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RAWLS, HEGEL, AND COMMUNITARIANISM

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FROM ITS ORIGINS in Moore and Russell's revolt against the British idealists McTaggart and F. H. Bradley, analytic philosophy has defined itself in opposition to the Hegelian speculative and metaphysical tradition. By "analytic philosophy" is meant that twentieth-century philosophical movement which may be characterized (roughly) by a number of salient features: by an emphasis on the analysis of language and meaning; by the employment of mathematical logic as a tool or method or as *the* method of philosophy; and by the fact that many of its practitioners have held a set of broadly empiricist assumptions, while viewing science (especially physics) as a paradigm of human knowledge.¹ Moreover, it is a relatively uncontroversial fact that this new philosophy had its origins, at least in part, in Moore and Russell's so-called refutation of central British Hegelian positions: in their wholesale rejection, for example, of the doctrine of "internal relations" and of "organic wholes," of knowledge considered as "synthesis" or dialectic, and of reality conceived as fundamentally monistic, one and absolute. Moore and Russell, for their part, simply argued for the opposed positions.²

As we approach the end of the twentieth century, however, it is not altogether clear who has won this debate. Ample evidence exists that despite more than fourscore years of disparagement and ridicule, the influence of Hegel (and many of the idealist positions) has not only *not died* but may even be gaining in strength.³ In particular, I hope to reveal Hegel's influence in an

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area where one might not yet have suspected it: in the thought of the paradigmatic theorist of justice in the Anglo-American world John Rawls.

At first sight, this claim seems preposterous. Rawls's thought is generally regarded as the epitome of contemporary, game-theoretic contract theory, firmly grounded in the Anglo-American tradition, with its essentially anti-metaphysical intentions and (some believe) its fundamental, atomistic individualism. Hegel's metaphysical system, on the other hand, still represents the paradigm of pretentious Continental system building, with its abstruse language, its speculative talk of one "world spirit" realizing itself through history and its claims to "absolute knowledge," while in the political domain (our primary focus in this discussion), Hegel was not only an ardent critic of social contract doctrine but the inspiration of modern communitarianism. So how, one might justifiably ask, could two thinkers stand further apart? I hope to show, however, that there is an important sense in which one can apply, without significant distortion, the term "Hegelian" to important aspects of Rawls's theory.⁴

An exposition of the close links between Rawls's thought and that of Hegel serves several purposes. For one, it serves the purely historical interest of vindicating Hegel in the face of much unjustified vilification in the Anglo world, assuming, of course, one believes that *A Theory of Justice* deserves its present high regard. More important, the exposition should work to dispel something of the aura of unacceptable "individualism" surrounding Rawls's work, while simultaneously revealing the flawed nature of recent communitarian accounts (those of C. Taylor, Sandel, MacIntyre, and Walzer, in particular). Such accounts are, in my view, sympathetic but fundamentally vague and misguided attacks offering a paucity of clear-cut viable alternatives. Should it emerge that Rawls in fact sides with the communitarian Hegel on numerous counts, the ground of contemporary debate should shift significantly. I hope to show that the true conflict cannot be conceived in terms of a simplistic dichotomy between "liberals" and "communitarians"; rather, the important issue regards the *kind* of community we seek. Finally, the following study suggests that an adequate conception of "community" — of what ultimately binds a just society together — may just be possible in a Rawlsian language: in a political language, that is, without a full-blown metaphysics.

Allow me to address one last preliminary point. In the subsequent discussion, I assume the legitimacy of Rawls's distinction between "moral theory" and "moral philosophy." By "moral theory" Rawls intends the systematic comparison of historically prominent moral conceptions, whereas "moral philosophy" (which includes moral theory) has as its major issue the problem of justification.⁵ In what follows, I shall primarily be concerned with moral

theory. Rawls has made a plausible case for provisionally setting aside the important questions of the truth or falsity, or even the reasonableness or unreasonableness, of various moral and political conceptions in order to proceed first with a systematic and comparative study of them. Only after we have clarified the nature of “Hegelianism,” that is, its relation to Rawls’s theory, and the consequences to be drawn for contemporary debates, are we in a position to ask which view is “best justified.”

POLITICAL, NOT METAPHYSICAL

I shall begin my comparison of the political thought of Rawls and that of Hegel by stressing what remains, no doubt, the fundamental difference between them: their respective stances in regard to metaphysics in general. My thesis shall be, in broadest outlines, that *A Theory of Justice* retains much of the fundamental structure of Hegel’s political theory while detaching this structure from its background metaphysics of absolute idealism—from Hegel’s monism and his talk of “world spirit,” from the doctrines of absolute knowledge and concrete universals, from the concept of the self as alienation and return, and so on. Many will here surely object that such a reading will result in but an evisceration of Hegel. In defense of my project, however, I shall try to show that Rawls nonetheless retains the *import* of many of the most significant strands of Hegel’s metaphysics; Rawls does this, however, in what he now takes to be a *practical*, and no longer metaphysical, form.

I do not mean to minimize the profound differences between the two thinkers. It is well known, for example, that Hegel viewed his political philosophy as but one subpart of his more comprehensive metaphysical system, as set forth (in skeletal form) in his *Enzyklopaedie* (1830). Although scholars dispute the sense in which Hegel claims his *Philosophy of Right* can actually be “deduced” from the more general system, agreement does exist that some form of “necessary connection” is being propounded between the general metaphysics and the political theory.⁶ More recently, of course, scholars have begun to question whether any such necessary connection *de facto* exists, but this was clearly not Hegel’s problem.⁷ Hardcore “Hegelians,” moreover, continue to stress Hegel’s uncompromising holism; on the Continent, at least, it is considered improper to study Hegel’s political thought without first spending semesters, if not years, on the *Science of Logic*.⁸ The Hegelian horse pill, it seems, must be swallowed whole or not at all.

John Rawls, on the other hand, posits an explicit separation between his political philosophy and *any* comprehensive, “metaphysical” system.⁹ In this respect, Rawls is decidedly “un-Hegelian”; he stands closer here to the positivist, or more accurately, to the American pragmatist tradition. For Rawls’s claim is not so much that metaphysical systems ultimately reduce to “nonsense” (that metaphysical claims are without purpose or meaning), but rather that such systems generally *underdetermine* (they may support, but they do not entail) one’s substantive position in ethics or political philosophy. In regard to his own theory, Rawls writes,

If metaphysical presuppositions are involved, . . . they are so general that they would not distinguish between the distinctive metaphysical views—Cartesian, Leibnizian, or Kantian; realist, idealist or materialist—with which [modern] philosophy traditionally has been concerned. In this case, they would not appear to be relevant for the structure and content of a political conception of justice one way or the other. (*PNM*, 240)

Rawls’s insight, although not altogether novel,¹⁰ is important, for it acknowledges that one might well be an ontological materialist (as was Hobbes) or an absolute idealist (as was Hegel) and yet still be a political monarchist rather than a democrat in both cases. Moreover, there appears to be no inconsistency involved. By taking such a normative, “practical” approach to the study of political issues, the metaphysical similarities or differences between any two theorists will be minimized for the express purpose of focusing on the structure and content of their substantive, ethical positions.

In rejecting Hegel’s extreme holism, however, and in claiming that moral theory retains a certain “independence” from further questions of metaphysics, ontology, or semantics, Rawls denies a major tenet of Hegelianism.¹¹ The question thus remains as to the respect in which (if any) his theory is similar to Hegel’s. I propose to identify three areas in which Rawls’s position may be considered typically “Hegelian.” By this I mean that in each case, the move originally introduced by Hegel and accepted by Rawls differs markedly not only from positions held within the Anglo-American, predominantly utilitarian tradition but from positions held by Kant. The three areas I assemble under the headings of the task of political philosophy (including its method and justification), the conception of the political person, and finally, the conception of human community and the state. If I am correct, Rawls’s theory may appropriately be labeled “Hegelian” in these important areas, once we have granted, that is, the possible separation of political theory from a full-blown metaphysics.

*THE TASK OF PHILOSOPHY:
DIALECTIC AND REFLECTIVE EQUILIBRIUM*

For Hegel, the task of philosophy in general is “reconciliation” (*Versöhnung*); it is a reconciliation of the individual, by means of reason, not to that which “merely exists” but to the real and the “actual” (*das Wirkliche*).¹² From the 1801 *Differenzschrift* onward, Hegel stresses that the need for philosophy begins in “bifurcation” or “conflict” (*Entzweiung*); its aim is to surmount and to comprehend such fundamental dichotomies as the one and the many, the finite and the infinite, subject-object, or mind-body (to name but a few).¹³ Political philosophy, for Hegel, is no exception; it too aims at a comprehension and resolution of the deepest cultural conflicts and aspirations of its time. In our time, Hegel believes, the conflict is one between the claims of an ancient communal ethical life (*Sittlichkeit*), on one hand, and that of the modern principle of individual freedom, on the other.¹⁴ His *Philosophy of Right* defends the position that only in the modern state — with its rational rule of law and its system of individual rights — is such a reconciliation between apparently diverse interests possible.

Although Rawls views philosophy as the attempt ultimately to “render coherent” our considered moral judgments (*TJ*, 21), I believe it does his thought no injustice to stress that it too aims at a “reconciliation by reason” — in fact, Rawls uses this exact phrase numerous times.¹⁵ In Hegelian fashion, political philosophy not only begins in conflict for Rawls but “justice as fairness” takes as its starting point a historically specific conflict: what Rawls calls the “impasse” reached in the modern period between the claims of freedom (in the tradition of Locke and Mill), on one hand, and those of greater equality (as represented by Rousseau or Marx), on the other.¹⁶ The task, as Rawls sees it, is to formulate “a deeper underlying basis of agreement” not only regarding the values of freedom and equality but of “fraternity” as well, and it is for this purpose that the two principles of justice are designed (*TJ*, 105). It thus turns out that *A Theory of Justice* — essentially a theory of the modern state — attempts to reconcile the conflicting tendencies of nothing less than what Hegel calls the animating principles of the modern epoch: the principles of liberty, equality, and fraternity for all men. Interestingly enough, this is also expressly how Hegel conceives his own task; for both, philosophy is “its own time apprehended in thoughts” (*PR*, “Preface,” 11).

