their families within the household. He considers women to be inherently unfit to participate in the worlds of (extra-domestic) work and politics or to engage in sustained intellectual activity. Many feminist scholars have argued that these views do not merely reflect Hegel's acceptance of the prejudices of his time, but follow from his legal and political philosophy more broadly, in a way that makes Hegel's entire political philosophy problematic from a feminist viewpoint. A leading figure among these scholars is Pateman, who argues in her now-classic book *The Sexual Contract* (1988) that Hegel held these views about women because, although critical of social contract theory, he retains (what Pateman sees as) the traditional
contractarian belief in an opposition between female body and the status of being a contracting individual.

Other feminist scholars, however, have sought to defend Hegel by arguing that his demeaning views on women contradict his broader system, thus reflecting merely contingent biases on his part, from which his work can be extricated so as to yield a system that is both coherent and liberatory for women. Landes (1981), for instance, argues that Hegel's account of women's familial role conflicts with his attribution to women of civil personality and modern agency. Mills (1996b) argues that his consignment of women to this familial role arbitrarily limits the possibilities for the development of human spirit (Geist). Ravven's (1988) version of this approach is exemplary. She argues that Hegel retains in the modern social world more-or-less exactly the same division between private and public spheres which he found in the ancient Greek world. (He described that division in terms of the split between Antigone acting from the familial principle, who carries out her sisterly duty to bury and commemorate her dead brother Polyneices, and Creon acting from the political principle, who prohibits and punishes this burial of someone whom he deems a traitor.) According to Ravven, the Greeks adhered to this division because they organized social institutions on the basis of nature. Yet in the modern world society is supposed to be organised by reason – on Hegel's own account. So it is incoherent that he nonetheless assigns women to the family, that is takes nature as a basis for social divisions. On Hegel's own grounds, Ravven concludes, in modern society women should be treated as 'fully human and rational' and allowed full access to civil society and the state (Hegel, 1988: 150).

Against the background of these feminist debates about Hegel's system, this chapter aims to reinterpret Hegel's views on women, and to show that they do form an integral part of his legal and political philosophy, specifically insofar as it is entwined with his philosophies of nature and mind. Crucially, what connects these different areas of Hegel's thought is his belief that a properly constituted society must be organically structured. An organic social whole, for him, is articulated into three subsystems or social spheres: the sphere of 'immediate unity' – the family; the sphere of 'difference' – civil society, the realm of economic life; and the sphere of 'mediated unity' – the state (see Neuhouser, 2000: 133). Hegel also believes that some people must be permanently stationed in each of the earlier spheres, that is in the family and in civil society. He thinks that women must remain within the sphere of the family because women's bodies and psyches embody a lack of differentiation between self and other, whereas men's bodies and psyches embody a principle of difference. Hegel makes these latter claims in his Philosophy of Nature and Philosophy of Mind (both published successively in 1817, 1827 and 1830).

By presenting this reinterpretation of Hegel, I aim to intervene in the feminist debates about Hegel. I will argue that Pateman is right to regard Hegel's patriarchal stance on women as integral to his system and as connected with his critical response to contract theory, but in my view the connecting factor is Hegel's
organicist – and anti-contractarian – idea of the state, which forms part of his broader emphasis on organic wholes. However, this might seem to imply that Hegel’s organism should be rejected because it is indissociable from his sexist view of women. Instead I propose to re-evaluate Hegel’s organicism. Despite its negative consequences for women, it accords productively with recent feminist efforts to rethink the nature/culture relation and to reconceive nature such that it is not negatively opposed to culture. Thus my conclusion will differ from that of most feminists, for whom Hegel’s patriarchal views on women either are a fatal flaw in his system (Pateman) or would be such a flaw if they were integral to that system but fortunately are not (Mills, Ravven and others). In contrast, I will conclude that Hegel’s views on women form part of a constellation of philosophical positions that he holds concerning nature, culture and freedom, a constellation that despite its sexism can still be fruitful for contemporary feminism.

**Hegel’s political philosophy and his conception of law**

Before we can understand women’s place in Hegel’s system, we need to appreciate his basic project in the *Philosophy of Right*. This is to show that a certain set of social institutions is uniquely legitimate because, together, these institutions provide the necessary conditions of individual freedom. He believed that this set of institutions was realised, at least in nucleus, in the most advanced contemporary European societies of his day. The starting point for the *Philosophy of Right* is, then, the assumption that individuals are free, or have free will. Hegel remarks that free will is familiar to each of us from our own experience (Hegel, 1991: §4, 37). Although Hegel continually refines his account of free will as the *Philosophy of Right* progresses, at the outset he takes free will to be the ability to choose, from one’s range of individual desires or available courses of action, which to pursue (Hegel, 1991: 11, 45).

The first social institution that, Hegel argues, is a necessary condition of individual freedom in this sense is private property. I cannot be genuinely free unless I am surrounded by objects that provide tangible evidence of my freedom and in which ‘I regard myself as free’ (Hegel, 1991: §18, 224). To make objects manifest my freedom to me, I must seize, mould and use them in ways that I freely choose. The moulded and well-used character of these objects then gives me back a sign of the freedom that I have exercised with respect to those objects. By moulding and seizing objects in this way, I have been making these objects into my property – making them into things which are ‘mine’ because they manifest my will.

