

Perspectives without Privileges: The Estates in Hegel's Political Philosophy

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ABSTRACT For a variety of reasons, Hegel's theory of the estates remains an unexpected and unappreciated feature of his practical philosophy. In fact, it is the key element of his social philosophy, which grounds his more properly political philosophy. Most fundamentally, it plays this role because the estates provide the forms of visibility required by Hegel's distinctive theory of self-determination, and so the estates constitute conditions for the possibility of human agency as such. With respect to political agency in particular, this ramifies into the view that the estates are *social preconditions* for legal and political practices, forms of *political participation* in their own right, and conditions of possibility of *moderate government* (three functions also attributed to the estates by Montesquieu).

KEYWORDS Hegel, Montesquieu, estates, loss of concepts

INTRODUCTION

WE DO NOT WONDER ENOUGH about the prominence Hegel gives to the estates in his ethical and political philosophy. Part of the reason we Hegelians, in particular, do not is surely the concern that doing so will render Hegel archaic or parochial, and thus condemn him to the kind of respectful neglect Montesquieu has suffered for similar reasons. In fact, it is often claimed that the German term for a society structured by the estates, *die Ständegesellschaft*, has a translation into French, *la société d'ordres*, but not into English. It names a form of social order grounded in custom, in which legal and political statuses are individually specified by particular grants to and agreements with both individuals but primarily groups (e.g. with the clergy, nobility, or the peasantry).¹ In such a social system, there is talk of rights,

¹See Hegel's comments in his essay on "The German Constitution," *Theorie Werkausgabe*, I. 505–6 and *Political Writings*, 41–42 (where this is used as the critical evaluation of the Holy Roman Empire), and also Behrens, *Society, Government and the Enlightenment*, ch. 1.

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of course, but the rights seem to be primarily prerogatives or privileges rather than universal protections. As such, the estates seem to refer to a form of order that is decisively behind us, historically speaking, and such an impression is only strengthened by the fact that Hegel's usage of *die Stände* ('the estates') is common for his time in referring to such social groups, but also to the assemblies formed along their lines for political representation, as well as to the constituent entities of the Holy Roman Empire.

But mainly, I think, one simply gets used to the sui generis character of Hegel's central texts, and there is simply so much strangeness all around that the strangeness of his emphasis on the estates does not stand out so much. But this emphasis is strange, particularly in the context of other modern political philosophers, and particularly for Hegel. Forget, for the moment, Hegel's admiration for the Scottish enlightenment authors—just focus on his views on German society itself. Why would someone with his distaste for the Holy Roman Empire, and in particular the behavior of the estates within it,² with the "miserable guild system" (*PR* §255)³ and the German status hierarchy—why would that philosopher then use the estates as a central schematizing structure for his vision of ethical life? For Hegel makes the claim that the fundamental way in which his contemporaries could "be somebody," i.e. be recognized as an individual with dignified status in public, was by achieving the honor of their estate (*PR* §253). In fact, Hegel goes so far as to claim that the estates are what turn *Willkür* (arbitrary choice) into *Wille* (rational free will), and that virtue as a personal character trait comes to be replaced by the honor of one's estate. But how can someone so impressed by Kant's revolution in moral theory seemingly retreat to the conservative position that the ethical meaning of one's life was *standesgemäß*, or determined by one's position in the social order, even if on his account that position is to be determined by the free choice of careers open to talent rather than divinely pre-ordained?

To take up a second way in which Hegel's theory of the estates is strange, even for him: Why would someone who had recently and publicly heaped scorn on the political judgment of the estates assembly in his native Württemberg, turn around a few years later and publish a text (the *Philosophy of Right*) in which the estates are the crucial mechanism of political participation? For, in Hegel's reconstructed state, political participation is channeled through the estates such that the agricultural estate is represented by landowners in one chamber of an estates assembly; the estate of trade and industry is represented in another chamber by delegates elected through the essential corporations of civil society (what we would now think of as industries); and the public estate of civil servants, teachers, soldiers, and the like are considered to have their political participation in their daily work for the common good, and so do not have suffrage rights at all.

There is, of course, an obvious and non-trivial answer to this question: The Owl of Minerva flies only at dusk, and so Hegel holds that a political philosophy can be nothing other than "*its own time comprehended in thoughts*" (*PR* Preface). But there are

²See, for example, his complaints on this score in the essay on "The German Constitution," in *Theorie Werkausgabe*, I.469–70/*Political Writings*, 13.

³References to Hegel's *Philosophy of Right* are by section number, with an 'R' indicating the Remark and a 'Z' the addition or *Zusatz*. English translations are from *Elements of the Philosophy of Right*.

versions of this answer that are both reasonable and hermeneutically productive, and versions that are neither, and we would do well to distinguish between them.

As an example of the latter, the historian Hans-Ulrich Wehler locates Hegel right in his contemporary *Zeitgeist*, where that involves a combination of peasant servility and bureaucratic power that sets Germany on a special path leading to the disasters of the twentieth century. This historical contextualization animates a characterization of Hegel as a deeply conservative opponent of popular sovereignty and proponent of a hierarchical, monarchical state.⁴ But Hegel does not see the peasantry as servile; instead, he takes them to be, on the whole, refractory and stiff-necked.⁵ Or, again, it seems plausible to put Hegel's theory of the estates into the historical context of the expectation that members of the newly formed German Confederation provide a constitution to their citizens based on social estates. But, rather than the *Landstände* of nobility, town, and country envisioned in the 1815 *Bundesakte*, Hegel's estates are agriculture, trade and industry, and civil service (to shoehorn them into three categories just for comparison's sake). And *these* estates fit the usual description of neither Prussia nor Württemberg. Nonetheless, one might charge Hegel with being an instrument of the restoration, vainly attempting to re-establish an organically harmonious feudal society after the disruption of the Napoleonic Wars by the paradoxical means of a powerful administrative state that (again) sets Germany on a unique and disastrous historical course.⁶ But there is less hierarchy, and more dissonance in the harmony in Hegel's estates system than at first appears.

What is needed is to combine the notion that philosophy is its own time comprehended in thoughts with a deeper consideration of what it would mean for a time to comprehend itself in thought, and, furthermore, the sense in which the turn of the nineteenth century was precisely a time that experienced its time as comprehensible in thought; that is, a time that experienced itself as historical. Without doing so, it is easy to slip into the mistake of thinking that our own political situation is dramatically different from Hegel's, because, unlike us, he lived in a time of non-conflictual and stable institutions.⁷ To the contrary, much in Hegel's practical political writings is animated by a very concrete sense of the way in which institutions were changing as a result of conflict and the way that those institutional changes then reframed future conflicts between groups. For example, in his essay on the German constitution, he chides his contemporaries for having the view

that Germany is still a state today only because it once was a state, and because those forms whose inner life has [now] departed are still with us. . . . The organization of that body known as the German constitution took shape in a life quite different from that which later invested it and does so now. . . . If these laws have lost their former life, the vitality of the present age has not managed to express itself in laws.⁸

⁴Wehler, *Deutsche Gesellschaftsgeschichte*, II.456–57.