The similarities, however, run far deeper. Even though Hegel is, strictly speaking, a “moral realist” and Rawls only a “constructivist” in ethics (I shall

return to this point in a moment¹⁷), both perceive the fundamental moral principles of the modern epoch as, to a large extent, already “embodied” (implicitly or explicitly) in contemporary political institutions and social practices as well as in the “traditions of their interpretation”; they are already embodied, that is, in what Hegel calls “objective spirit” and what Rawls terms “our public political culture.”¹⁸ Whereas for Rawls, philosophy aims for a “reflective equilibrium” between our most deeply held moral principles and a theory which purports to generate them (*TJ*, 48ff.), Hegel’s philosophical method – the political employment of the infamous “dialectic” – may similarly be so described. Hegel writes, for instance, in the preface to the *Philosophy of Right*:

After all, the truth about Right, Ethics, and the state is as old as its public recognition and formulation in the law of the land, in the morality of everyday life, and in religion. What more does this truly require – since the thinking mind is not content to possess it in this ready fashion? It requires to be grasped in thought as well. (P. 3)

According to both thinkers, what is needed is not some radical new beginning for ethics but rather that the moral principles and values latent in our everyday practices be “grasped in thought” as well – be made conscious and explicit, rendered consistent with each other, and their implicit rationality (or irrationality) grasped. For both thinkers, the reconciliation of principle and value is to be achieved by means of “reason” – not by the inexorable march of faith or by class struggle or violent revolution.

Of the two major tendencies within ethical writing, it is thus clear into which camp both Hegel and Rawls fall. The first tendency attempts to tell us what we should do; it claims we need a radical reconstruction of our first-order duties. Both utilitarianism (with its principle of utility) and at least some interpretations of Kantianism (with its categorical imperative) call for such a radical revision of our morality. Hegel and Rawls, on the other hand, (together with Aristotle) fall into the second camp; moral philosophy is the attempt to clarify and systematize what we have “all along” been doing. In Rawlsian language, moral philosophy is “Socratic” (*TJ*, 49); in idealist terminology, it aims at ethical “self-knowledge.” For both, there remains an important contrast with, say physics. To take an extreme example, if presented with an accurate account of the motions of the heavenly bodies that we do not find appealing, we cannot change that motion to conform to a more attractive theory (*TJ*, 49). In the case of theories about ourselves, by contrast, we may well wish to *alter* our views, actions, even who we desire to be, once their underlying regulative principles have been brought to light.

Noting similarities between Hegel and Rawls in regard to the self-conception of political philosophy sheds light on what I shall now call “the first communitarian criticism” of Rawls. This criticism runs roughly as follows: Rawls’s theory purports to present us with a universal, ahistorical account of justice supplied by the notion of pure rationality itself.¹⁹ Such a notion, however, is an illusion; all reasoning is in fact “situated,” dependent on various empirical assumptions, perceptions, and cultural practices of definite historical periods, or (as MacIntyre stresses) on particular cultural “traditions.” Not only is *A Theory of Justice*’s claim to “objectivity” a sham, but the work furthers the illusion that mankind itself is to be conceived on the model of modern Western bourgeois individualism and its instrumental, market rationality. A central concern of communitarians here is that by ignoring the cultural variation between concrete, historical human communities — by ignoring their alternative conceptions of personality, say, or of reason, or their subtle use of “thick” ethical concepts that tend to bind people together — resources or potentials for community are lost. Although this criticism is not restricted to those who call themselves “communitarians,” some version of it does unite them as a group.²⁰

As we have just seen, however, and as Rawls’s later works make abundantly clear, “justice as fairness” is intended to resolve an impasse reached in the modern Western tradition. *A Theory of Justice* is already explicit in maintaining that the method of reflective equilibrium begins with the data from common sense and “our moral tradition,” that the two principles of justice are to be judged against the leading contenders of *this* tradition, that they are “contingent” in the sense of being subject to revision in light of new empirical facts, and so on (*TJ*, 578). Already in *A Theory of Justice*, that is, practical reason and its conclusions are conceived as “empirically conditioned” (a rather “unKantian” move). The real issue between Rawls and MacIntyre or Walzer is not *whether* practical reason is conditioned by time and space in its origins and functioning; Rawls never denies this. The real issue is whether practical reason is thereby rendered “relative” and stripped of all “transcendent” critical function: a position Walzer, until recently at least, has tried to hold.²¹

Once again, a comparison with Hegel is helpful, for Hegel was the first to argue seriously not only that our ideas are historically conditioned but that this fact does not rob reason of its “objectivity”; in its “dialectical” operation, at least, reason can perform both an immanent and a critical transcendent function (see *The Philosophy of History*, “Introduction”). I believe it can be shown that Rawls, with the method of “reflective equilibrium,” attributes to practical reason a similar, if mitigated function.²²

Reflective equilibrium is that process whereby reflection seeks a “mutual adjustment” between particular considered judgments (formed through concrete observation and practice) and general moral principles until a satisfactory “fit” is reached—first within one’s own moral position (narrow reflective equilibrium) and then between one’s own view and that of an ever widening circle of others (wide reflective equilibrium; *TJ*, 46ff.). It is thus a method which, like the Hegelian dialectic, not only essentially entails the movement of thought “back and forth” between concrete particular judgment and general principle (Hegel would say it aims at the “concrete universal”), but importantly, is a conception of thought whereby a novel awareness develops through the emergence of conflict or contradiction and the overcoming of such conflict. In this respect, reflective equilibrium, like the Hegelian dialectic, may be compared with the idea of a metalanguage.²³

Briefly, a metalanguage is one in which we can say things about some other language (an object language) that cannot be said in that object language itself.²⁴ In this way, we might draw an analogy between a hierarchy of ever richer languages (object-language, metalanguage, meta-metalanguage, and so on) and what Hegel terms different “stages” of the dialectic; the “higher” stage will be a richer metalanguage in which problems posed in terms of the previous object-language (problems the object-language itself could not solve) are “resolved” (*versoehnt*), while the insights of the previous stage “preserved” (*aufgehoben*).²⁵ If we focus on a number of Hegel’s own examples, the analogy (although limited) is apt enough.

Hegel argues, for instance, that the Ancient Greek world lacked the language as well as the political institutions of individual subjective rights; the Athenian way of life rested on the secure foundation of a shared public religion and century-old filial duties. Hence when Athens was confronted with Socrates’ criticism, the city responded in accord with the only options open to it—either silence Socrates or be destroyed itself.²⁶ By contrast, the modern state expressly has at its disposal this conceptually enriched scheme of individual subjective rights. In acknowledging the universal principle of individual conscience, for instance, the state has expressly incorporated within itself or “reconciled” a domain of conflicting perspectives on the good life without its own unity being threatened. Further, the recognition of individual liberty of conscience, according to Hegel, is a sign of the modern state’s moral *superiority*: increased tolerance, a greater universality, and a diminishment in the severity of punishment of critics (*PR*, para. 100A).

I do not mean to imply that there are not important *disanalogies* between the idea of a series of metalanguages and the Hegelian dialectic. For one, the former idea (unlike the latter) carries with it no requirement that the conflict

resolution proceed in only one way nor that the series culminate in “absolute knowledge” (a full awareness of the whole process) rather than proceed to infinity.²⁷ The issue for the moment is whether reflective equilibrium too may productively be viewed as a process whereby we achieve an ever richer or more comprehensive ethical “overview,” and I believe it can.

Rawls claims, for instance, that any adequate account of justice will be one that reconciles by “a higher principle” what he calls our “common sense precepts of justice” (*TJ*, 305ff.). Such ordinary-language precepts (Rawls mentions five) will inevitably conflict when measured against each other. For instance, the precept “to each according to his ability” (elevated to a first principle by many libertarians) conflicts with “to each according to his need” (stressed in turn by Marxists); giving someone what they need is hardly identical to rewarding ability. Both precepts, in turn, conflict with “to each according to his effort” and so on. For Rawls, any adequate theory of justice will not elevate one commonsense precept at the expense of all others (in effect, ignoring or suppressing the conflict) but will be capable of “preserving” the basic insights behind each. Thus we find that in Rawls’s well-ordered society, the two principles of justice will be interpreted by four branches of government, each of which recognizes, as its special responsibility, one of the commonsense precepts (*TJ*, 275ff.). A balancing of the precepts and a “reconciliation” here occurs at the level of (and in the language of) the modern state. Only the scheme taken *as a whole*, writes Rawls, comes close to preserving the insight behind our most basic moral belief that justice requires “giving to each his due” (*TJ*, 313).

At this point one may be tempted to ask what determines, in Rawls’s theory, the weighing of these precepts within the state, given not only that common sense is undecided and may be systematically distorted but that mutually incompatible overarching accounts would seem possible? To come to grips with this problem, Hegel presents us with a rather thick, univocal theory of the “cunning of reason”: his metaphysical philosophy of history. Rawls nowhere, of course, attempts any such theory and presumably again eschews all such attempts. Nonetheless, I believe Rawls’s answer to this problem retains critical aspects of Hegel’s stance.

That is to say, while jettisoning all talk of one world spirit, of the inexorable march of reason, or of the end of history, Rawls’s theory nonetheless retains certain similar but far weaker assumptions: that there is such a thing as moral progress in history (since the days of slavery), that a study of man discloses a strong desire for freedom and for the exercise of his highest powers (Rawls’s Aristotelian principle) and that our social and political institutions indeed reveal a minimal rationality and coherence. In Rawls’s theory

also, that is, how we weigh the wisdom of the ages and balance the precepts of common sense (deciding which to reject and so forth), is essentially tied to a larger (if still partial) *systematic* conception, not only of the kind of beings we have historically been but of the kind of persons (consistent with this history) that we *aspire to be*. For Rawls, as for the German idealist tradition in general, the normative conception of the person plays a fundamental role in determining the content of the principles of justice (“DL,” 559).

