

Manuscript version: Author's Accepted Manuscript

The version presented in WRAP is the author's accepted manuscript and may differ from the published version or Version of Record.

Persistent WRAP URL:

<http://wrap.warwick.ac.uk/101706>

How to cite:

Please refer to published version for the most recent bibliographic citation information. If a published version is known of, the repository item page linked to above, will contain details on accessing it.

Copyright and reuse:

The Warwick Research Archive Portal (WRAP) makes this work by researchers of the University of Warwick available open access under the following conditions.

Copyright © and all moral rights to the version of the paper presented here belong to the individual author(s) and/or other copyright owners. To the extent reasonable and practicable the material made available in WRAP has been checked for eligibility before being made available.

Copies of full items can be used for personal research or study, educational, or not-for-profit purposes without prior permission or charge. Provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.

Publisher's statement:

Please refer to the repository item page, publisher's statement section, for further information.

For more information, please contact the WRAP Team at: wrap@warwick.ac.uk.

Hegel's Idea of the State

Stephen Houlgate

1. Freedom, Right and Community

Hegel's philosophy of "subjective spirit" in his *Encyclopaedia* (1830) shows that the human spirit, when fully developed, takes the form of "free will, which is *for itself as free will*" (*Enc.* 3 §481). In his account of "objective spirit" Hegel then shows that the free will — insofar as it is rational, rather than merely arbitrary — conceives of freedom as something both individual and universal. Freedom, for Hegel, belongs to the self-conscious *individual*; yet at the same time, as the object of a rational will, "freedom and its content ... are the *universal in itself*" (*Enc.* 3 §485). This means not only that freedom belongs in principle to all self-conscious individuals, but also that it has a rational character of its own that individuals must recognise if they are to be truly free.

The truly free will, however, does not just know itself to be free, but aims "to realize its concept, freedom, in the externally objective realm", thereby turning its freedom into "a world determined by the will" (*Enc.* 3 §484). When freedom becomes something objective, something actually existing, in this way, it comes to be, and to be conceived as, *right*. Right, for Hegel, is thus not just an abstract idea, but the "*existence [Dasein]* of the free will" that the latter acquires through its own agency (*Enc.* 3 §486, translation amended). The world of freedom produced by the will is in turn for it a world of right.

Yet this world, though produced by the free will, exhibits what Hegel calls "the *form of necessity*" and thereby becomes a "*power*" (*Macht*) confronting the will (*Enc.* 3 §484). It does so partly because it is objective — in the form of institutions and laws — and so resists the merely subjective whims of individuals; but also because it is generated by the "concept"

of freedom, a concept that the will does not itself determine but to which it must, and does, conform if it is truly *free*. In Hegel's view, the free will is self-determining and so makes decisions and initiates actions. Yet, at the same time, if it is truly free, it is bound by the concept or "logic" of freedom and so builds a world determined by that logic, a world that includes civil society and the state. Since the latter are produced by the logical necessity within freedom itself, they constitute a power that the free will must recognize and respect.

Right, therefore, is freedom, understood not only as something actual, but also as something necessary: as that which the truly free will *must* affirm (see Houlgate 2016, 106). In other words, right is the will's own freedom, understood as binding it. This necessity belongs essentially to the concept of right. A right does not have the force of a natural law, and so cannot by itself make the will do what the will does not want to do. Nonetheless, it demands recognition from the will and thereby confronts the latter with normative, if not natural, necessity. Hegel implicitly highlights this moment of necessity in right by noting, in the *Encyclopaedia*, that rights bring duties with them (*Enc.* 3 §486) and, in his *Philosophy of Right* (1820), that "right is something *utterly sacred*" (*RPh* §30). In his 1821/22 lectures, however, he makes this necessity explicit: "Right is *necessary*" (*VPR2*, 615).¹

Earlier in the *Encyclopaedia* Hegel argues that self-consciousness is free only insofar as "it knows itself to be recognized in the free other, and knows this in so far as it recognizes the other and knows it to be free" (*Enc.* 3 §436, translation amended). True freedom, therefore, is not something that the individual can enjoy solely by him- or herself, but is to be found only in relations of mutual recognition — in forms of *community* — with others. In the section on objective spirit (and the *Philosophy of Right*), Hegel shows that the specific forms of community made necessary by the concept of freedom include the family, the estates of civil society and the corporations. Since each of these is an objective institution that forms a

¹ All translations from *VPR* are my own.

necessary part of the world of freedom, each constitutes a distinct sphere of *right*. Right, in Hegel's view, thus belongs not only to individuals, but also to the communities in which alone individuals are truly free. The highest community of mutual recognition made necessary by freedom, and that contains and sustains all the others, is the *state* — that is, the free, rational state to which modern states more or less approximate (see Houlgate 2008, xxix).

2. Right and the State

The family, for Hegel, is held together by the “feeling of love”; civil society, by contrast, is the interconnection of individuals in pursuit of their own particular interests (*Enc. 3* §§518, 523, 535). The rational state differs from both of these forms of “ethical life” by having as its aim “the *form of conscious universality*” (*Enc. 3* §535). The citizens of the state, *qua citizens*, are thus united not by love or narrow self-interest, but by a common consciousness that freedom is something *universal* (in the two senses mentioned above). Moreover, they understand the state to be the guarantee of universal freedom, indeed to be itself the embodiment of right. Thus, the citizens of the state, *qua citizens*, are animated by a rational will that wills the universal, rather than what is merely particular, and that recognises the state to be the objective world of universal freedom.

