

## Hegel's Political Ideal: Civil Society, History And *Sittlichkeit*

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### I. Introduction

The door to Hegel's thought is guarded by the mutually opposed twin hydras of Marx and Nietzsche and the post-modernities they have spawned. There is on both sides of this revolutionary division a conception of philosophy not as rational comprehension<sup>1</sup> but as domination whether as *Ideologie* or as *Wille zur Macht*. Likewise Rawlsian liberalism, pragmatic and constructivist, is intent on consigning philosophical wisdom to the realm of private opinion and, from the standpoint of consensus or moral consumer democracy, on portraying as oppressive any attempt to found justice on a philosophical conception of the good. Liberalism, existentialism, communism and the various deconstructive syntheses which are their progeny all have as their stated goal the limitation if not the destruction of philosophical rationality. It is a matter of some interest, however, as to how, starting from an explicitly a-philosophical standpoint, it is possible to interpret the works of previous philosophers without caricature of their method, aim and spirit. This is not to say that post-Hegelian *philosophy* is without philosophical content and import or that it is not instructive as to certain limitations of the philosophical tradition. Still, and with all due respect, it would be surprising to find a philosophical comprehension of the tradition and its revolutionary moments from within the revolution itself.

Mainstream late-nineteenth and twentieth century philosophy both in its continental and analytic forms has its origin in large measure in opposition to the claims of the Hegelian system and inevitably falls into a severe hermeneutic raging against the outrageous fallacies of the past, on the one hand, or on the other, precociously to and fro-ing, gleaning out of context various forms and arguments in the service of some

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<sup>1</sup> Throughout this essay I use the English verb *to comprehend* and noun *comprehension* to convey the sense of Hegel's *aufheben* and *Aufhebung* respectively. This strikes me as preferable to Stirling's awkward suggestion of *to sublimate* in *The Secret of Hegel* (1865) and Suchting's suggestion of *to suspend* in "Translating Hegel's Logic: Some Minority Comments on Terminology" in Hegel, *The Encyclopaedia Logic*, (Tr. T.F. Geraets, W.A. Suchting, H.S. Harris) (Indianapolis: Hackett Publishing Company, Inc., 1991). Suchting's sense of *aufheben* as putting what is *aufgehoben* "out of action" cannot be reconciled with Hegel's thought. Comprehension implies the grasping of some object in its rationality which maintains the "action" of the object but as preserved and elevated in rational concretion.

contemporary dogmatism all the while holding in ironic or regulative suspension the substance of previous standpoints and comprehending neither the past nor the present. Such interpretations it might be said are hermeneuted. Adequately to conceive the accomplishments of the philosophical and post-philosophical traditions, then, requires clarification of their relation and central to this clarification is the rediscovery of traditional philosophical texts in light of their own logic. Such is the concern of the present argument which attempts to show in the Hegelian *Sittlichkeit* an institutional life not exhausted by Marxist and Rawlsian criticism.<sup>2</sup> This essay indicates the limits of post-Hegelian interpretations of Hegel by attending to the argument of Hegel's *Philosophy of Right* to indicate how it imposes neither a spurious ideal of the state on the material reality of human society nor an abstract spiritual ideal on human history. Finally, in light of these reflections, the present argument considers John Rawls's "Reply to Hegel's Criticism" in Lecture VII, Section 10 of his *Political Liberalism*. Here it is argued that Hegel's conception of an historically determinate common good beyond the divisions of civil society (explicated in the first two parts of this essay) provides a more comprehensive account of political life than is available on the Rawlsian view.

## II. Marx's Feuerbachian Critique Of Hegel

Marxists and liberals alike find in Hegel's political philosophy and philosophy of history a spurious ideal, whether state or cosmic spirit, which stands opposed to the freedom of individual labourers, consumers or culture-producers. Marx's criticism of Hegel is grounded in Feuerbach's view that Hegel has inverted the real subject of human existence, making what is merely ideal into an underlying reality and making reality into mere appearance.<sup>3</sup> According to Feuerbach: "The essence of Hegel's logic is transcendent thinking, the thinking of the human being supposed outside human beings" (Feuerbach:158).<sup>4</sup> As a result: "Hegelian philosophy lacks immediate unity, immediate certainty, immediate truth." To correct Hegel, then: "We only need always to make the predicate into the subject and thus, as the subject, into the object and principle"(Feuerbach:157).<sup>5</sup>

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<sup>2</sup> Rawls does not conceive the freedom of individuals as so radically destructive of institutional life as his deconstructionist contemporaries but maintains such ethical concretion only in virtue of a presupposed moral will present in what he calls the public culture of the United States but articulated only hypothetically in his thought.

<sup>3</sup> In its atheistic form this argument collapses real and ideal into the freedom of the natural finite subject. In its theistic form this argument separates real and ideal in a division between a finite subject and an ideal realm radically beyond human reason. From a Hegelian perspective both sides of this division are equally theistic and atheistic, one rendering the finite subject absolute, the other unable to distinguish the finite and infinite except by means of enthusiasm or authority.

<sup>4</sup> Ludwig Feuerbach, "Provisional Theses for the Reformation of Philosophy" in Lawrence Stepelevitch (ed) *The Young Hegelians: An Anthology* (Cambridge: Cambridge University Press, 1983) p. 158. Hereafter in in-text notes (Feuerbach).

<sup>5</sup> Likewise the liberal L.T. Hobbhouse in *The Metaphysical Theory of the State* (Connecticut, Greenwood Press, 1984) p. 18: " This then is the metaphysical theory of the state. It is the endeavour to exhibit the fabric of society in a light in which we shall see it, in or through its actual condition as the incarnation of something very great and glorious indeed, as one expression of that supreme being which some of these

It is instructive to consider the basic components of Marx's critique of Hegel as they succinctly appear in *Kritik des Staatsrechts* especially with reference to sections 261-69 of Hegel's *Rechtsphilosophie*.<sup>6</sup> Marx argues that on the Hegelian account the state appears as an external necessity which subordinates the realms of family and civil society which are thus rendered spheres of circumstance, caprice and individual choice. He states: "Accordingly, the rationality of the state [Staatsvernunft] has nothing to do with the division of the material of the state into family and civil society" (Marx:7).

For Marx this indicates that, on Hegel's view, the spheres of particularity and difference do not have their own rationality and moreover that the supposed rationality of the state, that is, its self-conscious order, does not permeate the lived content of family and civil society. The abstraction of the state lies precisely in its inability to comprehend the particular realms. Thus on Marx's view we have in Hegel's thought an essential tension between the abstract rationality of the state and the particular wills and lives of individuals, a tension which is overcome only through the conceptual subordination of the particular realms to the state.

Therefore, both from the standpoint of the private realms of family and civil society, which find in the state a merely external force, and from the side of the state, which finds in these realms contingency, caprice and circumstance, the emergence of the state appears unconscious and arbitrary. Marx links this unconscious process with nature. He states: "Family and civil society appear as the dark natural ground from which the light of the state emerges" (Marx:7).

Because actuality, on the Marxist view, lies on the side of particularity and difference, the concept of the state which Hegel develops over and against family and civil society will thus be a kind of unreal mysticism – an immanent spirit which works through family and civil society but of which individual family members and labourers are unconscious. From the Hegelian standpoint, Marx argues, this mysticism in turn renders human freedom and nature inactual, that is, without a rational order of their own.<sup>7</sup>

Marx contends that this denigration of the content of the familial and civil realms has a formal or logical correlate, that is, that the transition from these spheres to the state "is not derived from the specific essence of the family, etc., and the specific essence of the

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thinkers call the spirit and others the Absolute. There is no question here of realizing an ideal by human effort. We are already living in the ideal."

<sup>6</sup> Though unpublished by Marx his own view of the importance of the *Critique* is suggested by two references to it in his later writings: *Zur Kritik der politischen Ökonomie* (1859) and *Das Kapital* 2<sup>nd</sup> edition (1873). Cf. Karl Marx, "Critique of Hegel's Philosophy of Right", Trans. Annette Jolin and Joseph O'Malley, Ed. O'Malley (Cambridge: Cambridge University Press) p. xi. References to Marx's *Critique* in this section are from this translation. Hereafter in in-text notes (Marx).

<sup>7</sup> Marx expresses this Hegelian inactuality of family and civil society in a number of ways: (1) The purpose of their particular existence is not particular existence itself. (2) The conditioning factor (the reality of human discourse and activity) is presented as conditioned. (3) The determining factor (differences in the realms humans have created) is presented as determined. (4) The producing factor (human labour) is presented as the product of what is in fact its product. (5) Humans (*en masse*) are presented not as thinkers but as the result of thought/the Idea (262).

state, but rather from the universal relation of necessity and freedom"(Marx:10). Again particularity and difference have been given over to abstraction and the transition occurs merely by the imposition of vague categories on the specificity of natural life. According to Marx: "Exactly the same transition is effected in the *Logic* from the sphere of Essence to the sphere of Concept, and in the Philosophy of Nature from Inorganic Nature to Life" (Marx:10).

Further, on Marx's view, because mere abstractions do not have their own principle of movement, Hegel cannot indicate a movement or differentiation on the side of the ideal. Real movement, for Marx, occurs on the side of actually existing particulars which Hegel's idealistic account cannot possibly comprehend (Marx:10).<sup>8</sup> Marx states: "He does not develop his thought out of what is objective [*aus dem Gegenstand*], but what is objective in accordance with a ready-made thought which has its origin in the abstract sphere of logic. It is not a question of developing the determinate idea of the political constitution, but of giving the political constitution a relation to the abstract Idea, of classifying it as a member of its (the Idea's) life history. This is an obvious mystification" (Marx:14-15).

