

interpretation

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Hegel on the Source of Political Authority

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In a recent study I argued that law, for Hegel, is the foundations of the state; “the constitution which emanates from the will of the people is the ultimate principle according to which the activities and the institutions of the state are organized.¹ Within this organization no activity, whether it is legal, economic, religious, social, or educational, is valid or justified if it does not uphold the personality or individuality of the citizen.” But, I may be asked, does Hegel provide a principle or a political framework within which the desires, interests, and aspirations of the people as individuals and groups can play a significant role in the political process, in the process of enacting and modifying the law?

For unless the people individually or as a majority (democracy) participate in the political process their will would, at least in principle, be ignored, and if their wills are ignored they would not exist as self-determined beings, that is, as free. On Hegel’s view, my critic might go on, the ordinary people do not have to be consulted when the law is enacted, modified, or reformed; for the legislative power is not restricted to the Legislature but also extends to the monarch and his ministers. The monarch is in effect the final authority on what laws should be adopted or rejected. Thus the question arises: if we hold, as Hegel does, that the basis of the constitution is the will of the people, how can this will become concrete? How can we be certain that the final legal authority always acts in the interest of the people?

As an immediate response to this objection on behalf of Hegel let me ask: has there ever been a political system in the history of human civilization in which all the people participated, or could participate, in the process of government?² Again, how can a people of the *modern* state share individually or directly in the political process? I raise these questions not because I am here interested in discussing the arguments which validate or invalidate democracy as a political system but because I am anxious to focus attention on the central question of this essay: given a society in a certain place and historical period,

1. M. Mitias, “Law as the Basis of the State: Hegel,” *Interpretation: A Journal of Political Philosophy*, Fall, 1981.

2. D. Pickles, for example, writes: “no political system at any time, democratic or not, has ever provided for all the people even to choose the government, much less exercise governmental powers.” *Democracy* (New York: Basic Books, 1970), p. 9. And Jean-Jacques Rousseau writes: “if there were a people of gods, it would govern itself democratically. Such a perfect government is not suited to men.” *On the Social Contract*, ed. R. D. Masters, trans. J. R. Masters (New York: St. Martin’s Press, 1978), Book III, Chap. 4. See also, J. Plamenatz, *Democracy and Illusion* (London: Longmans, 1973); Sir H. S. Maine, *Popular Government* (Indianapolis: Liberty Classics, 1976).

how can the people of that society express and assert their will effectively? What sort of governmental structure should a state establish to ensure the continued growth of freedom in the lives of its citizens? Or, under what conditions can citizens participate in the political process in some fashion and feel in their hearts that they count and that the policies adopted by the state reflect their genuine interests as individuals? We may construct and defend a democratic, aristocratic, monarchical, or perhaps another form of constitution, and we may pride ourselves, at least in theory, that we espouse the most logical and humanistic form. The history of political theory from the days of Plato until the present is replete with such forms. But for Hegel the question which we should consider most of all when we analyze political reality is not whether this or that form of government is 'idealistic' or logically neat but whether it provides a social structure, a political atmosphere, within which citizens can exist under the conditions of rationality, morality, and creativity, whether they can function as persons. Hegel's criticism of Rousseau and Fichte, and the thinkers in their tradition, is based mainly on this premise. In each case he analyzed the basic principle advocated by the philosopher only to see whether that principle is (1) philosophically sound and (2) provides an opportunity for citizens to realize themselves as persons.

In this essay I shall first discuss the major arguments which Hegel advances against some aspects of the democratic form of government and then, on the basis of this discussion, proceed to a critical treatment of why he adopts the constitutional form of government which I defend in the first essay. Here I shall argue that (1) the fabric and the end of the legislative process is the general interest of the people; (2) within the political framework which Hegel recommends the people can, and should, express their wants, needs, or desires to the Legislature directly and indirectly; and (3) the final authority which enacts the laws of the land is the state as a sovereign power.

I

In discussing Hegel's critique of democracy we should first of all focus attention on three basic ideas in Rousseau's theory of the state. I do this simply because Hegel has mainly Rousseau in mind in this critique.³

First, the state is a union of men in which every member has voluntarily agreed to alienate his rights to the community as a whole for the sake of preservation and prosperity. The unity of these rights produces what Rousseau calls the *general will*. This will is the fundamental principle of the state. In a society

3. We should here point out that Hegel is also critical of Fichte's conception of the general will. This criticism extends, moreover, to the philosophers and intellectuals of the French Revolution. See, for example, Hegel's *Natural Law*, trans. T. M. Knox, with an introduction by H. B. Acton (University of Pennsylvania Press, 1975), pp. 85ff.; *The Philosophy of Right*, par. 258, 273.

governed by the general will the people are free because: (1) since every person has alienated all his rights to the whole none would be left with extra rights or power to dominate or control the others; (2) since each person gives himself to the community as a whole he gives himself to none; consequently he gives himself only to the general will which is his own will. Thus in obeying this will he in effect obeys himself; (3) there is in principle no reason for any person to usurp the rights of others, for "since each one gives his entire self, the condition is equal for everyone, and since the condition is equal for everyone, no one has an interest in making it burdensome for the others."⁴

Second, the state is sovereign; it is, in other words, the ultimate source of political authority.⁵ Sovereignty, however, derives its being from the sanctity of the contract according to which private individuals form a state, or a republic.⁶ Rousseau makes a clear distinction between 'general will' and 'will of all'. The former consists of the general interests which are common to the people as a whole, as a community. The latter consists of the private, particular interests. These interests are subjective and not necessarily shared by every citizen. Thus since the general will aims exclusively at the well-being of the whole state it "alone can guide the forces of the State according to the end for which it is instituted, which is the common good."⁷ This is based on the assumption that "it is uniquely on the basis of this common good that society ought to be governed."⁸ Therefore, "sovereignty, being only the exercise of the general will, can never be alienated, and that the sovereign, which is only a collective being, can only be represented by itself. Power can perfectly well be transferred, but not will."⁹ But the question which we should ask is: how does the general will become concrete, living, in the life of society? It becomes concrete in and through the corpus of law, that is, the constitution, which regulates the public activities of society. In the enactment of these laws the lawgiver should not have before his eyes the universal as such, or the good in itself, but only the true interest of the society as it exists in a certain place and time.