⁵Some important recent historical research supports Hegel's view even for the East Prussian peasantry (which was supposed to be the most servile on Wehler's line). See Hagen, *Ordinary Prussians*.

⁶E.g. Botzenhart, *Reform*, 94–95.

⁷E.g. Honneth, *Freedom's Right*, vii, 2.

⁸"The German Constitution," *Theorie Werkausgabe*, I, 465, and *Political Writings*, 9–10. This is a way of thinking that continues throughout Hegel's career—see Avineri's discussions of Hegel's rector's addresses from the first half of the 1810s in *Hegel's Theory*, 69–72.

And in the later essay on the proceedings of the Württemberg estates, Hegel continually presses a line of thought according to which the shift of Württemberg's status from being a mere duchy within the Holy Roman Empire to being an independent kingdom—itsself an institutional change brought on by the conflict of the Napoleonic wars—radically changed the functions of rights held by different estates within Württemberg, and thus reconstituted the perennial but institutionally mediated conflict between the estates on a new basis.⁹

We get closer to the truth by seeing Hegel's time as a *Sattelzeit* or saddle period (roughly from 1750 to 1850)—as a transitional period that understood itself as a transitional period.¹⁰ And in such a period, planning for the future is a part of the present political reality in a distinctive way. Here is how the historian Reinhart Koselleck describes the period:

Diplomatic, bureaucratic and propagandistic phrases reciprocally colored each other. All that may be valid *mutatis mutandis* for all historical periods. What is new is the feedback of historical-philosophical blueprints for the future and their concepts in political planning and its operational language [*Sprachsteuerung*]. The relation of concepts to the conceptualized reversed itself, it shifted in favor of linguistic anticipations, which were to be effective in coining the future. And so arose concepts, which far transcended empirical redemption, without sacrificing their political or social consequences. To the contrary.¹¹

This is in the same spirit as the remark we just saw from Hegel's German constitution essay, namely, that "the vitality of the present age has not [yet] managed to express itself in laws." In both cases, there is the discovery of an essence-appearance structure within political reality, where the tension between the two sides creates the space for concepts to be actual and effective, even if they do not immediately play either an adequate descriptive role with respect to the order of appearances, or even a straightforward explanatory role within that order.¹²

If Hegel is trying to capture a form of life that has grown old, he is trying to capture its age in part by showing its decay. But he shows its decay by showing how elements of that form of life that formerly subsisted in a seemingly organic unity with each other—i.e. without the space between essence and appearance—are being repurposed according to the new principle and thus given a different life, meaning, and function.¹³ There is, if you like, a genealogy here in something

⁹*Theorie Werkausgabe*, IV.462–597; and *Heidelberg Writings*, 32–136.

¹⁰The image here is of a *Bergsattel* or mountain pass between two peaks, as the *Sattelzeit* forms the pass between early and late modern periods.

¹¹*Geschichtliche Grundbegriffe*, I.xviii.

¹²For the same reason, this description of Hegel's time should remind us of the remark that he makes in the Preface to the *Philosophy of Right* that Plato's *Republic* is misunderstood as a utopia, and is instead "essentially the embodiment of nothing other than the nature of Greek ethics; and Plato [was] aware that the ethics of his time were being penetrated by a deeper principle which, within this context, could appear immediately only as an as yet unsatisfied longing and hence only as a destructive force" (*PR* Preface).

¹³Again, this is a point at which what might seem to make Hegel a hypocritical prognosticator of future trends actually makes him a child of his time, since such repurposing was the order of the day for the latter half of the eighteenth century. For other examples, see Habermas's discussion of the repurposing or functional conversion of the family and the initially state-governed public sphere during this time period (*Structural Transformation*, 43–51).

like the Nietzschean sense of the term.¹⁴ In addition, Hegel claims that we grasp something conceptually only when we grasp the norm inherent in the kind of a thing it is, and this requires seeing the norm as valid (at least in some respect). The validity of the norm is to be investigated not abstractly, but rather in the specific context of its operation. To grasp a form of life grown old is thus to grasp the way that the validity of its normative use of its different elements has been lost and the way new normative uses of those elements were producing a new form of validity. This new norm is encapsulated in a new conception of human agency, and so, for the fundamental rationale for Hegel's theory of the estates, we need to look at the way that his conception of human agency is presented in the work of the 1820s.

I. AGENCY AND VISIBILITY

For Hegel and the other German Idealists, agency is willing, which is essentially a process of self-determination. By the publication of the *Philosophy of Right* in 1821, Hegel had completed a long-gestating analysis of self-determination into three interrelated projects: self-appropriation, specification of content, and effectiveness (see *PR* §§25–27). In willing, we are trying simultaneously to take possession of ourselves, distinguish between what is central and what is peripheral in the events of our lives, and make happen what we want to happen in those events. When we act, we try to do all three of these things at once, but this is naturally quite complicated. In most areas of human life in which we try to do multiple things at once, we have developed explicit training processes that first separate the requisite skills and activities and train them individually before combining them. So one might break down the different parts of knitting, or shooting a free throw, into specific elements that could be targeted, tested, and improved. But no one has ever been taught, first, to take possession of themselves, then to distinguish the central from the peripheral, then to translate those central ideas into the world, and finally to put it all together as a complete performance of agency.

Or perhaps they have just never been taught this explicitly. As part of this gestation period, Hegel seems to discover in the world of lived experience three general strategies for solving this problem of coordinating the three projects of action. He calls these the three forms of 'accountability' (*Zurechnungsfähigkeit*), and his description of each form represents a conceptual distillation of common ways of life that are attempts to manage this complexity in everyday life. Each of the three subsections in the part on Morality in the *Philosophy of Right* describes a different and relatively independent form of agency that wrestles with the problem of combining these three projects in a distinctive way.

But even this is of relatively little help if you are an individual agent trying to get a grip on what you are doing when you are acting, since the descriptions of these forms of agency are too abstract and complicated to condense insight in the requisite way. What one needs are concrete forms of life. We find this in

¹⁴Cf. Nietzsche's *On the Genealogy of Morality* II:13, in which the relatively stable practice of an institution (there, punishment) is contrasted with the relatively changeable meaning and purpose of an institution, and all of Treatise III in which Nietzsche attempts to re-purpose our moral practice of self-discipline.