Hegel might seem, until this point, to have been dealing with completely asocial individuals. Actually, though, he maintains that no one can own any item of property unless others recognise they can do so. Unless others recognise that a given item is ‘mine’, others will try to seize and mould that item themselves, and in that case the object will come to manifest some other person’s will rather than my own. So, Hegel concludes, property ownership actually depends
on contract – in each case, one’s ownership of some item depends on others making and abiding by an agreement to acknowledge that one owns that item (Hegel, 1991: §7, 102). However, others will never be willing to recognise me as the owner of a given set of objects unless those others are themselves prospective property owners who seek my recognition and are willing to recognise my will in order to obtain reciprocal recognition from me. Thus no one can own property unless he recognises others to be property owners as well.

Hegel refers to the sphere of property and contract as ‘abstract right’. He calls the relations between individual property owners – relations in which they recognise and respect one another as persons with equal standing – ‘relations of right’ (Rechtsverhältnisse). Hegel’s overall argument has been that these relations of right are a necessary condition of property ownership and therefore, in turn, of individual freedom which requires private property. So, Hegel is arguing, basic features of a legitimate society are that it must not infringe individuals’ rights to be self-determining persons and that it must allow individuals to recognise and respect one another as self-determining persons.

Nonetheless, Hegel believes that relations of right have their limitations. One property owner will only ever recognise another, and abide by his contractual agreements, when doing so is to his own advantage (securing for him the recognition of his own will). So if any opportunities arise for an individual to gain the recognition he seeks without conferring recognition on the other party, then that individual will seize this opportunity – that is, he will make fraudulent contracts or commit various forms of theft. Wrong, or crime, is a constantly recurring problem within relations of right (Hegel, 1991: §§82, 115–16). What is needed to overcome this problem is for individuals to learn to recognise others, not merely because recognising others is a means to their own satisfaction, but because they have genuine concern that the needs of others (needs for recognition in this case) should be met. Individuals must learn to be concerned about the needs and interests of others as well as about their own interests. That is, individuals must learn to be moral and so, Hegel argues, a legitimate society will also contain the institution of morality.

Yet individuals can only learn to be moral if they are educated to embrace the interests of others, and they can only be so educated if they live, and are brought up, within the right set of social institutions (Hegel, 1991: §153, 196). This set of interlocking institutions Hegel calls ‘ethical life’ (Sittlichkeit); it consists of the family, civil society and the state. Within the family, individuals lose any sense of having purely individual interests and come to identify their good with the common good of the entire family. Individuals experience their identification with the family’s common good as the feeling of love for their family members. The family plays a vital role in educating people to be directly concerned that the interests of others – more precisely, the interests of the family as a whole – should be satisfied. However, this is only part of what is required to support relations of right, because situations in which everyone directly identifies with a common good can only arise within small-scale and emotionally intense
communities, such as nuclear families. So while a legitimate form of society must include the family, it must also include other spheres, including that Hegel which calls ‘civil society’ (bürgerliche Gesellschaft).

Civil society is the field where individuals work and engage in economic activities and transactions. This does not mean that civil society is identical with relations of abstract right. Civil society additionally includes: the law and the legal apparatus of courts, prisons, etc.; the ‘police’ (which makes public arrangements that promote general well-being, e.g. street lighting, price regulation); and ‘corporations’ (trade associations). The existence of these various institutions encourages citizens to be ‘public spirited’ – to value these institutions on the grounds of the benefits that they bring to everyone. The legal system benefits everyone by enforcing individuals’ rights and forcing owners to respect one another – which it does not only by punishing criminals, but also because the law provides a statement of the principles of right and mutual respect, a statement which commands everyone’s respect just because it expresses what is right. Law in this sense of a statement of the principles of right is what Hegel calls ‘positive law’, das Gesetz – right which has been formulated in statements, or ‘posited’ (gesetzt) (Hegel, 1991: §211, 241).

Since Hegel maintains that the law commands respect in virtue of expressing the principles of right, he appears to think that the law can never be wrong and cannot legitimately be criticised. Knowles reasonably asks: ‘Is Hegel signalling a conservative (and … servile) acceptance of law as we find it, however awful its demands?’ (Knowles, 2002: 276). I believe not: Hegel is talking about what the law ought to be like if it is to guarantee relations of right and therefore provide one of the necessary conditions of individual freedom. He is not denying that actual laws or systems of law may fail to live up to this ideal. Even when actual laws do fall short, though, Hegel thinks that we can only criticise those faulty laws by contrasting them to the ideal of a fully legitimate legal system – the ideal which he is trying to articulate.

Hegel argues that the legal system can only command the assent from individuals which it deserves if (a) every citizen is familiar with the content of the law and (b) the legal system is sufficiently transparent that it can be seen to be fulfilling its function of enforcing individuals’ rights, and doing so fairly and effectively (Hegel, 1991: §132R, 159–60. For (a) to be possible, the law must be written down in an orderly, accessible and readily intelligible form. For (b) to be possible, criminal proceedings should be public, due process must be observed and jury trial should exist.