Third, the government is a public force; it is "an intermediate body established between the subjects and the sovereign for their mutual communication, and charged with the execution of the laws and the maintenance of civil as well as political freedom."¹⁰ We can immediately see from this definition that the existence of government is not justified on the basis of a contract between it

4. *On The Social Contract*, Book I, Chap. 6.

5. This premise is central to all versions of democracy in the twentieth century. See, for example, Carl L. Becker, *Modern Democracy* (New Haven: Yale University Press, 1959); H. B. Mayo, *Introduction to Democratic Theory* (New York: St. Martin's Press, 1975); D. Pickles, *Democracy*.

6. *On the Social Contract*, Book I, Chap. 7.

7. *Ibid.*, Book II, Chap. 1.

8. *Ibid.*

9. *Ibid.*

10. *Ibid.*, Book III, Chap. 1.

and the people; on the contrary, it is a commission, “a function in which, as simple officers of the sovereign, they exercise in its name the power that has been entrusted to them by the sovereign, and that the sovereign can limit, modify, and take back whenever it pleases, since the alienation of such a right is incompatible with the nature of the social body and contrary to the goal of the association.”¹¹ Accordingly, the legislative power is a function of the people. But on what principle does a people promulgate new laws? The main task of the popular assemblies is, for Rousseau, to enact laws that are expressive of the general will. The deputies of the people must not be viewed as ‘representatives’, for the general will cannot be represented; they are its agents. Thus when there is a need for a new law or the modification of an older one the duty of the people’s assembly is to discover the new law or to change the old one so as to be expressive of the general will. In such an assembly it is not usual for the deputies to agree unanimously on what law should be adopted or rejected. Whenever this happens a majority vote is appealed to. But one may ask: can we determine the validity of a law by a majority vote? For if a minority is of a different opinion, if this minority does not consent to the adoption of the law, it would not feel free when compelled to act according to that law later on. Rousseau is aware of this difficulty. He thinks the whole question is badly put, for “when a law is proposed in the assembly of the people, what they are being asked is not precisely whether they approve or reject the proposal, but whether it does or does not conform to the general will that is theirs. Each one expresses his opinion on this by voting, and the declaration of the general will is drawn from the counting of the votes. Therefore when the opinion contrary to mine prevails, that proves nothing except that I was mistaken, and what I thought to be the general will was not.”¹² This of course presupposes that “all the characteristics of the general will are still in the majority. When they cease to be, there is no longer any freedom regardless of the side one takes.”¹³

II

Hegel agrees with Rousseau that the fundamental principle of the state is not gregarious instinct or divine authority but rather the general will of the people. This will is viewed as a universal and rational principle “which has thought both for its form and content” (Par. 258). Its end is the common interest, not the interest of this or that particular person or group of persons. But unfortunately, Rousseau, Hegel complains, abandoned this notion of will and replaced it by what he called the ‘will of all’: “he (Rousseau) takes the will only in a de-

11. *Ibid.*

12. *Ibid.*, Book IV, Chap. 3.

13. *Ibid.*

terminate form as the individual will, and he regards the universal will not as the absolutely rational element in the will, but only as a 'general' will which proceeds out of this individual will as out of a conscious will. The result is that he reduces the union of individuals in the state to a contract and therefore to something based on their arbitrary wills, their opinion, and their capriciously given express consent." Now, if the fundamental principle of the state is not the general will as something universal and rational, or, put differently, if the law which I must obey does not express my rational will but the capricious will of the majority of the society to which I belong, then I cannot be free. Early in the *Social Contract* (Book I, chap. 6, 7, and Book II, chap. 1, 2, 3) Rousseau advances a concept of will that is both general and rational, a will that cannot be alienated, divided, and mistaken, a will that is above the desires, values, and interests of the people as particular individuals. This will aims at the *general* interest of all, and this interest could not be articulated by any specific member of the community. In his discussion of Law and the Legislator, Rousseau repeatedly stresses that the people are not the best judges of what is truly good for them: "how will a blind multitude, which often does not know what it wants, because it rarely knows what is good for it, carry out by itself an undertaking as vast and as difficult as a system of legislation?"¹⁴ This is why the people need a person of superior wisdom to draft their laws, or constitution: "the discovery of the best rules of society suited to nations would require a superior intelligence, who saw all of men's passions yet experienced none of them; who had no relationship at all to our nature yet knew it thoroughly; whose happiness was independent of us, yet who was nevertheless willing to attend to ours; finally one who, preparing for himself a future glory with the passage of time, could work in one century and enjoy the reward in another. Gods would be needed to give laws to men."¹⁵ But when he came to discuss the legislative power, the assembly which has the task of articulating the laws of social behavior, Rousseau maintained, as we have seen, that a law is adopted or rejected by a majority vote. He did insist that the assembly should enact the general will, yet what the assembly articulates as law is nevertheless decided by the will of the majority, that is, "their arbitrary wills, their opinions, and their capriciously given express consent." We should therefore disagree with Avineri when he states that "Hegel misses the significance of Rousseau's distinction between *la volonté générale* and *la volonté de tous*. Hegel apparently sees Rousseau's 'general will' as a pure aggregate of individual wills and overlooks the fact that it represents a higher, community-oriented level of consciousness, transcending the 'lower' will which is oriented towards merely individual goals."¹⁶ Hegel is fully aware of Rousseau's distinction be-

14. *Ibid.*, Book II, Chap. 7.