As Hegel shows, freedom and right must take several different forms, including the right to property, the right to achieve satisfaction through action and work, and the right to family life. The state, however, is the ultimate guarantee of freedom and as such must stand in a twofold relation to these other forms of right. On the one hand, it must protect and realise these rights. Rights claimed by individuals mean little if they are not recognised by an authority and cannot be realised, that is, if the opportunity to own things or to find

satisfaction through work is not guaranteed. Accordingly, Hegel writes, the task of the state consists in maintaining people as “persons”, as bearers of right, “thus making *right* a necessary actuality”. The state also “promotes their well-being” and “protects the family and guides civil society” (through, for example, consumer protection measures and setting the prices of the common necessities of life) (*Enc. 3* §537; see also *RPh* §236). The state, as Hegel conceives it, is thus not a totalitarian institution that claims all rights for itself, but it ensures that the rights of persons and communities within it are realised and do not remain empty words.

On the other hand, the state, as the ultimate condition of all rights, is itself the highest community of freedom. As such, it has the right to prevent the subordinate spheres within it from asserting themselves at the expense of one another, and thereby to preserve them as moments of the whole (*Enc. 3* §537). This is not to deny that individuals and communities can assert their rights against the state when official bodies and civil servants abuse their power (*RPh* §§261, 295).² Yet this right to appeal against the state must itself be guaranteed by the state and its institutions, that is, by the sovereign power within which all rights are realised (*RPh* §278).

3. The State and its Constitution

In the state, as we have noted, freedom is understood to be something universal. Moreover, the particular rights enjoyed in the state by individuals, communities and institutions, and the provisions made by the state to realise those rights, are themselves set out in the form of particular universals, namely laws. “*Laws*,” as Hegel puts it, thus “express the determinations of the content of objective freedom” (*Enc. 3* §538). Such laws restrict the “independent

² For the contrary view, see Schnädelbach, 1997, 260, and Siep 2017, 212.

wilfulness” of individuals, since they require the latter to recognise the rights they articulate. Yet in a free, rational state they are also the “absolute *final end*” of human action: individuals pursue their own particular interests, but their activity is informed by recognition of and respect for the laws that secure their rights. Such recognition and respect may be self-conscious and deliberate, but it can also be a matter of “disposition” (*Gesinnung*) and “custom” (*Sitte*) (*Enc.* 3 §538; see also *RPh* §§151, 268). Indeed, Hegel claims in his 1822/23 lectures that the habit of respecting the laws and institutions of the state, and of living an ordered, law-abiding life, is in fact what holds the free state together. People often imagine, he says, that the state is held together by “force” (*Gewalt*), “but the bond is the fundamental feeling of order that everyone possesses” (*VPR2*, 1002; see *RPh* §268Z). The state, as Hegel conceives it, is thus not just a political entity, but exists in the dispositions, habits and actions of its citizens.

These dispositions are initially formed by the institutions of civil society, namely the estates and corporations into which the latter is divided (as well as by the family). Such institutions, though distinct from the political state, thus belong to the overall *constitution* (*Verfassung*) of the state. Yet the political state or “government” (*Regierung*) also has its own constitution (*Enc.* 3 §541). As Hegel notes, every state has a constitution of some kind that reflects the spirit of the people concerned (*Enc.* 3 §540 & R). In the free, rational state, however, the political constitution is determined by self-determining *reason*, or the “concept” (*Begriff*), as it is conceived in the “subjective logic” (1816) in Hegel’s *Science of Logic* (*Enc.* 3 §541; see also *RPh* §269, and *WL GW* 12:32-52). The political constitution, as Hegel conceives it, contains some features that critics (such as Marx) regard as irrational, indeed “medieval” (see Marx 1970, 113-14, and Houlgate 1997, 62-9). In Hegel’s view, however, each aspect of that constitution is made necessary by reason or the “concept” and so belongs to a free and rational modern state: “the constitution is existent *justice*, as the actuality of

freedom in the development of all its rational determinations” (*Enc.* 3 §539). To understand why the political constitution of the state must take the form described in the *Encyclopaedia* and *Philosophy of Right*, we must therefore briefly examine the logical structure of the “concept” itself.³

For Kant, concepts are representations under which other representations can be subsumed, and so they are “predicates of possible judgments” (*CPR* B94). The representation “rose”, for example, can be subsumed under the concept “red” in the judgement “the rose is red”. For Hegel, however, this is just how the *understanding* (*Verstand*) conceives of concepts (see *Enc.* 3 §541R). Reason (*Vernunft*), by contrast, conceives of the concept, not principally as subsuming given particulars under it, but rather as particularising and individuating *itself*.⁴ The concept as such is a universal — whether empirical, such as “lion”, or a priori, such as “quantity” — but it gives itself the form of a particular universal or “species” and of specific individuals — e.g. specific lions or numbers. The concept is thus the self-determining and self-differentiating universal. Note that in determining itself in this way, the concept establishes genuine differences between its moments: the universal turns itself into the particular and the individual that are logically different from it and one another. At the same time, the universal *continues* to be the universal in its particularity and individuality, since it particularises and individuates *itself* (*WL*, *GW* 12:34). The concept thus holds its

³ The “syllogism” is also important to Hegel’s idea of the state (see, e.g., Siep 1992, 263-4, and Wolff 2004, 297-8). As Sebastian Stein points out, however, the standard Hegel employs to determine the elements of the state is “not the syllogism but the concept” (Stein 2016, 149).