Hegel's phenomenology of the estates, in which he tried to identify both the distinctive ways in which members of different estates hold themselves and each other accountable for their actions and the distinctive values implicit in each way of life. Hegel thinks of farmers and soldiers as embodying and thus modeling the first form of accountability, workers and managers the second, and civil servants and merchants the third. So he thinks that farmers generally hold each other accountable only for those features of their actions that they actually foresaw; workers and managers generally hold each other accountable for the broader range of consequences that usually attach to the essential type of action in question; and civil servants hold each other accountable for the whole network of consequences and any infringement of rights and effects on the general welfare that result.¹⁵ In parallel fashion, Hegel thinks that the basic value of farmers is security, for workers and managers it is welfare, and for civil servants it is the good (understood as some sort of balance between right and welfare).¹⁶

Hegel sees in these more localized forms of life the possibility of formation (*Bildung*) that allows individuals to get a handle on becoming a determinate kind of person with a kind of integrity that comes from pursuing a common solution to the three-fold problem of agency. Human free agency is an enormous and slippery problem that continually threatens to become intractable; so many things must go right, or at least not terribly wrong, for free agency to be successfully exercised. Analogous to using a certain piece of software or playing a particular kind of instrument, pursuing a particular kind of solution to that three-fold problem gives a community a body of practical knowledge embodied in tips, virtues, training programs, work-arounds, habits, and compensations, etc. It is for this reason that in Hegel's diagnosis of his own time, an estates schema is nothing less than a precondition for robust individual agency as such. The estates (and, within them, the corporations) represent the circles of practical engagement in which this body of practical knowledge can be developed, honed, diversified, and transmitted. The exemplars of these estates—whether patron saints, stock characters in artistic representations, or just locally recognized successes—provide visible schemas for this practical knowledge that enable both emulation and debate.

¹⁵I recognize that I am asking the reader to take a great deal on faith when it comes to this interpretation of Hegel's theory of agency; the argument for that interpretation is to be found in my *Expansion of Autonomy*. Briefly, I argue there that Hegel expanded Kant's conception of autonomy, first, by seeing it as a composite project whose constituents are the attempts to solve the three problems presented here; self-appropriation, specification of content, and effectiveness. Hegel comes to the first two through a close reading of Kant's Doctrine of Virtue, and to the third through a reading of Fichte's conception of virtue. Second, he then spends a great deal of time and energy working out the conflicts and tensions between the attempts to solve these different problems, and the most prominent ways of managing these tensions become the forms of accountability (*Zurechnungsfähigkeit*) presented in the Morality chapter of the *Philosophy of Right*. Finally, he traces the social embodiment of these forms of accountability; that tracing is the primary purpose of his taxonomy and phenomenology of the estates (*Stände*). On my view, this expansion process traces a thread through Hegel's philosophical development from at least 1802 through his final works on practical philosophy.

¹⁶These are generic judgments in Thompson's sense of the term, and their function is connected with the specific difference that marks out the notion of a practice within the genus 'life form,' namely self-consciousness that one is engaging in a practice. See *Life and Action*, pt. 3.

The estates system thus writes large what is written too small in the individual to be clearly made out. In this respect, Hegel's procedure is much like that of Socrates in the *Republic* when he shifts from the discussion of individual justice to the form of the city with the suggestion that, "[p]erhaps, then, there is more justice in the larger thing, and it will be easier to learn what it is" (*Republic*, 368e). This is the sense in which we should take the characters (*Gesinnungen*) of the estates in Hegel's portrayal—neither primarily as attempts to describe all appearances, nor as attempts to prescribe a norm for a certain practice as applications of more general ethical principles, but rather as attempts to make visible the inherent, if implicit, normativity of a way of life. If this phenomenological analysis can be done in such a way as to bring out how a particular way of life embodies a solution to the three-fold problem of agency, then the validity of its normative perceptions can be secured without prejudice to the validity of the perceptions of other ways of life.

This problem of visibility is not just an idiosyncratic element of Hegel's view; rather, it is deeply embedded in the social and legal context in which agency has become a problem since the middle of the eighteenth century. Specifically, conceptions of freedom and norms of action that previously had particular connections to corporate groups and estates were reconceived as universal in their application. Instead of discussions of the freedom of the nobility from taxes, or the freedom of journeymen to seek employment, we begin to discuss freedom tout court. Among other effects, this shift deprives those terms of visible criteria of application.

But precisely this social context of the specifically modern problem of agency makes it somewhat puzzling that Hegel would attempt to solve *that* problem of application by means of an estates schema.¹⁷ That is, one might think that *precisely* in such a transitional period as Hegel's, the category of the estates would be the first to go; as a matter of historical fact, the estates seem to be the most salient element of the old order that *was not repurposed*. Why did Hegel think that the "unsatisfied longing" of his time for a realization of this new conception of agency had to be satisfied by reference to a "historical-philosophical blueprint" structured by the estates? Why did Hegel think that the estates were the proper object of his genealogy? And why did he think that the vitality of the present age (which for Hegel was always centered around its conception of freedom) might present itself in laws that used the estates as organizing principles? To sum up all of these questions in the light of the problem of agency we have just discussed: why did Hegel think that the problem of rendering visible this new and complex form of agency was best solved by an institutional design structured by estates and corporations?

There is one *historical* answer here in the fact that even the most dedicated legal reformers in Prussia found it impossible to do without an estates system, and yet, by the process of the codification of that system, transformed the very concept of the estates from forms of domination to forms of civil professions. The estates system both died harder and changed its colors to a greater extent than most historians of philosophy have recognized.¹⁸ But there are also three philosophical answers, and each follows a strand of Montesquieu's way of conceptualizing political reality.

¹⁷Or, if not puzzling, Hegel's strategy looks precisely like that of the restoration faction.

¹⁸Koselleck, *Preussen*, 73–74.

2. REPURPOSING THE ESTATES TO SERVE THE
NEW NORM OF AGENCY

The similarity between Hegel and Montesquieu should not surprise us. Though Hegel says only a few things here and there about Montesquieu in his corpus, and there is very little on Montesquieu in his lectures on the history of philosophy, many of the comments repeat the same point. To quote from the *Philosophy of Right*:

Montesquieu stated the true historical view, the genuinely philosophical viewpoint, that legislation in general and its particular determinations should not be considered in isolation and in the abstract, but rather as a dependent moment within *one* totality, in the context of all the other determinations which constitute the character of a nation and age; within this context they gain their genuine significance, and hence also their justification. (*PR* §3R)

The three additional answers to our question derive from this shared methodological perspective. First, Hegel sees the estates as a part of the *social preconditions* for the validity and functioning of strictly legal and political structures. Second, Hegel sees the estates as forms of *political participation* in their own right, and thus as crucial mediators between other elements in the totality of the state. And third, Hegel sees the estates as essential to the prospects of what Montesquieu called *moderate government*. All of these political functions are essential to Hegelian agency and its visibility.