Before turning to Rawls’s conception of the person, however, (merely another target of communitarian criticism), allow me to consolidate the position adopted thus far. My excursion into the dialectic and reflective equilibrium was meant to show how practical reason, working on the material of a particular historical tradition, can yet achieve a certain “objectivity.” Not merely for Hegel but for Rawls too (in explicit contrast to the position attributed to him by his critics), the historically conditioned nature of practical reason is acknowledged, while our capacities for reflection and self-criticism are affirmed. In Rawls’s view, if a theory exhibits an internal coherence of a high order, if it better than its competitors matches our normative judgments in reflective equilibrium, and if, importantly, it exhibits a greater “adequacy” or “comprehensiveness” (if it can account for its competitor’s position and not vice versa),²⁸ then together these criteria work to make one conception of justice, if not unequivocally true, at least “more reasonable” for us to hold than another (*TJ*, 577ff.). Finally, if this mitigated holistic and “idealist” conception of justification is acknowledged as Rawls’s own, the import of the first communitarian criticism vanishes; “justice as fairness” can claim greater “objectivity” — in the sense of fulfilling the above criteria — without loss of historical specificity. And Rawls, in light of the restricted practical aim he has set for himself (the practical aim of reaching moral agreement on principles regulating the basic structure of a modern pluralistic democracy), needs claim nothing more.

To be sure, emphasizing the similarities between Hegel and Rawls in regard to philosophical reason as “reconciliation” is not to overlook what I have called their fundamental difference: their respective stances in general in regard to a full-blown metaphysics or ontology. For Hegel, recall, the dialectic is not only a doctrine of “rational necessity” culminating in “absolute knowledge” but is conceived as an ontological category; presumably even things in nature operate “dialectically” (*Phen*, “Preface”). Reflective equilibrium, by contrast, is an open process of fallible, all-too-human thought. So too, for Hegel, the principles of freedom, equality, and fraternity to be reconciled are ultimately the ideas of one “world spirit” instantiating itself through finite minds and coming to know itself in history (*PR*, 341ff.). The

principles are conceived as universal and absolute; in an important sense, they are “discovered” by us.

Rawls, on the other hand, refrains from making such further, strong claims. Whether his two principles of justice are in fact universal, for instance, remains as much a matter for future empirical investigation to decide as for reflection to ponder (*TJ*, 578). It is not even clear that his two principles de facto underlie our tradition; they may well be nothing more than the “best interpretation” yet, a “construct” out of the pool of deeply held and widely shared moral and political considered convictions (see note 17). By taking this “constructivist” position, however, Rawls is not *denying* that there may be such a thing as a growing worldwide consciousness and recognition of individual freedom, as well as the possibility of absolute moral truths. It is only that a conception of political justice in his view (one appropriate for a modern, pluralistic democracy) cannot rest on the truth or falsity of such strong theses and must even be compatible with a number of conflicting positions concerning them. Hence for Rawls, unlike for Hegel, political philosophy must be set free from the anchor of a metaphysical foundationalism; in self-conception, its task comes closer now to the revamping of Neurath’s ship cast out on the open sea. In regard to some of the most ancient debates in philosophy, “justice as fairness” wishes to remain “agnostic.”

THE CONCEPTION OF THE PERSON

Perhaps the leading criticism which the German idealists have leveled at the utilitarians is that the latter operate with an inadequate conception of the person and of human dignity; utilitarianism conceives of the person as little more than a container of homogeneous desires bent on maximization.²⁹ Rawls, of course, reiterates a version of this critique: Utilitarians operate with a “consumer person,” underestimate the possibility of a rational restructuring of desire and motivation itself, and fail properly to acknowledge the “distinctions between persons” (*TJ*, 23ff., 185ff.). Ironically, Rawls’s own notion of the person has come under attack by communitarians, most notably, by M. Sandel.³⁰ Once again, such criticism at least appears to echo Hegel’s famous attack on the individualism of Kant.³¹

Sandel argues that Rawls presents us with a “hyper-Kantian,” “denuded,” or “abstract” conception of the person, conceived as an agent of choice, which is “prior to” and separate from its particular ends, attributes, commitments, and even concrete character (*LLJ*, 15ff.). Since Rawls conceives the plurality and separateness of individuals as ontologically “prior to their unity,” his

position leaves no room for communal values or social commitments in the “constitution” of the individual’s identity and self-understanding (*LLJ*, 147ff.). Rawls operates with a fundamentally “thin” and flawed notion of the person and with an inadequate understanding of man’s social nature. Sandel accuses Rawls, in short, of a metaphysical “atomism.”

As Rawls’s later writings have clarified, however, the basic mistake of the preceding criticism is that his use of the term “person” is intended not as a comprehensive account of personality but as a “political conception,” that is, as an appropriate conception of the person for the limited purpose of deciding on principles of justice for the basic structure of society (“PNM,” 231ff.). What I wish to show here is how close in fact this “political conception” of the person is to *Hegel’s* account of the person in part 1 of *Philosophy of Right*, entitled “Abstract Right.” (No one accuses Hegel of atomism.) Of further significance is how similar Rawls’s original position and Hegel’s abstract right are *in general*. Rawls’s *A Theory of Justice* stands squarely in the tradition of the German *Rechtslehre*.

Hegel’s concern in part 1 of *Philosophy of Right*, in the section titled “Abstract Right,” may be stated thus: What are the content and limits of relations among persons respecting and treating one another according to the single norm that each is a person? This concern reveals Hegel’s continuity with the natural rights tradition; the section is a form of methodological abstraction from the immediate and concrete social bonds between persons similar to that in state-of-nature methodologies.³² Unlike the latter, however, Hegel is explicit that he seeks the principles of personhood underlying the specifically modern period (*PR*, paras. 40A, 57R). His use of the term “person” is thus narrower than that of his natural right predecessors, who use it to refer either to the universal individual in the state of nature (Hobbes and Locke) or to the individual conceived as moral subject (Kant). For Hegel, by contrast, the term “person” refers to the individual qua his capacity to be the subject of *modern* political rights; it is only in the modern state that the capacity for citizenship, in principle at least, is extended to all men (*PR*, para. 40R). Further, Hegel considers such personhood only the “first condition” for freedom and human flourishing (*PR*, paras. 1, 33). For a more comprehensive good, the individual must be able to conceive of himself, not only as a rights-bearing legal person but as an autonomous moral subject and as a participating member of a rational community as well.³³

It is of interest to note that on each of these counts, Rawls follows Hegel (rather than Kant or other social contract theorists). Part 1 of *A Theory of Justice*, for instance, sets forth the original position, clearly a form of “methodological abstraction” from the richer and more concrete social bonds

between persons. This abstraction, however, is from our “post-Reformational public culture,” and its aim is to arrive at substantive political principles expressing men’s respect for each other (*TJ*, sec. 40). Similarly, part 1 gives us only a “thin theory of the good” (*TJ*, 396); it is not until part 3 that we receive a fuller conception, as well as, finally, an account of man’s social nature (*TJ*, 520ff.). My point is that for neither Hegel nor Rawls is any claim being made about the ontological “priority” of the individual to the group. Instead, modern political personhood (entailing the individual rights of conscience, free speech, various political liberties, the right to contract, to hold at least personal property, and so on) is claimed by both thinkers to be a *necessary* condition for human flourishing in post-Reformational circumstances, never a sufficient condition as Sandel’s critique implies.

If one looks more closely still, it emerges further that for both Hegel and Rawls, modern political personhood presupposes two minimum “moral powers,” capacities, or competencies of individuals (*TJ*, 505; “DL,” 525). In Hegel, personhood entails, first, what he calls the capacity for “self-conscious universality” (*PR*, para. 35). The human subject is unique insofar as it can recognize itself as “universal” — in the first instance, as “indifferent to particularity” (*PR*, para. 37). Hegel here refers to the ego’s ability to negate or distance itself from anything in particular — its own determinate thoughts and desires included (i.e., it can revise, reject them, and so forth). This “unrestricted capacity” for abstraction, Hegel believes, is presupposed not only in the person’s ability to perceive its *likeness* to the ego of others (abstracting from particular differences) but for its ability to grasp, and to determine itself to act in the world from, universal rules and principles (*PR*, para. 258R). Man alone, Hegel stresses, can consciously sacrifice everything particular, his own aims and life included; this capacity will be tested particularly in times of war.

The capacity for “self-conscious universality” in Hegel corresponds quite clearly, I believe, to Rawls’s first moral power of personality: to what Rawls calls “an effective sense of justice” and which he describes as “the capacity to understand, to apply and to act from (and not merely in accordance with) the principles of justice” (“DL,” 525). (In Rawlsian terminology, this capacity refers to the “reasonable” in us, in contrast to the merely instrumental and self-interested “rational” part.) But, so too, Rawls’s second moral power, “the capacity to form, to revise and rationally to pursue a particular conception of the good” (“DL,” 525), may be seen to correspond to what Hegel calls the ego’s second fundamental capacity for “self-determination” (*PR*, para. 6). The claim of both thinkers here is that fundamental to the *modern* notion of free personality is the ability not simply to follow rules nor merely to negate

or choose between de facto given alternatives (*Willkuer*) but to form plans, posit particular goals, and in general “express” a self-conception or a plan of life in an external, publicly recognized sphere (*PR*, para. 6). At this point, we arrive at Hegel’s important concept of “expression” (*Entaeusserung*). I hope to show that the concept is also central to Rawls’s account.

As C. Taylor has rightly pointed out, Hegel was influenced by the German “expressivist” movement of the 1770s, whose members revived the old Aristotelian notion of the good life as the expression of purpose or the realization of “form.”³⁴ Hegel, for example, praises Aristotle’s view of the soul as “self-organizing form” inseparable from a particular organic body (*Enzy*, para. 378 and *LHP*, II, 180ff.), and he, like Aristotle, imbues personality with the motive force of bringing its distinctively human capacities to fruition. Nonetheless, Hegel explicitly departs from Aristotle when it comes to questions of *political* personality. Unlike for the Ancients who, according to Hegel, viewed the form of an individual’s life as fixed “by nature” or independent of the subject who receives it, the purpose of a subject’s life must be given to it *by itself*; it must be its *own* conception. This Hegel calls the “principle of subjective freedom,” and he considers it to be the distinguishing mark of modernity; in the modern state, this principle has been acknowledged for the first in the universal right of free personality (*PR*, paras. 182A, 185R).