⁴ See, e.g., *WL*, *GW* 12:36: “The true, infinite universal [...] *determines* itself freely [bestimmt *sich* *frey*]”.

distinct moments in a unity that Hegel compares to “*free love*” because it “relates to *that which is distinct from it only as to itself*” (*WL, GW 12:35*, translation amended).

The logical structure of the concept requires more detailed examination than I can give it here (see Winfield 2012, 207-30). Yet we have seen enough to recognise that the political constitution of the state, insofar as it is rational and determined by the concept, must hold together in one self-relating unity the *distinct* moments of universality, particularity and individuality. In other words, the key to a free, rational state lies in the “*division of powers*” within that state (*Enc. 3 §542R*). Each power must be accorded its distinctive role that is not to be usurped by the others. On the other hand, they must also be bound together as moments of one whole. As we shall see, what unites them into a single constitution is the participation of each in the others in such a way that each preserves its distinct function (see *RPh §272*).⁵

The familiar modern conception of the division of powers is set out in Montesquieu’s *The Spirit of the Laws* (1748). In Montesquieu’s view, there is no “liberty” if “legislative power is united with executive power”, or if “the power of judging is not separate from legislative power and from executive power” (Montesquieu 1989, 157 [part 2, ch. 6]). According to Hegel, however, the concept makes necessary a different division of powers: not between the legislature, executive and judiciary, but between the legislative, executive and “*princely*” (*fürstlich*) powers (*Enc. 3, §§541-4*). This — in Hegel’s view — more rational division is based on the distinction between the logical moments of universal, particular and individual in the “concept”. As Hegel puts it in the *Philosophy of Right*, the legislative power is “the power to determine and establish the *universal*” in the form of law; the executive or “governmental power” is responsible for the “subsumption of *particular* spheres and individual cases under the universal”, that is, under the law; and the princely power brings the

⁵ See Siep 1992, 265. This reflects the fact that each moment of the concept is equally the whole concept and so contains all three moments; see *WL, GW 12:32*.

different powers together “in an *individual* unity which is thus the apex and beginning of the whole” (*RPh* §273).⁶ The princely power is the “beginning” of the whole state — in a logical, if not historical, sense — since it embodies the unity of the state within which the different powers are contained, as well as the state’s sovereign power of self-determination and decision (see *Enc.* 3 §542, and *RPh* §§275, 279). Accordingly, Hegel starts his account of the powers of the state in both the *Encyclopaedia* and the *Philosophy of Right* with the princely power.⁷

4. The Princely Power (or Power of the Sovereign)

The “concept” *qua* universal, as described in the *Logic*, exhibits a certain unity in the fact that it *continues* in its different moments and so relates to itself in them. Yet it comes to be explicitly self-relating, explicitly *for itself*, only as *individuality* (*WL*, *GW* 12:34, 49). Individuality thus has an ambiguous status. On the one hand, it is the concept itself that has come to be for itself; on the other hand, it is only one moment within the concept. Moreover, it is both at the same time: the distinct moment within the concept in which the latter itself comes to be explicitly self-relating.

This same ambiguity is evident in the princely power in the rational state. On the one hand, that power turns the whole state into an explicitly self-relating, self-determining unity, into a subject; on the other hand, it is but one among three different powers in the state. Furthermore, it unifies the state precisely *by* embodying in a distinct form the state’s unity and sovereignty. The princely power is thus the “highest pinnacle of the state and its all-

⁶ Emphasis added to “universal” and “individual”.

⁷ Starting with the princely power is thus by no means logically unjustified, as Vittorio Hösle contends (Hösle 1998, 567).

pervasive unity” (*Enc.* 3 §542). There is, however, a subtle difference between the state and a universal such as “life.” Life takes the form of *many* individual living things. By contrast, the state is a community that is conscious of itself as a single unity; accordingly, it must be embodied in a single individual rather than many. Indeed, in this way the state realises the concept of *individuality* more fully than life does. The terms “many” or “some” in fact express logical particularity, rather than individuality, as in the particular judgement “some As are B”. By contrast, individuality or singularity (*Einzelheit*) is expressed by “this one” or just “this”, as in the singular judgement “this A is B” (*WL, GW* 12:72-3).

Reason, or the “concept,” thus requires the free, rational state to have one individual head of state or “monarch.” As Hegel writes in the *Encyclopaedia*, “in the perfect form of the state, in which all moments of the concept have reached their free existence, this subjectivity is not a so-called *moral person*” — a company or corporation — but “the will of *one* resolving individual — *monarchy*” (*Enc.* 3 §542; see also *RPh* §279R). Hegel’s wording here is significant: in the state in which the moments of the concept have “reached their free existence” — have been fully distinguished from one another — the unity and subjectivity of the state must be embodied in one individual. The legislative power, which passes laws dealing with matters of universal interest, involves the “participation of everyone [*aller*] who belongs to civil society” (*Enc.* 3 §544).⁸ The executive power, on the other hand, applies the law — the universal — to particular spheres of civil society and the state, and so is itself made up of different “particular authorities”. Accordingly, it requires the participation not of all in society, but only of *some* or “*several*” (*mehrere*) individuals (*Enc.* 3 §543). Sovereign princely power, by contrast, through which the state acts as one self-determining unity or subject is embodied in *one* individual: the head of state.⁹ Monarchy — the idea that there

⁸ In *RPh* §301 & R Hegel prefers the term “*the many*” (*die Vielen*), to “all”.