2.1. *Social Preconditions of Validity*

If Montesquieu is remembered at all by philosophers nowadays, it is usually for his advocacy of the separation of powers within government. But it is even less noticed that Montesquieu is explicit that a merely formal separation of powers is insufficient to prevent tyranny:

All would be lost if the same man or the same body of principal men, either of nobles, or of the people, exercised these three powers: that of making the laws, that of executing public resolutions, and that of judging the crimes or the disputes of individuals. . . . In the Italian republics, where the three powers are united, there is less liberty than in our monarchies. . . . Thus, in Venice, the *Great Council* has legislation; the *Pregadi*, execution; *Quarantia*, the power of judging. But the ill is that these different tribunals are formed of magistrates taken from the same body; this makes them nearly a single power. (*SL* XI, 6)¹⁹

Throughout his discussions of the separation of powers in different nations and times, Montesquieu is finely attuned to the actual functioning of these powers in the context of the specific social groups in relation to which these powers operate.²⁰ It is essential to him, for example, that the different groups who populate the different branches of government not only be nominally distinct, but have really different “views and interests” (*SL* XI, 6).²¹

¹⁹But cf. *PR* §300Z, where this is moderately criticized. I will follow the usual practice for Montesquieu’s *Spirit of the Laws* of citing by book and chapter.

²⁰On Hegel’s own early and continuing recognition of this relation, see Avineri, *Hegel’s Theory*, 7.

²¹See also XIX.27, and the discussion in Dijn, *French Political Thought*, 25.

The important point for Hegel is that Montesquieu sees social distinctions not as in principle suspect, but rather as necessary resources, and thus prerequisites for the functioning of justified political authority. That is, whatever the social distinctions are, they constitute the context in which the political norms of a nation can have validity. In this way of thinking, there can be no question of *eliminating* social distinctions, particularly between groups. On the manuscript of the *Jenaer Realphilosophie* (1805–06), Hegel wrote by hand, “[t]he French Revolution—abolition of the **privileged** estates—this was achieved; abolition of the inequality/diversity [*ungleichheit*] of estates—*empty talk*.”²² Instead, the question is how to *repurpose* the notion of social distinctions in such a way that it can form a condition for the validity of political organization in a new age in which the self-determination of the individual is the centerpiece of that validity.

In answering this question with his version of the estates, Hegel really is a child of his time—essentially a relatively straightforward cameralist in accordance with the tradition of political science developed through the seventeenth and eighteenth centuries. Two aspects of this doctrine are particularly important to this repurposing: First, the notion of the estates was lifted out of its Aristotelian provenance and re-contextualized via the notions of the state (*Staat*) and its economy (*Wirtschaft*).²³ This was done in the context of a notion of political activity that aimed not to conserve an organic order, but to develop what we would now call the human resources of all of the estates, particularly the peasantry as (by far) the largest. Second, the same forms of education that are essential to this development within each estate also allow for individuals to choose which estate they want to join. Rather than Aristotle’s exclusively functional determination, one has the free choice of careers open to talent.

But it is essential, on Hegel’s view, that there be choices between qualitatively distinct alternatives. The complex problem of agency that Hegel describes necessarily leaves open the possibility of qualitatively diverse solutions, and the success of those solutions requires communities and exemplars. Nothing about that success requires that this diversity be located within an organic whole, however, since whatever unity the diverse ways of life possess is grounded not in the complementary virtues of particular kinds of human beings so much as in the status of those ways of life as different attempts to solve the same, necessary problem.²⁴ A society organized by economic creativity and government regulations is no less capable than one organized as an organic order in which all roles cohere of handling *this* kind of unity within diversity?

In light of this, we can note two specific ways in which the estates are repurposed as social preconditions, namely as legal and political institutions. As we noted in opening the discussion of the *Ständegesellschaft*, the reciprocal rights and duties of groups were largely a matter of historical and particular grants of privileges and

²² *Gesammelte Werke*, VIII.273–74. On the contradiction involved in the idea of such legal privilege, see “The German Constitution,” *Theorie Werkausgabe*, IV.507, and *Political Writings*, 43.

²³ For a concise statement of this shift with respect to the estate of the peasantry, see Conze’s entry in *Geschichtliche Grundbegriffe*, I.413–15.

²⁴ Of course it must be said that with respect to women and their talents, virtues, and functions, Hegel follows Aristotle.

prerogatives. In a remark to the *Philosophy of Right*, Hegel makes the following distinction:

Privileges, in the sense of rights of a branch of civil society which constitutes a corporation, are distinct from privileges proper in the etymological sense [i.e. ‘private law’], in that the latter are contingent exceptions to the universal law, whereas the former are no more than legally fixed determinations which lie in the *particular nature* of an essential branch of society itself. (*PR* §252R)

Whereas the prior use of social distinctions was to generate different and private laws for different groups, the new use of those distinctions is rather to specify what universal law means for different individual citizens in and through understanding them as members of different groups.²⁵ Though it is a much maligned term in the philosophy of law these days, Hegel thinks that the law has to make *reasonable* demands on its subjects, even if he sometimes puts the point using organic metaphors:

The power of government consists in the fact that each system shapes itself freely and independently according to its concept—and the *wisdom of government* consists in modifying each system at the same time according to its estate, i.e. to abate the strictness of the abstract concept for the sake of its living internal organs [*für ihr lebendiges Eingeweide*], as the veins and nerves defer to the different internal organs, adjusting and forming themselves according to them.²⁶

But Hegel’s basic point here is in accord with contemporary criticisms of the notion of reasonableness in legal contexts, since he agrees with the critics that there is no single standard of reasonableness—this varies according to the kind of life one leads. Whatever one might say about Hegel’s legal and political use of the estates, it has one virtue that contemporary critical theorists of law might envy; rather than obscuring the force of social distinctions under formally neutral language, it brings that force out into the open and makes it the subject of political rights and debate. With regard to the visibility of agency, the point here is that the function of the estates system shifts to solving the problem of what the norms of universal (civil) law could mean for particular circles of practical engagement. This is done to make it possible not only for the participants in each circle to see those norms as their own, but also to see the versions of those norms that are held valid in other circles precisely as versions of the same norm.

Second, Hegel is adamant that the system of the estates is an essential social condition for the possibility of political right more narrowly construed:

The idea that those communities which are already present in the circles referred to above [i.e. the estates and the corporations] can be split up again into a collection of individuals as soon as they enter the sphere of politics—i.e. the sphere of the *highest concrete universality*—involves separating civil and political life from each other and leaves political life hanging, so to speak, in the air;²⁷ for its basis is then merely the abstract individuality of arbitrary will and opinion, and is thus grounded only

²⁵See also *PR* §273R, where Hegel marks this shift as the difference between the constitutional monarchy he advocates and the feudal monarchy he attributes to Montesquieu.

²⁶*Gesammelte Werke*, VIII.271.

²⁷Compare the almost identical language in Humboldt, “Denkschrift über Preußens ständische Verfassung,” § 11.

on contingency rather than on a foundation which is *stable* and *legitimate* in and for itself. (*PR* §303R)

This stability and legitimacy cannot be found individual opinion—neither each on their own nor in aggregate—but only in those circles of practical engagement that have already developed the outlines of common norms and the axes of dispute concerning them. These outlines and axes are the concreteness of the norms that provide the content of political debate.