Civil society, then, as Hegel sees it, includes institutions such as a transparent legal system and public authorities, institutions which manifestly promote the interests of all individuals, and which each individual learns to respect and value on that account. In this way civil society educates people to feel and show concern for the interests of others – yet still in an unsatisfactory way, Hegel thinks. The structure of civil society presupposes that each individual pursues his own interests, which he takes to be interests that he has purely as an individual;
in addition, civil society educates people to be concerned about the interests that others also take themselves to have just as individuals. But civil society does not educate individuals to be concerned about interests that they, and others, take themselves to have not just as individuals but in virtue of belonging to a collective (Hegel, 1991: §258R, 276). We might say in Rousseau's terms that civil society accommodates only the will of all but not yet a truly general will.

Hegel concludes that the final sphere of ethical life, the state, is necessary because it educates citizens to identify their interests with those of the state as a whole. The state is the set of institutions in which political representatives deliberate about and carry out what is in the whole community's good. By participating in the state – via their deputies – each citizen comes to feel that his sense of self is bound up with his membership in this collective (he acquires a sense of national identity and pride) and so he becomes motivated to embrace the good of the collective as a whole. However, in embracing this common good, citizens do not abandon any sense of having purely individual interests. Citizens continue to spend most of their time pursuing the purely individual interests that they, as Bürger (participants in civil society) take themselves, and other Bürger, to have. Yet the institutions of civil society – for example, the legal system – are ultimately orchestrated and regulated by the state. Through political participation, citizens become aware of this, and realise that even in pursuing their individual interests they are still doing what is in the common good: they are pursuing economic activities to which the state, the arbiter of the common good, has given its support.

Overall, Hegel has argued that this whole family/civil society/state conglomerate is legitimate because it provides the conditions of individual freedom. More specifically, relations of right – property and contract relations – are necessary conditions of individual freedom of choice. And the institutions of ethical life are the necessary conditions without which relations of right will unravel into endless cycles of crime. As Cornell et al. note (1991: x–xi), then, Hegel's account of law has the merit that it recognises the necessity of certain basic, inalienable, rights to individual self-determination and dignity, rights which may not be infringed and which the state must respect and protect. But – and for Cornell et al. this is also a merit of Hegel's account – he denies that these individual rights provide a sufficient basis for social coexistence. For him, relations of right depend on institutional frameworks of family, civil society and state.

Hegel's entire argument in the Philosophy of Right may be regarded as a critical response to social contract theory. Hegel himself denounces social contract theory, which, he claims, 'proceeds atomistically and moves upward from the basis of individuality' (1991: §165A, 197). To speak very generally, social contract theorists hold that all individuals are free and argue that institutions are only acceptable if individuals have freely agreed to establish or participate in them, or would, rationally, so agree. Hegel takes his analysis of relations of abstract right to have shown that no lasting social relationships can be
established on the basis of contractual agreements, because contractual agreements presuppose self-interested individuals, whose self-interest will motivate them to renege on or dispense with their agreements whenever it suits them. Even property relations cannot be maintained unless society contains some institutions that do not rest on voluntary agreements, but within which individuals live and are educated prior to any possibility of contracting into them.

Despite these criticisms of social contract theory, Hegel does not reject every aspect of it. He agrees with contract theorists that social institutions are legitimate only if they enable and promote individual freedom, where this freedom is still understood in terms of individual choice between different options or different antecedently given personal desires. Indeed we might almost see Hegel as arguing in a Hobbesian vein that individuals can never securely hold onto their own private property unless they live under a form of political organisation that induces others to respect that property. Unlike Hobbes, though, Hegel envisages the required form of political organisation to be one that educates individuals to willingly adhere to the common good, and which transforms individuals' entire motivational structure so that they cease to be the purely self-interested agents that they were from the standpoint of abstract right. And, unlike contract theorists more generally, Hegel believes that the state can only do this in cooperation with civil society and the family, and that all these social institutions can only perform their educational role if they lie beyond the reach of voluntary agreement, as a background context of social and ethical life in which individuals are bathed throughout their existence. This context, then, cannot be one into which one enters by contracting; rather, it forms the necessary precondition of any reliable contract.

The place of women in Hegel's system

Where do Hegel's views on women fit into his legal and political philosophy? He discusses women's social role within his account of the family. Upon marrying, he says, women change their names, leave their families to enter those of their husbands, and cede responsibility for property ownership and management to their husbands (Hegel, 1996: §82, 150–1). As Pateman points out:

Hegel's marriage conforms to the … law of coverture, [which] Sir William Blackstone explained as follows: ‘By marriage, the husband and wife are as one person in law: that is, the very being, or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband. (Pateman, 1996: 214)

Pateman offers a leading account of how Hegel’s views on women follow from his general philosophy, specifically from his critical response to social contract theory. Since this response is, as we have seen, at the centre of his entire project in the Philosophy of Right, Pateman’s suggestion that Hegel’s response to
contract theory is the source of his views on women is plausible, so it is worth examining and assessing her interpretation of Hegel.