⁹ See *RPh* §273R: “the monarch is *one*”.

should be one person at the pinnacle of the state, as opposed to an oligarchy or directory — is thus not just a hangover from feudal times. It belongs by logical necessity to a fully developed rational constitution in which universality, particularity and individuality are distinct. “The monarchical constitution” — or constitutional monarchy — “is therefore the constitution of *developed* reason” (*Enc.* 3 §542).

Those hostile to the idea of monarchy may take momentary comfort from the fact that the monarch, as so far conceived, may be an elected head of state, such as a modern president. All Hegel has demonstrated so far is that the head of a rational, constitutional state must be a single individual. Yet Hegel also argues, famously, that the latter must be a hereditary monarch (*Enc.* 3 §542R). Hereditary monarchy, however, is no more a remnant of feudalism in the modern state than is monarchy as such. It, too, is made necessary by the political constitution that is fully free and rational. More precisely it is made necessary by the severely reduced role of the monarch in a free, rational constitution (see Houlgate 1997, 55-61).

First, recall the distinction between the three powers in the political state. The legislative power determines the laws of the land and the executive applies those laws to particular spheres of civil society. The princely power, by contrast, does not make the laws (*VPR2*, 1016); nor, contrary to what Hegel calls the “false French view”, does it wield executive power and govern (see *VPR3*, 1441). It merely provides “the moment of abstract decision” through which laws come into effect and actions of the executive are approved; that is, it grants the “sanction under which anything whatsoever is done in the government” (*Enc.* 3 §542R). The role of the monarch in Hegel’s state is thus similar to that of the British monarch or the German president, and unlike that of the US president, who heads the executive (see Wood 2011, 307).

Yet, as Hegel makes clear in the *Philosophy of Right*, the monarch is not the whole of the princely power, but only one moment of it (*RPh* §275). This is because the content of this power's decisions is contained in the laws passed in the legislature and in the advice given to the monarch by ministers from the executive. All that is left to the monarch as such, therefore, is the "formal decision" itself. In Hegel's well-known words, the monarch is merely the person "who says 'yes'" and "puts the dot on the i", the one who adds "I will" to the laws and policies presented by the other two powers (*VPR2*, 1015-16; see also *RPh* §280Z).¹⁰ Note that the decision made by the princely power as a whole is based on, or mediated by, the "objective" content of the laws and counsel presented to the monarch. The *monarch's* formal decision, however, is groundless and unmediated — the abstractly free decision that expresses the unconditioned sovereignty of the state (*RPh* §§279-81).¹¹ Since the role of the monarch is to do no more than make this unmediated sovereign decision, *not* to determine the content of the decision, he or she needs no special qualities beyond a "simply educated understanding" (*VPRI*, 177). The monarch's "existence", as Hegel puts it, thus can and should be as immediate and groundless as the decisions that he or she will make (*RPh* §281). Monarchs have therefore to be chosen by the immediacy of nature and to be hereditary: "the moment of abstract decision ... has within it the determination of

¹⁰ Thom Brooks argues that the monarch is more powerful than I suggest here (Brooks 2007, 106-13). Note, however, that war and peace are matters for the "princely power," not just the monarch (*Enc.* 3 §544, and *RPh* §329).

¹¹ Note that this sovereign decision is required in all cases, not just, as Tunick claims, "where we have no objective grounds for decision" (Tunick 1991, 492).

immediacy, and thus of *nature*, and with this the determination of individuals for the dignity of the princely power is established by *heredity*” (*Enc. 3 §542R*).¹²

Note that, for Hegel, monarchy is required to be hereditary by the fully developed *division of powers* within a free, rational state. That division first requires there to be a “princely power” distinct from the legislative and executive powers and embodied in the monarch; and it then reduces the specific role of the monarch *within* the princely power to that of making immediate, groundless decisions (the content of which is provided by the other two powers). The logical connection of immediacy and nature — which is established at the end of the *Logic* and presupposed throughout the philosophy of right¹³ — then requires the monarch’s very “existence” to be determined immediately by nature and monarchy to be hereditary. The institution of hereditary monarchy — found today in several European states — is thus built into the very idea of a modern, free and rational, constitutional state.

Conversely, hereditary monarchy itself guarantees that the other two powers in the state attain their rights: for the limited role of a hereditary monarch leaves the legislature free to pass laws and the executive free to govern (see *RPh §286*, and *VPRI*, 549). Hereditary constitutional monarchy, properly conceived, thus cannot be despotic but underpins true political freedom.

In the *Encyclopaedia* Hegel maintains that only the “speculative concept” can explain why hereditary monarchy belongs to a modern rational constitution (*Enc. 3 §542R*). The understanding, by contrast, often objects to this institution for two reasons. First, as Hegel

¹² Höhle fails to see that, although the princely power is “mediated by universality” (in the form of laws), the *monarch’s* formal decision is purely immediate and groundless. He thus maintains, mistakenly, that the head of Hegel’s state should be a democratically elected (or “mediated”) president or chancellor (Höhle 1998, 567).