To some degree, this seems slightly less a transformation of the purpose of the estates than in the legal case, since it is really an extension of a role that social distinctions already played. Thus, many historians think of the feudal estates assemblies as forerunners of modern parliamentary bodies.²⁸ But the substantial shift in Hegel's conception of what the estates are and what they do economically shifts their political function dramatically.

First, the clergy and the secondary estates of civil servants have become part of the public estate which does not have any representation in the estates assemblies, since, on Hegel's view, they play their role in collective will formation more directly and already have sufficient power to influence policy. Second, the estate of town-citizens has been replaced by corporations of craft and industrial production. Their character is derived from their mode of production, and representatives to their chamber of the estates assembly are elected from workplaces.

More radically, the landed nobility has been swept into a general agricultural estate represented by landowners, where the dominant character of this chamber of the assembly is derived from the mode of agricultural production, rather than hereditary claims. One reason for this is the positing in Hegel's model of a standing army open to all male citizens with promotion based on talent, so that the old definition of the nobility as the *Wehrstand*, or the nobility of the sword, loses its functional rationale. Furthermore, while the nobility certainly reacted with hostility to the shift from feudal personal labor services to wage labor, they nonetheless attempted from at least the middle of the eighteenth century onward to turn those personal labor services from traditional assistance; namely, taking in the manor's own harvests primarily for its own consumption, to assistance in the production of a market-bound surplus. This is an economic practice that the historian William Hagen has dubbed "commercialized manorialism."²⁹

Against the background of this undermining, we can then see Hegel repurposing the political function of the nobility by recasting its role with the agricultural estate as a whole. Specifically, he uses the notion that primogeniture is a justified restriction on the property rights to arable land in order to argue that the traditional features of the nobility—i.e. selection by birth and "stringent sacrifices for the *political end*" (*PR* §306–7)—are features of all agricultural landholders who therefore qualify for a substantial political role in the legislative power. But now the models for these role-players are middle-class, self-sufficient farmers, rather than the owners of large manor farms with subservient villages.³⁰ In the light of

²⁸See, e.g. Whaley, *Germany and the Holy Roman Empire*, II.247.

²⁹*Ordinary Prussians*.

³⁰This is in contrast with Montesquieu, who wants to maintain the nobility (but by similar means and for similar reasons that Hegel wants to maintain the estates). See the discussion in Dijn, *French Political Thought*, 31–32.

our concerns about the visibility of agency, we can see the importance of the way that this repurposing again shifts away from any grounding in the native talents or virtues of certain kinds of people and toward the concrete forms of their practical engagement. Here this engagement is represented most prominently by the mode of production, but also by the intergenerational transfers of farm property and the institution of military service. Hegel wants to make politics possible—that is, he wants to make a conversation about shared norms possible—by grounding that conversation in a social world diversified by the forms of engagement that themselves render such norms intelligible as internal structures of the shared problem of agency (i.e. as terms in which we appropriate ourselves, specify what is essential to us, and judge our effectiveness in the world).

2.2. *Political Participation*

It is important to recognize that Hegel, like Montesquieu, is a political realist. Like Montesquieu, Hegel's realism comes from his understanding political relations as necessarily embedded in the whole context of other kinds of relations, on pain of leaving political life "hanging . . . in the air," as Hegel complains in *PR* §303R (quoted above). But their realism also comes from their shared understanding that political forms of organization have the significance they do in virtue of the contrasts between them. In this connection, both Montesquieu and Hegel fail to share our own contemporary pious illusion that direct participatory democracy is a real possibility against which our extant forms of political life ought to be measured. Against the background of these two assumptions, Hegel sees an additional role for the estates system:

In our modern states, the citizens have only a limited share in the universal business of the state; but it is necessary to provide ethical man with a universal activity in addition to his private end. This universal, which the modern state does not always offer him, can be found in the corporation. We saw earlier that, in providing for himself, the individual in society is also acting for others. But this unconscious necessity is not enough; only in the corporation does it become a knowing and thinking ethical life. (*PR* §255Z)

The corporations, and by extension the estates system itself, are supposed to offer forms of political participation directly, i.e. relatively independent of their representation in the estates assembly. That is, they are supposed to provide practical circles of engagement within which the more general significance of shared forms of life can come to personal consciousness and individual members of those circles can take contrasting stands on the nature of that significance. This is a repurposing of the estates system against the background of a double historical shift involving, on the one hand, the development of the notion of the citizen to include a much larger proportion of residents, and, on the other hand, the development of larger states with more extensive administrative functions. The expectation generated by the former development simply cannot be satisfied at the level of the state given the latter.³¹ Put in terms of the visibility of agency, specifically universal political norms, such as property rights, have become essential resources

³¹On this tension, see Koselleck, *Critique and Crisis*, 11.

for modern solutions to the problem of agency. Such universal political norms are ineluctable and irreplaceable means for taking possession of ourselves, clarifying what really matters to us, and evaluating whether we have made a difference to the world. And yet the most obvious institutional arrangement (the state) that would render visible those resources and their use manifestly fails to do so for the vast majority of the population. The estates and corporations are thus brought in as intermediate, but still political, institutions.

So, on the one hand, this is Hegel putting an old institution to new use (even if in a modified form). In this new use, the corporate bodies of a *Ständegesellschaft* are ‘political’ in something like the sense given that term by Hannah Arendt; rather than being tied to policy and administration, politics is a matter of truly *acting* as an individual by taking a public stand.³² Of course, Arendt has her version of an estates system as well, in which action is only truly possible in the political realm and while not attainable in either civil society or personal life. Hegel holds out the possibility of both more local and more particularized circles of engagement within the social sphere itself that will make possible the kind of political action Arendt denies is possible there (precisely because of its mass regularity). We should not, however, lay too much stress on the term ‘political’ here. In fact, the same point might be put in Montesquieuan terms by meditating on the particular nature of honor as the cement of the political universe, rather than virtue, or interest, or, in more distinctively Hegelian terms, with talk of recognition. The important thing is that, in the absence of some Kantian direct insight into the universal significance of particular actions, the possibility of understanding that significance relies on public practices of interpreting shared norms. But all is lost, on Hegel’s account, if those shared norms are limited to the high-level principles of government with which very few of us have much in the way of practical engagement. Enacting those meanings requires contesting them, and this requires the concreteness that the estates and corporations are supposed to provide.

On the other hand, Hegel thinks that this new use is already embedded in the three traditionally related meanings of *der Stand* that I noted at the outset: it refers to social groups, to the assemblies formed along their lines for political representation, and also to the constituent entities of the Holy Roman Empire. Here, Hegel praises what appears to be an ambiguity in the German term: “Although the *estates* of *civil* society in general and the *Estates* in the *political* sense are represented, in so-called [political] theories, as remote from each other, linguistic usage still preserves the unity which they certainly possessed in earlier times” (*PR* §303R). The context of this particular passage is Hegel’s unusual view that the point of the estates assemblies is not to propose legislation, but rather to serve as a kind of wing of the press; their function is that they are where “the state enters into the subjective consciousness of the people” (*PR* §302). The political function of the estates of civil society is thus something rather similar to the function of the estates assembly—or rather they are both *political* in the same sense of the term; they are both ways in which explicitly universal norms become reflectively available to their members and thus visible tools for agency.