Pateman begins by showing that Hegel formed his account of women and the family against the backdrop of the puzzle of the marriage ‘contract’ as it had existed in Christian societies up until Hegel’s time. Marriage had been defined as a contract since at least the fourteenth century, yet had never rested on any ‘agreement between two equal partners who negotiate until they arrive at terms that are to their mutual advantage’ (Pateman, 1988: 154–5). Rather, the marriage contract was unwritten and included the wife’s commitment to obey and serve her husband. The terms of this peculiar-looking ‘contract’ could not, and still largely cannot, be adjusted to suit the spouses’ interests and circumstances; for example, spouses cannot agree on how long their marriage is to last.

According to Pateman, Hegel makes sense of the anomaly of the marriage contract by seeing marriage as unique among other kinds of contract, in that it is a ‘contract to transcend the standpoint of contract’ (Pateman, 1988: 174). By the ‘standpoint of contract’ Hegel means the outlook of individual property owners, a self-interested outlook which as we have seen easily slides into criminal grasping at others’ property. This internal tension within the standpoint of contract means that contractual relations cannot function reliably unless they are supplemented by other, non-contractual, social relationships. So the standpoint of contract must be ‘transcended’: integrated within social relationships in which individuals become genuinely concerned for the interests of others. An agreement to marry is an agreement by which property owners relinquish their sense of having purely individual interests and embrace the good which they and their spouse share as a couple. In this way those who get married are contracting to give up the standpoint of contract. Hegel’s general picture of the family is thus of a piece with his anti-contractarian project.

Moreover, Hegel believes that living in a family atmosphere of love and trust instils in individuals – both spouses and their children – a disposition to abide by promises and contracts. Thus family life is the necessary precondition at the affective level for reliable and lasting contractual relationships. Yet family life cannot itself be contractually based, otherwise it would not involve the atmosphere of whole-hearted devotion to common interests from which the members’ feelings of love and trust issue.

According to Hegel, though, the only family members who ever progress outside their families are men. How, then, Pateman asks, are women able – as Hegel says they are – to make contracts to get married? Pateman’s answer is that, according to Hegel, contractual relationships and free personhood are essential aspects of (although not sufficient for) modern civil life (Pateman, 1988: 188). As such, women must be permitted to participate in these aspects of modern civil life to at least some extent. But this participation cannot extend as far as full-blown engagement in the public world of property and contract. Rather, according to Hegel, women should have just enough civil personality that they
can agree to get married and thereupon renounce any further claim to be free persons capable of entering into contracts.

But why does Hegel hold the initial view that women are not fit to participate in the public sphere? After all, one might accept Hegel's idea that family relationships are non-contractual and rest on feelings of love and trust and a sense of common interest, but argue that these relationships equip all family members – both men and women – to participate in economic relations outside the family.

According to Pateman, the reason why Hegel thinks women must remain within the family is because his political philosophy inherits a particular conception of contract from classical contract theory. This conception of contract includes a particular conception of the kind of individual who is able to make contracts. On this conception, the contracting individual is defined in opposition to the female-bodied individual. Pateman explains:

The body of the 'individual' is very different from women's bodies. His body is tightly enclosed within boundaries, but women's bodies are permeable, their contours change shape and they are subject to cyclical processes. All these differences are summed up in the natural bodily process of birth. (Pateman, 1988: 96)

According to classical contract theory, the contracting individual is someone who can own property, and this capacity derives from the individual's ownership of his own body. For example, Locke holds that one has property rights over anything with which one 'mixes one's labour' (Locke, 1988: 287–8); thus property rights derive from a prior right over one's own labour and so, in turn, over the body with which one can labour. However, a hidden assumption in social contract theory is that women cannot own their bodies (or, at least, cannot own them in the unproblematic way that men do) because the boundaries of women's bodies are fuzzy. In particular, no clear boundaries separate pregnant women's bodies from those of the foetuses they carry. The classical idea of the contracting individual thus carries with it an assumption that this individual is male and that having a female body, in contrast, makes it difficult if not impossible for someone to own herself, to own property and to make contracts. Women are in this way naturally lacking in self-control and open to being dominated by others.

When Hegel takes over the idea of the contracting individual, he takes over these assumptions as well, Pateman argues (1988: 180–1). Because of these assumptions, Hegel cannot see how women – with their female bodies – can take part in relations of right, and he concludes that they must have no opportunity to make contracts other than the initial contract by which they get married. Moreover, Hegel argues that because in each family only the man progresses into the public world, it must always be the man who takes on the job of thinking and acting on behalf of his family's common interests. Every household must be male-headed.
Hegel himself at this point wonders whether the allegedly ‘universal’, common, interests which the individual marriage partners come to embrace (on his account) are actually the masculine interests of the husband (Hegel, 1996: §83R, 151). Yet Hegel reiterates that marriage does establish a genuine sense of common interests in its members, and is not merely an institution within which one individualistic person dominates another. He believes, though, that it is always the husband who must take on the role of identifying what the family’s common interests consist in and deciding how best to meet them. He must do this because he alone can advance beyond the family into civil society. As Hegel puts it, the husband becomes ‘primarily responsible for external acquisition and for caring for the family’s needs’ (Hegel, 1996: §171, 209).