¹³ See *WL*, *GW* 12:253, and *RPh §280R*; see also *RPh §11*: “the *immediate* or *natural* will”.

notes in 1819/20, understanding sees nature as something “negative” that should play no determining role in a world of freedom and certainly not in selecting the head of state (*VPR1*, 545). It is thus incapable of seeing that a moment of groundless immediacy, determined by nature, belongs necessarily to the constitution of a *rational* state (see, e.g., Marx 1970, 34).

Understanding’s second objection to hereditary monarchy is that the *people*, rather than the head of state, are sovereign and so should choose their head of state themselves — that the free, rational state should be an “*electoral realm*” (*Wahlreich*) (*RPh* §281R, translation amended). In Hegel’s view, however, such a constitutional arrangement places the final decisions of the state “at the discretion of the particular will”, the will that seeks satisfaction in civil society. Moreover, since particular wills differ in their interests, an “electoral realm” exposes the position of head of state to the struggle between competing factions and so may prevent the elected monarch from embodying for the citizens the unity and sovereignty of the state as a whole. Hegel cites as examples political entities, such as the Holy Roman Empire and the Polish-Lithuanian Commonwealth, in which, he claims, royal elections actually led to the “weakening and loss of the sovereignty of the state” and its eventual dissolution (*VPR3*, 1436, and *RPh* §281R).¹⁴ Yet we know that even in more stable electoral realms, such as the USA and France, presidential elections can prove divisive and set large swathes of the electorate at odds with their head of state. A hereditary monarch, by contrast, chosen by nature, and — *as the sovereign* — without particular interests of his or her own, is removed from the struggle between factions (*RPh* §281).

Hegel also has a more profound objection to the idea that the people should elect their head of state. As noted above, this idea is justified by the claim that the people, rather than the state or head of state, are sovereign; in Hegel’s view, however, such a claim rests on

¹⁴ In these entities, of course, only princes or nobles could vote for the head of state, not the general populace (*VPR2*, 1016).

misunderstanding the nature of political sovereignty. As he argues in the *Philosophy of Right*, one can indeed say that sovereignty resides with the “people” (*Volk*), but only if one understands by the latter the people organised into a rational constitutional *state* that is itself sovereign (*RPh* §279R). Such a state is in turn headed by a hereditary monarch. The idea that the people are sovereign, *as opposed to the monarch*, and that the people should thus elect the latter, is therefore confused: for the sovereignty of the people-as-a-state is embodied precisely in the hereditary monarch (see Tunick 1991, 483). To argue in this way is not mere sophistry on Hegel’s part. The idea that the people are sovereign is the idea that the *free will* of the people is sovereign. For Hegel, however, true freedom is not simply “*arbitrariness*” (*Willkür*), or the capacity to choose and do whatever we want (see *RPh* §15R); it is the system of *rights* that is realised in and guaranteed by the institutions of the *state*. The sovereignty of the free will, therefore, just *is* the sovereignty of the rational constitutional state, the keystone of which is the hereditary monarch. Accordingly, the people in a free, rational state cannot choose the head of state, any more than they can choose what counts as a rational state.¹⁵ Does this mean that elections play no role at all in the free, rational state? No, but they play a role only in the legislative power.

5. The Executive and Legislative Powers

In the *Encyclopaedia* Hegel includes the legislative power in the “*particular governmental power*” (*Enc.* 3 §543), even though its role is to pass laws dealing with matters of universal interest. He does so, I think, because the legislative power is one of the branches of the state that, in contrast to the monarch, are concerned with the particular content of “state business”. Yet, as is made clear in the *Philosophy of Right*, the *executive* branch is in truth the

¹⁵ On the sovereignty of the state, see Houlgate 1997, 56-7.

“*particular* governmental power”, since its specific role (in addition to advising the monarch) is “the subsumption of *particular* spheres and individual cases under the universal”, that is, under the law (*RPh* §273). Since its role is that of subsumption, the executive can perhaps be regarded as the exercise of *understanding* by the *rational* state.

The executive is divided into authorities or ministries responsible for different spheres of interest (such as education and finance) (*RPh* §290). It includes the “powers of the *judiciary* and the *police*” (*RPh* §287), though the two are clearly distinguished from one another, since the former is concerned with legal entitlements, crime and punishment, whereas the latter (with broader responsibilities than modern police) ensures that “*particular welfare* should be *treated as a right* and *duly actualized*” (*RPh* §230; see also *VPR3*, 1442).¹⁶ Ministries are headed by ministers (under a prime minister or chancellor), and otherwise comprise civil servants who have more or less direct contact with the people, communities and corporations to which laws and government policies are applied. Importantly, Hegel points out that those communities and corporations (and their members) have their own rights that must be respected by civil servants. Indeed, he notes, such rights are what protect both the state and the governed “against the misuse of power on the part of the official bodies and their members” — though he acknowledges that civil servants may also need to be controlled “from above” and even require the “higher intervention of the sovereign” (*RPh* §295 & R).

Since the members of the executive act only with the sanction of the sovereign, they are formally appointed by the latter (*RPh* §§283, 292). Yet their role requires them to have detailed knowledge of both the law and civil society, and so they must prove their competence through examinations as a condition of being appointed (*VPR2*, 1019). Thus, ministers and civil servants are chosen on the basis of their “training and aptitude”, not their

¹⁶ Hegel also defends the independence of the judiciary by insisting that the government may not threaten to suspend the administration of justice (see *Enc. 3* §544R).