Hegel’s concept of “expression” is of further interest because it signals an important aspect of his departure from Kant. With this concept, Hegel clearly attempts to overcome the rigid Kantian dualities between mind and body, reason and desire, and so on. Hegel is, in the end, a monist; it is of the essence of mind (*Geist*) that it express itself in space and time. So, too, imbuing personality with this motive force entails for Hegel (unlike for Kant) that sensuous desire and impulse be considered “intrinsic to freedom” (*PR*, para. 6). Thus in contrast to Kant’s view, where the physical, mechanical world forever remains a foil to our transcendental freedom, the sensuous material world in Hegel (including our own sensuous desire) is viewed as the necessary *medium* in which our freedom is embodied and revealed. A number of important subtheses follow from this altered conception.

For one, politically speaking, Hegel now attributes to the right of modern personality what may be called a *material content*; free personality, and the development of human powers, is impossible severed from an adequate material substratum (*PR*, para. 41). Thus we find in Hegel’s theory, for example, that the state will play a far more extensive welfare role than under traditional liberalism; the “public authority” should provide education, oversee public utilities (e.g., street lighting and bridge building), care for public

health, price daily necessities, and alleviate poverty among other things (*PR*, para. 236ff.).³⁵

Second, for any individual to exist qua person, for him to embody his plans and express a self-conception in an objective public sphere, it is essential that others be able to recognize him as well as acknowledge his desires and aims *as such* (*PR*, para. 71). This presupposes, in Hegel's view, not just a material substratum but a social background of shared understandings, expectations, and the "reciprocal recognitions" entailed by his notion of Geist.³⁶ Without such a prior cultural formation (without, in contemporary language, an understanding of the "form of life"), the individual could never adequately express his intentions or even come to know them. The minimal knowledge of such expectations Hegel terms *Bildung* (culture or education) and he describes it as our "second nature" (*PR*, para. 3).

The important point is that for a person to obtain "substantive freedom" in Hegel (and not just Willkuer or choice), it is not enough simply to overcome the alien and compelling character of the natural physical world (achieved through labor and property), nor is it enough to bring order to the chaotic inner world of one's desires (achieved primarily through moral reflection); one must also overcome the compulsory nature of human, communal life. The latter is achieved, in Hegel's view, through educating oneself to an awareness of universal ends as well as by participating in the construction of the rational character of public social life (*PR*, paras. 149, 260). "Substantive freedom" can only be fully instantiated, he claims, with a community wide "reciprocal recognition" of freedom as "lived social practice." The latter Hegel terms *Sittlichkeit* or "rational ethical life."

I have emphasized Hegel's notion of personality as "expression," for I believe the thrust of his departure here from Kant is fully accepted by Rawls. Rawls, too, views his own thought as an attempt to overcome the many dualisms of Kantian philosophy ("DL," 516). So too, in *A Theory of Justice*, Rawls explicitly criticizes Kant's theory of the person for lacking "the concept of expression" (*TJ*, 255). Further, like Hegel, he revives an essentially Aristotelian notion of the good life as the realization of purpose or "a plan of life" (which must now be given to the individual by himself); the minimal motivation attributed to persons in Rawls's theory is the "Aristotelian principle," which claims that other things being equal, humans enjoy the exercise of their distinctive capacities, and this enjoyment increases the more the capacity is realized or the greater its complexity (*TJ*, 426). As a consequence, Rawls, again like Hegel, stresses those minimal background conditions (both material and social) necessary for the realization of the powers of personality: Rawls's list of "primary goods" ("DL," 525ff.).³⁷ And impor-

tantly, among these goods, Rawls includes the “social basis of self-respect,” a prerequisite for which is that the individual participate in “social union” (*TJ*, 441). As we shall see in the next section, with Rawls’s idea of a “social union,” critical aspects of Hegel’s notion of Geist reemerge in contemporary political theory. For the moment, however, it suffices to note that Rawls, too, distinguishes between “rational” and “full autonomy”; the latter, he writes, can be “realized only by citizens of a well-ordered society in the course of their daily lives” (*TJ*, 528).

If the preceding analysis is correct, we can see how wide of the mark is Sandel’s criticism of Rawls’s “thin” and “denuded” conception of the self or person. In the original position, Rawls is not giving us an account of the “self” or “subject” at all but is (as is Hegel’s abstract right) presenting us with the minimal conditions for modern, political personhood or *citizenship*. In emphasizing the moment of individual choice, moreover, Rawls is merely articulating, in political terms, an insight already won during the Reformation: that the good the individual seeks should ideally be obtained *via* that individual’s own choice, consciousness, and will, not imposed from without by the dominant religion or the state or even by “the majority.”³⁸ Here, Rawls simply sides with the communitarian Hegel for whom the political “principle of subjective freedom” remains the distinguishing mark of modernity. Again, neither thinker is claiming that such political personhood is a sufficient condition for human flourishing, only that it is a *necessary* one given post-Reformational circumstances. Sandel’s “communitarian” account (and I believe Walzer’s, too, as well as MacIntyre’s critique of the notion of individual rights) misses this crucial point completely.³⁹

One might attempt to defend Sandel by claiming that, in criticizing Rawls, he has something closer to the Marxist critique of bourgeois individual rights in mind and not Hegel’s position after all. Yet I believe Sandel’s position would also be a misreading of the Marxist stance.⁴⁰ Nor am I denying that both Hegel and Rawls operate with an impoverished notion of the person, that is, of the *political* person or citizen.⁴¹ I have only tried to stress that the particular critique of the Rawlsian person made by Sandel (and other communitarians) takes us back to pre-Reformational thinking.

Finally, not only are Hegel’s and Rawls’s conceptions of the political person significantly similar but it is clear that both are employing the concept “person” not as a natural kind term but as a sociopolitical construct.⁴² That is, for both thinkers, a conception of man’s individual liberty and rights as “metaphysically” given (by God, say, or Nature) misses their distinctive aspect as hard-won human achievements; universal “free personality” and “individual rights” are cultural *products*, not starting points, of a long and

arduous historical struggle. Moreover, it is only if one views them as such – as presupposing this larger cultural effort – that their full significance is recognized and the responsibility for *maintaining them in existence* acknowledged. Thus it is that one finds in the works of Hegel and Rawls the conception of the person embedded in a further account of those particular background social, economic, and political institutions which alone allow free personality to flourish.

*SITTLICHKEIT, SOCIAL UNION,
AND THE WELL-ORDERED SOCIETY*

Whether one is reading Hegel's *Philosophy of Right* or Rawls's *A Theory of Justice*, the movement is from "abstract to concrete," from the minimal moral requirements of political personality (set forth in abstract right and the original position) to an account of those background economic and political institutions supporting such a conception until both works end, finally, with a reading of man's "social nature" (part S3). This fact is repeatedly overlooked, however, in communitarian criticisms of Rawls.

Sandel argues, for instance, that given Rawls's "denuded" conception of the person, his theory cannot justify the strong other-directed tendencies of its own difference principle.⁴³ Such a justification would require the notion of a "group" or "community subject" (an idea often attributed to Hegel).⁴⁴ C. Taylor's concern also focuses on the notion of community rights and he, like Sandel, faults Rawls for neglecting "background" considerations (specifically, considerations of the human good) in relation to which all questions of distributive justice and of individual "desert" must be situated.⁴⁵ This last criticism of Taylor's is particularly surprising, given that Rawls from the beginning has insisted that his two principles of justice are to apply to the background "basic structure" of society and *not* to individual actions; Rawls is well aware that there is no "context independent" notion of desert.⁴⁶ Again, I believe such communitarian criticisms are wide of their mark, but in spirit at least, they do revert back to Hegel: to Hegel's basic stance that social contract theory is an inadequate approach for an understanding not only of human community but of the modern state. Allow me to turn to this last point first.

Why, according to Hegel, is the ideal of the social contract inadequate to an understanding of the modern state? It is important to realize that Hegel distinguishes three different senses of the term "state" (*der Staat*).⁴⁷ Hegel

distinguishes between, first, the political state in the narrow or “strict” sense. This refers to the state qua its “internal organization”: whether it is a democracy, a monarchy, etc., as determined by its political constitution and explicit laws (*PR*, para. 274). Second, there is “the external state,” which refers to the organization of the judiciary and the police, including the concrete physical manifestations of government, such as the courthouse and jails (*PR*, para. 183ff.). Finally, Hegel refers to the “state proper” (*PR*, para. 267ff.), which encompasses both of the previous senses as well as something more; the state proper includes the customs, manners, and moral consciousness of a people historically united together in a tradition. The strictly political state, in Hegel’s view, is thus conceived of as the expression (the legal articulation or the making explicit and consistent) of a people’s prior ethical practices. Granted, this is a rather broad conception of the state, but it is no broader, we might note, than what is being encompassed under Rawls’s notion of “the well-ordered society” (in which government implements the two principles of justice) or, for that matter, under R. Dworkin’s notion of “law”; in each case, the domain of the state, of justice, or of “the law” includes the tradition’s underlying moral principles.⁴⁸

Keeping these different senses in mind, it becomes clearer why for Hegel the modern political state could never be traced back to an original “historical” contract between individuals in the state of nature. The strictly political state is the legal expression or articulation of a people’s historically prior ethical practices. But so, too, the ideal of the state as *nothing more* than a contract between individuals—a mere *modus vivendi*, as it were—is also inadequate in Hegel’s view. This is the case, he argues, because all contracting activity must take place against a background of shared assumptions, trust, and social practice, which themselves cannot be the subject of contract; it is impossible that everything be open to contract at once.⁴⁹ Again, no act of contract (social or otherwise) can generate the conditions of its own validity, but presupposes background norms, rules, or principles, compliance with which confers legitimacy on the contractual transaction. This background of shared moral assumptions Hegel terms *Sittlichkeit* (ethical custom or social life) and is that element which the model of the state conceived as a mere self-interested “compact” fails properly to acknowledge.

This criticism of the contract model has become commonplace (although it was not so, of course, in Hegel’s time). The issue here is the extent to which this criticism touches on Rawls’s social contract theory. Interestingly enough, it does not touch on Rawls’s theory at all; Rawls fully acknowledges the point.