The basic thrust of Marx's criticism, then, is that Hegel's conception of the ideal State necessarily subverts the individual freedom and material reality of civil society, rendering them subject to an external necessity. There is also an historical correlate to this political criticism. Marx states: "Hegel's view of history presupposes an abstract or Absolute spirit which develops in such a way that mankind is only a Mass, a conscious or unconscious vehicle for spirit." And:"The history of mankind becomes the history of the abstract spirit of mankind, thus a spirit beyond actual man."<sup>9</sup>

To respond to these caricatures, it is appropriate first to consider the unity of nature and will presupposed in the *Philosophy of Right* and the nexus of nature and freedom in family life which is a presupposition of Hegel's account of civil society. Both accounts indicate the limits of radically separating ethical and material life as on Marxist lines. Second, an explication of Hegel's account of civil society demonstrates that Marx's view of the contradiction between his conceptions of civil society and the state is not well founded.

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<sup>8</sup> Cf. Also his remarks on *Philosophy of Right* section 269 where Marx criticizes Hegel's view of the organic nature of the state. While Marx finds laudable Hegel's sense that the diversity of powers in the state is a rational and living whole, he is critical of Hegel's deduction of this principle. According to Marx, Hegel's view is not content to express the empirical reality of the differing and related powers in the state but posits over and against this fact an idea which, on Marx's view, is attached to no particular substance. Because this ideal is mere mysticism, how the organism is specifically *political* is not defined. For Marx, Hegel does not develop a political ideal, i.e., one which emerges through reflection on actual differences but rather develops an abstract ideal which he attempts to coerce into political form and which, as we've said, relates to political differences as external necessity. As noted earlier, on Marx's view, this ideal can be related to difference only through its subordination. The subordinating activity of the Ideal is thus a leveling of differences and only a general concept of organism remains. Marx states: "The same thing can be said with equal truth about the animal organism as about the political organism" (Marx:12).

<sup>9</sup> Friedrich Engels and Karl Marx, "The Holy Family" in *Writings of the Young Marx on Philosophy and Society* (Ed/Tr) Lloyd Easton and Kurt Guddat (New York: Anchor Books, 1967) p. 382.

### III. The Nature And Ethics Of Civil Society

#### 1. *Nature, Will and Family: The Presuppositions of Civil Society*

It is essential to see the role nature plays in Hegel's political thought. Hegel not only presupposes a unity of nature and freedom but also attempts to recognize a natural substantiality which informs the free will of individuals. Hegel asserts in the introduction to *The Philosophy of Right* that the account of the free will presupposes his account of subjectivity in the *Encyclopaedia*. Turning to the *Encyclopaedia* we find that Hegel contends "mind has for its presupposition Nature of which it is the truth".<sup>10</sup>

It has been argued that Hegel has a merely mechanistic and mathematical view of nature and that he thus contrasts the freedom of spiritual life with the externality and necessity of nature.<sup>11</sup> However, for Hegel this is nature as the *understanding* sees it, nature in its externality, that is, as the "merely external connection of mutually independent existences" (PM:3w81z). Hegel's view of the relation of will to nature conceived as mechanism follows this account. Hegel states: "here the activity of our willing, as of our thinking, is confronted by an external material which is indifferent to the alteration which we impose on it and suffers quite passively the idealization which falls to its lot" (PM:381z). However, for Hegel this is a limited account of nature and the intelligibility of nature in fact lies in that it is not thus opposed to the will. According to Hegel, nature itself overcomes its own externality (the division of independent existences) and "liberates the concept concealed in nature from the covering of externality and thereby overcomes external necessity." He argues further that this process is the "transition from necessity to freedom" (PM:381).

Thus Hegel clearly recognizes that the concept of nature opposes the concept of free will when nature is conceived as mechanism. When he contrasts freedom to nature in this way it is the Enlightenment understanding of nature he has in mind.<sup>12</sup> On his own view, however, this opposition is only one moment of the relation of nature to self-consciousness. It is crucial, therefore, to see that when Hegel speaks of nature in his political philosophy, he intends nature as thoroughly spiritualized in the human will. The whole standpoint of objective spirit is beyond the dualism of mind and nature; in the concept of the free will, which Hegel's political philosophy everywhere presupposes, this dualism is understood as implicitly overcome.

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<sup>10</sup> Hegel, *The Philosophy of Mind*, A.V. Miller (Tr), (Oxford: Clarendon Press, 1973) section 381. Hereafter in in-text notes (PM and section #).

<sup>11</sup> Manfred Riedel, "Nature and Freedom in Hegel's *Philosophy of Right*," in *Hegel's Political Philosophy: Problems and Perspectives* (Cambridge: Cambridge University Press, 1971) p.66.

<sup>12</sup> This makes sense of the difference between his view of the state as organism and the Wolffian view of Frederick the Great, for example, which sees the state as mechanism. For an account of the Prussian Enlightenment cf. C.B.A. Behren's, *Society, Government and the Enlightenment: The Experience of Eighteenth Century France and Prussia* (New York: Harper and Row, 1985).

In the 'Introduction' to the *Philosophy of Right*, Hegel recapitulates the argument of his 'Psychology' that the free will knows itself implicitly as the comprehension of nature. For Hegel the will is a *thinking* will and thus thought and will are not two separate faculties. Rather the will is a manner of thinking: thought determining itself to existence; "thinking as the urge to give itself existence". In any activity of the mind both moments are present (PR:4-A). Further, for Hegel the will is not limited by nature. Rather, the will's relation to nature is the will's relation to its own particularity and the distinction with which we are concerned is not between the will and nature but rather lies within the will itself; a disparity between what the will is in its principle and what it is in its deed. It is the unity of nature and freedom which permeates the relation of civil society to state in Hegel's political thought.

The basic or immediate institutional articulation of the unity of nature and will is the family. The family is both a natural institution and an appropriate ethical beginning in that it shares the immediate starting point of abstract right (in that the subject is confronted with a natural limit which must be transformed) while at the same time providing an objective ethical institution which can be recognized as grounding the subject's moral freedom and as presupposed by such freedom. It is presupposed by freedom, first, in an immediate or natural way. In infancy one is unable to look after oneself and therefore one's existence and welfare depends upon and is mediated by the concern of others. Most importantly the very identity of family members is mediated by relation to others, of child to parent, husband to wife, and sibling to sibling. Through their life together husband and wife become a unit, sharing experience. Also as a child one's own self image is determined by one's relation to one's parents. One's conscience is determined by the moral strictures of parents and one feels guilt when one contradicts parental rules.

This effects a severe criticism of the assumption that the free individuality upon which civil society rests is something given and unmediated as in state-of-nature accounts. In Hegel's account the individual freedom which is the foundation and justification of civil society and state is not merely given but rather has been mediated through the interiorization of the culture and discipline of family life. The individual is ethically educated prior to his capacity for full self-conscious moral action, his will is disciplined by a concrete ethical institution equipped with force, authority and legitimacy. Self-interest and nature, the corner-stones of state-of-nature accounts, are comprehended by the family unit which includes selfish individuals who are also devoted to one another. The family, therefore is a mediation of self and other implicitly accomplished in the feeling of love which family members have for each other.

The family is, however, a limited form of ethical life because individuals cannot develop to their full potential so long as they remain dependent on their parents; and the purpose of the family is to develop the individuality of children to the point where they can leave their merely natural relations behind. Children develop and leave their natural family in order to make lives for themselves, and ethical life in its immediate union of universal and particular ends is thus sundered into a situation where the individual defines himself in contra-distinction to the universal. According to Hegel, the further

development of individuality takes place in civil society which he calls "ethical life in its stage of division" because in it the individual subordinates the universal good to his own private interests (PR:184).

Thus the family unit dissolves through the working of the principle of individual personality and in civil society individuals are treated not as loved family members but as independent persons related to each other through self-interest and law. At all points however they are also united by the ethical education received in the home, through the experience of cooperation, and by common customs (PR:181). This very division is in the interest of ethical life and the individual's activity in this realm, though expressing his particular interests, are still ethical.<sup>13</sup> From this perspective, the Idea of right which refers to ethical life in the state is in fact prior as final cause to its articulation in family and civil society. In principle, ethical life as the union of self-conscious freedom and political institution is the reality from which family and civil society are abstractions or one-sided accounts.

## 2. *Civil Society*

According to Hegel, an individual's particular acts are embodiments of his freedom, not simply of his particular (economic) freedom (freedom of choice or freedom from obstruction) but of a more universal freedom, mediated by consciousness of law and institutional life. In developing its potentialities, Hegel contends, "particularity passes over into universality and attains its right" (PR:186). The process of civil society is thus an education of the particular individual from his own self-interest to a more universal ethical life, the development of the implicit universality of the moral will (PR:187). Through the course of this education, the individual is socialized and his talents, personality, and habits take on a social character. It is not simply that social institutions arise from these inter-relations though no doubt some do. Rather, the argument of 'Civil Society' can be seen to articulate why it is that certain social institutions have legitimacy for the free will: in its most general sense institutions are legitimate so far as economic and moral freedom presuppose them.

Hegel's argument develops in two ways. On the one hand, through the actions and interactions of self-interested individuals and the interplay of individual and social interests a *spontaneous* structuring of this inter-relation occurs, and the structures of civil society emerge as embodiments of the subject's free will. On the other hand, the structures which develop serve to discipline the subject's interests so that these interests become universalized and enact rather than contradict the interests of the community. On the principle of modern political life, only when legitimated, that is, when willed by an ethical community, do institutions discipline the individual will and objectify the universal relations of this will.

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<sup>13</sup> The division present in civil society does not mean that the individual has no universal interests, indeed people work to provide for their families and as members of corporations. Also their labour supplies the needs of moral individuals who have an inner universality. Nevertheless for Hegel these universals are rendered relatively particular in relation to the state because it belongs to their principle to be in conflict with each other in the civil realm.

(i) The System of Needs

For Hegel the individual with which we are concerned in civil society is not simply an isolated natural subject, bound to impulse but is, rather, a self-conscious subject related to his own appetites as a free member of a society. In civil society humans give an explicitly rational institutional form to their needs and desires. For Hegel, the subject's relation to desire and appetite is therefore not opposed to reason but is, in fact, determined by reason and his needs are not satisfied through merely natural objects but through the *artificial* products of human action.

