

Mark Tunick, 'Hegel's Nonfoundationalism: A Phenomenological Account of the Structure of Philosophy of Right'

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[317] In the Introduction to the Phenomenology Hegel comments on his method:

If this exposition is viewed as a way of relating science to phenomenal knowledge, and as an investigation and examination of the reality of cognition, it would seem that it cannot take place without some presupposition which can serve as its underlying criterion. For an examination consists in applying an accepted standard, and in determining whether something is right or wrong on the basis of the resulting agreement or disagreement of the thing examined(PhdG 81).¹

Hegel thinks this way of relating science to knowledge is misguided, for "where Science has just begun to come on the scene, neither Science nor anything else has yet justified itself as the essence or the in-itself"(Ibid.). In the Phenomenology Hegel insists there are no presupposed standards of truth, standards are internal: "Consciousness provides its own criterion from within itself, so that the investigation becomes a comparison of consciousness with itself"(PhdG 84). We need only contemplate "the matter in hand as it is in and for itself"(PhdG 84). The Phenomenology is a characterisation of consciousness taking on increasingly adequate forms, testing its own internal standards against experience; it depicts

1. PhdG refers to Hegel's Phenomenology of Spirit, tr. A.V. Miller (Oxford: Oxford University Press, 1977)--references are to paragraphs. PR refers to Philosophy of Right, tr. T.M. Knox (London: Oxford University Press, 1952); Z refers to the Additions, Rem to the Remarks, and Bem to the marginal notes (included in the German edition, Grundlinien der Philosophie des Rechts (Frankfurt: Suhrkamp, 1970)) to PR. In this article I also make use of the notes of Hegel's lectures on the Rechtsphilosophie, taken by his students, notes made available in the German over the last twenty years. Rph I refers to Vorlesungen ueber Naturrecht und Staatswissenschaft, ed. C. Becker, et.al. (Hamburg: Felix Meiner Verlag, 1983); Rph II, V, VI, and VII refers to K.-H. Ilting, ed., Vorlesungen ueber Rechtsphilosophie (1818-1831) (Stuttgart-Bad Canstatt: Friedrich Fromman, 1973); and Rph III refers to Philosophie des Rechts: Die Vorlesung von 1819/20, ed. Dieter Henrich (Frankfurt: Suhrkamp Verlag, 1983). Volume as well as page and line number, when needed, are given. All translations from the lecture notes are my own. Enz refers to Hegel's Encyclopedia of the Philosophical Sciences (1830), in three volumes, tr. William Wallace and A.V. Miller (Oxford: Oxford University Press, 1971-1975). Occasionally I introduce a passage from the lectures with "Hegel says" and some might find this inappropriate given these are students' notes. For a defense of the use of the lecture notes, including testimony to their accuracy, see Mark Tunick, Hegel's Political Philosophy (Princeton, New Jersey: Princeton University Press, 1992), pp. 5-11.

the path of the natural consciousness which presses forward to true knowledge; or [t]he way of the Soul which journeys through the series of its own configurations as though they were the stations appointed for it by its own nature, so that it may purify itself for the life of the Spirit, and achieve finally, through a completed experience of itself, the awareness of what it really is in itself(PhdG 77).

The Philosophy of Right is a search for right, not, as in the Phenomenology, for the reality of cognition; but one of the methods Hegel adopts and which helps make sense of the structure of Philosophy of Right is the method he uses in the Phenomenology. This paper offers an alternative, though not necessarily conflicting, interpretation to that given in recent accounts of Philosophy of Right that emphasize its "logical spirit."² While the phenomenological account is not necessarily incompatible with these others, it will point to a nonfoundational interpretation of Hegel's phenomenological method that is. [318]

I. Foundationalism and Nonfoundationalism

Foundationalists and nonfoundationalists disagree about the nature of justification. The specific basis of their disagreement will depend on the sort of justifications they take up. In the context of justifying a theory in the natural sciences, to be a nonfoundationalist might mean one rejects the idea that there are objective standards with which we test theories, such as correspondence to the real world. This article is concerned with Hegel's political philosophy, with his justification of certain social institutions and practices, those which he claims are "right." What is it to be a nonfoundationalist in the context of justifying practices and institutions such as private property, promising, monogamous marriage, or hereditary monarchy?

A common, but perhaps inadequate way of distinguishing foundationalism from nonfoundationalism is to say that foundationalist arguments deliver certainty, whereas nonfoundationalist arguments merely provide good reasons for a practice, making no claims to the practice's absolute validity. Assent to a nonfoundationalist argument is not compelled, but comes through persuasion. According to this way of understanding the distinction, Hegel would be a foundationalist if he thought his justifications of practices such as private property or hereditary monarchy were irrefutable and absolutely valid, not subject to debate; otherwise he would be a nonfoundationalist.

Whether or not we commit to nonfoundationalism in the sense just explained has

2. See Henry S. Richardson, "The Logical Structure of Sittlichkeit: A Reading of Hegel's Philosophy of Right," in Idealistic Studies 19 (December 1989):62-78; Peter Steinberger, Logic and Politics: Hegel's Philosophy of Right (New Haven: Yale University Press, 1988); and Dieter Henrich and Rolf-Peter Horstmann, eds. Hegels Philosophie des Rechts: Die Theorie der Rechtsformen und ihre Logik (Stuttgart: Ernst Klett, 1982), especially the essays by Ludwig Siep and Dieter Henrich.

significant implications for the tone of moral discourse and political debate; but the line drawn between foundationalism and nonfoundationalism on this account is not fine enough to capture the sense in which we can understand Hegel to be a nonfoundationalist in Philosophy of Right. Hegel on the whole does not seem to take the position that his views are merely meant to persuade, that they are but an interpretation we are free to accept or reject. It would be difficult, then, to argue he was a nonfoundationalist if that is all nonfoundationalism meant. There is, however, a more refined distinction we can draw between foundationalists and nonfoundationalists.

According to it, to foundationalists a practice is justified if it accords with external principles or judgments that serve as fixed criteria determinative for justification.³ Jeremy Bentham's utilitarianism is a foundational theory because it holds that the principle of utility, which itself lacks any further ground and "is not to be questioned," is the ground of all moral actions.⁴ Kantian ethics is foundational insofar as it has us appeal to a fixed standard--the categorical imperative--to decide what is moral. It is important to note that the essential feature of foundationalism, on this account, is not simply appeal to principles in justification; it is, rather, appeal to certain sorts of principles or judgments, those that are fixed, not in need of further justification, and which are "external."⁵ Nonfoundationalists, according to this distinction, reject such appeals to external standards in justifying practices. As Hegel writes, "consciousness provides its own criteria from within itself." How is this "more refined" distinction any different than the other distinction? Because appeal to internal criteria--which qualifies an account as nonfoundational on the more refined view--might still lead to a justification of a

3. See, for example, Norman Daniels, "Wide Reflective Equilibrium and Theory Acceptance in Ethics," Journal of Philosophy 76:5 (May 1979): a foundationalist approach draws on a "set of judgments that is held more or less fixed" (p. 266), or a set of moral beliefs that "is picked out as basic or self-warranting" (pp. 264-5). In his "On Some Methods of Ethics and Linguistics," Philosophical Studies 37 (1980):21-36, Daniels suggests a nonfoundational view is always subject to revision. Cf. David S. Stern, "The Immanence of Thought: Hegel's Critique of Foundationalism," Owl of Minerva 22:1 (Fall 1990), 19: a foundational account is one that yields "an absolutely grounded standpoint from which warranted philosophical truth can be articulated."