Early in the *Philosophy of Right*, Hegel sets forth three essential features of the modern notion of contract:

1. The contract must arise from the "arbitrary will" (*Willkuer*), i.e., from the free initiative of private contracting parties (and not from some higher public authority, say).
2. A common will (or shared purpose of the particular wills) is brought into existence by their mutual consent or agreement.
3. The object(s) with regard to which the contract is made, must be single "external" thing(s). (The modern practice of contract presupposes non-alienability of personhood and its essential characteristics.) (*PR*, para. 75)

Hegel's general point is that the contractarian tradition has confused such norms brought into being and having binding validity *within* the sphere of private transactions with those norms governing the public rights of political bodies, such as the state (*PR*, para. 75). It is of the essence of modern individual rights, for instance, that they are *not*, properly speaking, private property (unlike various rights in the medieval period); modern political rights cannot be alienated to others at will but are universally secured by the impersonal and general norms of the rule of law. Hence the realm of private contract could never lead to, or account for, the public, universal character of the modern state but instead must *presuppose* it.

What is of interest here, however, is that (in contrast to the social compact in Hobbes or Locke) the agreement in Rawls's original position clearly *violates* Hegel's first condition for the existence of a modern contract: that the contract be the result of the "private" arbitrary will. The veil of ignorance expressly excludes parties from the possibility of acting on such a private will insofar as it excludes all particular knowledge to them; the veil forces the parties instead to focus on common and universally shared characteristics (*TJ*, 136ff.). So, too, as a direct consequence of this veil, the parties in the original position "agree" that certain types of primary goods (the basic liberties and equal opportunities) are, in effect, to be withdrawn from the scope of future contract and universally granted to all.⁵⁰ What transpires in Rawls's original position is thus no ordinary contractual agreement. It is in fact an agreement which (to use Hegelian language) "transcends the standpoint of contract" itself; it acknowledges a far more substantive union between persons and political institutions.⁵¹ The original position, which serves as a "means of public reflection and self-clarification" ("PNM," 236), concentrates as much on those aspects "beyond contract" as it does on the moment of contracting itself.

Again, part 1 of *A Theory of Justice* may be seen to perform a function similar to Hegel's abstract right. In Rawls's original position, "the rational" (each person's legitimate rational advantage as represented by the parties) is acknowledged and granted a certain legitimacy, but it is ultimately framed and subordinated to "the reasonable": to the fair background terms of a

system of free and equal cooperation as a whole and to the capacity of individuals to honor such terms ("DL," 529ff.). The central difference between Hegel and Rawls in this respect lies, I believe, in the fact that, whereas Hegel envisions the fair cooperative terms to be those in accordance with the universal principle of substantive freedom, Rawls attempts to make this principle more specific; the well-ordered society entails realizing the difference principle as well.

The fact that "justice as fairness" does not conceive of our political life (or the state) on the model of a social contract but rather acknowledges (as does Hegel) a realm of private contractual transactions as an essential aspect *within* the modern state is even clearer in part 3 of *A Theory of Justice*, where Rawls speaks of the well-ordered society (one in which his two principles of justice are implemented by government) as a "social union of social unions" (*TJ*, 527). In this third part, Rawls proffers his account of man's "social nature" as well as his account of the "good of community" (*TJ*, 395). It is important to understand what he here has in mind, considering his many communitarian critics.

In claiming that man's nature is fundamentally "social," Rawls is not merely claiming that society is necessary for human life or that social life is a condition for the individual to develop speech and language and to acquire certain sorts of needs, interests, and so on (*TJ*, 522ff.). Nor is his point merely the Wittgensteinian one (repeatedly stressed by Taylor, for instance) that only in a community of speakers are certain conditions met whose satisfaction is necessary for us to hold justified beliefs or even to express our individual beliefs and thoughts in the first place.⁵² These facts are not trivial, but to characterize our social ties to one another by reference to these facts alone is to "trivialize" our sociability (*TJ*, 522). Why? Because all these things are equally true of persons who view their relations to one another in instrumental terms. They are all true of a group of egoists, say, who could not have developed language, voiced their egotistical needs, or justified their selfish desires without a prior social life, and so forth.

Rawls's point is stronger (as is Hegel's): Only by actively cooperating with other humans and by sharing important, moral ends with them can certain of the individual's distinctively human powers reach fruition. Furthermore, only by doing so can the individual participate in many of the realized capacities of *others* (*TJ*, 525ff.). Rawls defines a "social union" as that form of cooperative activity whereby individuals share final ends, participate in common activities valued for their own sake (a version of Aristotle's notion of *praxis*), and agree on a scheme of conduct leading to a complementary good for all (*TJ*, 525). Rawls contrasts this notion with that

of a “private society,” where individuals not only have independent or conflicting conceptions of the good but where they regard their social institutions in purely instrumental terms. “Private society,” Rawls explicitly notes, corresponds to Hegel’s notion of “civil society,” and the idea’s natural habitat, he claims, is economic theory (*TJ*, 521ff.).

A paradigm of social union, by contrast, is that of musicians playing together in an orchestra; a requisite in this case for the individual to develop his capacities is that others also develop theirs and that certain rules and principles are accepted by all from the start (*TJ*, 524). In a successful play of the music, the distinction between personal and communal well-being, at least temporarily, collapses. Insofar as individual players *identify* with the ends of the group (its goals have become their goals), each player not only shares in the responsibility of the group activity but is eligible for pride or shame with regard to it. I am thus eligible for pride or shame with regards to how *you*, another member, play. Unlike in private society, that is, in social union, members win or lose together; social union is not a zero-sum game. It is important to stress, however, that for individual players to “identify” with the group does *not* entail that they share *all* ends with other members of the orchestra (this would be an altogether illiberal model). As Dworkin has recently emphasized, a good performance of the music does not entail that members share all cultural aims nor that they all believe in one God nor that they all participate in a common sex life.⁵³ In order to “identify” with the group here, it is only necessary that individuals share the end of the union in question.

Establishing the fact that Rawls views the well-ordered society on the model of a “social union of social unions” with justice as a defining aim (and not on the model of a *modus vivendi*) is important for a number of reasons.⁵⁴ For one, the idea affords a way of attributing a certain “primacy” to group activity without committing ourselves ontologically to the notion of a “group subject” (or to Bradley’s idea, say, of a “moral organism”). An established orchestra can be, and legally is, treated as a “unit of agency” in its own right; it has an internal organization and interests peculiar to it, decisions made in its name, schedules to meet, and so forth. Such a scheme is not only “temporally prior” to any new member entering in but “conceptually prior”; the new individual’s activities will gain their significance against this background scheme. Further, such agency is not adequately comprehensible in terms of a “mere sum” of isolated actions; it expressly concerns the *manner* or *way* in which these actions are weighted and organized. An “integrated orchestra” or a “community between members” seem genuine enough, everyday phenomena. Nonetheless, one may still wish to maintain that this

“group spirit” or “way of life” is created by, and resident in, certain *human* attitudes and practices and nothing more.

Second, the introduction of the idea of social union means that Rawls’s conception of the political state (which implements the two principles of justice in the well-ordered society) not only explicitly departs from Kant’s position but is far closer to Hegel’s view than is commonly recognized.⁵⁵ Kant, that is, continued to view the state on the model of a *modus vivendi*: as a nonmoral consensus founded on the convergence of self-interest.⁵⁶ As we have seen, however, Hegel conceives of the political state as the deeper articulation of a people’s moral practices; the state is conceived on the model of *Geist* or *Sittlichkeit*. In pointing to the similarities between Hegel and Rawls in this respect, I am not, of course, attributing to Rawls Hegel’s particular views on such topics as democracy, nationalism, war, or civil disobedience.⁵⁷ I simply wish to emphasize that for both thinkers—unlike for the “Hobbesian strand” of liberal thought—the state is not conceived as a mere neutral “umpire” between competing interests; it plays a fundamental role in the articulation and education of shared moral interests.⁵⁸

Finally, the fact that Rawls views crucial aspects of the political life of a people on the model of a social union means that he too recognizes the important “good of community”: that people lead better lives when they do not draw a sharp distinction between their own welfare and that of the community to which they belong.⁵⁹ Although, for Rawls, citizens no longer share comprehensive religious or moral conceptions of the good life, they do share important ends in common; they share a desire for justice and they value their political institutions and activities as goods in themselves (*TJ*, 522). At least in the well-ordered society, citizens are viewed as *identifying* with the political community and hence eligible for praise or blame regarding its actions.

At this point, I must admit that I find this notion of “liberal community” (although an advance over traditional liberalism) inadequate after all. I wish to emphasize, however, that it is *not* for the reasons that Sandel, MacIntyre, or Taylor cite. Liberal community is not inadequate because persons no longer hold comprehensive conceptions of the good life in common. Given the diversity of religious and ethnic backgrounds which together make up the modern state today, shared conceptions of the good life must inevitably, it seems, be partial in the future. Nor is it necessary that members of the modern state share a common ethnic culture or racial characteristics; any suggestion to the contrary should strike us as reactionary and even dangerous. In my view, it is the fundamental flaw of recent communitarian accounts that, although rightfully stressing identification with one’s society’s fundamental

institutions as an important good, they so little concern themselves with *which* institutions and ends are worthy of our allegiance. This mistake neither Hegel nor Rawls makes.

My own view is that the thinness of Rawls's conception of liberal community lies not in his rejection of comprehensive conceptions of the good or of religious, racial, or particular cultural features of humans as bases for founding community today; this is, in fact, liberalism's strong point. The thinness of liberal community lies, rather, in its continuing *to look away* from important, shared moral ends we in fact hold in common, namely, economic, and I would also argue, "reproductive" ones. In Rawls's theory, that is, "social union" never enters into the economic sphere, at least on the day-to-day level.⁶⁰ Social union is defined in explicit *contrast* to the idea of private society, whose proper home, Rawls claims, is the economic domain. Similarly, when Rawls enumerates examples of social unions (he mentions families, games, the arts, science, sexual love, friendships, and the well-ordered society itself), the work relation, and any mention of the firm or productive relation, is conspicuously absent (*TJ*, 525ff.).⁶¹ Finally, when he gives his account of the learning of the social virtues as well as of the important "art of perceiving the person" (the art of discerning their beliefs, intentions, and feelings), Rawls actually seems to relegate such learning to extra economic activities — to the family, games, school, friendships, and so on (*TJ*, 465ff.). It is at this point, I believe, that the "thinness" of liberal community is revealed. Eight hours of the average person's day is spent at "work" or in the domain of so-called private society; social institutions and relations are viewed instrumentally, and other persons are seen as having, if not competing, then at least independent ends.

