

# Right Queer: Hegel's Philosophy of Marriage

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## 1. RIGHT QUEER?

The terms of contemporary debates about marriage bear an uncanny resemblance to those outlined by G. F. W. Hegel in his *Grundlinien der Philosophie des Rechts*, or *Foundations of the Philosophy of Right*, published in 1821.<sup>1</sup> Unlike any other philosopher, Hegel triangulates marriage between love and contract in ways that still resonate today. As an agreement made by rational consent of both parties and recognized by civil law, so he argues, marriage presupposes two autonomous, rights-bearing subjects together with the political and social structures of recognition—in short, what he calls the state—that this conception of subjectivity entails. And

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<sup>1</sup> I cite Hegel's text in German from volume 7 of *Werke*, ed. Eva Moldenhauer and Karl Markus Michael (Frankfurt am Main: Suhrkamp, 1970), and in English from Nisbet's translation, with some modifications, from *Elements of the Philosophy of Right*, ed. Allen W. Wood, trans. H. B. Nisbet, Cambridge Texts in the History of Political Thought (Cambridge: Cambridge University Press, 1991). Page numbers for references to these works will be given in parentheses in the text. This essay reworks ideas I articulated two years ago in an article entitled “Geschlechter/Grenzen: Die Ehe und der Staat in Hegels Philosophie des Rechts,” to appear in *StaatsSachen / Matters of State: Fiktionen der Gemeinschaft im langen 19. Jahrhundert*, ed. Arne De Winde, Sientje Maes, and Bart Philipsen (Heidelberg: Synchron, forthcoming). Several paragraphs in this essay are modified from that earlier article.



yet as a bond of love, marriage should not only transcend self-interest but also make particular, contingent inclinations and attachments meaningful to the political community.

What exactly these claims mean, of course, remains no less controversial for interpreters of Hegel than for those who debate the meaning of marriage today. For what distinguishes Hegel's account of marriage from almost all others is his claim that these qualities together make marriage a unique instance of what he calls *Recht*, or of law that is ethical because it instantiates rational norms. Hegel's philosophy of marriage thus also raises the question of why marriage should be a matter of democratic law at all and of what kind of law might claim the right to govern particular, intimate social relations and yet also be an expression of rationally legitimated political power. One main thrust of the *Philosophy of Right* is a critique of atomistic, contractual theories of subjectivity or personhood. It is impossible, Hegel argues, to conceive of a subject with political rights except as a member of a political community that recognizes those rights, inasmuch as it is the state that makes possible these freedoms. Moreover, Hegel argues, a conception of political rights in terms of contracts is hollow and abstract, inasmuch as it reduces subjects to property-holding agents. However one evaluates Hegel's arguments, criticism of this kind is woefully absent in contemporary debates about the "right" to marry or about marriage as a matter of "freedom."

Membership in the state—citizenship—might be considered universal in several senses. It constitutes an identity shared universally by citizens and governed by laws that treat citizens equally. But more substantially, to use Hegel's terminology, it can imply participation in a social whole that aims to realize a common good. Hegel considers this common good to be rational because it fosters and respects the rational autonomy of its citizens as subjects—their capacity to "give themselves" a law, to modify Kant's famous phrase—an autonomy that also constitutes their capacity for freedom. Or that, at least, is the view of Hegel that has emerged from a number of readers such as Kimberly Hutchings, Robert Pippin, and Frederick Neuhouser—to name some authors of recent works in English.<sup>2</sup> Yet this view of Hegel only sharpens the questions posed by his philosophy of marriage. For as critics have long noted, one way that Hegel defines the "universality" of citizens is through a law of marriage that excludes women from the public sphere.