“birth or personal nature”. Furthermore, since “ability” (*Befähigung*) is “the sole condition” of appointment, positions in the executive are in principle open to every qualified citizen (*Enc. 3 §543*, and *RPh §291*).

The third power in the rational state is the legislative power. Note that this is just one moment of the political constitution and does not have power over the latter, though it can amend it (*RPh §298*). The distinctive role of the legislative power is to pass laws that concern matters of universal interest and will remain in force for many years, rather than to approve government measures that can vary every year. Such laws include, for example, “criminal laws, laws about contract, about property”, all of which have a “content that is quite universal, that is valid in all particular cases” (*VPR3*, 1449). The legislative power, as Hegel conceives it, is thus distinct from both the executive and princely powers.

Yet it is not utterly separate from them, but contains both as its moments. The princely power belongs to the legislative power insofar as it formally approves laws passed by the legislative assemblies and, indeed, formally summons those assemblies (as in the United Kingdom today) (*RPh §§300, 308*). The executive power, on the other hand, provides advice to its legislative partner, and to that end ministers should themselves be members of the assemblies (again as in the United Kingdom, but in contrast to the USA) — though in his 1817/18 lectures Hegel states that ministers must “have no vote, but just make suggestions and expound and explain the reasons for these suggestions” (*VPR1*, 193; see also *VPR2*, 1026, and *RPh §300Z*). Hegel also notes in the *Encyclopaedia* that the content of laws passed by the assemblies may already have been “prepared” or even “provisionally decided” “by the practice of the law-courts”, and the latter — though distinct from the administrative and police powers of the government — belong to the executive power, since they subsume individual cases under the law (*Enc. 3 §544R*).

A rational political constitution, for Hegel, is thus an organic unity of powers, in which each is a moment of the others. It is not a system of “checks and balances” between powers based on mutual suspicion. The latter system is what the understanding, rather than reason, takes the constitution to be, and can lead to a struggle between the legislature and executive, as we sometimes see in the USA and which Hegel associates especially with the French Revolution (see *Enc. 3* §541R, and *VPR3*, 1451-2; see also Schnädelbach 1997, 248-9). Hegel insists that the legislature must hold the “administrative authorities” to account by reminding them that “they not only have to exact duties but just as essentially to pay regard to rights”, namely the rights of the individuals and civil institutions from which duties are demanded (*Enc. 3* §544R).¹⁷ Indeed, he acknowledges — in 1817/18 and 1824/25 — that there should even be an official *opposition* to the government in the assemblies (*VPRI*, 205, and *VPR3*, 1453; see Siep 1992, 253). Such opposition, however, should only be to “*this* ministry”, not to government as such. The assemblies should thus not be opposed to the executive as a matter of principle, but should be, and take themselves to be, moments of a single unified political state.

The role of the assemblies within the legislative power is to debate and then pass legislation. Laws, however, are matters of universal interest and concern everyone, and so should be discussed not just by ministers, but also by delegates drawn from civil society as a whole (*Enc. 3* §544, and *RPh* §311). Yet the task of the assemblies is not only to ensure that a wide range of *insights* is brought to debates. They also provide a political forum in which “private persons” can express their “subjective freedom” and general opinions; they are the place in which “the many also get to have their say [*mitsprechen*]” (*Enc. 3* §544, and *VPR3*, 1453; see also *RPh* §§301, 314). In the assemblies, therefore, the “*private estate*”

¹⁷ Siep is thus wrong to claim that, for Hegel, the government is not “obliged to justify itself before the assembly of the Estates” (Siep 2017, 210).

(*Privatstand*), with its interests, insights and opinions, “attains a *political significance* and function” (*RPh* §303). At the same time, when the debates in the assemblies are public, as Hegel believes they should be, civil society is itself educated about affairs of state, “*enabling it to form more rational judgements on the latter*” (*RPh* §315; see Wood 2011, 308).

In the *Encyclopaedia* and *Philosophy of Right* Hegel contends that citizens in a free, rational state must be able to *trust* that its institutions and laws serve their interests and guarantee their freedom (*Enc.* 3 §515, and *RPh* §§147, 268; see Houlgate, 2016, 112-15). Yet citizens must also feel that they are participating in running the state itself. It falls to the assemblies to satisfy this desire in civil society for the “participation of everyone [...] in the governmental power” (*Enc.* 3, §544). In a large state, however, not everyone can participate directly in the assemblies, so the members of the latter must be *representatives* drawn from civil society.

Hegel argues that members of the upper chamber must be selected by nature, since they are meant to reflect the interests of those who are dependent *on* nature and attuned to the rhythms of the latter (*RPh* §203, 305, and *VPR2*, 966-8) — the interests of what I have elsewhere called “ecological intuition” (see Houlgate 1997, 63). These members, by the way, are not to be confused with feudal nobility and should not include those who are proud of their “lack of merit” (*Verdienstlosigkeit*). They should work on and care for the land, and so can just as easily be called “non-nobility” (*Nichtadel*) as “nobility” (*Adel*) (*VPR1*, 199, and *VPR3*, 1457). The members of the lower chamber, by contrast, are meant to reflect the various spheres of human activity and industry in civil society (*RPh* §308). They can thus be selected by means of elections in which, in principle, all may take part. So, although in a large state it is not possible for everyone to participate directly in governmental power, it is possible for them to participate indirectly through elections.