In the place of natural desires we create our own second nature; our appetites and consumption are not limited to the products of nature and, in fact, for the most part we consume the products of human work. Indeed our particular desires are often only means to more social desires such as the desire for status. Therefore it is wholly abstract to describe our appetites as given by nature. Human desires are for the most part produced through social interaction, likewise the objects of desire are produced by society and the value of these objects is determined by human labour (PR:196). In the system of needs both the objects desired and the means for achieving them are through and through the product of human activity. Thus our desires cannot be described as merely *natural*, they belong to a complex web of social and commercial interactions. When one's needs are multiplied one is more dependent on others for one's satisfaction and the civil individual cannot be adequately understood in terms of the natural particularity of his will. The fact that in one's own work and self-interested activity one produces satisfaction for others makes reference to the needs of others essential to one's private conduct. Even one's desires are determined by the latest fashion and in the interest of status.

According to Hegel, however, thought as well as desire is educated in the workplace which is an intellectual and practical education resulting in the: "habit ... of objective activity and universally recognized aptitudes" (PR:197). One learns to be busy, to work in accordance with social standards, to get along with co-workers, basically to get things done. In Hegel's concept of civil society we are not dealing with individuals isolated by the particularity of their needs and brought together as a mere external collection of particulars. Rather we are concerned with members of a society, with individuals whose actions serve universal civic interests.

It follows that in terms of this universal, moral subjectivity, it is an abstraction to speak of a radical distinction between the differing interests of individuals. Individuals are freed from the conflict between a heterogeneity of needs and an homogeneous moral law into an inner universal will which finds its objective actuality in social institutions. The development of a system of need actualizes the moral subject's comprehension of his relation to nature; it is an objective expression of his liberation from the givenness of nature.<sup>14</sup> Thus for Hegel, the significance of civil society is that in it individuals find satisfaction only in relation to other free individuals, that human action is essentially

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<sup>14</sup> This liberation when conceived abstractly is a technological will whose freedom is expressed in the destruction of the environment.



moral and institutional, that is, *ethical*. He states: "This relation of will to will is the true and proper ground in which freedom is existent" (PR:71). But it is important to note that this is a will which, in a certain light, is the product of nature's own development and is thus not, in principle, opposed to nature.

In relation to the multiplication of needs and talents one comes to be recognized socially only in so far as one works in the satisfaction of one or another of these needs and insofar as one's special skill in this work meets social standards. This actuates a division of labour which is legitimated insofar as it enhances the objectivity of the system of need and deepens universal interdependence. Hegel states: "By a dialectical advance subjective self-seeking turns into the mediation of the particular through the universal, with the result that each man in earning and producing and enjoying on his own account is *eo ipso* producing for the enjoyment of everyone else (PR:199).

The resulting objective, social organization is composed of two elements: (i) a universal or common possession of general resources and skilled labour and (ii) a division of classes. The principle of common capital, general resources etc., is relatively clear.<sup>15</sup> Hegel's concept of class division requires further elucidation.

Hegel argues that individuals partake in universal institutions and common capital by means of their own skills and resources. These are not simply personal attributes and acquisitions, however, because one attains one's own resources only in relation to others and further because what actually counts as skill is determined by what is valued in society. For Hegel, the basis of the class system is that the individual be related to society by virtue of the particular skills and intellectual and practical education attained by himself and his family. In this system the individual obtains his position in society in terms of the actual circumstances of his life and his ability to perform socially recognized work.

The conjunction of particular skill and the universal will (the social will of particular individuals) is determined as an objective ordering of individuals in terms of the work they do, that is, in the divisions of class. What Hegel has in mind here are the divisions among those occupations whose activity might be defined as (1) primary labour directed to the harvesting of nature (farmers and fishers, for example), (2) industrial and market labour directed to the transformation of nature, and (3) professional labour directed towards humans themselves (doctors, lawyers, teachers, civil servants) (PR: 202-205). The development of such objective classes is a necessity, according to Hegel, but he argues that "the ways and means of sharing capital are left to each man's particular choice" and that the classes are the root which "connects self-seeking to the universal" (PR:201-A). The important aspect of class division is that, in it, there is a unity of the interests of society with the interests of individuals. One satisfies one's particular desires by adapting oneself to the customs of one's class and to the skills required in civil society, and by cooperating with one's co-workers. The objective order upholds individual choice and conversely the universal is instantiated in the ethical intentions of individuals. On

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<sup>15</sup> Cf. for example, Adam Smith, *The Wealth of Nations*, Book II.

Hegel's view, therefore, because the realm of civil society is not a realm of merely natural need, it is not ultimately opposed to ethical life.

In the satisfaction of self-interest, therefore, individuals also partake in an objective order which in turn educates them beyond their isolated self-interest and disciplines them in the needs of society. One is recognized not as a merely private person but as a member of a class and in order to actualize one's purposes (which means to have them recognized) one must limit oneself to a particular trade, profession, or vocation. It is important to note however, that individuals are not simply bound to a particular class. On Hegel's analysis, an individual may, in principle, choose the class to which class he will belong in accordance with the skills and manners he develops. Further, the forms of social life which develop in civil society are not meant completely to determine the individual's ethical life; for Hegel society is founded on far more than need and economic relations (PR:205). The class system is not to be valued in and of itself but rather as an appearance or prefiguration of the ethical life which is only fully developed in the state.

Hegel recognizes the limits of the class system and he argues that adjustment and correction are to be undertaken by the government. He states that classes are superceded by and undergo modification through the working of civil law, the administration of justice, the process of education, and religious instruction (PR:203). Therefore, one's relation to society is not wholly determined by one's relation to one's class. One must keep in mind, however, that one's class and occupation imply a specific discipline and experience of life, a particular kind of education. For example, what one ought to do is determined relative to one's class and one's interests are, in part, mediated by one's class. It follows that the individual can have ethical knowledge in civil society and (again) that the relation of civil society to the state is not that of a non-ethical to an ethical realm. In fact, the important point for Hegel is that civil society is a definite form of self-conscious ethical life. In the *education (Bildung)* which occurs in the system of needs, the activity of the subject is to develop the implicit customs of this realm in order that they may be known. This reflection upon custom is, in the first place, rectitude or knowing the attitudes and behaviour appropriate to one's class.

However, the identity of particular and universal interests is relative in the class divisions and individuals are more than merely class-beings, for example, they may move from one class to another. Further, individuals from different classes come into direct relation to each other, as the system of needs engenders an interdependence of class, and it becomes necessary to know the customs of many different classes if one is to work in civil society.

#### (ii) The Administration of Justice

In this interdependence of classes and in virtue of the freedom with which the individual may move among different classes, the person educated in the system of needs is conscious of participating in an order which goes beyond the particular class to which he belongs. According to Hegel this universionality is at the basis of the administration of justice: everyone is seen to be equal and one's rights are recognized, not in virtue of one's

class, but in virtue of universal personhood. Right therefore, has universal validity (it belongs to everyone) and in law it is given determinate existence for consciousness (PR:210). From a division into individual persons and distinct classes, civil society makes explicit its unity and universality through the system of law. Hegel states: "In the administration of justice ... civil society returns to its concept, to the unity of the implicit universal with the subjective particular" (PR:229).

This unity has primarily two manifestations. First, the particular conventions and interconnections brought about by the necessary dynamic of the system of need are raised to the level of self-consciousness in the system of law. Custom is made into a system in which the subject recognizes his own universal reason. Second, because the universal law is determinate and actual in this sphere, the right of intention is given objective standards by which it can judge action. The universal or social interest is made objective for consciousness in positive law and is further determined by its application to the details of civil and family life.

Hegel sees law as produced in the actual life of a people and sees the role of government to articulate these developments. In the system of law, the subject knows a reason that is actual and determinate in society. The social relations, which remain implicit qua custom, now assume an explicit and independent reality which stands over and against the individual's merely particular interests. In a society whose customs have been raised to the objectivity of positive law, the individual has the objective right to "insight into what is recognized as right" (PR:132). It is essential to Hegel's argument that civil law is willed and actualized by the self-conscious subject. In fact, for Hegel, the authority of the modern system of justice lies in the recognition by individuals that their personal interests can be realized only in a universal order. On Hegel's conception, then, civil law is not some abstract metaphysical end-in-itself which a philosopher king type ruler imposes upon his subjects, rather it arises from the particular customs and appetites of a people.<sup>16</sup>

There are, however, two significant limitations to the administration of justice. First it remains in a certain sense only a relative unification of universal and particular interests because, though it brings all individuals under the form of law, it tends somewhat to defend the individual's universal interests as against his merely personal interests.<sup>17</sup> Second because the actuality of the union of universal and particular ends occurs only in single cases of infringement of the law, justice is not a thoroughgoing unity of universal and particular rights (cf. PR:229). Hegel explicitly demonstrates the limits of civil law and shows why civil society develops institutions of concrete universality, which educate the individual such that he recognizes in a more explicit form that the will of the courts

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<sup>16</sup> This contradicts K.H. Ilting's point that "Hegel could no longer describe the state as that organization of a political community where the citizens examined and decided the general problems of the family and especially civil society." Cf. K.H. Ilting, "The Structure of Hegel's *Philosophy of Right*" in Pelczynski 1971, p. 107.

<sup>17</sup> Though, *taken to extremes*, the distributive justice of the present day defends the personal over and against the universal.

(the rule of law) is his own will. The most determinate form of the ethical life of civil society occurs through government agencies and private corporations.

(iii) Government Agencies and Private Corporations

It is the demand of the subject that his concrete freedom, the unity of his social and particular ends, be actualized in a stable and continuous manner (PR:230). This unity is extended throughout the realm of civil society through two institutions: government agencies (municipal, provincial and federal) and private corporations.

According to Hegel, the purpose of government agencies and regulative bodies is to be a middle term between the individual and the common goods and opportunities which society affords. One of the duties of government agencies is to maintain the common capital and general utilities (PR:235). Also government agencies are concerned with quality control and price fixing of essential services and goods. Hegel argues that "goods in absolutely daily demand are offered not so much to an individual as such but rather to a universal purchaser, the public" (PR:236). Government regulations insure that the public is not defrauded or taken advantage of by particular interests. However, even lawful actions may interfere with the freedom of others and Hegel contends that government agencies also attempt to remove accidental hindrances to the rights of the individual and the public (PR:230).