15. *Ibid.*

16. S. Avineri, *Hegel's Theory of the Modern State* (Cambridge: Cambridge University Press), p. 184.

tween the general will and the will of all, but he is also aware that Rousseau himself reduced the notion of the general will to that of the will of all.¹⁷

Thus although Rousseau formulated a rational principle of the state this principle remained abstract and ineffective in the management of the affairs of the people. The real social contract, the contract that is actually operative, does not seem to be expressed in the general will but in the contract established by the will of all. Rousseau failed to bridge or to provide a principle according to which the two wills can be unified. "For this reason, when these abstract conclusions came into power, they afforded for the first time in human history the prodigious spectacle of the overthrow of the constitution of a great actual state (France during the French Revolution) and its complete reconstruction *ab initio* on the basis of pure thought alone, after the destruction of all existing and given material. The will of its refounders was to give it what they alleged was a purely rational basis, but it was only abstractions that were being used; the Idea was lacking; and the experiment ended in the maximum of frightfulness and terror" (Par. 258).¹⁸

The crux of this criticism is that an abstract idea of the general will is not fruitful in reforming or restructuring an already existing state. The main task of an adequate political theory is to help in building on what already exists; the attainment of rationality is a gradual process of achievement. It is a mistake to think that a state can be built on the basis of pure thought alone. The defects, injustices, or blunders of a state may be exposed or condemned but the reality of the state cannot be denied or obliterated. Moreover, basing a state merely on the idea of a contract *ab initio* does not in fact lead to a well-organized or smoothly functioning state; on the contrary, it only produces a loosely organized political body, for the customs, values, and interests of a society which constitute the heart of its constitution evolve gradually. They arise out of the existential conditions of the people through a historical period. I should here immediately add that Hegel does not mean to say that there cannot, or should not, be an ideal which stands above the actual; but, as I shall argue in some detail later on, there must be within the state a viable mechanism, or principle, which facilitates the realization of the ideal in the life of the people. This principle is absent from Rousseau's political theory. Rousseau held that the state is composed of two basic powers, the executive power and the legislative power. As an executive power, the government is an intermediary between the sovereign and the people. But the sovereign becomes concrete in the general will, that is, in the constitution. The people alone are entrusted with the legislation of all the laws. Rousseau's reluctance to allow any other power or agency to

17. For a detailed discussion of how Rousseau abandons his concept of the *general will* and replaces it with the concept of the *will of all* see B. Bosanquet, *The Philosophical Theory of the State* (London: Macmillan, 1958), Chap. 5.

18. See also, G. W. F. Hegel, *Phenomenology of Mind*, trans. J. B. Baillie (London: Allen & Unwin, 1961), pp. 599–610.

assist in the enactment of laws led him necessarily to invest the popular assembly with the full power to enact all the laws. This is the main reason why he was forced in the final analysis to reduce the general will to the will of all.

Upholding an abstract idea of the general will leads to another undesirable consequence: the freedom of the individual would be disregarded. For if the general will is sovereign, and as such inalienable, indivisible, and cannot err, then it should follow that every member of the state should submit his will completely to it. This premise is made explicit by Rousseau: "in perfect legislation, the private or individual will should be null; the corporate will of the government very subordinate; and consequently the general or sovereign will always dominant and the unique rule of all the others."¹⁹ But if the end of the state is the freedom of the individual, and if this individual does not, at least in principle, participate in the legislative process, if, in other words, his actual will is ignored, then any claim to his freedom would be a fiction and not a reality. Hegel is, it seems to me, quite aware of this weakness in Rousseau's concept of the general will; for in the same section where he discusses the concept he insists that rationality exists concretely in the state when objective freedom, the freedom implicit in the universal, in the general will, is unified with subjective freedom, with the freedom of the particular, private will (Par. 258).

But the general will becomes concrete in the popular assembly, that is, in the legislative process. This process is the heart of what is usually called the democratic process, for in it the people are expected to declare their will, to articulate this will as a law, and to adopt the law as a rule of social behavior. But we should here ask: under what conditions is the popular assembly to arrive at the true content of the general will? Are the people qualified, or in a position, to discover the common good? I raise these questions for two reasons: (1) they place the problem of freedom into sharp focus; (2) the method of articulating and realizing the general will is, for Hegel, a central question of political theory; for if the end of the state is freedom we should explain not only the meaning of freedom but also the conditions under which it is possible. Now let us ask again: is the conceptual framework within which Rousseau analyzes the concept of the general will and the way this will is actualized concretely adequate? The answer to this question is, for Hegel, in the negative. In what follows I shall explain why.

We have seen that, for Rousseau, the people are sovereign: their will is the source of political authority. This premise underlies Rousseau's insistence that the legislative power must be restricted to the people in events of popular assemblies. In these assemblies they vote on those laws which they take to be expressive of the general will, of the will of the people as a whole. This task cannot be relegated to 'representatives' for two reasons: (1) the people are most qualified to judge what is in their best interest; and (2) the will of the individual

19. *On the Social Contract*, Book III, Chap. 3.

cannot be represented. Hence in articulating a needed law the people must be present and each person must deliberate and decide on the appropriateness or inappropriateness of a proposed law. This line of reasoning seems at first look attractive and convincing, for it asserts the sovereignty of the people in a genuine fashion. It also seems to account for the possibility of freedom effectively. Hegel, however, rejects it for the following reasons.