Hegel states, at one point in the *Philosophy of Right*, that elections are either “superfluous” or “an insignificant play of arbitrary opinion” (*RPh* §311), presumably because they do not by themselves ensure that those with the best insights are chosen to enter the lower chamber. Yet elsewhere he indicates that elections are, indeed, an important part of a rational state (see, e.g., *VPRI*, 200-1). His understanding of the electoral process, however, differs somewhat from what is current today.

6. Elections in the rational state

Hegel’s guiding idea, when considering elections, is that the lower chamber should not just represent the sheer *will* of the people: for were it to do so, “political life”, which is meant to protect people’s rights and legitimate interests, would be made dependent on “arbitrary will and opinion”, thus on “contingency” (*RPh* §303R). Equally, membership of the lower chamber should not be determined by the simple fact that a large *mass* of people has certain views. Indeed, for Hegel, the “sole aim of the state” with regard to the “people” is to ensure that it “should *not* come to existence, to power and action, *as such an aggregate* [*Aggregat*]”. Otherwise, what would hold sway would not be reason and right, but the “blind force” of the people, the simple weight of numbers (*Enc.* 3 §544R; see also *RPh* §302). To put the point another way, the “private estate” should not participate in the political process as a shapeless mass of *individuals*, since this would base the laws of the state on the “*democratic element devoid of rational form*” (*RPh* §308R).¹⁸ Hegel was once accused by Karl Popper of proclaiming that “*might is right*” (Popper 1966, 2: 41). Note, however, that he rejects the idea that legislation should be determined by the sheer will of the people or the majority, precisely

¹⁸ This directly contradicts the influential view of the Abbé Sieyès, for whom “individual wills are the sole elements of the general will”. See Sieyès 1951, 50.

because it would give pride of place to the *might* of popular opinion, rather than reason and right.

Elections to the lower chamber should not, therefore, involve individuals coming together “for a moment to perform a single temporary act” and having “no further cohesion” (*RPh* §308). They should be carried out by an “already organized people” (*Enc.* 3 §544R). As indicated above, Hegel accepts that sovereignty resides with the “people”, if one understands by the latter the people organised into a rational constitutional state (*RPh* §279R). Such a state as a whole includes the three political powers, but also the institutions of civil society: the estates, corporations and other recognized associations. In Hegel’s view, therefore, private persons should participate in elections to the lower chamber *as members of those civil institutions* (*Enc.* 3 §544R, and *RPh* §308). In this way, they will vote, not as abstract individuals with their own (possibly idiosyncratic) views, but as persons who understand the rational organisation of civil society and are conscious of the recognized interests and rights of the institutions to which they belong.¹⁹

Delegates are in turn sent to the lower chamber not simply by a certain *number* of people, but by organised, recognized institutions — “associations, communities, and corporations” (*RPh* §308). They are, accordingly, “*representatives* not of *individuals* as a crowd, but of one of the essential *spheres* of society, i.e. of its major interests” (*RPh* §311R). Indeed, strictly speaking, they are not *re*-representatives at all, since they do not stand in for someone or something else; rather, the interest of each institution is “*actually present* in its representative” (*RPh* §311R). The lower chamber is thus the place where not merely the opinions of large masses of people, but the recognized *rightful interests* of associations and their members, are given voice. It is, of course, possible that individuals voting *en masse* as

¹⁹ As Klaus Vieweg notes, the right to vote in the rational state is thus connected to the “adequate *political education* of the voters” (Vieweg 2012, 384).

individuals may elect delegates who promote their interests and rights, but this is ultimately left to chance. If, however, voting occurs within recognized associations, there is a structural guarantee that those interests and rights will be given voice in the lower chamber.²⁰

For Hegel, then, the entitlement to vote — unlike the right to own and exchange property — belongs not to persons as such, but to individuals as members of recognised associations or “interest groups” (see Vieweg 2012, 437). Yet this does not mean that Hegel’s conception of elections is incompatible with our current conception. In Hegel’s state, for example, recognized communities or “municipalities” (*Gemeinden*) are among the associations that send delegates to the lower chamber, and in modern states delegates are often elected to represent the constituencies in which voters live. If such constituencies have a recognized municipal identity and common interest and are more than mere geographical areas, they count as *associations* in Hegel’s sense (though, as we know, they do not always have this character) (*RPh* §308-9, and *VPR2*, 1029; see Wood 2011, 308).²¹

Modern states, of course, usually have universal adult suffrage, but this too is not incompatible with Hegel’s conception of elections. Indeed, Hegel states explicitly in 1817/18 that “if associations are to send deputies” — to the lower chamber — “and every citizen must belong to an association, then every active citizen can also take part in the election” (*VPR1*,

²⁰ In Hegel’s view, a further guarantee would be provided by requiring delegates to have held “*positions of authority*” in communities or corporations (*RPh* §310). — Note that, in Hegel’s state, laws protecting rights are thus determined by three things: 1) the demands of right itself (and the concept of freedom), 2) the insights and opinions of delegates, and 3) the specific rights and interests represented by those delegates.

²¹ Hegel would presumably oppose proportional representation detached from constituencies. Political parties could also count as associations in Hegel’s sense, as long as they represent legitimate interests, rather than just numbers of people (see Vieweg 2012, 437, 442).