Further, government is responsible to ensure that the disparities of the system of needs do not infringe the universal right to partake in the common good. For Hegel, the extravagance of the free market causes an impoverishment of those who for reasons of luck or ability cannot partake fully in the market. As members of civil society they are encouraged to actualize themselves through work yet they are prevented from this by the very system which encourages the desire (PR:243). Because the dispossessed cannot fully partake in the benefits and opportunities of civil society, they feel this limitation as a resentment of those who have more and whose disproportionate wealth is one cause of their poverty (PR:244). Hegel argues that government attempts to prevent vice from breeding among this class and to secure the welfare of its members (PR:245). Nevertheless, in this contradiction the dispossessed are left out of society as a whole and do not find their freedom in its laws and customs, which appear merely to instantiate the aforementioned contradiction.

On Hegel's view, only if one's class is liberated from opposition to the whole can an individual be liberated to the universal standpoint of justice and to participation in the broader interests of the whole society. Likewise justice can attain true universality only when class prejudices can be overcome. Thus on Hegel's account the very justice of a society depends on the issue of re-integrating the dispossessed, which is demanded by the dignity of individuals. He states: "Against nature man can claim no right, but once society is established, poverty immediately takes the form of a wrong done to one class

by another. The important question of how poverty is to be abolished is one of the disturbing problems which agitate modern society" (PR:244-A).<sup>18</sup>

In its relations to business, to the dispossessed class and to individuals, government agencies protect particular interests so far as they have a relation to the common good; so far as they are related to the institutions of civil society. Government agencies and regulatory bodies have as their purpose the actualization of the universal contained within the divided interests and classes of civil society. In this actualization however, the universal ends of society are determined in a merely external organization whose activity is mostly the prevention of hindrances to particular satisfaction. On the one hand, specific departments of government mediate between the various individual ends in order to maintain their harmony, though still only in the interest of individuals. On the other hand, individuals will their own personal ends and the common end primarily as a means to these ends.

In order to overcome the limits of government civil regulation, where the common good remains in a somewhat external relation to individual interest, the common good must be given a more objective form in corporate life. In the corporation, Hegel argues, the relation of the particular worker to the universal organization is mediated by his particular skill. The purpose of the individual's activity and of the activity of the corporation, however, is one and the same, that is, the satisfaction of the individual, though at this stage as a collective enterprise. In this way the purpose of the corporation is to establish reciprocity between the universal good and the particular interests of individuals; only so far the individual cooperates with others and adheres to the conventions of the workplace can he find his satisfaction, and only through the efforts of particular individuals, in the satisfaction of their needs, can such a system and education be developed (PR:251). In the corporation it is not simply the case that the particular subject must will a universal good which is still imposed in a somewhat external manner; rather the corporation is a universal institutional will which more directly engages the particular interests of its members. Though the corporation is exacting in its discipline, educating its members to requisite levels of skill and habit, it ought also to protect its members. Hegel argues that the corporation restricts unlimited earnings, rationalizes the form of charity and actualizes the right to welfare of its members (PR:253).

The corporation is the most concrete institution of civil society. In the system of needs for example, one accomplishes one's own welfare and only subsequently

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<sup>18</sup> From a Marxist standpoint it appears that Hegel inadequately comprehends the principle of equality as witnessed in his acceptance of class alienation and primogeniture, for example. This criticism has some validity and marks in Hegel's thought a certain abstraction relative to the concrete freedom and equality presupposed in the centuries after Hegel. It is misleading, however, to conclude, as does Riedel, that Hegel was thus attached to pre-modern social structures. Rather, he found in the principles of the Prussian Enlightenment a less violent transformation of political institutions than present in the French Revolution which resolved into a reign of terror. It is only on the view that civil society is an end in itself and on the assumption that classes are static forms imposed on social life and not themselves expressions of modern freedom that Hegel's depiction is found radically flawed. It is closer to the Hegelian argument to see historical-political forms both as stable and as containing within the logic of freedom which is their very substance the seeds to their own rational revision.

contributes to the satisfaction of the welfare of others. In the corporation one wills the satisfaction of others as well as oneself, and recognizes that one's particular satisfaction is the product and end not only of one's own will, but also of the will of others. Under the system of justice the standards which must be respected in the relation to these others has been determined but in the corporation the moments of civil society, of right and welfare, are united (PR:255). Further, the union of particular interest and universal interest is more concrete in the corporation than in the system of justice. Here it is not simply a matter of an application of the universal to the particular. Rather, for Hegel, the true union of the subjective and the objective will is implicit in the corporation. Nevertheless, the ethical union present in corporate life is subject to competition among the various corporations comprising civil society, it is not therefore sufficient to ethical life.

It is plain, however, from the preceding account that it is quite problematic to argue that Hegel sees civil society, by contrast with the state, as a merely unconscious economic realm restricted exclusively to the satisfaction of material natural desires. Rather, for Hegel civil society is an education of individuals to a consciousness of the underlying ethical institutions which ground their self-interest and morality. The universality of the moral will is shown to presuppose a concrete institutional system.

Contrary to appearances, the real end of civil society is not simply wealth but an education of individuals to a consciousness of true human enjoyment. Consequently, for Hegel, the economic relations of civil society are fundamentally ethical because they develop the subject's objective duties and overcome abstract moral reflection (PR:187). The movement of civil society is to develop universal and free relations among humans who recognize and respect each other, who share customs, laws and history. It is a dialectical development, where the individual develops his consciousness of his institutional nature.

#### **IV. Against The Cosmic Spirit: The Logic Of Hegel's Philosophy Of History**

The contention that Hegel's political thought involves an unresolved division between civil society and freedom which renders oppressive his concept of the state is mirrored in criticism of Hegel's concept of history. Even Charles Taylor the most influential North American interpreter of Hegel follows Marx in this regard: "[W]ith the development of a notion of *Geist* as a subject greater than man, Hegel developed a notion of historical process which could not be explained in terms of conscious human purposes, but rather by the greater purposes of *Geist*. The transformation in political, social, religious institutions which must come about if man is to fulfil his destiny are no longer seen as tasks which men must consciously accomplish." And further: "In other words, the notion that man is related to a larger cosmic subject went along with the displacement of the subject of history in Hegel's thought, who is no longer simply man -- if indeed, he ever conceived it as such but *Geist*."<sup>19</sup>

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<sup>19</sup> Cf. Charles Taylor, *Hegel* (Cambridge: Cambridge Univ. Press, 1975) p. 74.

But just as on Hegel's account, the state is not related as ideal spirit to civil society as material reality, neither is world history (whose subject is the state) a process which uses individuals as its tools and instruments. The present argument is concerned to clarify the logic of Hegel's philosophy of history through an examination of three of its basic components: (1) the conception of the state as eternal, (2) the distinction between the essence and existence of the state and, (3) the distinction between the real and the ideal state.

### *1. Freedom and the Eternity of the State*

On Hegel's argument, the *eternity* of the state lies not in some timeless other-worldly realm, but in the fact that it is a product of the infinitely free will. The minimum presupposition of Hegel's political thought is the free will in its most abstract form, that is, in its relation to external natural objects and other individuals who are "conscious of their own particularity and diversity" (PM:483). From this starting point the action of the will is to overcome the difference between itself and the otherness of its own actions, to make these actions more fully embody its freedom. The free will determines itself in the actual world by transforming what is *merely given* in accordance with its concept.

For Hegel, the will's self-reflected and self-determined activity is in principle eternal, though not in separation from the finite world. Rather its activity is self-determination in the finite and real world. For Hegel, natural objects, as finite, are in a constant state of alteration because of the contradiction between self and other.<sup>20</sup> By contrast, the free will as *self-referential* being, comprehends natural form, is a unity of self and other, and is not therefore subject to this alteration. The activity of the will is precisely to give itself embodiment, to transform the other into a determination of itself. Therefore the principle of the will is that of a true infinite which contains all finitude, difference, and limitation within itself (PM:386).

For Hegel, freedom, because infinite, implies the comprehension of time. He argues that man's ethical life, having its principle in freedom, is elevated above all necessity and chance, beyond all contingency and temporality.<sup>21</sup> Therefore, for Hegel, human beings are both *in time* and in a sense *beyond time*. He argues that time is a limited form of history, the mere succession of epochs *ad infinitum*. He calls this the spurious or negative infinite, an interminable alteration between one epoch and the next; a *time-1* which always becomes a *time-2* (Logic:94).

Therefore, considered solely in terms of its merely temporal movement, spirit appears as incomplete and finite. However, according to Hegel the actual process of history is to comprehend this limit. He states that time is, in fact, the necessity which compels spirit to make manifest its inherent principle, that is, to give embodiment to the

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<sup>20</sup> . Hegel, *The Encyclopaedia Logic*, (Tr. T.F. Geraets, W.A. Suchting, H.S. Harris) (Indianapolis: Hackett Publishing Company, Inc., 1991) section 92. Hereafter in in-text notes Logic and section #.

<sup>21</sup> Hegel, *Philosophy of History*, (Tr) J. Sibree (New York: Colonial Press, 1900) p. 24. Hereafter referred to in in-text notes as PH and page number.

free will.<sup>22</sup> For Hegel, therefore, history is the expression of spirit in time, the labour of transforming time in its apparent difference from spirit, into an expression of spirit or, in other words, the development of the ideality of the real.<sup>23</sup>

The practical development of the free will is an historical process; the successive transformation and appropriation of the otherness of the objective realm by the subjective will. History, therefore, is nothing other than the self-development of the self-understanding of the free-will. Hegel's concept of the 'cunning of reason', however, seems to lend credence to the view of Marx and others that Hegel's political thought involves a state which is the result of no conscious purpose and a process of world history which uses individuals as its tools and instruments. Hegel states: "It is what we may call the cunning of reason that it sets the passions to work in its service"(RH:89).