First, "to hold that every single person should share in deliberating and deciding on political matters of general concern on the ground that all individuals are members of the state, that its concerns are their concerns, and that it is their right that what is done should be done with their knowledge and volition, is tantamount to a proposal to put the democratic element without any rational form into the organism of the state, although it is only in virtue of the possession of such a form that the state is an organism at all" (Par. 308). What Hegel means when he says that the idea of popular government lacks rational form is that it ignores the aspect that a state is an organic whole and that the individuals who compose it are concrete, unique wills: "the rational consideration of a topic, the consciousness of the Idea, is concrete, and to that extent coincides with a genuine practical sense." A citizen in the state is not merely a number or an abstraction. And the people are not, to borrow a term from Herbert Marcuse, 'one-dimensional' in every possible respect. Their wills are not, in other words, homogeneous.²⁰ The state is a concrete whole; as such, it is composed of groups, classes, associations, or corporations. In whatever an individual feels, thinks, or does, he reflects the interests of the group to which he belongs. Thus a citizen is not merely a universal interest or consciousness which he shares with the rest of the society; "this consciousness and will, however, lose their emptiness and acquire a content and a living actuality only when they are filled with particularity, and particularity means determinacy as particular and a particular class-status" (Par. 308). What Hegel is here stressing is that it is a grave mistake to think that in any society it would be possible for all the members of that society to agree unanimously, equally, on a certain matter or proposal primarily because people exist as individuals and as groups who share certain ideas and interests.²¹ A person realizes himself as an individual only in so far as he belongs to such a group: "the single person attains his actual and living destiny for universality only when he becomes a member of a Corporation, a society, &" (Par. 308). Accordingly if individuals participate in the legislative process, "whether individuals are to choose representatives for this purpose, or whether every single individual is to have a vote in the legislature himself," the state would be reduced to an atomistic and abstract level (Par.

20. Cf. Charles Taylor, *Hegel* (Cambridge: Cambridge University Press, 1975), pp. 408ff.

21. From the principle "if freedom implies the consent of each individual, then of course only the subjective aspect is meant. From this principle follows as a matter of course that no law is valid except by agreement of all. This implies that the majority decides; hence the minority must yield to the majority." *Reason in History*, pp. 56-7.

303). The 'people' become the 'many', and as such they exist "as an aggregate, a formless mass whose commotion and activity could therefore only be elementary, irrational, barbarous, and frightful." If this happens the state would cease to be a will or a unity of purpose; it would instead exist under the sway of particular wills or interests. Hegel makes this point forcefully when he discusses the possibility of electing the monarch directly by the people: "in an elective monarchy, I mean, the nature of the relation between king and people implies that the ultimate decision is left with the particular will, and hence the constitution becomes a Compact of Election, that is a surrender of the power of the state at the discretion of the particular will. The result of this is that the particular offices of state turn into private property, the sovereignty of the state enfeebled and lost, and finally the state disintegrates within and is overthrown from without" (Par. 281).

Second, the claim that each person should participate in the legislative business of the state presupposes that "everyone is at home in this business—a ridiculous notion, however commonly we may hear it sponsored. Still, in public opinion a field is open to everyone where he can express his purely personal political opinions and make them count" (Par. 308). In *Reason in History* Hegel characterizes this presupposition as false and dangerous, for then "each popular faction can set itself up as the 'People. What constitutes the state is a matter of trained intelligence, not a matter of 'the people'." ²² Hegel insists that we must clearly distinguish between what the 'people' will actually and their ability to will the universal. In a popular assembly a people may agree on a certain law, but in this agreement there is no guarantee that what they have willed is the universal. If they fail to will the universal they achieve only one kind of freedom—subjective freedom. But the determination of the universal, of the general interest of the people, requires "a comprehensive insight into the nature of the state's organization and requirements" (Par. 301). This insight is not, under normal conditions, generously present in the minds of ordinary men. Its attainment requires skill, dedication, wisdom. ²³

Third, if we hold that the laws of the state should be decided by the people directly we undermine the very idea of the constitution: the need for a constitution becomes superfluous: "the only institution necessary would be a neutral, centrally located observer who would announce what in his opinion were the needs of the state, a mechanism of assembling the individuals, casting their vote, and the arithmetical counting and comparison of the votes on the various propositions—and this would already be the decision." ²⁴ This is a serious

22. *Ibid.*, p. 57.

23. In his early political writings Hegel discusses this difficulty with specific references to France, England, and Germany during the latter part of the eighteenth century and early part of the nineteenth century. See Z. A. Pelczynski's excellent treatment of this point in *Hegel's Political Writings* (Oxford: Oxford University Press, 1964). Chap. 4.

24. *Reason in History*, p. 57.

consequence of the idea of popular sovereignty, for the 'state' is an abstract entity; its foundation is the general will.²⁵ Accordingly it needs to be translated concretely. This translation is what gives rise to the whole machinery of governmental and social institutions without which social life and culture are impossible. But the detailed determination of the general will is the very structure of the constitution: "only in the constitution does the abstract entity of the state assume life and reality."²⁶ Moreover, if we do away with the constitution we in effect ignore the validity of the universal, the ideal, in the life of the people. If this happens, any attempt at rational progress or reform would necessarily come to a halt.

Fourth, in order for popular government to be effective, in order for it to work, the people must enjoy a high degree of political consciousness; but in fact, at least in Hegel's time, this requirement does not seem to be fulfilled. An expression of this difficulty is electoral apathy. Hegel thinks that popular suffrage especially in large states "leads inevitably to electoral indifference, since the casting of a single vote is of no significance where there is a multitude of electors. Even if a voting qualification is highly valued and esteemed by those who are entitled to it, they still do not enter the polling booth. Thus the result of an institution of this kind is more likely to be the opposite of what was intended; election actually falls into the power of a few, of a caucus, and so of the particular and contingent interest which is precisely what was to have been neutralized" (Par. 311). We may here ask: why does popular suffrage lead to electoral apathy? I raise this question, for it would seem that casting one's vote on a matter of social significance is a political obligation. Hegel is certainly alive to this point. He holds that the main reason for electoral apathy is, as I have just indicated, lack of political consciousness; this lack is itself a consequence of a more rooted problem, namely: most people do not have a substantial conception and sense of freedom. They conceive of freedom abstractly, that is, as an activity of personal satisfaction. But in order for one to be fully free he should acquire both understanding and skill in realizing the universal in his personal experience. This happens only when a person views his destiny as an integral achievement of the life of the state as a rational whole.