So, the family as Hegel portrays it embodies two forms of inequality between women and men (not that he himself understands these to be forms of inequality). Firstly, men progress beyond the family and women cannot. This becomes the source of a second inequality, because it means that the husband acquires the exclusive right to serve as the representative of his family. And with this right, he gains additional rights: to exercise control over the family’s property, to bestow his name on any children, and to cause the severance of his wife’s ties with her family of origin. Hegel explains, ‘both of the persons who marry want to constitute one person; [therefore] the wife loses her name and no longer belongs to her family’ (Hegel, 1996: §78R, 145).

Pateman explains these views of Hegel’s by arguing that they stem from his male-centred conception of contract, which leads him to think that women are unfit to take part in the contractual relations which regulate social intercourse outside the family. But a serious problem with Pateman’s account of Hegel is that he does not simply take over, but actually rejects, the traditional contractarian idea that the contracting individual is a self-sufficient owner of property. Hegel argues that individuals can only own property if they are recognised to do so by others, so that owners are never self-sufficient. Their capacities for ownership actually depend on their relations with others, and ideally society will be structured so that it enables and encourages individual owners to recognise others for their own sake. Here Hegel is redefining what it is to be a contracting individual. On his redefinition, the contracting individual is never self-contained but is embedded in a network of relations of recognition which constitute him (or, potentially, her) as a property owner. But if being a contracting individual does not involve self-sufficiency but, on the contrary, involves complex relations of dependence on others, then being a contracting individual is not necessarily incompatible with the (ex hypothesi) female condition of lacking clear boundaries that differentiate one’s body from those of others. So, far from conceiving the activity of contracting to be incompatible with having a female body, Hegel rethinks contracting in a way that makes it, in principle, compatible with having a porous female body.

Because Hegel rethinks contract so that it is at least potentially compatible with having a female body, it cannot – as Pateman argues – be his conception of
contract which leads him to place women in the private sphere. So we still lack an adequate explanation of why Hegel believes that women belong in the family. Still, Pateman’s explanation does point in the right direction. Hegel does indeed think that the female body embodies a lack of differentiation between self and other. And he does indeed think that this feature of the female body means that women should not participate in the public realm. But for Hegel this is not because women’s bodies make them incapable of contracting. Rather, for Hegel, it is because women’s bodies suit them to be the full-time ‘organs’ of just one subsystem within an organically structured society – the subsystem of ‘immediate unity’, the family.

‘Immediate unity’ in the family and the female body

We have seen that Hegel criticises contract theory on the grounds that voluntary relations can only be coherently maintained within social institutions to which individuals belong non-voluntarily. Ultimately, Hegel is arguing here that individuals can only have freedom of choice if they are also free in what he regards as a deeper sense: if they also have what Neuhouser calls ‘social freedom’, the freedom to act in accordance with social roles and positions (for example, the role of a family member) which are essential to their identities (Neuhouser, 2000: 33).

This deserves a little elaboration. As Hardimon explains, Hegel’s idea is that the modern social world needs to be so organised that it enables individuals to ‘actualize themselves as individuals … and as social members’ (Hardimon, 1994: 102). If society only enabled individuals to be free as individuals – in terms of exercising the ability to choose between options and desires – then what Hegel regards as a fundamental need of individuals would remain unfulfilled, namely their need to feel at home in the social world – and not merely to feel at home in a deluded way but to feel and be at home. Individuals need to feel, not alienated from society, but that it is their home. For this they need to be able to participate in social institutions, to act according to the roles available within those institutions, and to affirm these roles rather than finding them a constraint or burden. Thus this kind of social freedom is a fundamental part of freedom, of being able to act in a self-determining way as opposed to acting from externally imposed constraints. So, again, the individual freedom that contract theory prizes is possible only in a kind of society organised in fundamentally non-contractual and non-voluntarist ways.

For Hegel, individuals can attain this deeper kind of ‘social’ freedom only if the social order is structured in the right way, into the interlocking set of institutions that he has outlined. A social order that is structured in this way – into distinct but mutually supporting spheres – is organised organically, for Hegel. Here Hegel relies on a particular understanding of what it is to be an organism. On this understanding, an organism is an entity which has its own purposes (above all to reproduce itself) and which articulates itself into specialised
subsystems (the digestive system, the reproductive organs) which support one another so as to fulfil the organism’s purposes (Hegel, 1971: §381A, 9–10). Hegel also thinks that every organism is self-determining – that is free – in the sense that it develops and articulates itself in accordance with its own, inbuilt, purpose or plan. So, an organically structured social order can be described as free, for Hegel, because it freely organises itself into the determinate set of social institutions that are required for its own purposes qua social order. Ultimately, for Hegel, individuals cannot have freedom of choice unless they first have social freedom, and they can only achieve social freedom within a social order that is itself free in the sense of being organically articulated.