However, properly conceived the 'cunning of reason' does not imply a cosmic spirit which uses humans as instruments. Rather, Hegel uses the phrase the 'cunning of reason' as a metaphor for the implicit realization of spirit in the immediate or natural form of the human will, that is, its unconscious impulse towards freedom. Even in one's most particular desires one is free, according to Hegel. One's actions show a command of nature and overcome one's individuality by bringing one into a relation to others; that is, they have a universal significance. The universal significance of an action, Hegel argues, is its implicit principle. Initially the means of realizing this principle appear as something external to the universal, as mere particular acts, that is, the purely subjective interests of individuals. Hegel argues, however, that passions, in the process of their own self-fulfilment create a universal order of society and that this social order in turn, is given power over the passions. This is familiar as the basic argument of 'Civil Society'.

It becomes evident in history, Hegel contends, that the passions are thus not opposed to the universal ethical order but are the means by which it is achieved. The point made by Marx and others that individuals are merely instruments in so far as they are not conscious of the ends they serve, would seem correct. What such interpretations neglect however, is the dialectical element. In Hegel's argument, both passion and principle are mere abstractions from concrete human existence; humans are self-conscious intelligent beings and their actions and reactions are interwoven with universal elements, with the good and with welfare (PH:28). The content of passion by its very nature is of universal significance and is not external to spirit in Hegel's argument (PH: 73).

Further, the process of history, which originates in a subject unconscious of his freedom, is precisely a development of that freedom from its implicit expression in impulse and desire to its self-conscious actuality in the state. In terms of world history, Christianity represents, for Hegel, a liberation from the unconsciousness of this process in the human recognition that it is realized in the 'fullness of time' and that the end of its development is free, self-conscious spirituality. From the origin of Christianity onwards

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<sup>22</sup> Hegel, *The Phenomenology of Spirit*, (Tr) A.V. Miller (Oxford: Oxford University Press, 1977) p. 487.

<sup>23</sup> Hegel, *Lectures on the Philosophy of World History Introduction: Reason in History*, (Tr) H.B. Nisbett, (Cambridge: Cambridge University Press, 1989) Hereafter in in-text notes referred to as RH and page number..



human beings are aware of the goal of spirit and the process of history becomes a self-conscious, self-development (cf. RH: 54). Once humans become in some measure conscious of their own freedom, they can no longer be described merely as unconscious tools. For Hegel, humans are ends in themselves, who consciously will and actualize their own freedom. He states: "Not only do they in the very act of realizing [freedom] make it the occasion of satisfying personal desires whose purport is diverse from that aim -- but they share in that ideal aim itself" (PH:33). This is the essence of modern democracy.

## 2. *The State as Essence and Existence*

The core of Hegel's argument is that the ideal state is *not* the simple essence of the state. In fact to speak of the *ideal* state as the essence of the *real* state is a category mistake. It is only when we focus on the particularity of an historically existing state that we can distinguish between its essence and its appearance.

Further, he argues that within the category of reality the distinction between essence and appearance is actually a distinction between the underlying consciousness of freedom and the actually existing state the object and embodiment of this spirit. It is therefore apparent that the essence of the state is not some eternal other-worldly essence which the real state but feebly imitates. He argues, the "universal spirit is essentially present in human consciousness" (RH:95). Moreover, he contends that this universal has its phenomenal reality in the state and, in contrast to the caricature of his view, he states: "In the case of the spirit or concrete concept, however, the phenomenon itself is the essential ....The phenomenal aspect of spirit is its self-determination, which is the element of its concrete nature: the spirit which does not determine itself is an abstraction of the understanding" (RH:96).

Essence therefore is not beyond appearance, rather it is essential to existence to be appearance, essence must appear. Whereas Kant, for example, interprets appearance in a subjective sense which fixates the thing-in-itself outside or behind appearance, for Hegel the significance of the category of appearance is that we are no longer faced with independent existences in the world.

Again it is important to note that for Hegel the *existence* of the state is not simply held in distinction from its essence. Rather, appearance is manifested essence. For Hegel, it is merely an abstraction to think essence and appearance (inner and outer) as radically opposed. He states: "The usual error of reflection is to take essence as what is merely inner. If it is taken only in this way, then this view of it is also a quite external one and that *essence* is the empty external abstraction" (Logic: 140-Rmk).

On Hegel's view, in the case of spirit, *essence is existence* and *existence is essence*. Spiritual activity is self-determining and its freedom consists precisely in transforming what confronts it as mere externality into its own embodiment. From the standpoint of the understanding, however, we can distinguish two senses in which the state may be analyzed in terms of a division between essence and appearance: (i) the essence of the state as the underlying consciousness of freedom and the appearance of the state in its

existence as a temporally and geographically bound set of political institutions and (ii) the rational institutions of the state and their appearance in the patriotism and ethical freedom of its many citizens.

But, for Hegel, to describe the state from this standpoint is inadequate. He argues that the state is nothing other than the institutional expression of the objective logic of self-conscious freedom. There is thus an essential unity of the state and the individual's consciousness of his freedom. The objectivity of the state is the individual's objectivity and conversely the individual's consciousness of his freedom is the state's own subjective life. The objective realm of spiritual existence or freedom is thus the state and its motivating principle is the subjective will. Subjectivity stands outside the state only in the mind of the commentator or so far as the subject consciously abstracts himself from its laws and customs and it is thus only in abstraction from the totality of institutional life that a distinction of subjective essence and objective appearance can be maintained.

### *3. The State as Real and Ideal*

On Hegel's view, the ideal state is not to be radically separated from either the real state or the free will. According to Hegel, the ideal state develops out of the activity of the real state and is not some eternal *idea* or essence in which the real state participates. Hegel contends that the development of the ideal state is the development of the nation's own thought, that is, its movement from a primitive or merely natural awareness to a thinking culture. Correlative to this development is the emergence of a free self-conscious life among its citizens; and it is in the self-consciousness of its citizens that the nation's spirit or ideal side is actualized.

On this view, the very essence of a nation's spirit is the activity whereby it realizes its potentiality and makes itself its own deed, its own work. In more concrete terms, a nation's spiritual act is the process whereby it develops itself from its largely restricted and merely national reality to its free ideality, to an actual idea of itself, articulated in its art, religion and philosophy. The ideal state is the result of an actual historical development through which a definite cultural and intellectual idea of the state has been accomplished. Through this process the universal interests of the citizens of a state become objective for them (PH:73).

For Hegel, a nation's greatest achievement is self-understanding; the full self-comprehension of its own customs, laws, institutions, of the whole sphere of its ethical life. And this self-understanding is its ideal life, its comprehension of its history. This ideal life, therefore, is not some perfect abstract attainment, according to Hegel, but is the end of the real work of the nation, the dusk of its ethical activity. He argues that *thinking culture*, a society's rational self-consciousness and self-expression in art, science, religion, and philosophy, is both the completion and the corruption of the state. Thinking culture, the highest development of the state, sets itself over and against the state and is its dissolution (PH:71).

Hegel identifies the *real* state with the particular, finite, and transitory interests of a nation. From one standpoint, then, history thus appears as the story of the glorious rise and inglorious fall of nations. Hegel's observation that "history is the slaughter-bench of nations" is well known. A question arises as to how the transitory and finite state can be related to the supposedly eternal ideal state. A brief consideration of the accounts of *reality* and *ideality* in the *Encyclopaedia Logic* sheds light on this relation in Hegel's philosophy of history.

Hegel argues that all determinate reality is permeated by its limit and he contends that limit is also the negation of determinate realities. Furthermore he states: "As the negation of the something, limit is not an abstract nothing in general, but a nothing that is, or what we call an *other*. In something we at once hit upon an other, and we know that there is not only something, but also something else" (Logic, 92). And: "Something is in itself the other of itself, and the limit of a something becomes objective to it in the other" (Logic: 92).

In terms of the real state this dialectic is apparent in the relation of a given state to other states. Hegel argues that the states negative relation to itself, that is, its finitude is embodied in the world in its relation to another state as if the negative were something external. However, because this negativity and distinction in fact give shape to the individuality of the state, it is just as much an internal moment (PR:323).<sup>24</sup> These external states determine the identity of the given state in terms of its geographical boundaries in so far as they may compete for resources and also in terms of war where the limit of a given nation becomes apparent if it is defeated. However as soon as one nation is defeated another nation arises as the enemy. Further and in a deeper sense once a given nation has been *world historical* in the Hegelian sense (that is, has played the greatest role among its peers in the development of freedom in its age) and has passed through its cycle of advance and decline, another nation takes its place. From this point of view, history appears to be an infinite process of the rise and fall of finite nations as one nation gives way to an *other*, a process to which nations are subject but which they do not comprehend.

According to Hegel, however, this infinite progression is a spurious or negative infinity (*schlechte Unendlichkeit*) since it is nothing but the negation of the finite (Logic: 94). It is not a true comprehension of the finite as after the negation of one nation another arises only to suffer the same fate. The infinite expressed in this way expresses the requirement that the finite and the infinite ought to be united, that the finite merely ought to be *aufgehoben* (Logic:94). It is an infinite which has only a negative relation to the reality of the state. From this standpoint history appears to be incomplete, the mere succession of states.

However the dialectic of negative infinity elucidates the true relation of the finitude and infinity of the state. For Hegel, it is mistaken to conceive the relation between the

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<sup>24</sup> An internal reflection of this negativity and division is present in the competition characteristic of civil society

finite and the infinite as one of rigid antithesis. He states: " If we say that the infinite is the `nonfinite', then by saying that we have already expressed what is true: since the finite itself is the first negative, the nonfinite is the negation of the negation, the negation that is identical with itself, so that it is at the same time true affirmation" (Logic:94). What this suggests is an infinite process of the finite wherein something passes into another, this into another and so on *in infinitum*. But as the other into which something finite passes is an otherness that is its very own, so in passing into this otherness it remains in relation to itself: as such a negation of the negation it is a "being for itself" and "this relation in the passing and in the other is genuine infinity". Hegel continues: "In being-for-itself the determination of ideality has entered. Being-there [*Dasein*], taken at first only according to its being or affirmation, has reality, and hence finitude too is under the determination of reality at first. But the truth of the finite is rather its ideality." (Logic:95)

For Hegel, this movement from the finite to infinite being-for-itself, from reality to ideality also occurs in the internal life of individual states and is the process whereby a state moves from being a merely particular nation to being a world historical nation. According to Hegel, thought has as one of its moments the negation of the finite and determinate. By comprehending itself in thought, by raising its implicit principle to self-consciousness, he argues, a nation overcomes its geographical and temporal limitations and can be said to be truly historical. The thought of Plato, for example, lives on though Athens has fallen. The principle developed in a particular state becomes the starting point of the next phase of world history, whose *real* activity is the objective determination of this principle.