4. Jeremy Bentham, An Introduction to the Principles of Morals and Legislation (New York: Hafner Press, 1948), ch. 1, secs. 1, 11.

5. Richard Dean Winfield distinguishes a foundational approach from one that "generates its own method and content in the course of its self-determination" (Reason and Justice [Albany: SUNY, 1988], p. 14). George R. Lucas Jr. refers to "presuppositionless norms" as "involving no metaphysical entities or theories drawn from outside themselves" ("Foundation-Free Philosophy and the Quest for Justice: A Comment on Richard Winfield's Enterprise," Owl of Minerva 22:1 [Fall 1990], 82). George Klosko also refers to the lack of "external criterion" in articulating a nonfoundationalist "coherence method" of moral justification (The Principle of Fairness and Political Obligation [Lanham, MD: Rowman and Littlefield, 1992], pp. 20-21).

practice that we think shows the practice to be absolutely valid--and which therefore qualifies as foundational according to the less refined distinction. Of course if it is unjustified to think a practice is absolutely valid unless it conforms to external criteria then the two distinctions collapse into one.

What makes a standard "external," as opposed to "internal"? One example of an external standard is historical necessity. A foundationalist justifying the institution of private property might claim as part of the justification that the institution was the inevitable product of a noncontingent historical process. (Foundationalists need not commit to the historical necessity of practices, but someone who does commit to this view is a foundationalist.) The claim is foundationalist insofar as it appeals to a criterion external to the activity of practical reasoning and deliberation--in this example, to a metaphysic of history. External standards dictate the content of right independent of the assent of the parties engaged in justification; internal criteria, in contrast, necessarily involve the practical reasoning and deliberation of those involved in justification. Internal criteria refer to ungrounded views we hold and use to test a practice. If the practice in question cohered with these views, we might say we are at home with this practice, and that this justifies it. This is precisely Hegel's strategy as political philosopher. He looks at the world present to him and finds an interpretation of its various laws that lets us understand them, or some subset of them, to be "interconnected" and part of a "whole" in which we understand ourselves to be at home and free. "It is in being so connected that the various laws acquire their true meaning and therewith their justification"(Hegel, PR 3 Remark, p. 16). This is a nonfoundational justification of these laws because it hinges, not on conformance with an external, fixed standard, but rather, on coherence with a set of judgments and beliefs that are themselves ungrounded.⁶ From here on when the Philosophy of Right is spoken of as nonfoundational, by nonfoundational is meant the more refined distinction just laid out.

II. The argument of Philosophy of Right

Hegel wrote his Philosophy of Right as a compendium or guide to his lectures on the philosophy of right. This was a common practice in the German universities of his day. Just as the professor would expect the student to attend all the lectures, so the author of the Philosophy of Right expects his reader to read consecutively from start to finish, not in bits and pieces or in random order. Hegel has imparted structure to his book, and that it has this order and not some

6. There is another way of characterizing external as opposed to internal standards or principles. Suppose we are considering the justification of punishing a murderer. A nonfoundationalist could justify the act of punishment by appealing to principles internal to the practice of legal punishment--for example, that we punish to deter future crime, or that we punish to express social condemnation of blameworthy action. Even though this justification appeals to principles, it is nonfoundational because it appeals to principles internal to a practice that itself may require justification.

other is part of his argument.⁷ The form Hegel gives his book bears on the content of the book, on the substance of his argument. The concern in this article is with why Philosophy of Right has the structure it has. An understanding of this structure draws on Hegel's phenomenological method--the [320] dialectic of experience. This understanding supports a nonfoundational reading of Philosophy of Right. But before we can understand anything about the structure Hegel gives his argument, we need first to see what the argument is.

In the Philosophy of Right Hegel gives his philosophical views about which laws, practices, and institutions are right, or just (Recht). Hegel seeks to answer the question, what is right? For Hegel, this question is intricately connected to the question "when am I free?"⁸ His argument is that laws, practices and institutions are right if we can understand ourselves to be free by being committed to them. For Hegel something is right if by willing it we are free. "Any existence that is an embodiment of the free will is right"(PR 29).

In his lectures Hegel acknowledged that his equating right with freedom may seem strange, and tried to get his students to put aside their ordinary understanding of right:

With right one often thinks of possession, satisfaction of desires, and regards these as fundamental. [Right] is the protector of possessions, of satisfactions, a protection we buy only by giving up a part of our freedom, so that right serves to protect only those who gave up a part of their freedom; in this way right is set in opposition to freedom, at once the servant of satisfaction, possessions, but also a limitation on our freedom. This representation is to be given up in favor of one which sees freedom and spirit not as restricted by, but as receiving their existence through right(Rph V: 3:102).

Since Hegel's use of "right" departs from customary usage, it is worth pausing to make clearer the connection he sees between "right," contents of will, and freedom.

7. Karl-Heinz Ilting discusses the structure of the Philosophy of Right in his "The Structure of Hegel's 'Philosophy of Right'," in Hegel's Political Philosophy: Problems and Perspectives, ed. Z.A. Pelczynski (Cambridge: Cambridge University Press, 1971), pp. 90-110; in "The Dialectic of Civil Society," in The State and Civil Society, ed. Z. A. Pelczynski (Cambridge: Cambridge University Press, 1984); and in "Rechtsphilosophie als Phaenomenologie des Bewusstseins der Freiheit," in Henrich and Horstmann, eds., Hegels Philosophie des Rechts, pp. 225-254. Ilting sees Hegel's work as an account not of how freedom is historically realized, but of how we become conscious of freedom: Hegel gives both a phenomenological account of the consciousness of freedom, and a dialectical account of the Idea of freedom. The argument developed in this essay pursues in detail a line of thought Ilting suggests. Several of the essays in Henrich and Horstmann, eds., Hegels Philosophie des Rechts criticize Ilting's reading for missing the logical (vs. phenomenological) spirit of Philosophy of Right.