³²*The Human Condition.*

This raises substantial historical and political questions that cannot be answered to anyone's satisfaction here. But I do want to take up the issues in reference to one specific estate, namely that of farmers, since of all Hegel's treatments of the estates, his descriptions of farmers and his ascription to them of a fundamental yet apparently subordinate political role have seemed most a scandal to his readers.

Briefly, Hegel portrays the basic *Gesinnung* or character of the agricultural estate in terms of a trust that is immediate, familial, substantial, and even lacking in individuality. Both need and desire, on the one hand, and labor and satisfaction, on the other, are immediate, physical, and concrete. More abstract norms and requirements are considered to be arbitrary commands or at best promises from social superiors that are to be taken at face value as power relations rather than internalized as self-given moral guidance. And, at least in his early writings, he picks up the common adjective for the peasantry—*tückisch*—that had been turned into a technical term by the German Enlightenment author Christian Garve. As Garve used it, the term meant that peasants were suspicious of the landlord, irrationally resistant to any suggestions of change in practices, and excessively unconfident in their own reasoning abilities.³³ Now, as Garve understood this character of the peasantry, it was grounded in their experience of vulnerability to arbitrary treatment by the landlord, without the possibility of effective legal protection or even remedy. Therefore, it is tied to precisely the exemption of the nobility from positive law to which Hegel objects. They have a kind of patriotism encapsulated in their trust that the government would protect them from predatory landlords, as exemplified by the famous Miller Arnold case in Prussia.³⁴

Clearly, Hegel's presentation of an estates system is indexed to a society in transition. But Hegel, nonetheless, holds that the basic attitudes and character of the agricultural estate will survive these transitions, and that their refractoriness or obstinacy might be made a virtue (see *PR* §203Z). 'Obstinacy' is not a traditional philosophical concept, but this particular form of stubbornness was given a philosophical diagnosis by Fichte (though not explicitly under that description); it is a rejection of the summons to be free. Some explanation is no doubt in order.

First, Fichte's idea: Fichte thinks that we only come to an awareness of ourselves as free subjects in the world by being summoned to exercise that freedom by another free subject.³⁵ That summons, which might take the form of education, or being held responsible for something that we have done, must be a strange kind of cause. On the one hand, it must necessarily bring about our awareness of ourselves as free; but, on the other hand, in order to be aware of ourselves *as free*, that cause cannot determine us to do anything in particular. So, it is crucial to the nature of the summons that, even by rejecting it, we come to an awareness of our own free subjectivity. Even if we refuse to accept responsibility for something

³³See Garve, *Ueber den Charakter der Bauern*. Also the discussion in Behrens, *Society*, 149; and Jenkinson, "Christian Garve."

³⁴Cited by Hegel at *PR* §295R. This generates an additional puzzlement at Hegel's folding of the landed nobility into the same estate as the peasantry, but it should be noted that most of the eighteenth-century landed nobility reacted with the same obstinacy as the peasantry to proposed agricultural reforms, even when their benefits were proven on model government farms. See Whaley, *Germany and the Holy Roman Empire*, II.247.

³⁵*Sämtliche Werke*, III.32–35.

for which we are blamed, for example, that very refusal is a free action that only has its force because we accept responsibility for it. Since the production of that awareness of responsibility is the essential goal of the summons, there is thus a way in which even rejecting it is accepting it.

This is precisely what is going on in Hegel's description of the agricultural estate, and gives a more rigorous expression to Garve's idea that farmers *underestimate* their own reasoning ability. So, Hegel says, the farmer "does not attain the self-assurance of his understanding [*nicht zum Selbstgefühl seines Verstandes . . . kommt*]."³⁶ As Hegel understands farmers, their life is rooted in the specific geography and personal relations that give context to their life, all of which is directly perceptible. From the perspective of this way of life, universal legal norms have an external character, which makes them appear to be commands or, at best, promises—since that is the perceptible, social form in which they appear. Some of the best passages from Hegel's theory of the estates come from the *Jenaer Realphilosophie*, and take the form, "[a] farmer and a craftsman walk into a bar. . . ." In this way, Hegel dramatizes the inevitable, if minimal, recognition of the summons:

on his side the farmer brings his peasant common sense [*Bauernverstand*] to light and shows that he is not so dumb. [He] speaks up while carousing, some maxims, and in response to the force used against him, says, sure, he will do it. And to the extent that in this way he keeps the right of his understanding and will safe, he obeys. It is the formality of speaking and insight.³⁷

The recognition of an agricultural estate is a way of acknowledging traditionalism as a free act. More provocatively, it is a way of counting an apparent refusal to reason as itself a form of reasoning. It is a way of acknowledging, in the refusal of the summons, more intelligence than the refuser himself acknowledges. It is a way of bringing into the conversation those who appear to reject the presupposition of the conversation, and so a way of fighting against the reification of social relations that, nonetheless, acknowledges the reality and stability of different roles and practices. It is a way of meeting the needs of political society articulated in "The Earliest System Program of German Idealism," which opposes to the state as machine, a conception of political society as a communicative act in which "finally the enlightened and unenlightened must shake hands. . . . Never again the contemptuous glance, never the blind trembling of the people before its wise men and priests."³⁸ But here this is directly connected to the more explicitly political role of the agricultural estate, which is essentially conservative on Hegel's view.³⁹

2.3. *Moderate Government*

For Montesquieu, the goal of the separation of powers is the prevention of tyranny. That is, the goal is the maintenance of what he calls 'moderate government.' Particularly as they function within monarchies, Montesquieu has

³⁶*Vorlesungen über Rechtsphilosophie*, IV.516.

³⁷*Gesammelte Werke*, VIII.268.

³⁸*Theorie Verfassungsgabe*, I.236.

³⁹This has broader implications as well, since in the *German Constitution* essay Hegel argues that it is German obstinacy in defense of their traditional prerogatives that has prevented them from forming any state at all. See the discussion in Avineri, *Hegel's Theory*, 42–44.

a finely developed theory of the value of the diversity of estates and corporations. Specifically, he values their sloth:

The bodies that are the depository of the laws never obey better than when they drag their feet and bring into the prince's business the reflection that one can hardly expect from the absence of enlightenment in the court concerning the laws of the state and the haste of the prince's council. . . . [E]ven in their frenzy, these orders have longed only for the laws and their duty and have slowed the ardor and impetuosity of factious men more than they were able to serve them. (*SL V*, 10, 11)

As Annelien de Dijn nicely puts it, for Montesquieu, the corporate forms embedded in the estates system constituted the “institutionalized insubordination” that checked the apparently absolute power of the monarch.⁴⁰

At first, this seems quite contrary to Hegel's oft-cited claims to the power of the state, and certainly ‘insubordination’ would be putting the point too strongly for his tastes. Nonetheless, Hegel similarly emphasizes the mediating function of the estates (e.g. *PR* §301, 302), and claims that in contrast to a despotic state, “[t]he constitution is essentially a system of mediation” (*PR* §302Z). And, as with Montesquieu, the way that outwardly similar institutions play those mediating roles varies widely according to the particular social and historical context in which they play them.