In this regard, Hegel can be read within a tradition of social contract theory that has been analyzed by Carole Pateman, in which the sexual contract implicit within the marriage contract defines political freedom in terms of men's domination over their wives.<sup>3</sup> Hegel does not in fact consider marriage to be a contract; as he famously argues in a note to §163, it is rather an agreement that "supersedes" or "suspends" (*aufheben*) the abstract, self-interested standpoint of contracting agents. But his understanding of marriage does subordinate wives to their husbands by subsuming domestic identities within the family and naming the husband as the individual who represents the family in public. Recasting the ancient distinction between the *oikos* and the *polis*, Hegel's theory appears to ascribe systematic relevance to this exclusion: as Hegel is usually read

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<sup>2</sup> Kimberly Hutchings, "Hard Work: Hegel and the Meaning of the State in His Philosophy of Right," in *Hegel's Philosophy of Right*, ed. Thom Brooks (Oxford: Wiley-Blackwell, 2012), 124–42; Robert B. Pippin, *Hegel's Practical Philosophy: Rational Agency as Ethical Life* (New York: Cambridge University Press, 2008); Frederick Neuhouser, *Foundations of Hegel's Social Theory: Actualizing Freedom* (Cambridge, MA: Harvard University Press, 2000).

<sup>3</sup> Carole Pateman, "Hegel, Marriage, and the Standpoint of Contract," in *Feminist Interpretations of G. W. F. Hegel*, ed. Patricia Jagentowicz Mills (University Park: Pennsylvania State University Press, 1996), 209–24; Carole Pateman, *The Sexual Contract* (Stanford: Stanford University Press, 1988).

today, the exclusion of women from public life serves to liberate men from the contingency and particularities of their bodies and so frees them to act in universally public ways. At the same time, one crucial intention of Hegel's argument is also to protect the autonomy of the private, domestic social sphere, in which dispositions of affection, devotion, care, piety, and love can be cultivated and recognized as ethical in their own right—as an ethical foundation for particular ties of intimacy and belonging.

Put charitably, then, one can say that Hegel's account of marriage engages with fundamental features of the modern era and that his attempt to work through the paradoxes it engenders remains symptomatic of contemporary questions and debates. Put less charitably, however, Hegel's account appears to justify the heterosexual, heterosexist prejudices enshrined in the marriage laws of his day.

Starting with some recent work, this article investigates contemporary interpretations of Hegel to ask what insight his philosophy might hold for current debates about marriage. The heterosexist shape of his account is undeniable, but this is one reason that his philosophy offers resources for asking why marriage might matter to the state—and the state matter to marriage—in the context of debates about marriage laws that have become gender neutral. Hegel's philosophy has been one of the most important philosophical resources for theorists of social recognition as diverse as Charles Taylor, Axel Honneth, and Judith Butler, proving equally powerful for theories of multiculturalism, for post-Marxist critiques of practical reason, and for queer theory. Yet nowhere in Hegel's system do sexual difference and sexual desire erupt more acutely as a matter of social recognition than in his theory of marriage, and for this reason alone his philosophy of marriage merits closer consideration.

To summarize my arguments: I will suggest that Hegel's philosophy of marriage—taken together with critiques of his heterosexual prejudices and the theories of social recognition that his work informs—does prove useful to contemporary debates about marriage and the state. Not only do they illuminate issues crucial to conceptions of citizenship, but they also prove insightful to theories of queer kinship. I take queer kinship in the sense defined by Elizabeth Freeman (2004), as forms of belonging faced with the dilemma that they both seek access to systems of recognition while also maintaining the resistance of intimate, passionate attachments to social institutions and norms, including gender norms.<sup>4</sup> Suggesting that Hegel does have something to offer to contemporary notions of both citizenship and kinship, I ask, in a word, whether his philosophy of marriage might be considered right queer.

## 2. SEXUAL RIGHT?

The stakes of Hegel's treatment of marriage as a matter of Right become especially apparent in recent work that has strongly criticized the state's involvement in marriage tout court. Approaching marriage from a liberal perspective, this work is fundamentally at odds with Hegel's philosophy. Yet precisely because liberal conceptions of the state are so influential, this clear difference in perspective illustrates what Hegel has to offer to current debates about marriage.