8. Cf. PR 4; and Ilting, "The Structure of Hegel's 'Philosophy of Right,'" p. 92.

Hegel often uses "right" to mean something one claims, as in a right to property (PR 49), a right of first possession (PR 50), a right not to be a slave (PR 57), a right to own a thing of which I have complete use (PR 60), a right to suicide (which Hegel says we do not have, PR 70),⁹ a right to be held accountable for the first consequences of my actions (PR 118), a right to have my action imputed to me on the basis of my knowledge of the objective worth of the action (PR 132), a right of children to be educated and nurtured (PR 174), a right of parents to the service of their children (PR 174), a right of each member of a family to the family assets (PR 171), a right to choose one's own class (PR 206), a right to work,¹⁰ a right of the public to be supplied what it needs by businesses (PR 236), a right of consumers not to be defrauded (PR 236), a right of corporations to look after their own interests (PR 252), and a right of state officials not to be arbitrarily removed from office (PR 293). Hegel's claim that there are all these rights presupposes his argument that certain social practices, laws, and institutions are right or just. To say I have a right to own some property presupposes that the institution of private property is right. Sometimes Hegel speaks of these institutions as themselves having rights, so that there is "the right of marriage," as opposed to rights of the married partners (PR 176), and the "supreme right" of the state against the individual (PR 258).

All the practices, institutions and laws which are right are, in Hegel's view, contents of will. They are commitments from which we can break, or abstract. [321] I can choose not to respect the institution of private property, by stealing, or by living in a commune where I share everything with others. The temptation to do the former might befall us at some time--we want very badly something which we cannot have--and at this moment we may feel unfree by having to live according to the demands of the institution of private property. By saying that we have a right to private property, which implies that the institution of private property is right, Hegel means that really we are free by living according to the demands of this institution. This is how Hegel's conceptions of right and freedom are connected.

The Philosophy of Right discusses various commitments which Hegel claims are right, including commitments to private property, contract, marriage and the nuclear family, markets in labor, corporations, hereditary monarchy, and a bicameral legislature. Commitment to any of these requires acting in certain ways--for example, not stealing, executing contracts, not divorcing or committing adultery, choosing one's occupation, obeying the laws imposed by lawmakers, paying taxes. Rights entail duties, and Hegel's argument is that duties are consistent with freedom.

9. Cf PR 66: we cannot alienate our personality. Hegel says we have the "absolute right" to give up our life to something higher--state or fatherland (Rph II: 1:265, 3-11); cf. PR 70 Z: to kill oneself is to judge against one's personality, and this we have no right to do.

10. Established not in Philosophy of Right but in the lectures; see Rph III: 192-193.

The Philosophy of Right specifies the commitments in which we are free. It is "a treatment of examples of right, of contents of the free will"(Rph VI: 4:149, 26-30). It is a progressive account-- "the realisation of freedom has stages"(Rph I: 10, 155-157). Hegel lays out the various contents of the will, its commitments, from lower to higher, leading to an account of the highest commitment human beings can will, in which we obtain complete freedom.

Hegel's account of the commitments in which we are free is not static, but dynamic. His account is of the commitments in which we become free. The will takes a certain path to become free. It develops, and its development is reflected in the structure of Philosophy of Right. In the last four paragraphs of his introduction (PR 30-33), Hegel comments on how his book is structured. Having characterized right as the embodiment of free will, and the free will as something that develops, so that what counts as right itself changes according to the development of the free will, Hegel now considers the stages of this development. At each stage the free will is embodied in different determinate existences. Each content of the will, each commitment, has its own right. As the will develops it finds new contents with their own rights and Hegel says that these new rights are "higher," and that they belong to "spheres or stages of spirit" that are "more concrete," "richer," and "more truly universal"(PR 30). Hegel maintains also that we still hold on to our previous commitments--they are preserved so far as possible. For example, commitment to property is preserved even as we are committed to the state, and the abstract rights to property remain in the state. Hegel uses the well-known term aufgehoben (from aufheben, Aufhebung) to characterize how these rights and commitments are preserved although they are superseded. When possible we hold to our previous commitments, but if our new commitments conflict with them, the right of the lesser is subordinated to the right of the higher (PR 30 and Rem).

[322] We now have a preliminary sense of the significance of the structure of Philosophy of Right. Hegel structures his work so that each section depicts an increasingly concrete sphere and a more adequate conception of what is right. Hegel claims that those rights which belong to spheres that are more concrete, rich, and truly universal are "higher." The concern here is with precisely what this claim means, and how Hegel justifies it. The answer to be given draws on a nonfoundational interpretation of Hegel's Philosophy of Right that itself draws on a phenomenological account of that work's structure.

III. The Philosophy of Right as the development from abstract to concrete

Hegel says that as the concept of right unfolds it takes shape as various existences. The Philosophy of Right offers accounts of these various "shapes" or "forms" (Gestaltungen) of existence (PR 32), or "spheres or stages of spirit." Hegel gives accounts of the various commitments and rights that make up each Gestaltung. The rights that are a part of the most complete or concrete Gestaltung are the highest. When Hegel says an account is concrete he

means it is a complete account of the whole, of "the thing-itself."¹¹ For Hegel, if something is abstract it is incomplete--it abstracts from the complete truth of the thing; the more of the truth of the thing we capture, the richer our account, the more concrete it is (Hegel equates "concrete" with "rich," cf. Enz 164). Hegel argues in the Preface to his Phenomenology that truth is nothing but the richest, most concrete, complete account of our object: "The True is the whole"(PhdG 20). To be concrete also is to be mediated. Something is mediated if it is what it is by virtue of its relation to something else. A more concrete account of a thing shows more of its relations, gives a richer account of how it is mediated.¹²

What does it mean to give a "complete" and therefore fully concrete account of social life? How do we know it when we see it? A more abstract account of social reality fails to capture everything of importance about this reality. Something in reality that is left out of this abstract account will contradict some aspect of the account: this is one way we know the account is too abstract and incomplete: "abstract totalities"--abstract accounts that are taken as complete accounts-- "cannot stand on their own"(Rph V: 3:168, 26-31). Ultimately what we have in the most concrete and rich account of social life, or of what Hegel calls objective Spirit (Enz 385), is an account that does not leave us in contradiction with ourselves; for we already live objective Spirit, we are it, we know it implicitly (Enz 385 Z); we will experience the incompleteness of any account that is not concrete enough, for in the reality portrayed in such an abstract account we will not be fully at home. For example: we are creatures of passion, desire, interest, and love. These forces were and are essential in shaping social life; any account of social life that leaves out, for example, love, must be inadequate, too abstract. This point is seldom brought out, perhaps because the later Hegel emphasizes it only a few times, and then mainly in his [323] lectures; yet we shall see that for Hegel, feelings like love are the basis of all ethical bonds, and ethical bonds, precisely because they are rooted in genuine feelings--because they are "concrete" and not "abstract"--command the highest right. The young Hegel emphasized love as the basis of ethical life; the Hegel of the Rechtsphilosophie tries to show the rational basis of ethical life, but he does not take back his earlier view about the importance of love, or of passions.¹³

The justification of Hegel's claim that some rights are higher than others is, on the phenomenological account, that the account of the world that is consistent with the declaration of these rights is a more complete account. Hegel adds that the justification for his claim can be found in his Logic and Encyclopedia--the method used in developing the argument of Philosophy

11. Robert Solomon, In the Spirit of Hegel (New York: Oxford University Press, 1983), p. 276.

12. Cf. Charles Taylor, Hegel (Cambridge: Cambridge University Press, 1975), pp. 104-105: "Hegel's point is that all descriptions of things as immediate turn out on closer examination to be inadequate; that all things show their necessary relation to something else, and ultimately to the whole."