III

Hegel, then, agrees with Rousseau that in order for a state to be free it must express and realize the common interest, or the general will of the people. Hegel, however, disagrees with Rousseau on how this will becomes actual, on how its content can be articulated as a valid law. While Rousseau insists that

25. Rousseau, like Hegel, views the state as an abstract, ideal, entity. See *On the Social Contract*, Book I, Chap. 6.

26. *Reason in History*, p. 57.

the people as a whole should directly participate in the legislative process because they, as a people, are sovereign, Hegel thinks that this procedure is impractical and does not ensure the gradual realization of the general will as a rational principle in the life of the whole.

The central problem for political theory, for Hegel, is not whether we should adopt a democratic, aristocratic, or monarchical form of constitution, but whether we can determine “the *best constitution*, namely, that institution, organization, or mechanism of government which most securely guarantees the purpose of the state.”²⁷ Thus we should ask: since the end of the state is freedom, what sort of political organization is most conducive to the realization of this end? “A free constitution,” Hegel writes, “is for us dependent upon the idea of representative government, and this has become a firm prejudice.”²⁸ We should immediately add that when Hegel speaks of representation he means *indirect* representation: “our states are so big and their people so many, that they cannot directly, but only indirectly through representatives, contribute their will to political decisions.”²⁹

My critic may here object: how can a person be represented indirectly? I shall discuss this question in detail later on; but for now let me make the following remark. Suppose the will of a person can be represented directly or indirectly, what is the purpose of this representation? Now suppose it cannot be represented at all, does it not have the right to seek and attain its true interests? Again, does it not become free in realizing these interests? Thus the question for Hegel is not whether the will can, or cannot, be represented by another person or an assembly of persons but whether the real interests of the people can be discovered, systematized, and enacted into law. Here my critic may ask once more: who, in Hegel’s view, is qualified to enact the laws of the state? Hegel holds that the enactment of the laws is the task of the legislative power. This power is a function of the state qua sovereign. But sovereignty is an abstract entity; it is the ideality of the state. It exists concretely in the three powers of the state: the Crown, the Executive, and the Legislature: “the organic unity of the powers of the state itself implies that it is one single mind which both firmly establishes the universal and also brings it into its determinate actuality and carries it out” (Par. 299). Thus unlike Rousseau, Hegel maintains that the enactment of the law is not restricted to the Legislature—the Assembly of Estates—but to all the powers of the state. This point is clearly stated in the following passage: “in the legislature as a whole the other powers are the first two moments which are effective, (i) the monarchy as that to which ultimate decisions belong; (ii) the executive as the advisory body since it is the moment possessed of (a) a concrete knowledge and oversight of the whole state in its numerous facets and the actual principles firmly established within it, and (b) a

27. *Ibid.*, p. 58.

28. *Ibid.*, pp. 61–62.

29. *Ibid.*, p. 61.

knowledge in particular of what the state's power needs. The last moment in the legislature is the Estates" (Par. 300). My critic might once more interject: this view undermines the people's authority in determining the laws of the state, for the legislative task is, for Hegel, the monopoly of the monarch and his advisory council. But unless the people speak for themselves, or declare their own will directly, there would not be any guarantee that the enacted laws will express their true interests. This argument is mistaken for at least two reasons.

First, Hegel avers that the legislative power is a function of the state, that is, *the people*, but as sovereign. However, as I just indicated, sovereignty is an abstract ideal; its concrete determinations are the three basic powers. If we restrict the legislative business to the Legislature alone we face two difficulties: (1) we violate the integrity of the sovereignty of the state; for if the sovereignty of the state becomes concrete in its three governing powers it would necessarily follow that exclusion of any of these powers would limit the authority of the people in the formulation of its laws; (2) we further the separation, or independence, of the powers of the state. Hegel repeatedly stressed that if the powers of the state remain separated its unity would be destroyed; the state would consequently meet its end: "the idea of the so-called 'independence of powers' contains the fundamental error of supposing that the powers, though independent, are to check one another. This independence however, destroys the unity of the state, and unity is the chief of all desiderata" (Add. to Par. 300).

Second, the claim that 'the people' should declare and enact their will into law is vague and misleading; for, what do we mean by 'the people'? Do we mean, for example, 'all' or 'many' of the people? "The phrase 'the Many'" Hegel writes, "denotes empirical universality more strictly than 'All', which is in current use. If it is said to be obvious that this 'all' *Prima facie* excludes at least children, women, and, then it is surely still more obvious that the quite definite word 'all' should not be used when something quite indefinite is meant" (Par. 301). So when political thinkers and critics speak of "the people with reference to legislative business they usually mean 'summoning' the Estates;" they assume that "(i) the deputies of the people, or even the people themselves, must know best what is in their best interest, and (ii) their will for its promotion is undoubtedly the most disinterested" (Par. 301). But this assumption is mistaken—why?