Elsewhere, I have argued that Rawls's theory, indeed, has not liberated itself from the model (reaching back to Locke and Adam Smith) of a private appropriating individual bent on maximization when it comes to the *domain of labor*, despite strongly opposed other tendencies of his thought.⁶² And I am in fact suggesting that this model must be rejected for much the same reason that Rawls rejects it elsewhere: It is simply beneath human dignity.⁶³ Finally, one way of deflating the power that this private appropriative model holds over us is to take seriously the alternative *form* of labor embodied in the traditional activity of women outside the market (in family, child, and home care).⁶⁴ Such "reproductive" activity (in explicit contrast to the category of "productive" labor) aims directly at the reproduction of particular human relationships; it is not only essentially "other directed" but retains critical features of social union, such as shared activities and actions performed for their own sake (a version of Aristotle's *praxis*). So, too, such

reproductive activity and work fundamentally entails, develops, and exercises what Rawls calls the “art of perceiving the person.” For the present, however, it is enough to note that what I am considering the “legitimate” criticism of Rawls’s theory is not the contemporary communitarian criticism at all but a new version of the old socialist one. The greatest (moral) threat to “community” does not lie in our religious, cultural, or racial diversity; the peril lies in that expanding, commodified market relations threaten us all.

In concluding this section, it is important to note that Hegel conceived of numerous institutions that were to foster communal values and keep the atomizing tendencies of the market and modern civil society in check. Hegel mentions in this regard the family (with its caring relations), the state (with its imposition of universal rights and duties), the institution of primogeniture (which was to keep all land from alienability, a suggestion Marx rightly mocks), and finally and importantly, the economic “corporations,” which organize isolated workers into powerful economic communities, thus forming an intermediate community between private individual and universal state (*PR*, paras. 231-56).

Many of these options, however, are not open to Rawls. Rawls cannot appeal to older feudal institutions, which run contrary to principles of the market (even if this were helpful); the United States, at least, never had such institutions. So, too, Rawls’s theory has no equivalent to Hegel’s notion of the economic corporation — no intermediate form of community between individual and state as might be found, for instance, in the idea of workplace democracy — and for this Rawls has been criticized.⁶⁵ Finally, even the family (that presumed haven in a heartless world) is undergoing a transformation as never before. With the twentieth-century movement of women into the market, those strong filial and caring bonds between family members, rather than remaining a check to instrumental market relations, are in danger of being invaded by them.

So the threat to “community” — the threat to the possibility of a genuine identification of the critical interests of the individual with *any* larger, significant community, much less with the political community of the state — seems real enough. As I have been suggesting, however, the solution does not lie in a yearning for the past.

THE OWL OF MINERVA

We have seen that Rawls’s theory is not so far from the original mouth-piece of modern communitarianism as is commonly believed. In regard to

political philosophy's aim as conflict resolution or reconciliation, its method as the attempt to "bring order" and to gain an "overview" of our moral life, its "expressive" conception of the political person with two minimal moral powers, and its vision of the well-ordered society as a "social union of social unions," Rawls's theory (like Hegel's) has greatly distanced itself from the Hobbesian strand of liberalism. In the reading presented here, Rawls and Hegel even share a common weakness: Both still allow the Hobbesian strand too unbridled a rein in the economic realm — in "private" or "civil society." This brings me to a final similarity between the two.

In Hegel's view, the owl of Minerva — philosophy — spreads her wings only at dusk; only when an action has already been completed or a way of life grown old is it possible to grasp it fully in thought (*PR*, "Preface"). This conception of philosophy as a "looking backwards" holds, with some qualification, for Rawls's theory as well.⁶⁶ That is, just as Marx criticized Hegel for failing to recognize, at the beginning of the nineteenth century in Germany, the movement toward democracy in the political domain, so I believe Rawls's theory has not taken seriously the call for democracy in the economic domain in this century.⁶⁷ Certainly, the radical implications of the women's movement have yet to capture his attention.⁶⁸ And I believe in both cases, the reason is the same: Similar to the political employment of Hegel's dialectic, reflective equilibrium starts from the data of our philosophical tradition and "public political culture" (see p. 543 above). Although Rawls here intends to highlight our shared political tradition (in contrast to the individualistic economic domain), examining this tradition alone would appear insufficient; radical new developments may emerge elsewhere first, for example, within the workplace. Or again, examining our philosophical tradition and public political culture, although necessary and important, cannot be sufficient; the realm until recently has been composed entirely of males. This suggests that for a more "adequate" account of the well-ordered society, reflective equilibrium must be "radicalized" and extended into new (in particular, into the so-called private) domains.⁶⁹

My own view is that if we are to think deeply about community (about what it is that holds a just society together), we can no longer overlook the important communal activities which women have traditionally performed within the private sphere, for instance, interpreting and responding to the concrete needs of others, an activity that goes far toward binding people to one another. Further, as women move into the public sphere (and as feminists have begun to argue), a new demand emerges that our political institutions henceforth acknowledge this activity. A conception of the "modern state," for instance, traditionally conceived in terms of maintaining law and order,

a military prepared for war, and a policing of citizenry and competition, could give way to a different conception whereby the state is fundamentally conceived as a flexible provider of services, an educator and satisfier of need.

In conclusion, I believe much of the contemporary “communitarian” attack on Rawls is a red herring; either the attack is misconceived or Rawls from the start acknowledged the point. Perhaps this much the comparison of his thought with Hegel’s has clarified. But so, too, my comparison has hopefully suggested that, particularly in the area of moral and political philosophy, many of the slandered Hegelian notions appear to have a certain appropriateness; the tradition of analytic philosophy, in discarding *all* of Hegel, threw out the baby with the bathwater. The doctrine of “internal relations,” for instance, far from proclaiming its legitimacy across the board, has a definite appeal when dealing with relations between persons.⁷⁰ When I hear of a child abused next door, the death of a loved one, or of a peoples’ rights being systematically violated, *I* am (or at least I should be) altered. Similarly, the idea of “dialectic” or “synthesis,” that knowledge of the person is to be attained not simply by reflection (as in Descartes) nor by mere empirical observation (as for Hume) nor by the direct intuition of some mysterious faculty (Moore) but rather (like reflective equilibrium) is *mediated* and indirect, the hard-earned result of concrete experience, subtle reflection, and the interaction between a variety of particular, historically situated selves — this complex approach leads *away*, in my view, from the smug self-certainty that accompanies all dogmatism. Finally, the fact that the focus is again on the person, not on the person conceived as an isolated organism (as in, say, a biological reading) but on the person considered as a political and “cultural” being, as one whose desires and actions have an essential connection to the background institutions and social conditions amid which it was schooled; that the focus is again on the person — not merely in the sense of focusing on what kind of beings we are but on what kind of persons we aspire and ought to *be* — this is only a part of the legacy of Hegel which remains alive and well in the thought of Rawls.

NOTES

1. Admittedly, this is only a rough, working sketch. For a more extended discussion, see P. Hylton’s *Russell, Idealism and the Emergence of Analytic Philosophy* (Oxford: Clarendon, 1990), 44ff.

2. Moore and Russell argued for a doctrine of “external relations,” for a conception of the whole as “reducible to the sum of its parts,” for a philosophical method as “analysis,” for

knowledge as immediate or “by acquaintance,” and for a view of reality as fundamentally atomistic. See Moore, “Refutation of Idealism” (1903), “External and Internal Relations” (1919), and Hylton (1990).

3. The works of J. N. Findlay, C. Taylor, A. Danto, N. Goodman, and the later Putnam are only a few of those in the Anglo tradition that reveal strong idealist tendencies. There is, moreover, a growing interest in such themes as “holistic justification,” and Bradley’s thought is witnessing a revival, at least in England. See the recent collection of essays *The Philosophy of F. H. Bradley*, edited by Manser and Stockton (Oxford: Clarendon, 1986).

4. The actual historical influence of Hegel’s philosophy on Rawls will not be a topic of this essay. Rawls clearly read Hegel’s *Philosophy of Right* already in the 1960s (cf. references to Hegel’s work in *A Theory of Justice*); however, much of Hegel’s influence on Rawls seems to be more “indirect” — by way of the ethics of F. H. Bradley, for example, and the work of J. Dewey.

5. See “Kantian Constructivism in Moral Theory: The Dewey Lectures 1980,” *Journal of Philosophy*, September 1980, 554 (hereafter “DL”). For a further, secondary discussion, see A. Davidson, “Is Rawls a Kantian?” *Pacific Philosophical Quarterly* 66 (1985): 49.

6. See *Hegel’s Philosophy of Right*, translated by T. M. Knox (Oxford: Oxford University Press, 1977), para. 2. All further references to this text will be indicated by *PR* followed by the paragraph number. “R” after a paragraph number refers to Hegel’s remarks immediately following the main paragraph, “A” to later additions culled from notes taken at Hegel’s lectures.

7. Professor U. Steinforth, for instance, recently defended such a separation between Hegel’s metaphysical doctrines and his political theory (lecture at Columbia University, Spring 1987).

8. *Wissenschaft der Logik* (Berlin, 1812). This work espouses what the Anglo-American world would call Hegel’s “metaphysics.”

9. And this is the case, Rawls intends, for any of the standard meanings of the term “metaphysics.” See “Justice as Fairness: Political not Metaphysical,” *Philosophy and Public Affairs* 14, no. 3 (Summer 1985): 223-51 (hereafter “PNM”).

10. Wittgenstein, for instance, makes a similar point: “But the idealist will wish to teach his children the word ‘chair,’ after all, for of course he wants to teach them to do this and that, e.g. to fetch a chair. Where then will the difference lie between how the idealist-educated children speak and the realist ones? Won’t the difference only be one of battle cry?” (*Zettel*, para. 414, translation mine). Whereas Wittgenstein’s is a pragmatic point, Rawls’s theory may be viewed as extending this insight into the normative domain.