13. See Rph I: 171, 949: love is the bond of the state. See also Rph I: 108, 871-77.

of Right is the scientific method found there.¹⁴ The concept of right unfolds according to a movement which is immanent, and which is characterized by Hegel as the dialectic (PR 31 Rem). Earlier stages of right are limited and defective, and must be superseded.¹⁵ This is a foundational claim. It is a claim to absolute knowledge, as opposed to a perspectival or partial knowledge, and is made from what is regarded as "an absolutely grounded standpoint from which warranted philosophical truth can be articulated."¹⁶ Hegel implies that the necessity of supersession is a metaphysical necessity, the necessity of the Idea.

In one phenomenological account, the argument that inferior stages of right must be superseded need not depend on commitment to Hegelian metaphysics, but is borne out by experience, deliberation, and self-reflection: any Gestaltung that is abstract or limited will be incoherent. It must be superseded because we demand a coherent account of social life. This is the thrust of the nonfoundational interpretation of the Philosophy of Right. It is an interpretation consistent with a recent trend--notably among those whom continental authors sometimes call their American Hegel "friends"--that finds in Hegel "not the consummate metaphysician, but a subtle and systematic critic of metaphysical thought."¹⁷ On this view, the ground for justifying the claim that an account of right is more adequate, and ultimately for the claim that an institution or practice is right, is not an external standard of which Hegelian metaphysics or logic gives an account, but rather, satisfaction with that account of right, a satisfaction experienced phenomenally by consciousness upon comparison with the ungrounded views it already holds. Of course this phenomenological account, taken on its own as a complete account of Hegel's philosophy of right, flies in the face of the numerous passages, several of which have already been cited, in which Hegel explicitly casts his political philosophy as metaphysical, and claims that a complete understanding of the Rechtsphilosophie presupposes the logic (cf. PR Preface p. 2). There is another, nonfoundational reading which Hegel's texts also support, a reading which is also in the spirit of Hegel, and which we need to make sense of many of the passages in Philosophy of Right and the lecture notes. [324]

14. PR 31. Hegel distinguishes the Philosophy of Right from the Phenomenology several times (PR 35, 57, 71). For discussion, see Ludwig Siep, "Intersubjektivität, Recht und Staat in Hegels Grundlinien der Philosophie des Rechts," in Henrich and Horstmann, eds. Hegels Philosophie des Rechts, pp. 255-277.

15. In Rph VI: 4:157, 2-11 Hegel says that earlier stages of right are limited and must be injured; it is necessary that abstract rights are injured, i.e. that the state demands taxes be paid.

16. David S. Stern, "The Immanence of Thought: Hegel's Critique of Foundationalism," Owl of Minerva 22:1 (Fall 1990), 19.

17. Stern, "The Immanence of Thought," pp. 19-20; cf. Robert Solomon, In the Spirit of Hegel; and the works of Kenley Dove, William Maker, and Richard D. Winfield, referred to in Stern, p. 20n.4.

IV. A phenomenological account of the structure of Philosophy of Right

In the Phenomenology, consciousness is thrown into the world, and develops by interacting with that world in a process we might call the "dialectic of experience"(Cf. PhdG 86-88). The subject of development formulates an account of the world that comes to be seen as inadequate, and is forced to formulate a new account. The subject proceeds in the dialectic of experience, which Hegel characterizes as a "necessary progression" of "determinate negation"(PhdG 79), until it reaches a point where it "no longer needs to go beyond itself," where it is satisfied and at peace.¹⁸ This process, the dialectic of experience, is at work in the Philosophy of Right as well.

The Philosophy of Right consists of various accounts of commitments we have in the social world--the world of objective Spirit--based on various theories about this world; as we progress, each new theory approaches asymptotically the actual world, encompassing more of its complexity and detail, accounting for more of our actual commitments. Each account is tested, not by external standards, but by its coherence with our experience as Spirit an-sich. This progression of theories or accounts of objective spirit will now be considered, in order to show how we can read Philosophy of Right nonfoundationally, in a way that sees its structure as shaped by the dialectic of experience.

Abstract Right

Hegel says he will begin with the most abstract account of social reality--the theory in the first main part of Philosophy of Right, called Abstract Right (PR 32 Z). The account given there resembles a classical liberal theory: the individual, about whose particular features we know nothing, is considered in its "immediacy;" this means that we isolate the individual, bracket all the concrete relations of which it is a part and which help define who it is (PR 34 Bem). Rather than being a doctor, or an American, or a fan of Mahler, or a "Jones," the individual is merely a "person," without bonds to the world. If a "person" in this degree of abstraction were really to exist it (presumably we could not say he or she) would have no consciousness of tradition, family roots, friendships, or membership in a class or nation. "A human being qua person is nothing further: class, rank are excluded"(Rph VI: 4:173, 14-16). Abstract Right is an abstract account because it wipes away all particular features of individuals, much as John Rawls does with his "veil of ignorance."¹⁹ The person takes itself as "abstract," "infinite," or "free" in the sense that it is free from all commitments and limits (PR 5). But in fact human beings are no

18. PhdG 80. Since the purpose here is to explicate Philosophy of Right, I cannot nor do I try to give an adequate account of the phenomenological method or the dialectic of experience in the 1807 Phenomenology.

19. John Rawls, A Theory of Justice (Cambridge: Harvard University Press, 1971), pp. 136-142.

such indeterminate beings, and because of this discrepancy between what a person with the consciousness of social life we find in Abstract Right thinks it is, and what a real human being is, the account of Abstract Right will reveal itself to be inadequate (Cf. Rph V: 3:190-1). Consider PR Paragraph 35, in which Hegel describes two views: (1) "I am completely determined on every side;" (2) "I am simply and solely self-relation," "I know myself as something infinite, univer-[325]sal, and free." The view in (1) is the more perspicacious view of a philosopher with a complete understanding of social life, while the view in (2) is the narrow one of "Abstract Right." The person holding to (2) will confront (1) and be forced to seek a more satisfactory understanding, to raise his consciousness. This is how the dialectic of experience works; it moves us beyond Abstract Right to a more adequate account of social life. The reason a social reality actually like that described in Abstract Right would be inadequate is that in this social reality there are no ethical commitments; and since we are, implicitly, ethical beings, we will experience this inadequacy. What is presupposed in making this claim is a conception of humans as involved in ethical commitments, and richly mediated with others as part of Spirit. This presupposition can be regarded as a metaphysical claim; but if we follow the dialectic of experience then no presupposition is made at all; the claim that we are Spirit, the conception of humans as requiring ethical commitments, is borne out in the phenomenological process. The criticism of Abstract Right is nonfoundational insofar as it appeals, not to an external standard of right, such as utility or the categorical imperative, but to introspection and the invocation of ungrounded views we already hold and which serve as touchstones for moral deliberation. (The final section will treat the possibility that the dialectic of experience presupposes a conception of what a human being really is that is indeed an externally grounded presupposition, so that the phenomenological account is foundational after all.)