Thus, at the historical point when a particular state has reached its completion, a contradiction between its ideal and its real moments presents itself. Thinking reflection upon the state isolates its rational spirit and thus stands in opposition to all that is merely particular, determinate, and limited. Social bonds are thus broken, Hegel contends, and subjectivity takes refuge in individuality (RH:146.).

Hegel argues that although this division of ideal and real dissolves the bonds of the state, it also gives rise to a new principle. Whereas the principle which motivated the nation was at first merely implicit in its concrete relations, its laws, and external affairs, in thinking culture this principle is made explicit, and given the form of universality. Hegel argues that, "this change also brings with it new and additional determinations of content", developments in art, religion and philosophy (RH:147).

For Hegel, therefore, the state obtains to ideality only once its practical and particular activity is accomplished. The idealization of the state transforms its merely linear history and gives it the form of universality in religious and aesthetic representation and in philosophical conceptualization. According to Hegel the concept of the state contains a whole history of spirit in its universal principle; for example abstract right is the principle of the Roman world and morality is the principle of the Reformation and Enlightenment (PH:281). By contrast with Marx's portrayal, a careful analysis shows that on Hegel's view the concept of the state is thus not a timeless other-worldly structure. Rather the concept contains the whole history of the state, but, having comprehended its historical

contingency, the concept expresses this history in the form of philosophical necessity, as a necessary determination of the free will (RH:146).<sup>25</sup>

### V. Rawls's Reply To Hegel: A Response

Hegel's political thought is thus not an abstraction as suggested by Marx and his contemporary followers. Over and against Marxist readings, Hegel's political and historical conception of *Sittlichkeit* does not subvert the *real* relations and divisions among citizens in favour of an *ideal* speculative resolution. Rather it articulates a concrete ethical order which mediates the individuality of citizens through an objective good present in the historical life of institutions. Moreover, its conception of the institutional difference between civil society and state seems more fully than the Marxist view to express the principle of modernity, that is, the free individual.

By contrast, Marxism, in virtue of conceiving the divisions in civil society as destructive of free individuality can thus be seen as a kind of political moralism; a longing for a utopian freedom which *ought to be*, finding in the heteronomy of civil society an affront to the universality of the citizen-labourer.<sup>26</sup>

What primarily distinguishes Rawls from Marx (and Nietzsche), however, is the Enlightenment constitution of the United States and the Kantian moral philosophy which he presupposes at every point. As a result, he is able to give expression both to the moral equality of individuals, in his conception of the 'original position', and to a hierarchy of talent and exertion, in his 'difference principle' which states: "[T]he social and economic inequalities attached to offices and positions are to be adjusted so that, whatever the level of those inequalities, whether great or small, they are to the benefit of the least advantaged members of society"(I,1).

Rawls thus presents his liberalism, a modified Kantianism, as that political construction most inclusive of the private and public dimensions of the freedom and equality of individuals. His view, 'political liberalism', more fully than Hegelianism recognizes the pluralism characteristic of contemporary liberal democracies while, at the same time, attempting to answer Hegel's criticisms of contract doctrine. His theory presents liberal contract doctrine in its most universal form able to express not only individual conscience and welfare but also the social and political good which the state secures.

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<sup>25</sup> It should be noted that for Hegel the mere succession of states is not just set aside. Rather he argues that this succession (the spurious infinity) is the external aspect of the unity of the infinite and the finite and that the truth of the finite and the infinite is implicit in this process.

<sup>26</sup> For example, cf. *Anti-Duhring*. Also cf. James Doull, "Hegel and Contemporary Liberalism, Anarchism, Socialism: A Defense of the *Rechtsphilosophie* against Marx and his Contemporary Followers" in *The Legacy of Hegel*, ed. J.J O'Malley (The Hague: Nijhoff, 1973).

But Rawls's appropriation of Hegel's theory in his own *politicized* contract doctrine is less than complete. While attempting to develop a universal political realm beyond the particular divisions of civil society and private association, Rawls nevertheless falls short, unable to conceive the state in terms of its full ethical concretion. Rawls can make explicit the whole of the constitution only as it is reflected in the Supreme Court. Further, on his view the unity of equality and difference which liberalism seeks can be secured only in a temporary manner and requires the intrusions of an activist Court to rectify the unjust distribution of social goods which necessarily arises from the free pursuits of even good-intentioned individuals. Thus his conception of the judiciary renders it more akin to Hegel's account of the administration of justice, properly within the realm of civil society, than to a properly constitutional institution.

Rawls conception of the American state is thus rendered problematic as he cannot articulate the historical unity of politics, morality and religion through which the state comprehends the divisions present in civil society. While he brings a Kantian philosophical conception of the state in by the backdoor, so to speak, he gives its ethical substance only hypothetical determination.

### *1. Reply to Hegel's Criticism*

Lecture Seven of *Political Liberalism*, 'The Basic Structure as Subject', contains Rawls's reply to Hegel. Over and against Hegel's criticism of contract doctrine Rawls believes that a pragmatic Kantianism can comprehend both the social nature of individuals and the distinction of constitutional from other social agreements. Rawls portrays Hegel's view as arguing that contract doctrine:

- (1) Confuses society and state with the association of private individuals;
- (2) Determines law by the contingent and private interests of individuals;
- (3) Extends illegitimately to the state ideas properly applicable to civil society;
- (4) Cannot adequately express the embedded nature of the human subject
- (5) Fails to recognize the social nature of humans (PL:VII,10).

In sections 1-9 of "The Basic Structure as Subject" Rawls derives the significance of the basic structure of the state from his conception of individuals as free, equal, rational and moral (PL:VII, 4-5). Further he indicates that the agreement about which principles are to govern the basic structure are to be distinguished from the other agreements characteristic of the private associations of civil society (PL:VII, 6-7) and argues that the Kantian view can be shown to accommodate the social nature of individuals (PL:VII,8).

(I) Political Liberalism: Not Value-Comprehensive,<sup>27</sup>  
Not Individualist

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<sup>27</sup> The translation of Hegel's *aufheben* as *to comprehend* has the unfortunate result, in this essay, that it leads to confusion with Rawls's notion of *comprehensive doctrine*. Rawls defines comprehensive doctrines as those moral, religious and philosophical views which are concerned with what is of value in human life. Such conceptions are general when they are applied to a wide range of subjects. He distinguished as a

Rawls begins by contrasting *political* liberalism with utilitarianism and libertarianism (PL:VII, 2-3)<sup>28</sup>. By contrast with utilitarianism, political liberalism is not a general theory, it does not determine the principles appropriate for all social realms. Rather it applies only to the basic structure.<sup>29</sup> He states: "It seems natural to suppose that the distinctive character and autonomy of the various elements of society requires that within some sphere they act from their own principles designed to fit their peculiar nature"(PL:262). Thus unlike utilitarianism, political liberalism maintains distinct principles for the basic structure.

In opposition to utilitarianism, libertarians do not view the state as based on a common end. They contend that the unity of the state emerges not from the pursuit and achievement of a common good but on the basis of the private contracts of individuals. The state, therefore, is conceived as a unity only in a minimal sense.<sup>30</sup> Like utilitarianism, then, libertarianism denies that there are principles which are specific to the basic structure of the state.

Rawls wishes to distinguish his view from utilitarianism and libertarianism both of which wish to collapse the state into civil society. On the one hand, utilitarianism improperly applies to the whole state a general principle, for example the principle of utility or the greatest happiness principle, which is appropriate only to the various spheres of the civil realm. Similarly it applies to the state as a whole a common good appropriate only at the level of private association. Conversely, libertarianism does not make principles appropriate to the private sphere universal or public, rather it renders private principles and institutions which are properly public or universal. Utilitarianism, then, might be said to conceive the state from the standpoint of the equality of individuals, while libertarianism treats of the state from the standpoint of the freedom of individuals.<sup>31</sup> Rawls intends to conceive the basic structure in distinction from the agreements and principles appropriate to the civil realm. He develops its distinctive quality in his account of why the basic structure is the first subject of justice.

### (Ii) Justice And Hypothetical Agreement

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matter of degree between generally and partially comprehensive doctrines. To avoid confusion I will use the phrase value-comprehensive doctrine when referring to Rawls's usage (PL:13,175).

<sup>28</sup> Those references to *Political Liberalism* which include Roman Numerals refer to Chapter and Section.

<sup>29</sup> Here Rawls's argument responds to the concerns of Michael Walzer's interesting *Spheres of Justice*.

<sup>30</sup> Relying on Robert Nozick's *Anarchy, State and Utopia* Rawls defines the libertarian state as "a network of private agreements". Further: "this network represents the procedures the dominant protection agency (the state) has agreed to use with its clients, as it were, and these procedures may differ from client to client depending on the bargain each was in a position to make with the dominant agency"(PL:264). Nozick argues that to deal with the troubles present in the state of nature: "Groups of individuals may form *mutual-protection associations*: all will answer the call of any member for defense or for the enforcement of his rights"(Nozick:12). Further he states: Out of anarchy, pressed by spontaneous groupings, mutual protection associations, division of labor, market pressures, economies of scale, and rational self-interest there arises something very much resembling a minimal state or a group of geographically distinct minimal states." The dominant protection agency emerges typically as the victor (within relevant geographical boundaries) in conflict with other protective agencies (Nozick:16-17).