Hegel holds that we should make a distinction between what one wills, on the one hand, and willing the universal, on the other. Willing the universal, which is the proper business of the legislative powers, requires "profound apprehension and insight." It is a mistake to think that the Assembly of Estates is in a position to determine the universal. I discussed this point in the first part of this essay. I should, however, add here that in universal legislation our end is to promulgate a law, a statement which is both general and determinate; "the distinction, however, is not a hard and fast one, because a law, by being a law,

is *ab initio* something more than a mere command in general terms (such as 'Thou shalt not kill'). A law must in itself be something determinate, but the more determinate it is, the more readily are its terms capable of being carried out as they stand" (Par. 299). Thus although law is a general proposition, it has an empirical character; without this character, it cannot be relevant or applicable to the life of the people. But in order for one to enact such a law he should have a synoptic knowledge of the affairs of the state. He should have a profound grasp of its external and internal problems; he should also know these problems as interrelated. A popular assembly is not in a position to possess this sort of knowledge; it is only qualified to articulate what the people actually will under given circumstances. Hence it should function as a link, that is, an intermediary, between the government and the nation: "the Estates have the function of bringing into existence the moment of subjective formal freedom, the public consciousness as an empirical universal, of which the thoughts and opinions of the Many are particulars" (Par. 301). In this way it becomes a major factor in guaranteeing the well-being and freedom of the people.

But its ability to render this service to the nation does not lie merely in its status of being the representative of the people, but especially in its political insight, "(a) in the *additional* insight of the deputies, insight in the first place into activity of such officials as are not immediately under the eye of the higher functionaries of the state, and in particular into the more pressing and more specialized needs and deficiencies which are directly in their view; (b) in the fact that the anticipation of criticism from the Many, particular of public criticism, has the effect of inducing officials to devote their best attention beforehand to their duties and the schemes under consideration, and to deal with these only in accordance with the purest motives" (Par. 301). I quote this passage at length only to stress that, for Hegel, the determination of the universal requires political skill, experience, and wisdom. This is a main reason why he held that the executive power is in a better position than the Estates to contribute to the legislation of the law; they have a deeper and more comprehensive insight; "they are also more habituated to the business of government and have a greater skill in it, so that even without the Estates they are *able* to do what is best, just as they also continually *have* to do while the Estates are in session." Hegel is here aware of the possible charge that if the monarch, or the executive power, becomes the ultimate factor in the legislative business there will be a tendency, at least in principle, toward despotism. But this charge assumes that the will of the executive is bad or less good than the will of the Estates. This assumption, Hegel argues, is "characteristic of the rabble or of the negative outlook generally." We cannot conduct the affairs of the state on the assumption that its various powers are antagonistic to one another, otherwise the state would be doomed to failure sooner or later: "the attitude of the executive to the Estates should not be essentially hostile, and a belief in the necessity of such hostility is a sad mistake. The executive is not a party standing over against an-

other party in such a way that each has continually to steal a march on the other and wrest something from the other. If such a situation arises in the state, that is a misfortune, but it cannot be called health" (Add to Par. 301). Moreover, we should remark that by its very nature the executive has the universal as its end while the Estates proceed in their business as private individuals; they start, Hegel writes, "from isolated individuals, from a private point of view, from particular interests, and so are inclined to devote their activities to these at the expense of the general interests, while *per contra* the other moments in the power of the state explicitly take up the standpoint of the state from the start and devote themselves to the universal end" (Par. 301).

Hegel thinks that "it is one of the most important discoveries of logic that a specific moment which, by standing in an opposition, has the position of an extreme, ceases to be such and is a moment in an organic whole by being at the same time a mean" (Par. 302). This moment is the Estates; it is a mediating organ between the government and the nation. While the first intends the universal, the second, the Estates, intends the particular interests of the people. From the standpoint of civil society, the nation exists as a conglomeration of individuals who give preeminence to their particular interests without due consciousness or concern for the well-being of society as an organic whole. But in the Estates the people qua members of civil society acquires its "political significance and efficacy;" it here appears "neither as a mere indiscriminate multitude nor as an aggregate dispersed into its atoms, but as what it already is, namely, a class subdivided into two, one subclass (the agriculture class) being based on a tie of substance between its members, and the other (the business class) on particular needs and the work whereby these are met. It is only in this way that there is a genuine link between the particular which is effective in the state and the universal" (Par. 303).

Although this point has been discussed before, I reiterate it only to focus attention on the need to view the state as a harmonious unity, not only because outside it ethical life is impossible but also to establish on a firm foundation the claim that the people are the ultimate source of political authority. For the people cannot be the source of such authority unless they exist as a unified will and unless there is a framework within which the rational and general aspect of this can be enacted into law.

IV

A brief consideration of this framework, the Assembly of Estates, should throw more light on the role of the people in the legislative process. The principle around which this framework is organized is this: society elects its representatives *as a society*, on the one hand, and the legislative power enacts the

laws of the nation as an organic unity, as a unity of will, on the other. Let me discuss the dynamics of this principle.

The Assembly of Estates is composed of two houses: the first represents the agricultural class and the second represents the business class. The first class is “one whose ethical life is natural, whose basis is family life, and, so far as its livelihood is concerned, the possession of land” (Par. 305). This class is composed of farmers and an educated elite. Like the monarch, its members acquire their land and sociopolitical class by birth. Hence they do not depend for their living either on the state or on the other classes; they have a will of their own. This socioeconomic status allows them to be in a position to contribute constructively to the well-being of the state. “This class,” Hegel states, “is more particularly fitted for political position and significance in that its capital is independent alike of the state’s capital, the uncertainty of business, the quest for profit, and any sort of fluctuation in possessions. It is likewise independent of favour, whether from the executive or the mob. It is even fortified against its own wilfulness, because those members of this class who are called to political life are not entitled, as other citizens are, either to dispose of their entire property at will, or to the assurance that it will pass to their children, whom they love equally, in similarly equal divisions” (Par. 306). But although the right of this class is based on the natural principle of the family, and although it has the universal immediately realized in its life, it cannot sever its political outlook or interest from that of the nation as a whole, that is, from the general interest of society (Cf. Add. to Par. 306). It thus has the unique role of being an intermediary between the monarch and the executive, on the one hand, and civil society, on the other. With the monarch it shares the aspect of economic and political independence and with civil society it shares similar rights and needs. Its virtue consists (1) in bringing about a more reasonable and prudent judgment in legal matters and (2) in enhancing the unity between the Estates and the Executive.