In arguing for the “disestablishment” of marriage as an institution sanctioned by civil law, for instance, Tamara Metz's recent book *Untying the Knot* turns to Hegel's philosophy as a crucial

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<sup>4</sup> Elizabeth Freeman, “Queer Belongings: Kinship Theory and Queer Theory,” in *A Companion to Lesbian, Gay, Bisexual, Transgender, and Queer Studies*, ed. George E. Haggerty and Molly McGarry (Oxford: Blackwell, 2004), 295–314.

foil—as representative of an “(un)liberal concept of marriage.”<sup>5</sup> For Metz, Hegel’s philosophy of marriage constitutes a “formal, comprehensive social institution”: “formal” because it is recognized according to formalized social norms that exist beyond or outside civil law; and “comprehensive” because it therefore possesses a “unique power” of “control,” “regulation,” or “influence” that threatens liberal commitments to “freedom of thought and expression” and “deep cultural diversity” (85ff.). In this top-down view of Hegel’s theory, marriage “trains individuals to see themselves as organically tied to social and political institutions and attendant belief systems” (101). It does so because it instantiates an “ethical authority” that functions not just as a check on individual agency but rather demands that its sanction be adopted by those whom it regulates as an expression of their own will. It thus “naturalizes” interdependence as a moment of self-restriction that is also self-liberating. The danger Metz sees is not that such institutions exist but that they exist as instruments of state power with a universal claim on citizens. Protecting citizens from this power means that marriage should be left instead to “voluntary associations, to religious and cultural entities that wield ethical authority more effectively and justly than does the state” (134).

The idea that voluntary associations might wield ethical authority more “justly” than the state marks a profound disagreement with Hegel, if not a strong misreading of his terms. For Hegel, ethical authority, or “*Sittlichkeit*,” is just or “right” only as a matter of *Recht*—that is to say, when it is expressed through laws of the state. Hegel’s standard for Right is what he calls “objective rationality”: reasons or justifications that transcend the whims, inclinations, desires, or interests of any one individual or group of individuals to express a universal conception of the common good. For just this reason, Metz explicitly avoids employing the Hegelian term “state,” writing instead of the “public” and “communal” nature of marriage in contrast to the limited political authority of government (106). The result, however, is not to isolate the “social-psychological logic” of marriage in Hegel’s argument but to talk past his basic assumptions and his objections to liberal conceptions of political rights.

This problem becomes especially apparent in the analogy to religion underlying Metz’s argument for the “disestablishment” of marriage. In comparing the “comprehensive” social power of marriage to that of religion, for instance, Metz writes: “to a believing Catholic, the pope’s commands are freedom-guiding, in that Catholics believe that the pontiff’s commands guide them to some freedom or good beyond that which they can currently perceive” (103). But this comparison is misleading because it does not ask whether the “ethical” authority claimed by the pope is rational according to Hegel’s terms. Hegel’s insistence on the autonomy of Right means that a blind appeal to papal authority cannot be an expression of what he theorizes as ethical life, and sharing or identifying with the pope’s commands as a matter of religious belief is not what Hegel has in mind when he imagines marriage as an institution that would give public significance to intimate ties and yet, at the same time, reflect the freedom of an autonomous, self-determining community. Of course, Hegel’s views on religion evolved over time and proved difficult enough to provoke the first great split between schools of his interpreters, the right and left Hegelians. Hegel held philosophy and religion to be similar in that both seek to comprehend the absolute. Yet in the introduction to the *Philosophy of Right*, Hegel explicitly contrasts religion to philosophy:

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<sup>5</sup> Tamara Metz, *Untying the Knot: Marriage, the State, and the Case for Their Divorce* (Princeton, NJ: Princeton University Press, 2010), 87. Hereafter, page numbers for references to this work will be given in parentheses in the text.