11. See “The Independence of Moral Theory,” *Proceedings and Addresses of the American Philosophical Association* 48 (1974-75): 5-22, where Rawls argues that moral theory (the study of structures, as these relate to our moral sensibilities and natural attitudes) is independent of the theory of meaning, epistemology and philosophy of mind.

12. “Preface,” in *Philosophy of Right*, 10-12. For Hegel, “the actual” (*das Wirkliche*) is not the same category as “the existing” (*das Dasein*); the former is essentially “rational” (*vernünftig*), whereas the latter frequently is not. This distinction is crucial to Hegel’s famous claim that “what is rational is actual and what is actual is rational,” which does *not* mean that whatever now exists is rational. In this famous line, Hegel instead stresses the “power” of reason: that it has the ability to have *Wirkung* (effect or actuality) in the world.

13. See Hegel, *The Difference Between Fichte’s and Schelling’s System of Philosophy*, translated by Harris and Cerf (Albany: State University of New York Press, 1977), 89.

14. This theme is already explicit in Hegel’s early *Essay on Natural Law* (1802-3), translated by T. M. Knox (Philadelphia: University of Pennsylvania Press, 1975).

15. See, for instance, Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 580 (hereafter *TJ*), or “PNM,” 226.

16. See "DL," 517, or "PNM," 225. The historically specific nature of Rawls's theory continues, almost miraculously, to escape the notice of his critics.

17. By "moral realist" I intend the position that moral claims are granted cognitive status and that at least some moral statements are true by virtue of their reflecting the true "nature of things"; some version of this position Hegel surely holds given that the ultimate reality is absolute spirit (Geist). Rawls, on the other hand, has replaced the traditional epistemological search for moral truth with an essentially political, "practical task" of reaching agreement on principles of justice in accordance with a particular democratic, moral conception of ourselves ("DL," 517ff.). This "constructivist" approach will entail a "suitably constructed social point of view" that all can accept and in terms of which "moral objectivity" will now be conceived. Thus Rawls, unlike Hegel, makes no claims as to the ultimate nature of "moral facts" or to whether, strictly speaking, there even are such.

18. See Hegel, *Enzyklopaedie*, paras. 469-487ff. and Rawls, "PNM," 225ff. A detailed discussion of the practical similarities and differences between these two concepts would lead us too far afield. Allow me, however, to mention that in Hegel's political thought, "objektiver Geist" refers to the world of concrete political institutions, customs, and social laws, in which a people's "spirit" (their fundamental moral principles and ethical self-conception) is publicly embodied or "objectified." Rawls's idea of a "public political culture" similarly refers to a people's shared moral conceptions, including "the basic intuitive ideas that are embedded in the political institutions and the public traditions of their interpretation" ("PNM," 225). As I shall argue, Rawls assumes, as in Hegel's case, that the core of these institutions are, at least minimally, "rational" and "coherent." The two conceptions thus reveal important similarities. The differences between them will again have to do with the strong metaphysical and ontological implications of Hegel's "objektiver Geist" which Rawls's idea does not entail.

19. See, for instance, A. MacIntyre, *After Virtue* (Notre Dame, IN: University of Notre Dame Press, 1981), 20, where the author includes Rawls among those who attempt to show "that the notion of rationality itself supplies morality with a basis"; C. Taylor, "The Nature and Scope of Distributive Justice" (*Philosophy and the Human Sciences*, 1985, 303) and "Justice after Virtue" (presented at Princeton, April 1988) 25, where Taylor interprets Rawls's view as purporting to be a "timeless, context-free theory"; M. Walzer, *Spheres of Justice* (New York: Basic Books, 1983), 4ff., where Rawls is accused of resisting the "displays of history" and ignoring the "particularism of history, culture, and membership," as well as the more recent "A Critique of Philosophical Conversation" (*The Philosophical Forum*, Vol. 21, nos. 1-2, Fall-Winter, 1989-90), where Walzer faults Rawls's construction of the original position for being in "asocial space," for thinking itself presuppositionless and so on.

20. See previous note. For a similar criticism of Rawls by a thinker not usually considered "communitarian," see V. Held, *Rights and Goods* (1984), chap. 4. B. Williams has also voiced similar concerns, although the author now (*Ethics and the Limits of Philosophy*, 1985, chap. 5) exempts Rawls's theory from his attack.

21. See Walzer, *Spheres of Justice*, where the author clearly holds the "relativity" thesis. More recently, however, Walzer has distanced himself from this earlier stance and admits to what he calls a "minimal universalism" across cultures in a paper presented at the New York University Law and Philosophy Colloquium, Fall 1988.

22. There are many points of contact between Hegel's dialectic and Rawls's method of reflective equilibrium, as well as important differences; to pursue these similarities and differences would entail an essay in itself. I wish to note here, however, that both the dialectic and the reflective equilibrium are proffered as alternative philosophical approaches to the modern methodological dichotomy of "rationalism," on one hand, and "empiricism," on the other. This point alone makes them worthy of comparison. Like Hegel (*PR*, para. 2), Rawls's method rejects

any form of “Cartesian” appeal to intuition and to the self-evidence of first principles, on one hand, and to mere empirical generalization, on the other (cf. *TJ*, 578ff., also “Outline of a Decision Procedure for Ethics” [1951]). For both, the practical goal is a form of ethical self-knowledge, conceived as necessarily “mediated,” indirect, and so forth. The primary differences between the two methods will pertain, again, to what I have called the “fundamental difference” in regard to their background stances on ontology and metaphysics.

23. See J. N. Findlay, *Hegel: A Re-examination*, (New York: Oxford University Press, 1959), chap. 3, and M. J. Inwood, *Hegel* (London: Routledge & Kegan Paul, 1983), part 2, chap. 5, where both authors compare the Hegelian dialectic with the idea of a metalanguage.

24. According to Copi, the term “metalanguage” originates with Russell who writes in 1922: “These difficulties suggest to my mind some such possibility as this: that every language has, as Mr. Wittgenstein says, a structure concerning which, *in the language*, nothing can be said, but that there may be another language dealing with the structure of the first language, and having itself a new structure, and that to this hierarchy of languages there may be no limits” (quoted in I. M. Copi *The Theory of Logical Types* [London: Routledge & Kegan Paul, 1971] 107-8). The idea of a metalanguage, however, has come to have both a “technical” sense (as used by Tarski) and an “intuitive” one. By the “intuitive” sense (the comparison with which is all I attempt to defend here), I have something closer to the later Wittgenstein’s notion of an *Uebersicht* (comprehensive “overview”) in mind.

25. See Hegel, *Enzyklopaedie*, part 1, paras. 79-83.

26. Hegel, *Lectures on the History of Philosophy*, translated by Haldane (London: Routledge & Kegan Paul, 1982), 426ff. (hereafter *LHP*).

27. Unlike the idea of a hierarchy of metalanguages, the stages of the dialectic culminate in a full awareness of the whole process—in a language, as it were, in which we can speak about the whole hierarchy of languages—and this is the stage of “absolute knowledge” as set forth in the *Science of Logic* (see *Phen*, 479ff.). So, too, it is not the case with the idea of a series of metalanguages that there is only *one* metalanguage in which we can speak about a given object-language; a given object-language may have two metalanguages with respect to it—in principle, even numerous incompatible ones. Hegel’s dialectic, by contrast, (see introduction to *Science of Logic*) is meant to generate a *unique* series of categories; the resolution of “contradiction” proceeds according to “rational necessity” or in one way only. Significantly, these last two aspects of the Hegelian dialectic (aspects whereby it diverges from the idea of a series of metalanguages) also tend to be the aspects which Hegelian sympathizers find among the most difficult to swallow. (See Inwood, *Hegel*, 128ff.).

28. That the criterion of greater comprehensiveness is central to the superiority of Rawls’s position in his own eyes can be seen as well from the fact that in *A Theory of Justice* the major ethical alternatives are paraded before the parties in the original position and ultimately revealed as inadequate, including “justice as fairness”’s chief competitor, utilitarianism (*TJ*, 122ff.). Hence one way of formulating the claim of Rawls’s book is to state that whereas his contractarian position can account for the utilitarian insight, the reverse is not the case.

29. For Hegel’s criticism of utilitarianism, see *Enzyklopaedie*, paras. 473-82, and *PR*, paras. 18-21; for Kant’s, see his *Groundwork*, chap. 2.

30. See Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982; hereafter *LLJ*). For a similar criticism by Taylor, see “Virtue after Justice” (1988), 21.

31. See *PR*, paras. 133-40.

32. See S. Benhabib, “Natural Right and Hegel,” (Ph.D. diss., Yale University, 1975).

33. These are the three increasingly rich and concrete modes of self-characterization corresponding to the three sections of Hegel’s work: abstract right, morality, and ethical life.

34. Taylor, *Hegel* (Cambridge: Cambridge University Press, 1975), 13ff.

35. The public authority has the duty to alleviate poverty, in Hegel's view, because the family was originally the basic economic unit. Historically, however, civil society "tears the individual from [the soil and inorganic resources] and family ties," forcing the person to become dependent on civil society. For this reason, it is the duty *today* of the public authority to "protect its members" by providing subsistence, job training, accident insurance and the like (*PR* para. 238).

36. Hegel's paradigm of Geist (mind, spirit) minimally entails two consciousnesses acknowledging common characteristics and shared ends, including the "reciprocal recognition" of this acknowledgement. Cf. *Phenomenology of Spirit*, translated by A. V. Miller (Oxford: Oxford University Press, 1979), 111ff. Depending on the specific nature of the relationship, of course (whether the relationship is between two contracting parties, two friends, marriage partners, citizens, and so on), the ends shared and the characteristics acknowledged will vary.

37. The Rawlsian idea of "primary goods" can itself be traced back to Aristotle's notion of *choregia* or "props" for the good life. See my *On Civic Friendship* (Ann Arbor: University of Michigan Press, forthcoming), chap. 2.