The second house of the Assembly of Estates represents the interests of the business class. This class does not participate in politics directly but *indirectly* by means of deputies or representatives, because (1) it is the largest segment of society and (2) because it is composed of various associations. Each of these associations is grouped together on the basis of mutual economic or professional interests. It is extremely difficult, if not impossible, to harmonize and articulate these diverse interests by means of direct participation in the legislative process. Thus since the deputies of this class “are the deputies of civil society, it follows as a direct consequence that their appointment is made by the society *as a society*. That is to say, in making the appointment society is not dispersed into atomic units, collected to perform only a single and temporary act, and kept together for a moment and no longer. On the contrary, it makes the appointment as a society, articulated into associations, communities, and Corporations, which although constituted already for other purposes, acquire in this

way a connexion with politics" (Par. 308). But my critic might at this point insist: how can the deputies of these diverse associations discover the unity of the will of the people? Put differently, how can the diverse interests of these associations be harmonized and articulated as a law? Again, can the deputies *represent* the will of the people? These questions call for a two-fold clarification. First, what does it mean for a society to appoint its deputies *as a society*? Second, what does it mean for the deputies to represent the people?

First, when Hegel asserts that society, qua society, should appoint its deputies, he means that the people are the electorate, and that the concrete interests of the people as a whole must be expressed and must play a role in the legislative process. But 'the people' is not an abstract or a homogenous mass of human beings. The term 'people' refers to human beings who exist in society as individuals with personal interests, values, intellectual capacities, emotional inclinations, desires, and world outlooks. A quick look at how people actually conduct their activities in social life shows that they exist as groups, or associations, or as Hegel would call them, Corporations. What makes a corporation possible is unity of socioeconomic and professional interests. In civil society a corporation is usually preoccupied with its particular interests: the attainment of these interests is the basis of its satisfaction. Accordingly if the interests of the people are to be represented in the Legislature comprehensively and concretely, each corporation should elect its deputies. But the activity of representing would not be useful or effective unless the deputies are competent or qualified for the task. Hegel is sensitive to this condition: "the guarantee that the deputies will have the qualification and disposition that accord with this end," he writes, "is to be . . . above all in the knowledge (of the organization and interests of the state and civil society), the temperament, and the skill which a deputy acquires as a result of the actual transaction of business in managerial or official positions, and then evinces in his actions" (Par. 310). Thus a deputy of the people should enjoy a political and administrative sense; he should be devoted and responsive to the needs of his community; and, above all, he should be capable of making a wise judgement (Cf. Par. 311).

I am aware of the possible objection that the differentiation of society into associations or corporations is *démodé* or perhaps does not apply to our own society at the present.³⁰ But the crucial point which we should recognize, however, and which is the crux of Hegel's argument, is not whether society exhibits a certain mode of economic or professional organization but that if a system of representation is to be successful, it should take into serious con-

30. I am of the opinion that Hegel's claim that society is composed of associations, that these associations reflect definite socioeconomic or professional interests, is valid in principle even in our contemporary society. In the United States, for example, the president and the representatives of the people are not elected directly by the people but indirectly through the electoral college, the existing parties, and other types of caucuses. In addition, a large portion of the legislative business is conditioned by all sorts of lobbying groups which represent the concrete interests of minorities, labor unions, businesses, and others.

sideration the interests of *all* the people. This 'all' exists as a diversity, or multiplicity, of interests. Accordingly the deputies should be the deputies of the various interests of the people. Only in this way does a society act as an electorate concretely and not abstractly as a conglomeration of atoms (Par. 311).

Second, when Hegel characterizes deputies as representatives of the people or of their will he does not mean "simply the substitution of one man for another; the point is rather that the interest itself is actually present in its representative, while he himself is there to represent the objective element of his own being" (Par. 311). It is a notorious presumption to claim that an elected official can, regardless of his intellectual achievements or political position, know the actual content of the will of the people.³¹ Hegel is aware of this difficulty. He clearly states that the deputies are not "agents with a commission and specific instructions" (Par. 309). Two arguments are advanced in support of the claim. (1) "Since deputies are elected to deliberate and decide on public affairs, the point about their election is that it is a choice of individuals on the strength of confidence felt in them, that is, a choice of such individuals as have a better understanding of these affairs than their electors have and such also as essentially vindicate the universal interest of a society or a Corporation in preference to that interest." (2) The Assembly of Estates "is meant to be a living body in which all members deliberate in common and reciprocally instruct and convince each other." The point which merits special emphasis here is that the substance of the legislative activity is what is right, or good, not merely for this or that individual or group of individuals but the whole of society given as a diversity, indeed complexity, of interests. This activity is deliberative; its content, the common good, is not given as a ready made or clearly formulated principle. On the contrary, it is conceived, articulated, on the basis of understanding the actual social condition and rational aspirations of the state as an organic whole. This is why Hegel reminds us that "representation is grounded on trust, but trusting another is something different from giving my vote myself in my own personal capacity. Hence majority voting runs counter to the principle that I should be personally present in anything which is to be obligatory on me. We have confidence in a man when we take him to be a man of discretion who will manage our affairs conscientiously and to the best of his knowledge, just as if they were his own" (Add. to Par. 309). Accordingly when I vote for a person I declare confidence in this person's qualification to discover and promote the common good. In this act I function as a citizen; I do not think merely of my subjective interest but also of the well-being of the state as a sovereign power.