<sup>31</sup> Though, as is commonly argued, utilitarianism only partially comprehends the equality of individuals, while libertarianism has a less than complete conception of freedom

Rawls contends that only a hypothetical agreement can avoid the contingencies of historical life and thus secure a universality capable of determining what is fair, of recognizing unfairness in particular historical situations and of providing guidance for adjustment of institutional practices. He states: "We cannot by actual agreement get beyond happenstance or specify a suitably independent standard"(PL:272). Hence Rawls's *original position* which he defines as: "a point of view, removed from and not distorted by the particular features and circumstances of the all-encompassing background framework, from which a fair agreement between persons regarded as free and equal can be reached"(PL:23). In *A Theory of Justice* he states: "One excludes the knowledge of those contingencies which sets men at odds and allows them to be governed by their prejudices. In this manner the veil of ignorance is arrived at in a natural way.<sup>32</sup> And again in *Political Liberalism*: "Thus the original position is simply a device of representation: it describes the parties each of whom is responsible for the essential interests of a free and equal citizen, as fairly situated and as reaching an agreement subject to conditions that appropriately limit what they can put forward as good reasons"(PL:25).

While Rawls considers political liberalism *constructivist*, this representation is not itself constructed, rather it is a reflection of Rawls presupposition of the moral person, that is, a person who is both reasonable, having the capacity for just cooperation and rational, having the capacity to pursue his own good (PL:103-4).<sup>33</sup> Further he states: "Citizens capacity for a conception of their good in a manner suited for political justice is modeled within the procedure by the rationality of the parties. By contrast, citizens' capacity for a sense of justice is modeled within the procedure itself by which such features as the reasonable condition of symmetry (or equality) in which their representatives are situated as well as by limits on information expressed by the veil of ignorance"(PL:104).

It is important to consider the ethical substance of Rawls's position even though he now avoids a philosophical exposition of this, relying rather on a merely constructivist-political account. Fundamental to Rawls's *Political Liberalism* is that it moves beyond the value-comprehensive Kantianism emphasized in *A Theory of Justice*. Rather than explicitly grounding his account in a Kantian concept of the person he wishes his theory to be a module which can be grounded variously from differing value-comprehensive views. The doctrine as he now espouses it is itself political and, on his view, its distinguishing virtue is that because it is not value-comprehensive it is beyond the conflicts which exist among religious, philosophical and moral views. Thus *political liberalism* more fully represents the pluralism and toleration characteristic of modern liberal democracies. But were political liberalism merely to be hypothetical and pluralistic it would not be able objectively to specify which goods are primary, it would

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<sup>32</sup> John Rawls, *The Theory of Justice*, (Cambridge: Harvard University Press, 1971) p.19. Hereafter in in text notes TJ and page #. Here the veil of ignorance is a representation of the restrictions placed on the knowledge of individuals in order to insure that they chose principles of justice from an equal standpoint.

<sup>33</sup> In Rawls's political constructivism, what is constructed is "the content of a political conception of justice. In justice as fairness this content is the principles of justice selected by the parties in the original position as they try to advance the interests of those they represent"(PL:103).



not be able to advance determinate ethical principles on the basis of which to choose among the diversity of goods present in consumer democracies. It is in the principles of justice that Rawls moves beyond pragmatic consensus and, as James Doull argues, returns pragmatism to its Kantian source.<sup>34</sup>

While Rawls wishes to provide merely political justification of his position, the good which underlies his position remains Kantian. To quote William Galston, the right is really the liberal conception of the good "that dare not speak its name".<sup>35</sup> In this light then it remains appropriate to treat Rawls's argument in light of the substantive commitments expressed in *Theory of Justice*. First, it is important to note that the Rawlsian good obtains its universality via the negation of the particular characteristics of citizens. He states: "No one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like. Nor does any one know his conception of the good, the particulars of his rational plan of life"(TJ:137). The good for Rawls is freedom and equality conceived as the universality of individuality. Secondly, he clearly recognizes that this universal good is not subject to the temporal limits of history. He states: "[T]o see our place in society from the perspective of this [original] position is to see it *sub specie aeternitatis*: it is to regard the human situation not only from all social but also from all temporal points of view" (TJ: 587). Nevertheless, thirdly, Rawls considers the universality, the eternity thus obtained to be concrete in that it does not reside in an otherworldly realm. He states: "The perspective of eternity is not a perspective from a certain place beyond the world, nor the point of view of a transcendent being; rather it is a certain form of thought and feeling that rational persons can adopt within the world" (TJ:587). Finally, this Rawlsian view expresses a confidence that union with such eternity, an inwardness characteristic of faith, frees one in relation to the world. He states: "Purity of heart if one could attain it, would be to see clearly and to act with grace and self-command from this point of view" (TJ:587). Thus Rawls, like Hume and Kant, uncovers the moral universality which underlies the economic and cultural activities of individuals in civil society; the enlightenment form of a Reformation ethic.

## 2. *The Limit of Rawls's Reply: A-historical Liberalism and the Supreme Court*

Rawls obtains to this union of morality and self-interest, however, only in abstraction, that is, only as a representation. His attempt to show how this abstract universal might stabilize the concrete political life of Americans does not and cannot express the full dynamic of the U.S. Constitution which informs the political culture from which he draws his fundamental concepts. Rather Rawls's view can express the totality of the Constitution only through one of its moments, the Supreme Court.<sup>36</sup>

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<sup>34</sup> James Doull, *The Philosophical Basis of Constitutional Discussion in Canada*, *Animus* 2 (1997), 112.

<sup>35</sup> William Galston, quoted in *Debating Democracy's Discontent: Essays on American Politics, Law, and Public Philosophy* (New York: Oxford University Press, 1998) p. 336.

<sup>36</sup> Here Rawls expresses, in part, the tendency within the U.S. constitution to a separation of parts which replicates the divisions of civil society.

For Rawls, the Supreme Court has a *special* role as the institutional exemplar of public reason (PL:235-240). According to Rawls, public reason is the reason which citizens use when considering themselves from the standpoint of the 'original position'. As argued above, for Rawls, the various conflicts among moral, religious and philosophical views in liberal society are legitimate because grounded in the free use of reason. (PL:xiv,1,36f.,55,129,135,144). He argues that conflicts among reasonable persons inevitably arise because of "the many hazards involved in the correct (and conscientious) exercise of our powers of reason and judgment in the ordinary course of political life" (PL:56). From this legitimate pluralism of value-comprehensive doctrines, Rawls draws the conclusion that such views are too diverse to serve as the basis of "lasting and reasoned political agreement" (PL:58). Likewise the type of reasoning which ought to be employed in public debate concerning issues of basic justice must seek to avoid controversial value-comprehensive principles.<sup>37</sup> The degree to which public reason is exemplified by the debates held and decisions made by other institutions is judged by Rawls in terms of their likeness to those of the Court. He states: "To check whether we are following public reason we might ask: how would our argument strike us presented in the form of a supreme court opinion"(PL:254)?

Rawls' account, then, of the adjustments which will renew justice in liberal democracies is particularly apposite to Supreme Court decisions. He sees the tendency of individual actions, even when just, to be opposed to fairness. He states: "The overall result of separate and independent transactions is away from and not toward background justice .... the invisible hand guides things in the wrong direction and favors an oligopolistic configuration"(PL:267). However, while society tends to fall away from a unified social good, individuals are freed in this decline, they can pursue their private goods without fear that this entails the total destruction of justice they know that adjustments are made elsewhere in the system especially in the just decisions of the judiciary (PL:269).

Whereas on the Rawlsian view the judiciary exemplifies an ideal of public reason that other branches of government vaguely approximate, the history and logic of the U.S. constitution indicates a more concrete spirit. A more comprehensive view sees all branches of government as fundamentally shaped by their relation to each other in the context of the whole Constitution. The U.S. Constitution gives institutional form to the political will of the American people and constitutional history is in large part the history of America itself. The fundamental political ideals of the United States have been shaped by the creation, crises, and corrections of the constitution. In the broadest sense, then, the Constitution itself is the best exemplar of public reason. The separation of powers limits each branch by its own function and that of the other branches. The abstract universality of law is tempered by the particular interests expressed by the representatives of the people. The executive branch gives energy and focus to the government, especially in times of great struggle. In principle all branches of government are committed to

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<sup>37</sup> For Rawls the values of public reason are as follows: (1) Appropriate use of fundamental concepts of judgment, inference, and evidence; (2) Reasonableness and fair-mindedness; (3) Adherence to the criteria, procedures and generally accepted beliefs of commonsense knowledge; (4) Acceptance of non-controversial methods and conclusions of science. Rawls 1993: 66-67, 139, 162, 224.

defending the constitution.<sup>38</sup> Thus, in principle, each branch through its relation to the others gains an appreciation of the whole constitution and thus of a crucial element of the public good. Each branch in its own way thus expresses the public reason which is primarily embedded in the Constitution as a whole.<sup>39</sup>

Michael Sandel's recent *Democracy's Discontent*<sup>40</sup> goes a considerable distance in correcting Rawls's account of American public reason. Sandel in a selective but telling history argues that a more institutionally concrete reason found in the republican tradition answers to a greater degree the aspirations of American citizens, conceived as embedded in time and place. Sandel it might be said presents the limits of the Supreme Court from the side of the embedded needs and rationality of the individual and association. His public reason is best exemplified in the legislature. But his account like that of Rawls falls short of a comprehensive view of American history. Primarily what is lacking in both accounts is a sense that implicit in the constitution is a determinate good comprehensive, as the totality of finite interest, of the freedom and equality of individuals. Because the constitution fundamentally informs American history, indeed is its subject, the histories which Rawls and Sandel would tell of the American public culture are rendered one-sided by their partial accounts of the Constitution.

Consider Rawls's discussion of the emergence in the United States of a general agreement on the principles of justice. Central to John Rawls's account of how a stable liberal regime is possible is his conception of the *historical* transformation of individuals' value-comprehensive doctrines by liberal institutions. It is an under-appreciated fact that Rawls's political conception of justice, thoroughly analytic in its methodology, is nevertheless grounded in certain presuppositions about the history of the United States and highly questionable presuppositions at that.