The abstract person gives externality to its will by directing it to something different and separate from it--property (PR 41; Rph III: 70, 22-24). Phenomenally the will does this to satisfy its needs (Rph III: 70:18-24); but Hegel adds that from "the true standpoint," which is to say the standpoint of the speculative philosopher who has thought through, or experienced in thought, the entire development of will, the significance of property is that it is the first embodiment of freedom (PR 45 Rem). Commitment in Abstract Right is commitment only to property and the demands entailed by this institution. In Hegel's view, commitment to property is not an ethical commitment, but a commitment of our arbitrary will (Rph VI: 4:150). According to Abstract Right we are persons with rights, but in fact we have identities, we have "concrete bonds," "real duties," family, job (cf. Rph V: 3:174-5). Some ethical commitments we do not ever literally choose, but are born having. Abstract Right abstracts from social life all ethical bonds, and "starts from scratch," like "Penelope's web"(PR Preface, p. 1; cf. pp. 4,10), as if we were not already particular individuals situated in a concrete world.

In Abstract Right there are only rights to property. "The only right of persons is to property"(Rph VI: 4:160, 4-6). The duties in Abstract Right are to respect these rights by recognizing others as persons, as property owners. If we were to develop a criminal code on the basis of the theory established in Abstract Right it would deal only with violations of personal property rights. We could call wrong only the taking or damaging of one's property, including

one's body. [326] We would have to leave out a great deal of what we do include in criminal codes. We could not outlaw prostitution, drunkenness, slander, drug use, public nudity, treason, or consensual homosexual sodomy, because none directly violate a person's right to property. Slander may injure a human being, but not a person, since persons have no pride or dignity to insult. An attempted but failed murder would not be punishable because in Abstract Right intentions do not count (PR 37). A criminal code that took seriously the theory of Abstract Right would necessarily embody the principle of strict liability. And there would be no room in contract law for principles of equity. As an account of our society and its law, Abstract Right is deficient. It fails to accord with existing social life.

Hegel is sometimes understood to claim that Abstract Right is an incoherent account of social life because the social reality implied by Abstract Right presupposes institutions and practices for which Abstract Right itself cannot account.²⁰ Part of Hegel's conception of property is that to own property is to use and alienate it (PR 59-70). But to alienate property requires that I participate in a common (gemeinsam, versus universal) will with another, with whom I contract (PR 71; Rph V: 3:203). Property presupposes the institution of contract (PR 72). But more than this, it presupposes an institution that enforces contracts and administers justice. To have property is to belong already to a state whose police will help me enforce contracts I make. But, the argument goes, at the standpoint of Abstract Right there is no state, no police, no prison; none of the mechanisms exist which are required if there is to be property, hence we must go beyond Abstract Right.

The defender of Abstract Right could respond that all the necessary mechanisms needed to create and enforce contracts can be derived from Abstract Right: persons simply stipulate that if either party breaks the contractual promise a third party will punish the violator. But Hegel's criticism of Abstract Right is not merely that it presupposes the institutions which it brackets. Hegel argues that property implies contract and contract presupposes not merely a state and police, but a universal (not merely a common) will. Phenomenally contract proceeds from the Willkuer, or arbitrary will, of persons (Rph III: 81: 26-29); but, Hegel claims, really it is not the contingent wills of the contracting parties that binds them together, but the concept of right (Rph VI: 4:263, 12-18). To break a contract is to violate not merely a person's Willkuer, nor merely the common will of the two parties. It is to violate right. To have property is already to share in not only a common will with those who recognize a thing as mine, but a universal will that says a contract (normally) obliges (PR 81 Bem., p. 171). To the theorist of Abstract Right wrong appears as a particular will violating the common will previously entered into, but really wrong is the particular will violating the universal, not some common will. Only in the lectures does Hegel make this absolutely clear: "With wrong Recht-an-sich makes itself valid, not the [particular] will" (Rph VI 4:265, 4-6). Abstract Right, then, is inadequate as a form of consciousness not simply because it presup- [327] poses institutions which it brackets; but because it fails to recognize an implicit truth about the will.

Hegel proceeds to indicate how we will experience the inadequacy of this form of

20. Cf. Alan Brudner, "Hegel and the Crisis of Private Law," Cardozo Law Review, 10:5 (March, 1989), 959: "[The freedom in "Abstract Right"] is abstract because divorced from the means of its reality."

consciousness. Besides leaving out the ethical character of the state, the account in Abstract Right leaves out the moral character of subjects, which we see in the split will of the criminal. In the view of Abstract Right crime arises when my will opposes your will. But the phenomenon of moral guilt is premised on the criminal's will being itself split. Hegel claims that by acting out his particular will in violating the universal will expressed in the criminal law, the criminal violates his own implicit will (PR 99 Bem; Rph VI: 4:382, 2-23). The theorist of Abstract Right offers no account of the sense of guilt some criminals feel, or why we blame or condemn criminals morally. Blame and guilt are facts of (our) social life, are things we experience; Abstract Right is not getting the whole story, and we will see this and move beyond Abstract Right as a result of the dialectic of experience.

When a person's abstract rights are violated, we demand punishment. Hegel considers three possible responses to this demand: legal punishment by the state; moral punishment by the subjective will of the wrongdoer, through guilt at having done wrong; and self-help. Hegel conflates this last response with revenge, perhaps properly so, and criticizes revenge as too subjective and arbitrary (PR 102). Either of the other two responses requires us to go beyond the account of Abstract Right. In the Philosophy of Right Hegel considers first the moral response to wrongdoing. The reason Hegel chooses to consider first the moral response and not state punishment is that the account of social life that sees as central the moral will, Moralitaet, is to Hegel a more abstract account than that which sees as central the ethical will of the state. The following sections will show why Hegel thinks Moralitaet a more abstract and unsatisfactory account of social life than Sittlichkeit.

Moralitaet

In Abstract Right human beings are seen as persons with Willkuer. In Moralitaet they are seen not merely as persons but as subjects, individuals with [328] intentions and conscience. No longer is the content of my will mere needs; now it is my aim (PR 109 Bem). The content is "mine," my "inner purpose" (PR 110). The moral will universalizes itself, it formulates positive moral commands (Rph V: 3:348-9). Hegel has in mind Kant's categorical imperative, which has us "act as if your maxims had to serve at the same time as a universal law (for all rational beings)."²¹ But because the source of the moral will's commands are its own conscience rather than the ethical commands "out there," its commands remain a mere "ought" (PR 108, 111). This will be the crucial flaw of Moralitaet as a form of consciousness.

Intentions were ignored in Abstract Right but they matter in Moralitaet. At this standpoint an act is mine only if it was my purpose or intention to do it (PR 110). It is my "subjective right" to have imputed to me only what lies in my intention and conscience (PR 107 Bem., p. 206).