201). He adds that “day laborers, servants, etc., not being members of an association, are excluded”; and in the *Philosophy of Right* he appears to exclude women from voting (*RPh* §301R). In 1824/25, however, he points out that if people are entitled to vote simply by virtue of being *individuals* with free will, “then women also have this right” since “they are individuals” (*VPR3*, 1459). This suggests that, in Hegel’s view, women are excluded from voting, not because they allegedly lack free will, but because voting takes place within recognized associations and women do not belong to them.²² This in turn suggests that women, as well as day labourers and servants, would have the vote, if they were to belong to recognized associations, and that universal suffrage is thus not incompatible *in principle* with Hegel’s conception of elections. Indeed, one could argue that these citizens should already be entitled to vote in the rational state, since they belong to *municipalities* and these municipalities, by Hegel’s own admission, count as associations (*RPh* §§308-9).

As Herbert Schnädelbach notes, Hegel would not regard “mass democracy” as a “constitution of freedom” (Schnädelbach 1997, 257). Hegel’s concern, however, is not that only the privileged few should be able to vote, but that elections should ensure that the recognized rights and interests of civil society are represented in the legislature. In my view, there is no reason in principle why every adult citizen should not participate in such elections.

7. Conclusion

Hegel insists that the constitution of a state develops out of the “spirit” of the people concerned and cannot simply be transformed at will (*Enc.* 3 §540R). Each people, therefore, has the constitution that is appropriate to it (*VPR3*, 1425). Yet constitutions are not fixed, but

²² In the *Philosophy of Right* Hegel maintains that women have their “substantial vocation” in the family, rather than in “work and struggle with the external world” (*RPh* §166).

can be amended through legislation or changes in practice (*RPh* §298). Constitutions can thus be subjected to scrutiny and criticism, and Hegel's idea of the free, rational state provides the standard by which to assess modern states that lay claim to being free. From the perspective of that idea, various features of modern states fall short of what is required for genuine freedom: for example, there is too sharp a division between political powers in some states, and in others an underdeveloped system of rights (of both individuals and associations).²³ Most problematic, however, from a Hegelian standpoint, is the modern view that the state derives its authority from the "will of the people", and that the members of the legislature, and in some cases the head of state, should be chosen by the people voting *as individuals* (even when they vote in constituencies).

This view is problematic for several reasons. First, it produces a legislature that reflects the opinions of certain numbers of people, but does not necessarily represent all the legitimate, rightful interests of civil society. Second, it leads some states to decide matters of national importance through popular referendums, in which people with "no further cohesion" come together "for a moment to perform a single temporary act" and in which "arbitrary will and opinion" decide the outcome, as much as insight does (*RPh*, §§303R, 308). Third, it can expose the position of head of state to the struggle between factions. Fourth, and most importantly, it leads modern states to misunderstand what constitutes the foundation of their freedom.

Modern states often take the foundation of their freedom to be the fact that the people *choose* who will govern them. Freedom is, of course, also taken to involve respect for the rule of law, but laws are themselves to be passed by representatives chosen by the people. Accordingly, such states describe themselves as "democracies". For Hegel, however, democratic popular choice is in itself merely "formal freedom", the freedom to decide things

²³ See Hegel's remarks on England's "backwardness" in this latter regard (*Enc. 3* §544R).

for oneself on the basis of one's particular desires and opinions. As such, it is not the foundation of freedom but just one moment *within* genuine "objective freedom", which consists in the system of rights and institutions that constitutes the rational state (*Enc.* 3 §544R). This system of rights includes the right to choose one's property and occupation, as well as the freedom to vote, but it is not *founded* on the freedom of choice. It is determined by the concept of freedom, and so is what the free will *must* affirm if it is to be truly free, and it has priority over choice in the rational state. In Hegel's view, it is this system, not democratic choice, that is the true guarantee of freedom in modern states (if and when it is present) (see *RPh* §272R). Freedom thus resides in the clear articulation of rights and in the distinct civil institutions and political powers that realise and guarantee these rights.²⁴ Most modern states do, indeed, recognize that the division of powers is a crucial pillar of political and social freedom. Yet they risk obscuring the importance of that division, and thus of leading their citizens to misunderstand the core of true freedom, by describing themselves principally as "democracies".

To repeat: Hegel does not deny that elections (through recognised associations) are an important component of political freedom, but he insists that popular choice is not itself the foundation of our freedom. Indeed, we who come after Hegel know that popular choice in modern states can sometimes threaten the rights and institutions which are freedom's true foundation: for parties can be elected to the legislature, as in Germany in 1930 and 1932, that have no regard for objective freedom at all but seek to rule through the worst "blind force".²⁵

²⁴ Note that, although the rational state must have both civil and political institutions, specific civil corporations and associations are voluntary organisations (see Avineri 1972, 164-5, and *RPh* §206), whereas the three political powers are necessary.

²⁵ The National Socialists gained 107 seats in the Reichstag in September 1930 (out of 577) and 230 in July 1932 (out of 608). See Bullock 1962, 161, 216-17, 230.

Pace Popper, Hegel does not think that “*might is right*”, but that freedom should govern our social and political lives. In his view, however, genuine freedom is guaranteed, not by democracy as such, but by a free and rational constitution, the rights it secures and the ethical disposition that it produces in its citizens.