Rawls makes reference to history primarily for two purposes. First to indicate why an overlapping consensus is a necessary condition of justice and secondly to indicate that it is a reasonable possibility that an overlapping consensus be achieved, that it is not a utopian idea. He contends that the liberal values of individual freedom and toleration arose historically only when it was realized that peace could not be achieved on value-comprehensive grounds during the Wars of Religion (PL:xxiv). Thus on Rawls's view, toleration is linked with the denial that a political order can be grounded in a single value-comprehensive doctrine. Likewise, conceptions of a political order based on a value-comprehensive common good are linked with oppression. He states: "a continued shared understanding on one [value-]comprehensive religious, philosophical, or moral doctrine can only be maintained by the oppressive use of state power". Rawls calls this the 'fact of oppression' (PL:37). The necessity of a political conception of justice follows from the inability of religious and political views to provide a stable basis for society without oppression.

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<sup>38</sup> Cf. Kent Greenawalt, *Private Consciences and Public Reasons* (New York: Oxford University Press, 1995). p.57.

<sup>39</sup> For a more nuanced account cf. Greenawalt 1995.

<sup>40</sup> Michael Sandel, *Democracies Discontent: America in Search of a Public Philosophy* (Cambridge: Harvard University Press, 1996).

This assumption is closely related to his second use of history, that is, to show that the idea of an overlapping consensus is not utopian (PL:158). Because liberal constitutions emerge in the wake of the impotence of value-comprehensive doctrines, they are at first established, from the standpoints of those who believe various moral, religious and philosophical views, as a *modus vivendi*: "as providing the only workable alternative to endless and destructive civil strife" (PL:159). Rawls contends that from this *modus vivendi*, it is reasonable to conceive citizens moving through a constitutional consensus to an overlapping consensus.

He states: "the liberal principles of justice, initially accepted reluctantly as a *modus vivendi* and adopted into a constitution, tend to shift citizens' value-comprehensive doctrines so they at least accept the principles of a liberal constitution"(PL:163). For Rawls, it is the transformative power of liberal institutions which makes possible an overlapping consensus on a political conception of justice. In discussing the transition from a *modus vivendi* to a principled 'constitutional consensus', Rawls argues that political liberalism can take advantage of "a certain looseness" in the value-comprehensive standpoints of most citizens. He states: "Most people's religious, philosophical, and moral doctrines are not seen by them as fully general and [value-] comprehensive, and these aspects admit of variations of degree." Further: "many if not most citizens come to affirm the principles of justice incorporated into their constitution and political practice without seeing any particular connection, one way or the other, between those principles and other views." And: "Should an incompatibility later be recognized between the principles of justice and their wider doctrines, then they might very well adjust or revise these doctrines rather than reject those principles" PL:160.). Finally he argues that "the political conception shapes [value-] comprehensive doctrines to cohere with it" and liberal principles of justice "tend to shift citizens' [value-] comprehensive doctrines so that they at least accept the principles of a liberal constitution" (PL:160n.25,163). On the Rawlsian account one moves from a constitutional consensus to an overlapping consensus when political principles and ideals are founded on a specific political conception of justice that uses fundamental ideas of society and person or a range of such ideas as illustrated by justice as fairness (PL:158,164).<sup>41</sup> But these brief historical forays, although they have some plausibility, at best capture only one side of the historical development.

First, Rawls underestimates the value-comprehensive underpinning of toleration and overestimates the link between a politics of the common good and oppression. Rawls's sense that there is a looseness of fit in the way citizens hold their value-comprehensive doctrines makes no sense of the religious spirit which, in part, animated the American Revolution. Moreover, it fails to recognize the ways in which Reformation subjectivity undergoes its own internal transformation which prepares the way for the acceptance of liberal principles. There is not, contrary to Rawls's account, the reluctant acceptance of a *modus vivendi* and then the external cultural transformation of religious views. The transformation which occurs, albeit through the influence of political forms, has as its

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<sup>41</sup> Cf. PL: 164-167 for an account of the "forces which push a constitutional consensus toward an overlapping consensus."

prior basis a union of value-comprehensive doctrines and constitutional principle. There is an identical spirit which animates Reformation religion and Enlightenment philosophy. From the sides of faith and pure insight respectively each upholds only those forms of political life which can be grounded in the rights of free subjectivity.<sup>42</sup> The spirit common to these standpoints finds its practical fulfilment in the American revolution and the U.S. Constitution.<sup>43</sup> The constitution stabilizes the Revolution in relation to its substantial basis a common good beyond the division of states and individuals.<sup>44</sup>

Further, the structure of the U.S. constitution indicates that a politics of the common good need not lead to oppression. As conceived by the framers, all government, federal and state, is grounded in the universal will of the people. However, differences which emerged from allegiance to particular states and self-interest led to considerable worries concerning faction. Without eliminating local interest, national government was achieved in the direct relation of the federal state to individuals and the maintenance of substantial local jurisdiction. Further, the separation of powers ensured that, in principle, no branch of government (legislative, judicial, executive) could gain dominion over others;<sup>45</sup> all branches conceived as equally grounded in will of the people (Hamilton, *Federalist*: 22).

Madisonian pluralism, then, is founded on the clash of particular interests, the tension among which can be resolved only around principles of justice and the common good. (Madison, *Federalist*: 51). On this view, particular self-interest and the universal laws of the state are conceived not as simple opposites but as necessary to each other and to the common good of which each are but moments. The will of the people is given rational form in the Constitution which in turn rests on the people's sovereign will. But as Madison is clear, neither element exists in separation from the other: in abstraction from each other, both the raw will of the majority and the rule of law are equally destructive of freedom. The constitution achieves, in principle, the political enactment of a good whose objectivity consists in the comprehension of the individual will in its universal and particular expressions. For the founders, the goods of government and religion are in principle one and the same. Here there is a common good whose inner differentiation protects citizens from oppression and is the source of their public philosophy.

There is reason then to question Rawls's conception of the necessity of an overlapping consensus. The constitution of the American Republic expresses a convergence of religion and principles of justice at a far deeper level than Rawls

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<sup>42</sup> . For a discussion of the logic of Enlightenment cf. F.L. Jackson, "The Paradoxical Idealism of Enlightenment" *Dionysius* 1, (Dec. 1977): 161-76. Also cf. James Doull, "The Concept of Enlightenment" in *Digressionen: Wege zur Aufklärung. Festgabe für Peter Michelsen* Ed. Frushsorge, Mannger und Strock. (Heidelberg: Karlwinter Universität Verlag, 1984) and "Faith and Enlightenment", *Dionysius* 10, (1986): 129-135.

<sup>43</sup> Cf. D. Peddle, "Puritanism, Enlightenment and the U.S. Constitution" *Animus* 1998, Vol. 3, sections 43-58.

<sup>44</sup> It is unsatisfactory, then, to conceive the difference between ancient and modern constitutions simply as a difference between good and right.

<sup>45</sup> . James Madison, in *The Federalist Papers*, (Intro. by Clinton Rossiter) New York: Mentor Books, 1961) 49. Hereafter in in-text notes: Contributor, *Federalist*, and section #.

suggests, American freedom is accomplished in part through the strength of its religious life not through its impotence.

Nevertheless while Rawls's position cannot give true political form to the public culture of the United States and is unable to comprehend the ethical concretion of the framers, it is beyond the standpoint of the framers in its content. The division with which Rawls is concerned is not simply between a universal good and the particular goods of individuals, be they persons or states. Rather he starts from the presupposition of a well-ordered society in which individuals have a sense of the public good and are driven by both public and private motives reasonably stabilized. The division for Rawls is between the public goods of political life and the value-comprehensive goods of moral, religious and philosophical life. Individuals thus stabilized in a well ordered society are divided, not between the public good and particular interest, but between the value-comprehensive union of reason and nature and the political union of the same. For Rawls the individual obtains to ethical concretion, a union of universal and particular interests, on both sides but so far as he attends to one side or the other finds himself in conflict. By contrast with Madison's standpoint where faction emerges only through the aggressive tendencies of self-interest, for Rawls, faction and instability emerge from the rationality and autonomy of individuals engaged even in just pursuits.

Rawls has thus deepened the divisions between the private realm and the public realm. But his concept of an overlapping consensus is no more than a contingent unification, inadequate to the universality and rationality of both realms. While the Supreme Court may uphold justice, individuals and states nevertheless find ways around the law because it does not permeate and express the totality of ethical life. The legalistic state appears a hollow coercive shell in conflict with the lived content of the aspirations and practices of members of society.

Rawls captures crucial aspects of the finitude of the state in his primarily juridical conception; he indicates, for example, how the state can be conceived as an external means to individual's conceptions of the good life. Further the deepened divisions to which Rawls gives voice reflect in a profound manner the pluralism of American civic life. But what Rawls cannot articulate is the actuality of the good as ethical totality, as a concrete unity of the universal will of individuals and not simply as an external comprehension in a *social union of social unions* (cf. TJ:527ff). He conceives the institutional life of the United States from the standpoint of a pragmatic sociology which lacks the logical form which animates the U.S. Constitution.

To reflect on the content of contemporary ethical life in terms of the philosophical form implicit in the arguments of the framers would be to see, beyond the irresolvable *private* moral conflict of individuals, an ethical whole comprehensive of such division. The ideal implicit in the U.S. state might thus be shown to underlie and complete the social divisions characteristic of civil society. As such the differences of private and public universalized in Rawls's political liberalism would be shown to have their place within the logic of the state. This division then would no longer stand in the way, morally or politically, of the correction of the infinitely destructive will of the American

economy. Such a view would indicate in terms more pluralistic than Hegel's, the historical objectivity of the good in the United States and the freedom which might be obtained in relation to it. While such a position advances beyond Hegel in the determination of democracy and equality, it cannot ignore the ethical institutions called forth by the limitations of civil society and the ethical ideal which permeates the history of the public realm.