21. Immanuel Kant, Groundwork of the Metaphysic of Morals, tr. H. J. Paton (New York: Harper and Row, 1964), p. 106.

Hegel says that in Abstract Right the actio or legal action is distinct from the moral action (PR 113 Rem). According to the standpoint of Abstract Right if I shoot at a target, not knowing a person is hiding behind it, and kill the person, I should be punished for not respecting the rights of this person. But the theorist of Moralitaet would say that I have the right to deny an action that did not lie in my purpose (PR 114Z). Since in our own practice the law does take into account intent--we do, Hegel notes, distinguish between murder and manslaughter (Rph III: 3:358-59)--Moralitaet provides a more adequate account of existing legal practices: "In our lawcodes the right of the subjective will is respected and this is a great advance"(Rph V: 3:359, 19-22).

As an account of the modern criminal justice system, Moralitaet improves upon "Abstract Right," but is still inadequate. Hegel shows this by taking as the paradigm of the account given in Moralitaet Kant's moral theory (Hegel also considers consequentialist moral theories, under the subsection "welfare," in PR 121-123). Hegel's criticism of Kantian morality, that it is 'empty,' cannot be considered here; it has been discussed in many other places.²² But Hegel does make a point that has not been emphasized, and which relates to the logic that shapes Philosophy of Right. Hegel says Kant's categorical imperative lacks content or concreteness because to live by its maxims we need not know anything particular about ourselves or those to whom we undertake obligations, so long as we can justify these obligations by applying the moral law of reason. In this respect, Hegel notes, the categorical imperative is similar to the Christian abstract conception of duty Hegel also attacks. In his lectures and own marginal comments to the Philosophy of Right Hegel criticizes the Christian prescription of universal love. Hegel writes "universal human love ... universal, empty--for human beings are concrete individuals" (PR 126 Bem, p.238); and in his lectures he asks, "how can I demand the welfare of the Chinese? ... The bible is more rational in saying love thy neighbor as yourself, i.e. the people with whom you come into relation"(Rph VI: 4:338, 16-22). Hegel's point here is that formal moral precepts lack concreteness. We undertake various obligations, and make other commitments, not because of some abstract principle, but because we already live in concrete relations which require us and make us want to act in various ways. The abstractness or incompleteness of Moralitaet, then, leads us to an account of ethical life, in which we find these concrete relations. We are moved from Moralitaet to Sittlichkeit by a dialectic of experience; we are beings of concrete commitments rooted in interests and feelings like love. A form of consciousness that understands commitments to be rooted in formal principles instead will necessarily be experienced as inadequate. The move from Moralitaet to Sittlichkeit need not be

22. For English language accounts, see Charles Taylor, Hegel, p. 371; Hugh Reyburn, The Ethical Theory of Hegel (London: Oxford University Press, 1921), pp. 60-61; Henry Allison, Kant's Theory of Freedom (Cambridge: Cambridge University Press, 1990), pp. 184-192; Timothy O'Hagan, "On Hegel's Critique of Kant's Moral and Political Philosophy," in Stephen Priest, ed., Hegel's Critique of Kant (Oxford: Clarendon Press, 1987), pp. 135-159; and Allen Wood, "The Emptiness of the Moral Will," in Monist 72:3 (July 1989), pp. 454-483.

construed as logical or metaphysical; rather, it can be understood nonfoundationally: we will experience the necessity of moving beyond Moralitaet by testing the account given there against the internal standard of our own ungrounded beliefs and judgments.[329]

Sittlichkeit

In Moralitaet the standard for judging right is the moral will, or conscience:

With [laws of right] what is held as not absolutely valid comes into collision with an inner voice. Man does not stop with the existing laws, but rather claims to have within himself the standard of what is right (Rph V: Preface).

Hegel says conscience is a modern phenomenon, a withdrawal into oneself (PR 136, Z). He contrasts this moral conscience with what he calls "true conscience," which is the disposition to will what is really (an und fuer sich) good. Hegel claims in the final section of the Philosophy of Right that it is only in ethical life that we find an account of duties that make up the content of the true, as distinct from the merely moral, conscience.

The idea of appealing to internal standards--the idea of subjectivity--is the defining feature of Hegel's nonfoundationalism, and has its roots in Moralitaet. But in Moralitaet the content of the internal standards is defective. Hegel's nonfoundational account depends on our invoking as standards of justification internal views and beliefs, but not just any subjective convictions.²³ Rather, the phenomenological account depends on our invoking the (ungrounded) beliefs and views inculcated into us through our practices and institutions, through the Bildung of our ethical life.

Ethical life consists of concrete commitments, to family, civil society, and the state. The duties and rights that derive from these commitments are not based on Willkuer; Hegel says they are "necessary"(cf. PR 75 Rem). In his first set of lectures Hegel defends arranged marriages for this reason:

It used to be different, where parents would choose their child's spouse based on their insight and duty. The reason being, the parents had the thought of duty and the understanding that the children must marry. The girl would love the determined husband because he should be her husband, and vica verca. Here love's roots weren't in accidental desires, or the subjects' Willkuer, but in the thought of the determination (Rph I: 94:421-29).

23. For discussion of Hegel's criticism of false subjectivists, what he sometimes calls ethicists of conviction, see PR Preface, especially pp. 4-7; and Tunick, Hegel's Political Philosophy.

Commitments are ethical because they are not arbitrary but necessary. But also commitments are ethical and not merely moral because they are based on not formal principles but interests and nonarbitrary love. (Hegel implicitly distinguishes between the 'arbitrary' love between two persons romantically involved, and the ethical love between parent and child.) Hegel contrasts the modern ethical relationship between parent and child, based on love, with the relationship he finds in ancient Rome, where fathers could kill their children or make them slaves; in Rome, which to Hegel resembled the society depicted in Abstract Right, commitments lacked a basis in love and therefore were weak. Genuine commitments in which we are free are, in Hegel's view, necessarily the result of particular interests and passions--they are things we care about; there is something wrong about someone who really cares about formal principles, has passion for them. In Hegel's view it is the concrete human being, not mankind in the abstract, that commands our love and commitment.²⁴ Sittlichkeit provides an account of duty based on our particularity, on our [330] concrete needs, interests, and relationships. These needs and interests are the driving force of the dialectic of experience that moves us beyond the abstract forms of consciousness depicted earlier in Philosophy of Right.

Sittlichkeit encompasses both Abstract Right and Moralitaet (PR 157 Bem, p. 307; cf. Rph VI:4:417-18). The abstract rights to person and property are an essential part of ethical life in a modern state (PR 185 Rem). But also essential is the principle of subjectivity central to Moralitaet: "what should count as valid should count not by force, still less through the habit of custom, but rather through insight and understanding of the grounds"(Rph VI: 4:723, 23-25). Sittlichkeit is historically prior to both of the previous spheres: "it is first on the grounds of ethical life that its moments [Abstract Right and Moralitaet] develop themselves"(Rph III: 121, 9-13). Hegel says Abstract Right and Moralitaet arise only when the ethical substance is lost; when people no longer find themselves in their customs and law, they seek satisfaction in themselves, as did Socrates and the Stoics (Rph II: 1:290, 16-27):

The ethical substance, the substantial life of a people, a family, comes first; only later, if custom becomes corrupt, does the subject turn inward and seek support in morality, does he seek the good not in custom but in himself (Rph I: 1: 82, 20-21).