31. In the proceedings of the Wurtemberg Diet, Hegel writes with reference to the 'will of the people': "this is a great Word, and the representatives of the people should take the greatest care not to profane it or use it lightheartedly. To say 'he knows what his will is' is one of the most difficult, and hence most noble, things one can say of a man. People's representatives must not be picked at random, but rather one should choose the wisest from among the people, since not every-

But the Assembly of Estates, or peoples' assemblies in general, may not be honest, skilled, or wise; they may not, in other words, be qualified to participate effectively in the legislative process. Indeed if we look at the history of political institutions, we find that in most cases the peoples' assemblies of the various states did not exercise the highest degree of wisdom or competency. Hegel knew this fact very well. This is the main reason why he refused to restrict the power to enact laws only to the Legislature, the Estates; he insisted, as we saw, that the people themselves, including the monarch and his advisory council, should also contribute to this task.

Hegel strongly believes that the people should voice their opinions and make recommendations on the political business of the state. This is a basic way in which they can exercise their political freedom: "the formal subjective freedom of individuals consists in their having and expressing their own private judgments, opinions, and recommendations on affairs of state. This freedom is collectively manifested as what is called 'public opinion,' in which what is absolutely universal, the substantive and true, is linked with its opposite, the purely particular and private opinions of the Many" (Par. 316). I discussed the importance and political implications of public opinion elsewhere.³² Here I would like to emphasize two points. (1) For Hegel, the Assembly of Estates is a public forum in which the problems, needs, aspirations, and interests of the state are evaluated, debated, and settled. In this forum the Executive as well as the citizens can, directly or by means of the press, contribute their objections, views, or wisdom. They can, moreover, cooperate in determining what is best for the nation. The relation between the people and the government is not contractual. The latter is not, moreover, instituted on the basis of trust. It should, instead, be viewed as an instrument of the general will, for its main task is to apply the law, to bring the particular under the universal. It is the power which realizes or makes the will of the people actual. Moreover while the main interest of the Assembly of Estates is to discover and exchange what the people actually want, the main interest of the government is to discover the objective, rational aspect of these interests and enact them into law. But it cannot do this unless it knows the mind of the people as members of corporations concretely, and unless it shows respect for their rights and interests. The proper strength of the government lies in its associations: "in them the executive meets with the legitimate interests which it must respect. and since the administration cannot be other than helpful to such interests, though it must also supervise them, the individual finds protection in the exercise of his rights and so links his private interest with the maintenance of the whole" (add. to Par. 290). Again, "just as civil society is the battlefield where everyone's individual private interest meets

one knows, as it is his duty to know, what one's true and real will is, i.e., what is good for one." Quoted and commented on by Pelczynski in *Hegel's Political Writings*, p. 93.

32. Cf "Law as the Basis of the State: Hegel."

everyone else's, so here we have the struggle (a) of private interests against particular matters of common concern and (b) of both of these together against the organization of the state and its higher outlook. At the same time the corporation mind, engendered when the particular sphere gain their title of rights, is now inwardly converted into the mind of the state since it finds in the state the means of maintaining its particular ends" (Par. 289). This is enough to show that for Hegel the work of the government and the Assembly of Estates should not, as we argued earlier, be viewed as antagonistic but as complementary to each other.

(2) In being an open forum, the Assembly of Estates provides a realistic education for the people in the affairs of the state; in its meetings they learn best how to recognize the true character of their interests. "The idea usually dominant is that everyone knows from the start what is best for the state and that the Assembly debates is a mere discussion of this knowledge. In fact, however, the precise contrary is the truth. It is here that first begin to develop the virtues, abilities, dexterities, which have to serve as examples to the public. Of course such debates are irksome to ministers, who have to equip themselves with wit and eloquence to meet the criticism there directed against them. Nonetheless, publicity here is the chief means of educating the public in national affairs. A nation which has such public sittings is a far more vitally related to the state than one which has no Estates Assembly or one which meets in private" (Add. to Par. 315). The Assembly of Estates, then, performs two important functions: (1) it informs the government about the people's needs or problems; (2) it brings to focus, to the attention of the people, the problems of the state as a whole internally and externally. It is in this dual function that the Assembly of Estates acts as an intermediary, that is, as a unifying bond between the government and the nation.

But the power responsible for the enactment of the laws is the monarch and his advisory council: "the second moment in the power of the crown is the moment of particularity, or the moment of a determinate content and its subsumption under the universal. When this acquires a special objective existence, it becomes the supreme council and the individuals who compose it. They bring before the monarch for his decision the content of current affairs of state or the legal provisions required to meet existing needs, together with their objective aspects, that is, the grounds on which decision is to be based, the relative laws, circumstances &c." (Par. 283). It should be clear from this passage that the monarch is not strictly personal or subjective but assisted, indeed determined, by the wisdom of the executive council, on the one hand, and the articulated needs or demands of the Legislature, on the other. The monarch, qua ruler, enjoys the privilege of being a final authority because he sums up in his person the sovereignty of the state: "the power of the crown contains in itself the three moments of the whole, viz., (a) the *universality* of the constitution and the laws: (b) counsel, which refers the particular to the universal; and (c) the mo-

ment of ultimate decision, as the *self-determination* to which everything else reverts and from which everything else derives the beginning of its actuality" (Par. 275). Thus when Hegel states that the final legal authority is the monarch, he does not in any way mean to advocate a despotic or 'authoritarian' type of government. The only authority, for him, which should rule the state is the authority of the law. His only concern is to establish a political framework within which the state can function and express itself as a unified whole. This framework is based, as I have so far argued, on three basic principles: (1) the substance of the legislative process is the actual and general interests of the people; (2) the people participate in the legislative process indirectly by electing deputies who represent their interests concretely and directly by voicing their opinions in the press and the recognized means of public communication; (3) the monarch as the concrete element of the sovereignty of the state decides what laws should be accepted or rejected. This decision is based on the recommendations of the Legislature and the advisory council of the state as such.

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