At the political level, Hegel has the (to us) rather surprising view that the assembly's function must be less to legislate, than to publicize. And he expects it less to offer concrete proposals, or even concretely to modify the executive's proposals, than to talk about those proposals in such a way that their content and rationale can be appreciated by their constituents. In Hegelian terms, this function at the level of the state is a continuation of the function we found in the corporations themselves; making the concrete content of norms visible as resources for solving the problem of agency. The highest level political norms concern questions about whether we can take possession of ourselves as citizens of the state in which we reside, and whether such citizenship, if available, is something central or peripheral to who we are. Secondarily, these norms, as embedded in positive laws (e.g. concerning property and taxes), control effectiveness (particularly for the new economic activities). This function is essential, even if it necessarily involves slowing the pace of government and administration.

Thus far, the function of Hegel's estates assembly as a whole is roughly continuous with Montesquieu's notion of its function in the continental monarchy, even if there is a deeper conception of agency underlying it. But it confronts a different world; one in which the very pace of change has to become a subject for constitutional attention. At one point, Montesquieu notes that sometimes nations thrive more in a time of transition between constitutions than in stable forms. For Hegel, by contrast, the newly modern world is one of perpetual transition. On Hegel's analysis, civil society just is permanent revolution and this is a new social precondition for any justified government.⁴¹ But, following good Montesquieuian method, the condition is brought into the explicit constitution and made a

⁴⁰*French Political Thought*, 25–26.

⁴¹This is a theme developed throughout Ritter, *Hegel and the French Revolution*.

principle of right. Thus Hegel introduces this move by writing that, “[t]he second section of the Estates encompasses the *changing* element in *civil* society” (PR §308). Civil Society is the permanent revolution, and the second chamber of the estates brings this new feature of the world into the heart of the constitution. Were it not brought into the constitution, it would be a politically exogenous force.

But precisely in the context of this internalization of revolutionary temporality in the constitution, the counterbalancing force of the traditional agricultural estate is even more important. Thus, in contrast to the “*changing* element,” Hegel introduces the agricultural estate as the “substantial” estate. This is an old function now made more important. We noted earlier the fundamental change from an estate defined by landed nobility subject to military service to a class of landowners defined by their agricultural mode of production (what we would now call ‘family farms’ rather than commercialized manor farms). Thus, it is a question of finding a new group to play the same role as one that had vanished, rather than repurposing a given group. The agricultural estate gets a full chamber in the assembly precisely as an inertial control on the pace and scope of modernization. Historically speaking, the early modern estates assemblies in general tended to be conservative—even where there were specific chambers or delegates for peasants, those representatives were usually the wealthier peasants, and so more invested in the status quo.⁴²

But the addition of one of the mediating factors (civil society or the second estate) fundamentally changes the nature of this mediation itself. Consider the difference between identifying this estate with the nature of its activity—*Gewerbe* or industry—and the identification of the estate with its location—the towns, which would be the closest of the traditional estates to Hegel’s notion. A town takes its place within the one totality through its dependence on rural agriculture, and constitutes a kind of totality of its own in virtue of the life of the city itself. But the activity of industry is creative destruction, and thus the constant generation of new totalities is neither geographically nor substantively determined in advance.⁴³ The function of this second estate is itself a constant repurposing of resources. With the addition of this revolutionary principle to the constitution, the function of mediation itself is repurposed—it serves less to check and balance than to articulate the terms of change.

In terms of the visibility of agency, this means that the political conversation has radically changed, and now involves a meta-level reflection on the terms in which discussions of specific norms can proceed. The changed mediation introduces a public reflection not only on what H. L. A. Hart called primary rules—i.e. *rules about actions* such as the prohibition on theft or assault—but also on secondary rules—i.e. *rules about rules* that tell you how to recognize what the rules are, how to change them, and how to apply them.⁴⁴ But Hegel grounds this reflection socially

⁴²Whaley, *Germany and the Holy Roman Empire*, II.247. Also Humboldt, “Denkschrift über Preußens ständische Verfassung,” §17.

⁴³As Marxists and others have long noted, many of the first developments of capitalism came outside the towns because of the freedom of rural land from the guild restrictions of the towns.

⁴⁴*The Concept of Law*. I do not mean by this reference to suggest that Hegel was a positivist in Hart’s sense; among these secondary rules in Hegel’s way of thinking would be included ethical, customary, and political conceptions that would quite exceed Hart’s strictures on the content of such rules.

in the estate whose activity makes the need for change concrete, and thus makes the need for terms in which change can be managed palpable, and thereby makes the problem of articulating those terms tractable. This is essential to the visibility of agency, since it connects a way of life with an evolving body of practical knowledge to what otherwise threatens to become an abstract problem without obvious connection to the difficulties individual agents face in exercising their agency.

3. THE CONTEMPORARY RELEVANCE OF HEGEL'S THEORY OF THE ESTATES

It may, however, appear that this explanation simply magnifies the concern broached at the beginning of this paper; namely, that Hegel's theory of the estates is hopelessly archaic.⁴⁵ Perhaps now it appears to be (at best) a shrewd intervention into a political reality that has long since vanished, and thus (at best) a historical curiosity, rather than an idea with enduring significance for political philosophy. After all, it seems archaic to think of changing economic interaction as the domain of a single group of people. We ourselves seem to live in a world in which all of us are exposed to changing market conditions of various sorts and the constant revolutionizing of social relations that such change engenders. One way of putting this concern is to say that in the estates system Hegel offers us a political philosophy for a time before the transition from status to contract as the primary mediating term of social relations. To come back to Hart's formulation, Hegel seems to insist on certain kinds of primary rules as necessary points of stability—for example, the rule that arable land must pass undivided to the oldest son—but soon new secondary rules for the generation and enforcement of voluntary contracts would render such primary rules inherently and continually revisable.

The contractual period, however, was never pure and did not last forever—in fact it lasted perhaps a century by the broadest reckoning (1850–1950).⁴⁶ We now find ourselves once again in a political position in which status is now essential to the social order: immigration status; status as convicted felon or sex criminal; the status of income as passive, earned or capital gains; the status of institutions subject to particular consent decrees (e.g. police departments, prison systems, universities, corporations); the status of land subject to different jurisdictions; and the status of transnational commercial transactions according to different

⁴⁵This section is admittedly more speculative than the preceding, painting as it does with a rather broad brush. Certainly, more would have to be said about race and gender to make my case here convincing. I introduce this case largely to combat the common view that Hegel's estates are simply archaic and of no interest to our current situation. Sometimes this common view is supported by the claim that the estates do not do anything that was not done by political parties in the historical development to 1848 and beyond. On this view, Hegel misidentified the relevant political form, and so simply failed in his political or sociological judgment. In fact, the estates represent a fuller conception of political participation grounded in the deep structure of agency itself rather than political parties' funneling and sorting mechanisms for political opinion and economic interest. Since precisely these mechanisms have come in for criticism as either evacuating the political content of government (e.g. in Germany) or maintaining the power of the wealthy donor class (e.g. in the United States), it seems useful to look at an alternative conception of political participation from the recent history of political philosophy as speaking precisely to our historical moment.