This and like passages shed significant light on the phenomenological method that structures Philosophy of Right. For Hegel we are implicitly ethical beings; we share in an ethical substance,

24. Consider this passage from Dostoyevsky's Brothers Karamazov, tr. Constance Garnett (New York: New American Library, Inc., 1980): "I love humanity, but I can't help being surprised at myself: the more I love humanity in general, the less I love men in particular, I mean, separately, as separate individuals. In my dreams I am very often passionately determined to serve humanity, and I might quite likely have sacrificed my life for my fellow creatures; and yet I'm quite incapable of living with anyone in one room for two days together. As soon as anyone comes close to me, his personality begins to oppress my vanity and restrict my freedom. It invariably happens that the more I hate men individually, the more ardent becomes my love for humanity at large."

but we have to come to the consciousness of this fact. The ethical substance is our ground; by being brought up and shaped by its practices and institutions we have a set of beliefs and views that provide the internal standard for justifying these practices and institutions. Besides being our ground, the ethical substance is also our goal (PhdG 348, 439-40, 680, 801; PR 142, 143). We come to recognize how the practices and institutions of ethical life are justified through the dialectic of experience.

The last section of the Philosophy of Right, the account of Sittlichkeit, provides the most concrete theory of social life. In it Hegel refers to commitments to spouse, children, profession, state. It is the longest and most complex section, and is presented according to the principle of the work as a whole: development from less to more stringent commitments, from lower to higher right.

The first commitment Hegel describes in Sittlichkeit, the first content of will, is family. Living in a family means taking on responsibilities for the good of someone other than oneself:

What the individual does he does not for himself, not out of the self-interest that concerns the satisfaction of the individual, but rather each looks out for something universal (Rph I: 1:102, 679-81).

Commitment to family entails specific obligations and duties, what the purely formal moral will was unable to find. Family is a concrete commitment. The rights within family--of the children to an adequate upbringing, of the parents to the service of their children--are not abstract rights, because the members [331] of the family are not abstract persons to each other; they are particular human beings who are bound to each other because they are who they are and not someone else (Cf. Rph III: 129, 12-16). Abstract rights appear only when the family begins to dissolve (PR 159). When members do invoke abstract rights, they no longer are a unity (Rph V: 3:510, 10-14), the ethical bond between them is gone.

Hegel says that because of the ethical nature of the institution of marriage (PR 162)--it is a giving of oneself to a whole (PR 163 Rem)--the state has an interest in it. Commitment to the state requires that individuals give themselves up to a whole, and marriage prepares us for that; it is part of the education process (Bildung) that leads to our understanding that in the state lies our highest duty, and for this reason the state has an interest in preserving marriage as an institution. Hegel points to the circumstances surrounding the Trojan War and the rape of Lucretia, both of which illustrate the great lengths to which states may go to preserve the ethical character of the marriage relation (Rph III: 141, 23-25).

While marriage is an important commitment, social life does not consist only in family life, nor does Hegel think we are truly free in our commitment to family. We are not truly free in it because the bond between partners that is the basis of the commitment is in part a contingent bond, arbitrary love. Commitments in which we are truly free are necessary (PR 158Z). If we enter marriage because of love, then if we lose our love for our partner we may feel justified in breaking our commitment. While commitment to family is important, it is not the only (and

perhaps not even the most important) commitment we have in social life; and we will experience this abruptly. For if we think that family life is an adequate account of social life, then social life will rudely awaken us to the truth: "Civil society is the huge power that rips men away and demands that they work for it, and do everything by its means"(Rph V: 3:700; cf. PR 238 Z). No longer can we remain in the "idyllic" life of the autonomous family that looks after its own needs. The fact of modern social life is that "everything is already possessed, one can't fish, hunt, pick fruits"(Rph VI: 4:605, 18-21). To satisfy individual needs we must work in civil society: "civil society pulls man away from natural accumulation of life needs"(Ibid.). Civil society supplants family, its rights are higher than the (non-abstract) rights of family. For example, Hegel says society has a right over the arbitrary will of parents with respect to the education of their children (PR 239), because education bears on the child's ability to become a member of civil society. Therefore society can compel parents to send their children to school (PR 239Z). Similarly, children can be forced to be immunized for the good of society (Rph VI: 4:603, 11-13).

An adequate account of our commitments in social life must take into account civil society. As with the account in Abstract Right, the theory of Civil Society is very much a classical liberal conception: the key difference is that in Abstract Right individuals are treated as abstract persons with no particular features, [332] while in the more concrete account of Civil Society the particularity of individuals plays an essential role in the ordering of social life.²⁵ In civil society each individual seeks to fulfill his or her particular, natural, and arbitrary aims; each relates to the others in the process of satisfying their needs (PR 182).

Hegel depicts civil society as the "alienation of ethical life," an alienation that was absent from the ancient states, or if there led to their fall (Rph III: 149, 9-23). In civil society, "ethical life is lost in its extremes"(PR 184). Each seeks to satisfy his own particular needs, while the unity among individuals is lost sight of. Hegel says that in civil society the ethical substance steps back "into the unconscious":

The substance loses itself in civil society, steps into unconsciousness, steps into the background, is not aim or interest but unconscious necessity, the inner bond that is substantial unity (Rph VI: 4:416, 1-7).

Hegel, here, suggests that the theory of civil society is a form of consciousness of social life that not merely is incomplete, but suppresses a more adequate (truer, more concrete) consciousness. According to the dialectic of experience, a subject with the form of consciousness one has at the stage of Civil Society--atomistic particularism--will confront something in the world for which it

25. Hegel did not make explicit this difference between Abstract Right and Civil Society, and in his lectures he occasionally conflates the two. For example, "Civil Society is the realm of formal, strict right, where the individual acts as person with property"(Rph II: 1:249, 9-15).

cannot account; it will see that the theory of Civil Society is inadequate. What about social reality does the account in Civil Society leave out? What new institutions exist in the state that do not already exist in civil society? There are some: the monarch (PR 275ff); higher officials that help select and confirm the officials of corporations (PR 288); legislators (PR 298); taxation and spending of collected revenues (PR 299); estate representation (PR 301); political parties (PR 302 Rem); public assemblies (PR 314-15); laws protecting free speech (PR 319); foreign policy and the conducting of wars (PR 320, 323, 324 and Rem); the standing army (PR 325); and ambassadors and treaties (PR 320). New duties include paying taxes (PR 299), and the defense of state (PR 270 Rem, pp.168-69), which implies the duty to give up life and property to defend the state (PR 324). These political institutions and duties serve exclusively universal aims. When we pay taxes in a modern state, we pay in money and not services, because, says Hegel, only in this way are taxes entirely unrelated to one's particular capacities, as was not the case in feudal monarchies, where services were required from vassals (PR 299, Rem). Similarly, participation in war is a duty of citizens that derives neither from their particular interest nor from a corresponding right on the part of citizens to declare war (Rph VI: 4:155-56). In war we are asked to risk life and property for something transcending the particular commitments we have in civil society.²⁶ With the form of consciousness one has in Civil Society one cannot account for the universal demands made by many of these institutions and practices--particularly by war--demands which, if we reflect, we will find we are willing to fulfill. The account in Civil Society must therefore be superseded. The means of this supersession are already in Civil Society.