38. By contrast, Sandel, at times, seems to hold a simple "majoritarian" view on questions of morality (see "Morality and the Liberal Ideal," *New Republic*, 7 May 1984, 17). Perhaps R. Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1979), *Law's Empire* (Cambridge, MA: Harvard University Press, 1986), chap 1. has argued most carefully against the altogether unsatisfactory nature of such a position.

39. E. Baker, "Sandel on Rawls," *University of Pennsylvania Law Review* 134(April 1985): 895ff, and A. Gutmann, "Communitarian Critics of Liberalism," *Philosophy and Public Affairs* 17(Fall 1985): 308-22, make related criticisms of Sandel's and MacIntyre's positions.

40. That Sandel's position cannot be the Marxist one (but in fact seems to revert back to Aristotle on *political* personality) can be intimated by the following: Even Karl Marx in *On the Jewish Question* explicitly claims that modern individual rights "certainly represent[] a great progress," in *Marx-Engels Reader*, edited by Tucker, 35. Marx's argument is not that individual rights (with the exception of the right to private property in the means of production) are unimportant or even unnecessary at this stage of history but merely that they are not sufficient for "true human emancipation." Even as late as his *Critique of "The Gotha Program"* (1875), Marx argues that political rights will become "superfluous" in the last stages of socialism, not that they can be discarded now (in *Marx-Engels Reader*, 531ff.).

41. I in fact believe that both Hegel and Rawls *do* operate with an impoverished notion of the political person (or citizen), but for none of the reasons contemporary communitarians cite. See my "Are There Only Two Moral Powers? Ambiguities in Rawls's Concept of the Person," in *Analyse & Kritik*, (forthcoming 1992), where the author argues that even modern citizenship requires a third "emotional" power overlooked by Rawls (and Hegel); cf. also author's forthcoming *On Civic Friendship*, chap. 3.

42. Rawls notes that the term "person" derives from the Latin *persona*, which originally referred to the mask worn by actors in Greek tragedy; since ancient times "a person" refers primarily to those capable of playing a public, political role ("PNM," 233).

43. See Sandel, *LLJ*, 66, 70-78, 101-3.

44. The attribution of a personified "group subject" to Hegel was abetted, I believe, by Bradley's notion of a "moral organism" (see *Ethical Studies*, 1876). Hegel indeed uses the term "organism" in reference to the state at numerous points in the *Philosophy of Right* (e.g., paras. 267, 271), but his usage appears largely metaphorical; elsewhere, he repeatedly stresses that the notion of a biological organism is an inadequate model for rational mind or Geist (see esp. *Enzyklopaedie*). It is on the paradigm of Geist, of course, that Hegel models the state.

45. See Taylor, "The Nature and Scope," 291ff., and "Justice after Virtue" (1988), 21, 25.

46. For the confusions surrounding Sandel and Taylor's criticism of Rawls's notion of "desert," see Baker, "Sandel on Rawls," 907ff. The author argues that Rawls's theory presupposes no "preinstitutional" basis for determining desert. What people "deserve" is precisely the problem of justice to be *solved*.

47. See Z. A. Pelczynski, "The Hegelian Conception of the State," in *Hegel's Political Philosophy*, edited by Pelczynski (Cambridge: Cambridge University Press, 1971), 1-29.

48. See Dworkin, *Taking Rights Seriously* (1979), 47, and *Law's Empire* (1986), chap. 1. It should also be noted here that whereas Hegel uses the term "justice" (*Gerechtigkeit*) in a narrow, technical sense (cf. *PR*, para. 99), Rawls normally uses the term in the wider sense of the German *Recht*.

49. See S. Benhabib, "Obligation, Contract and Exchange: On the Significance of Hegel's Abstract Right," in *The State and Civil Society*, edited by Pelczynski (Cambridge: Cambridge University Press, 1984), 159.

50. This is the case, at least, under what Rawls calls the "special conception of justice," which (in contrast to the "general conception" in which the difference principle applies to all the primary goods) pertains only as "social conditions improve" or to our specifically modern epoch (*TJ*, 83).

51. Hegel speaks of "transcending the standpoint of contract" (*PR*, 163R) in referring to the marriage agreement, which he (in contrast to Kant) denies is simply one contract among others. In Hegel's view, although the modern (bourgeois) marriage agreement "begins" with a decision of the arbitrary will (and although Hegel acknowledges the right of divorce due to practical difficulties), the agreement has as its basis the recognition of shared moral principles and the "surrendering of the arbitrary will in a substantive union"; marriage's aim in principle is to be "inherently indissoluble" (para. 163R). A similar reasoning holds for our relation to the state conceived now as an even more fundamental form of "rational social life"; in the state proper, it is even more difficult for an individual to "opt out." As we shall see, in Rawls's view, political institutions are also not conceived on the model of contract but on that of a "social union."

52. Cf. Taylor, *Human Agency and Language* (Cambridge: Cambridge University Press, 1985), chap. 3.

53. See Dworkin, "Liberal Community," *California Law Review* 77(1989): 479-504."

54. See "The Idea of an Overlapping Consensus," *Oxford Journal of Legal Studies* 7.ii (1987): 5ff., where Rawls explicitly denies that our political life can adequately be conceived on the model of a *modus vivendi* (hereafter "IOC").

55. Both Gutmann, "Communitarian Critics," for instance, and Larmore in a recent review of Sandel, *Journal of Philosophy* 81, no. 6 (1984): 338, continue to interpret Rawls's view of the state on the model of a "modus vivendi."

56. See Kant's "Perpetual Peace" (1796). According to Rawls, Kant here remains within the "Hobbesian strand" of liberalism which conceives of "ordered liberty [as] best achieved by skillful constitutional design framed to guide self- (family-) and group-interests to work for social purposes by the use of various devices such as balance of powers and the like" ("IOC" p. 2). Rawls's central criticism of this Hobbesian conception of the state is that such a self-interested consensus is "inevitably fragile" and temporary—that it could never achieve the stability and social unity which marks a well-ordered political regime (*ibid.*).

57. Hegel, for instance, in his later years was not a democrat. For his view on democracy, see *PR*, paras. 273R, 279R.

58. In Hegelian language, the state must further the education of its citizens to an awareness of "universality" or shared ends (*PR*, para. 187R). In Rawlsian language, government, by implementing the two principles of justice, helps maintain or construct if not universal shared interests, then at least an "overlapping consensus" regarding them.

59. This formulation is Dworkin's in "Liberal Community."

60. This claim needs some qualification. Economic "social union" applies to Rawls's well-ordered society *as a whole* insofar as the society realizes the difference principle — that principle which specifies that no one shall institutionally gain unless all are benefited (including the worst off). In Rawls's theory, however, this principle is implemented from the "top down" by the various branches of government (*TJ*, 247ff.); it is thus not a principle which holds *within* the firm, say, or at the day-to-day level in the realm of work, where individuals may still live in "private society." See my "Rawls and Ownership: The Forgotten Category of Reproductive Labor," *Canadian Journal of Philosophy*, Supp., 13 (1988): 139-67; also G. Doppelt, "Rawls's System of Justice: A Critique from the Left," *Nous* 15(September 1981): 259-307.

61. At first sight, it looks as if Rawls exempts the work relation because it is believed to presuppose an element of "compulsion," whereas social union is described (at one point) as something all can "freely participate" in (*TJ*, 529). On closer observation, however, whether or not an arrangement constitutes a social union for Rawls cannot rest on the presence or absence of all "necessity" in the type of activity, for the fact that man must eat and labor in any particular way is no more "forced" than that he must live in families or in society, and yet the latter two are among the class of social unions. The answer as to why Rawls exempts economic activity from the list of social unions must lie elsewhere; my own view is that Rawls simply accepts a major tenet of neoclassical theories of production and continues to operate with the model of a privately appropriating individual in the realm of labor. See my "Towards a New Conception of Ownership," Ph.D. diss., Harvard, 1985, chap. 3: 110ff.

62. See Schwarzenbach, "Rawls and Ownership."

63. G. Doppelt, "Rawls's System of Justice," cf. ft. 61, taking a more standard Marxist line, also criticizes Rawls for restricting "community" to the political domain and for leaving "no room" in his theory for "the model of dignity through self-affirming labor in community with others" (p. 277).

64. Women have been "mixing their labor," after all, for centuries in the domestic realm, whatever else they have been doing. To distinguish this form of activity clearly from the model of "productive" labor, I have called the form "reproductive" labor. Reproductive activity aims not, in the first instance, at the production of physical objects, exchange value, or even "human services" but at the "reproduction" of a set of concrete human relationships — in the best case, on my analysis, specific relationships of friendship or *philia*. See Schwarzenbach, "Rawls and Ownership." Moreover, with women moving en masse into the marketplace in this century, the time would seem ripe to retain aspects of reproductive labor in the public sphere. See the author's *On Civic Friendship* (forthcoming).

65. Most recently again by Gutmann, "Communitarian Critics," 321.

66. I believe it holds generally, although one finds such "utopian" or forward-looking passages in Rawls as "until we bring ourselves to conceive how this [a public understanding of mutual respect] could happen, it can't happen" ("PNM," 231).

67. This is not to say that certain "left-wing Rawlsians" have not made such a call; I include the work of J. Cohen and J. Rogers, *On Democracy* (New York: Penguin Books, 1983), chap. 6, Doppelt (1981), and myself (1988) in this category.

68. I might here add that the women's movement of the past century, and all the gains women have thereby won, lends renewed credence to Hegel's view of history as the struggle for "the realization of freedom." It may just be that Rawls's theory, although implicitly operating with certain assumptions about the nature of historical progress, needs to elaborate such assumptions more fully to better ground his own position.

69. Why, for instance, should our common "shared" precepts about family life, the treatment of children, animals, principles of friendships, trust, and so on not be elaborated and critically

relevant for our public political life? An approach developing such a reflective equilibrium of the private realm, as well as its implications for our public life, is developed in the author's forthcoming *On Civic Friendship*.

70. Things are "internally related" to each other if (as Bradley typically expresses it) the terms are "altered necessarily" by the relations into which they enter. Again, if it is necessary of me that I stand in a certain relation to a certain object, so that I would not be what I am if I did not, then this relation is "internal" to me. See Hylton, *Russell, Idealism*, 44ff.

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