⁴⁶Habermas, *Structural Transformation*, 77–79; Gilmore, Grant, *Death of Contract*; and Snyder and Mirabito, "The Death of Contracts."

bilateral and multilateral agreements. And, lest it be thought that this list is too heterogeneous to serve as a collection of examples for a single concept, it must be noted that this heterogeneity is proper to the concept of status—this was what made status-indexed rights look like prerogatives or privileges. There are, in fact, more intractable and yet stable differences in economic perspective in our contemporary world than we usually realize, in part because our primary vocabulary for talking about such differences—class—dramatically understates the number and contextuality of the differences. And at least in our everyday, pre-theoretical experience of these differences, they appear to include fundamental differences in the perceptions of value and practices of responsibility. There is, then, a sense in which we have lost our concepts for such social differentiation, even at a time when it is hardening in both social and political spheres.

I want to close this essay by setting out three different stories about the loss of concepts from the philosophical literature on that topic, asking which seems the best model for this loss of a philosophical terminology for social differentiation.

The most familiar story comes from Alstair MacIntyre, who claims that we currently possess only the simulacra of morality, because the background beliefs and practices that originally animated the fragments we retained have been lost.⁴⁷ In a less hypothetical mode, the historian James Collins has offered a similar understanding of the development of the French estates system. As he tells the story, the Old Regime in France died in its sleep in the 1750s, but it died so peacefully that no one noticed, and so the French continued to use a vocabulary of the three estates to understand themselves that no longer had any grip on social reality.⁴⁸ This is similar to the line we saw above from C. B. A. Behrens, according to which the estates lost their original functional rationale and social integrity, and so continued on as superficial legal forms. In this context, it is easy to see how the Abbe Sieyès's question, "[w]hat is the third estate?" could have such revolutionary force.

But whatever this model's virtues for understanding the conceptual scheme of social differentiation around the turn of the nineteenth century, it seems not quite the right model for our current situation, since one of the key features of our modern political discourse is precisely the absence of even the simulacra. In many respects, our situation seems to be reversed; we have the social reality but not the conceptual scheme with which to grasp it.

We might, then, think that our situation with respect to social differentiation is closer to a case taken by Cora Diamond from Duke Maskell:

Maskell claims that the word 'nation' has disappeared from our political vocabulary—he means that of Great Britain and its educated classes in particular. The word and its cognates can no longer be used with any conviction in political discussion. If the British had had the vocabulary of a *nation* and its *honor*, they could have made their fighting a war to recover the Falkland Islands intelligible to themselves; but they had made those terms obsolete, had allowed the political vocabulary containing these words to lapse.⁴⁹

⁴⁷*After Virtue*, 2.

⁴⁸*The State in Early Modern France*.

⁴⁹Diamond, "Losing Your Concepts," 257.

But again, this seems not quite right, at least for our conceptual scheme for something like the estates, since it does not seem likely either that such a scheme recently had political currency, or that any particular collective political action would quickly be rendered intelligible were we to be able to use such a scheme presently with a straight face. If anything, we would need such a scheme to help us understand why collective political action—at least in the United States—currently seems impossible.

So perhaps our situation is closest to the story told in legal studies by the thesis known as the ‘Death of Contracts.’ As its proponents tell it, the development of common law, from the Norman Conquest all the way through the American Revolution, proceeded without the development of a general body of rules for contract. “[T]here were, instead, laws relating to various specific types of transactions: foeffments, mortgages, bailments, loans, pledges of property, agreements under seal, and so forth.”⁵⁰ But, beginning in the nineteenth century, there is a development of a distinct and general doctrine of contract law (with elements such as consideration, offer and acceptance) that is meant to apply to the whole spectrum of commercial and personal transactions. This doctrine grounded itself in the formal equality of individuals, and attempted by its generality to encourage experimentation with new forms of bargaining by restricting liability as tightly as possible within the limits of explicit agreement. But, by the middle of the twentieth century, there was widespread criticism of the doctrine of formal equality, a return to the fragmentation of contract law, and an “explosion of liability.”⁵¹ Most transactions, once covered under general principles of contract law, are now subject to environmental, labor, and consumer regulations, or governed under the Uniform Commercial Code or the UN Convention on Contracts for the International Sales of Goods. What is left over to be governed by purportedly general contract law are just transactions involving real estate, services, and intellectual property.⁵²

On this analogy, we might think of our own society as having come out of a period in which the diversity of productive social groups played a minimal political role, save for the one division of class, and back into a period in which a more varied assortment of social types are politically and ethically relevant. So the concept is lost in three senses: first, because the nearest historical world in which it played both a social and a conceptual role is separated from us by a historical

⁵⁰Snyder and Mirabito, “The Death of Contracts,” 358.

⁵¹Gilmore, *Death of Contract*, 103. It is interesting that Habermas sees this historical development and even the sense in which it involves a “refeudalization” of society, and yet rejects the estates as meaningful models of the political communication that are decisively transcended by the public sphere of the liberal/contractual period (*Structural Transformation*, 231; see also Neckel, “Refeudalisierung der Ökonomie”). But given this refeudalization, one has to wonder whether the estates—with all of their prickly particularism and conservatism—might not be at least as good a model for effective political participation as those institutions produced by the Glorious Revolution. On Habermas’s relation to Hegel’s theory of the estates, see also Hedrick, “Reifying and Reconciling Class Conflict.”

⁵²Snyder and Mirabito, “The Death of Contracts,” 366. We still teach classes called “Contracts” in law schools, of course, but according to this line of thought the elements of contract law have come to mean different things in the new reality to which they relate, and serve primarily as dangers for the unwary rather than the basis for remedies. Or, where they do have continuing meaning, they have simply merged with the law of torts.

world in which it ceased to play those roles; second, because in that intervening era a new conceptual vocabulary developed that lingers into our own; and third, because the attempts to revive a version of the concept will always be tarnished with at least the semblance of nostalgia.⁵³

But these are, in many respects, precisely the problems Hegel confronted in his own time with respect to the estates, and this way of thinking of loss of concepts has a deep connection to his own meditation on the phenomenon in his early essay on “The German Constitution.” There is, therefore, an unexpected fusing of the horizons between ourselves and Hegel, as we stand with respect to his theory of the estates in much the same relation as he stood to the doctrine of the late feudal estates that he inherited.

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⁵³Cf. Neckel, “Refeudalisierung der Ökonomie,” 14–15.

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