When Hegel describes the elements of a legitimate social order within the Philosophy of Right, then, he takes it that this social order is a living system:

As living spirit, the state exists only as an organised whole, differentiated into particular functions which proceed from the single concept … of the rational will and continually produce it as their result. (Hegel, 1971: §539, 265)

Hegel is using the word ‘state’ here, as he sometimes does, to mean a structured social order as a whole. The overall purpose of the social order is to reconcile people’s sense of having individual interests – and, correspondingly, their sense of being different from one another as individuals – with concern for others and commitment to the collective good, corresponding to a sense of ‘unity’ with others. As a purposive entity, the social order must be subdivided into specialised spheres, each with a function and character that flow out of the purpose of the social order as a whole. Specifically, then, the social order must be subdivided into one sphere that fosters a strong sense of unity between people (the family), one sphere that fosters a strong sense of difference between people (civil society) and another sphere that reconciles the two (the state).

Hegel’s organic conception of society seems to imply that everyone ought to be permitted to participate in all three spheres, because each sphere enriches its participants’ lives by giving them access to an essential aspect of membership in a modern society. Apparently, then, women ought to be able to participate fully in family, civil society and the state, while men ought, as well as having access to civil society and the state, also to participate in the life of the family as fully as women, undertaking an equal share of domestic responsibilities. But, of course, Hegel does not agree; he thinks that women may participate only in the familial sphere. This is because, as Wood points out, for Hegel ‘differentiated institutions require a social differentiation among individuals. Each principle [that is each sphere] must have its proper representative and guardian’ (Wood, 1990: 244). Given specialised institutions, certain individuals must be permanently based in and responsible for each of them. This conclusion follows from Hegel’s idea that a properly constituted society must be structured in the same way as an organism. Each of the functionally specialised subsystems within an organism is realised by
a specific range of organs (for instance, the stomach, bowels, etc., realise the
digestive system; the gonads, genitals, etc., realise the reproductive system).
Similarly, Hegel assumes that each social subsystem must be maintained by a
dedicated set of people who serve as its ‘organs’ or functionaries. In fact, in his
*Philosophy of Nature* Hegel is emphatic that animals are a higher form of organic
life than plants because in animal bodies there is full functional specialisation,
whereas in plants each part or component system contains within itself the
entire network of functions – this is why it is possible to generate entire new
plants through cutting and grafting (See Hegel, 1970: §343A, 304). Functional
specialisation is integral to a proper organic whole, for Hegel.

This belief underlies not only Hegel’s position on women but also his view
that ‘in our modern states, the citizens have only a limited share in the universal
business of the state’ (Hegel, 1991: §255A, 273). He endorses a legislature
composed of two houses, the landed aristocracy and a house of deputies from the
corporations that organise civil society, who are elected through processes inter-
tnal to the corporations. Thus neither peasants nor the vast majority of burghers
may participate directly in the political sphere.

However, even if we accept that there must be some people who are perma-
nently based in and responsible for their families, it does not automatically follow
that those people must always be women. This role might be played by men in
some families and women in others. But Hegel introduces the further idea that
women, as a sex, must play a familial role because their bodily and psychical
nature uniquely suits them for this role, or, as he himself puts it, ‘The
natural
determinacy of the two sexes acquires an *intellectual* and *ethical*
significance’
within the context of an organically articulated social order (Hegel, 1991: §165,
206). Women’s nature is to embody an ‘immediate unity’ of self and other, both
physically and psychically, while men’s nature is to embody ‘difference’ between
self and other. Hegel expands on this in his *Philosophy of Nature*.

Hegel discusses sex difference within his account of ‘sexual relationships’
(*Geschlechtsverhältnisse*), by which he means the reproductive activities of
animals, including human beings. These ‘sexual’ relationships arise when one
animal encounters another of the same species and senses that the two animals
are both ‘identical’ (in the sense that they belong to the same species) and ‘differ-
ent’ (as individuals). The animal senses a tension between the identity and the
difference:

[it] *feels* this deficiency [or tension]. Consequently, the genus [that is, the spe-
cies] is present in the individual as a strain opposed to the inadequacy of the
single actuality; it is present as an urge to attain its self-feeling in the other

The animal acquires an urge to make the identity of the two animals tangible in
some way. The solution is to copulate with the other and thereby produce
offspring, which, as the product of both parents, tangibly manifest the parents’
species-identity. Hegel says: ‘In the natural state the identity of the sexes is ... a third, that is produced, in which both sexes intuit their identity as a natural actuality’ (1996: §75, 139). Ultimately, though, reproduction is futile, because the offspring are still individual animals that differ from their parents as yet more separate individuals. Despite its futility, it is reproduction in which animals are driven to engage.

According to Hegel, in any reproductive process the two participant animals must play different roles. Reproduction is a process with a purpose: the purpose of producing a third entity that manifests the identity of the two animals that have contributed to it. Just as every purposive organism must articulate itself into specialised subsystems, likewise the two individuals who are carrying out the purposive activity of reproduction must assume specialised roles within that process. The entity to be produced must be a 'third', different from the parents, and so one parent must be responsible for producing the child as a distinctive individual entity. Yet the offspring is also to be nothing more than an embodiment of the identity between the parents. In this respect, the offspring must itself be identical with the parent(s). The second parent is responsible for producing the offspring as something that is identical with its parent(s).