[333] When described as the pursuit of our self-interest civil society sounds anti-ethical. What is ethical about civil society? Ethical life seems lost at the stage of civil society, where particularity is sovereign, but really it is there, not explicitly but implicitly. In civil society we are at the level of what Hegel calls "appearance"(Schein). Though I aim at my particular interests, and think this is what really matters, really I do the universal (Rph II: 1:307; cf. PhdG, Pars. 351, 392). "No one can satisfy his needs without the satisfaction of the needs of others"(Rph II: 1:310, 19-20; cf. Rph III: 160, 17-19). In satisfying my subjective or particular needs I bear on others. The universal is present in my actions (PR 189). Through work (Arbeit) I am "mediated" with the universal. By working in civil society for corporations we come to see that the theory of Civil Society, that views social reality as nothing but atomistic individuals out to satisfy their egoistic, particular needs and desires, is inadequate. Civil Society carries within itself the seeds of its own "destruction" as a form of consciousness--not its complete destruction, but rather its Aufhebung.

26. See Tunick, Hegel's Political Philosophy, pp. 83, 88-90, 99.

Civil society is ethical because it connects us up with each other, not only unconsciously by making us dependent on each other economically and for our personal gratification, but also consciously. In civil society the consciousness of an individual is raised from concern with her own egoistic particularity to a concern with more universal aims. Hegel's account of civil society raises "particularity" to center stage, but it departs from many classical liberal accounts of society in understanding by particularity what is group particularism. In civil society we have not isolated individuals or "atoms" but individuals already organized in "collectivities" or "communities" (Gemeinwesen). In civil society "the individual makes his appearance only as a member of a universal"(PR 303 Rem). Civil society is composed of classes; each individual commits himself to a class and in doing so becomes something particular while at the same time developing an ethical disposition, a sense of honor and obligation to his class. The German word Hegel uses is Standesehre (PR 207); this is the disposition of "being a member." By taking on the commitments of civil society, which we at first do in fulfilling our particular interests, we are brought to the universal. This occurs through membership in the corporations of civil society--companies, trade unions, guilds, churches, universities (PR 289 Rem; cf. PR 251; Rph VI: 618, 27-32). Corporations are "concrete totalities," "small states" (Rph VI: 4:521, 20-21); they have the form of universality though their aim is still particular.

In his lectures Hegel says that the state "incorporates civil society;" it "makes civil society seem not like the external state, like a chain, but rather a higher ethical necessity"(Rph VI: 4:479, 17-28). When we arrive at the section "State" in Philosophy of Right we come to a new consciousness of our social world: "subjectivity is given the form of universality" (Rph II: 1:309, 8-9), "the ground of particularity is raised to universality"(Rph III: 151, 18-19). To a theorist who sees in social life only civil society, taxes might seem a necessary evil, something external (cf. PR 184 Z); but to someone with the consciousness of the state as her own ethical substance, her own rational and universal will, taxes would not seem a burden. The difference is not that we are taxed in a [334] different way, but that we have a different consciousness of or disposition towards our practices and institutions. "Spirit is the state only when [the state] is present in consciousness, known as existing object"(PR 258 Z). The state is civil society seen in a new light, but also it is immanent within civil society, for it is through the institutions of civil society that we can arrive at the consciousness of the state as our own ethical substance. The corporations and judicial system are educative institutions that help bring individuals to this consciousness.²⁷ We are able to arrive at this consciousness only because we are ethical beings. That we are at home in the institutions of the modern state is a conviction the dialectic of experience will bear out, and must bear out if we are to say these institutions are right.

V. Conclusion

The Philosophy of Right gives a progressive account of theories or forms of consciousness of social life. As we proceed through the book, each new form of consciousness Hegel presents more adequately encompasses social life, takes into account its concrete richness. The commitments that are a part of each new account are ones in which we are more free. In

27. Cf. Harry Brod, Hegel's Philosophy of Politics (Boulder, Colorado: Westview Press, 1992).

Hegel's view we would not be at home in any of the worlds depicted by the earlier accounts given in Philosophy of Right. Only in the most concrete account, that includes all the ways in which we are mediated with others, that includes our particularity, our commitments to family, civil society, and state, do we find an account of a world in which Hegel thinks we are at home and therefore free. We will come to realize this, to attain knowledge of this implicit truth, through the dialectic of experience. We will know what is right because we will experience the satisfaction of being at home in the practices and institutions of ethical life, an experience of reconciliation that for Hegel is called freedom.²⁸ If we ask Hegel to justify the claim that we are most free in the practices and institutions of ethical life, and that these practices and institutions are therefore right, he refers us to his logic. But he also gives a nonfoundational response. We decide whether a practice is right through introspection, seeing whether the practice coheres with ungrounded beliefs and judgments that we hold.

We might think that this internal standard of ungrounded beliefs presupposes a conception of what a human being really is--for example, it presupposes, perhaps for metaphysical reasons, that we are creatures of love with concrete commitments and a need to express our personality and particularity--so that the account is foundational after all, appealing to an externally grounded theory of human nature. This line of argument is rejected because for Hegel, "human nature" is itself shaped by the practices and institutions that make up a people's Bildung. It is because they have the institution of private property that members of a modern state come to think of themselves as persons; because they share in the practice of promising that they have expectations in others and a sense of obligation in themselves that promises must be kept. By living in a family and working for a corporation they learn to be committed to something universal. Born into a world with particular prac-[335]tices and institutions, we come to have certain expectations, preferences and beliefs. The practices and institutions are the source of these internal standards, standards that are neither grounded (that is, justified by some external criterion) nor fixed (since they change when our practices and institutions change), and with which, on the nonfoundational account, we justify the very same practices and institutions.

We might wonder whether it is but a trick, or one big circle, to justify practices by appealing to standards that presuppose the very practices. Such a move, though, is the key to nonfoundationalism. The purpose here is not to defend nonfoundationalism. It is, rather, to provide an account of the structure of Hegel's Philosophy of Right. Marx had accused Hegel of ignoring the empirical world and instead developing what is objective "in accordance with a ready-made thought which has its origin in the abstract sphere of logic."²⁹ The purpose here has been to promote a very different way of understanding Hegel.

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28. For further discussion of Hegel's conception of freedom as being-at-home, and of Hegel's project of reconciliation, see Michael O. Hardimon, "The Project of Reconciliation: Hegel's Social Philosophy," Philosophy and Public Affairs 21:2 (Spring 1992); and Tunick, Hegel's Political Philosophy, ch. 3.

29. Karl Marx, Critique of Hegel's 'Philosophy of Right', trans. Annette Jolin and Joseph O'Malley (Cambridge, 1970), p. 14.