Each parent animal develops a specific reproductive anatomy that enables it to play one or the other of these roles. 'The formation [anatomical shape] of the different sexes must be different, their determination in opposition to one another which is posited by the concept must exist' (Hegel, 1991: §165, 174). Notably, then, Hegel does not think that different animals play different roles in reproduction because they have different anatomies. He thinks that there are different roles in reproduction, of which each animal must assume one, and that the anatomy of each animal develops accordingly.

Those animals whose role is to produce the offspring as something that is different from them develop male reproductive anatomy. The distinctive feature of the male genitals, Hegel thinks, is that they are primarily located on the outside of the body. Generally, Hegel believes that 'external' organs and limbs enable animals to engage and interact with items in the external world; according to him, the outward development of anatomical shape reflects the subject's 'relation to an other outside it' (Hegel, 1991: §355A, vol. 3, 131). Male reproductive anatomy is no different: it enables male animals to contribute to the offspring in a way that treats it as something different from the male parent – by expelling it outside that parent's body, in the form of semen.

On the other hand, those animals whose role is to produce the offspring as something that is identical with them develop female anatomy. The female genitals are located on the inside of the body. Here Hegel appears to be influenced by what Laqueur (1990) calls the 'one-sex' model of anatomy, which prevailed until the late eighteenth century. According to this model, female genitals are the same as male but have failed to develop fully, owing to a deficiency of heat; they have remained inside the body as a result. The internal reproductive anatomy of females allows them to contribute to their offspring in a way that treats the
offspring as something identical to them, as a part of their own bodies. Their anatomy allows females to retain their offspring in their wombs, within their own bodies, as an element within their own bodily processes. Hegel sums up his picture of sex difference as follows: '… in one or other of these genitals, one or the other part is essential; in the female this is necessarily the undifferentiated element, while in the male it is the sundered element of opposition' (Hegel, 1970: §368, vol. 3, 174).

We can now see what is involved in Hegel’s idea that female bodies embody a principle of self/other unity. The special role of female reproductive anatomy is to contribute to producing offspring in a way that treats those offspring as identical with their parent(s), and hence this anatomy develops on the inside of the female body so that females can contribute to, and feed and nurture, offspring as elements within their own bodies. Female anatomy is organised so that it treats the mother and her offspring as an undifferentiated unity – so that it does not establish any boundary separating the mother’s body from that of her offspring.

Hegel also claims, regarding human beings specifically, that this kind of physiology translates into a specific kind of female psyche, which draws no distinction between the mother’s self and the self of the foetus or child. He discusses this in an early section of his Philosophy of Mind, on the ‘feeling soul’ (Hegel, 1971: §403–§406, 92–122). The condition of having a ‘feeling soul’ (fühlende Seele) is one through which each individual human being must pass at an extremely early stage in his or her life. Someone with a feeling soul is swamped by their sensations and experiences, not having yet developed the cognitive and conceptual skills to organise and comprehend these experiences. Other people and, above all, the child’s mother are a particular source of these overwhelming feelings. Hegel seems to suggest that this condition of being swamped by feelings that emanate from the mother begins while the child is still a foetus in the womb. At this time ‘opposition is completely absent’ and the foetus is utterly ‘dominated’ by its mother, who is the source of all its sensations (Clarke, 1996: 158). A trace of this domination continues after birth, with the psyche of each young child being fundamentally imprinted by experiences that occur in the context of its relationship with its mother. The mother, Hegel says, ‘is the genius of the child’ (1971: §405, 95), that is she is the presiding spirit who fundamentally stamps the child’s personality (Clarke, 1996: 159, 161). Hegel’s point is that in early life there is a lack of psychical opposition between mother and child, which results from and prolongs the lack of physical distinction that obtained when the child was still in the womb. Ultimately, each child transcends this undifferentiated relationship and achieves a level of separateness from its mother. But, according to Hegel, each one of us always retains a particular individual character that results from the experiences that have shaped us during these formative relationships with our mothers.

Hegel has described the psychical mother/child relationship from the children’s side, but his point applies to mothers as well. At least while absorbed in caring for their children, mothers do not (as Hegel sees it) distinguish psychically
between themselves and their children. This prolongs the lack of distinction that mothers felt during pregnancy. Women’s condition of physical and psychical fusion with their children makes them ideally suited for the role of full-time family maintenance. As family members, people have no sense of having purely individual interests and they take their interests to be identical with those of the family as a whole. Since women have no clear sense of their bodily boundaries or of the boundaries of their selves, they are uniquely suited to the identity of family member with its lack of any sense that there might be boundaries between different members’ interests. This is why, for Hegel, it must be women who dedicate themselves to the care of their families: women’s porous boundaries make them the ideal category of people to be functionaries of the family as one subsystem within an organic social whole.

**Nature, culture and freedom**

I have argued that Hegel does have systematic philosophical reasons for his stance on women, reasons that derive from his legal and political philosophy as it entwines with his philosophies of nature and mind. Hegel’s belief that women have a natural disposition to identify closely with and to care for others might be turned against him to suggest that women have a unique and important role to play within the public sphere as well as within the family. Thus many late nineteenth-century feminists adapted the initially patriarchal idea that women have special maternal, nurturing, virtues to argue that women should be granted political rights – above all the vote – because women had the moral qualities to reform, pacify and purify the public sphere (Bryson, 1992: 88–9).

Even so, few contemporary readers will be convinced by Hegel’s reasons for believing in women’s special moral nature. His account of reproductive anatomy relies on a pre-Darwinian view of species, so that he explains anatomy teleologically in terms of the purposes of organisms. This pre-Darwinian holistic conception of organisms is integrally linked to Hegel’s conception of the state. However, even though this constellation of organicist views appears to be outdated and constitutively linked to the patriarchal belief in women’s domestic place, I suggest that this constellation still has value for contemporary feminists. In particular, it is relevant to recent feminist efforts to rethink the nature/culture relation and to challenge the traditional valorisation of culture over nature.

Grosz, one of those involved in these efforts, motivates her version of this feminist return to nature by referring to critiques of the sex/gender distinction made by earlier feminist theorists, including her own earlier self (as in Grosz, 1994). These theorists argued (against the sex/gender distinction) that our bodies, not only our minds, are culturally shaped, and that we become sexed by taking on cultural norms corporeally. As Grosz observes, this argumentative strategy revalues the body relative to the mind by lifting bodies into the realm of culture and meaning and out of the sphere of ‘mere biology’ and mere nature (Grosz, 2004: 2–4; 2005: 44–5, 171–2). This strategy presupposes a hierarchical
opposition of culture and mind – and now, too, bodies – over the biological and
the natural; moreover, Grosz suggests, it prevents feminist theorists from
adequately accommodating the biological dimension of human life and culture.
Further, she argues, it is a mistake to assume that what is biological is fixed and
unchanging: the essential nature of biological life is to evolve and organise
itself non-deterministically. Because nature is dynamic, it ‘incites’ culture to
change; different cultures are different expressions of nature in its variability.
Another key part of the biological dimension of human life, as Grosz sees it, is
sexual duality. Merging Darwin with the later Irigaray, Grosz maintains that
sexual difference occurs naturally in most living species, including humankind,
because it is ‘the strategy [which] life has developed to ensure its maximum vari-
ation and proliferation’ (Grosz, 2004: 10).
Grosz’s recent approach has pronounced parallels, unexplored by Grosz herself,
with Hegel’s philosophy. For Hegel, cultures are manifestations of spirit, but spirit
is not simply opposed to nature: ‘The transition from nature to mind is not a
transition to an out-and-out other, but is only a coming-to-itself of mind out of
its self-externality in nature.’ And ‘nature itself overcomes its externality … This
transition from necessity to freedom is not a simple transition but a progression
through many stages … of nature’ (Hegel, 1971: §381A, 13–14). Spirit is a
higher-level development of nature, not radically distinct from nature but its
most refined elaboration. This is because nature is not merely inert matter:
nature is through-and-through organic, and even the most narrowly ‘mechanical’
or inanimate parts of nature already contain the seeds of organic life and must be
understood not mechanistically but rather as approximations to the organic. For
nature to be organic means that it is self-organising, in a way that prefigures and
will be ultimately manifested in the creative, self-reflexive and self-moving char-
acter of spirit. Thus Hegel, too, challenges the nature/culture dichotomy and
does so, like Grosz, by seeing culture and spirit as manifestations of a nature that
is already dynamic and self-organising.
It is because Hegel refuses to separate culture from nature that he thinks both
that the state should be structured as an organism and that the several spheres
within society should be organised so that they collectively manifest and realise
the ‘natures’ of their individual members. Society is to refine and rearticulate
nature in higher form, not to repress nature or set nature aside. Consequently,
the difference between male and female natures too needs to find social realiza-
tion. Just as Grosz sees sexual difference as essential to nature qua self-changing,
Hegel sees sexual difference as essential to nature qua self-organising (as we saw
in his Philosophy of Nature). As we have also seen, though, Hegel understands the
sexual difference in a way that leads him to confine women to the family, so that
this confinement is integrally connected with his organic view of nature.
However, this does not mean that Hegel’s positions on women, the family and
the state should be rejected or dismissed by feminists. Their value for feminism
is not simply negative, but is ambiguous, because Hegel’s demeaning picture of
women is motivated by philosophical assumptions about nature, culture and
their relation which can be recontextualised within contemporary feminism in productive ways, so as to help us rethink the significance of natural and biological forces in human cultural and social life. Contrary to those such as Ravven who locate Hegel’s value for feminism in (what they – wrongly in my view – take to be) his elevation of spirit over nature, I suggest that this value lies in his determination to integrate spirit with, and within, nature.

**Notes**

1. In all references to Hegel’s works, paragraph number precedes page number. Translations are sometimes corrected without special notice.
2. For an excellent critical account of this family of defences, see Hom (2009: ch. 1).
3. For further explanation see Hardimon (1994: ch. 3).

**Bibliography**


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