“die Philosophie, weil sie das *Ergründen des Vernünftigen* ist, eben damit nicht das Aufstellen eines *Jenseitigen* ist, das Gott weiß wo sein sollte” (precisely because philosophy is the comprehension of what is rational, it cannot be the setting up of a beyond that exists God knows where) (24; 20). By this standard, Hegel’s philosophical account of marriage cannot simply make recourse to belief in the same way that religion does; and if marriage is to prove ethical, then it must instantiate norms that are rational because they express freedom autonomously in the strong sense that Hegel ascribes to membership in a modern political community, as citizens of a state.

One might reject Hegel’s philosophy for assuming an “ideational homogeneity” within the modern nation-state, as Metz does (107), and this might be one reason to argue that his theory is incoherent or fails to live up to its own standards. But clarifying this difference in terminology does at least point to the stakes of Hegel’s endeavor and its continued relevance for the problems it seeks to engage. Chief among these is the problem that Metz, too, finds focused in marriage: the distinction between public and private. Here, again, Metz’s analogy to religion proves insightful. If one follows Thomas Lewis, the innovation of Hegel’s approach to religion is not to separate religious belief out from a secular public sphere, as something “immune to criticism and challenge,” but to ask how religious belief might matter to politics.<sup>6</sup> Even without accepting Hegel’s mature view of (Protestant) Christianity as a faith that could serve as a civil religion for the state, one can agree that his attempt to understand the place of religious belief and practice in the modern world constitutes a challenge to liberal paradigms that separate religion from politics; that it raises continually pressing questions of whether deeply held beliefs can rightly be excluded from the public sphere or motivate political commitments. His philosophy of marriage evinces a similar tension. For all the integrative force his account ascribes to the institution, Hegel is equally concerned with preserving individual particularity—expressed in love—as politically relevant because it is distinctly private and intimate.

Hegel was not the first philosopher to think of marriage as an institution that is radically modern for expressing and recognizing the freedom to love, or to ask what this meant for the socially foundational role that marriage had come to play in both politics and religion.<sup>7</sup> Like others, Hegel saw the revolutionary implications of marriage for love in its rejection of instrumental concerns, just as he saw that modern conceptions of romantic love or intimacy took shape as secular transformations of religious conceptions of transcendence. But he is unique for insisting that this history endows marriage with a normativity equally universal and particular; that marriage could paradigmatically express what he calls “ethical life.” In this, he was and remains a critic of both liberal and “romantic” strains of thought. Metz, for instance, proposes to replace civil marriage with a limited institution of “intimate care-giving units” that would foster the realization of narrowly defined, instrumental aims of equality, liberty, and stability without any attempt to shape citizens’ minds through marriage. Yet she also speculates that it might be hard to prevent this “instrumental” institution from acquiring “special expressive significance” (135). Keenly attuned to the historical reasons for why this might be so, Hegel’s philosophy of marriage focuses the difficulties of liberal political theory, just as Metz’s comparison between religion and

<sup>6</sup> Thomas A. Lewis, *Religion, Modernity, and Politics in Hegel* (Oxford: Oxford University Press, 2011), 10.

<sup>7</sup> In this regard, he had quite specific German predecessors, namely the circle of Berlin intellectuals for whom the question “What is Enlightenment?” famously erupted in 1783—in a footnote, it is rarely noted, to an exchange about civil marriage; cf. my arguments in “‘Was heißt Aufklärung?’ Eine Fußnote zur Ehekrise,” the first chapter of Albrecht Koschorke, Nacim Ghanbari, Eva Eßlinger, Sebastian Süsteck, and Michael Taylor, *Vor der Familie: Grenzbedingungen einer modernen Institution* (Konstanz: Konstanz University Press, 2010), 51–96.

marriage makes clear why liberal theorists cannot simply ignore Hegel's critique. As Adrian Daub has clarified, Hegel's philosophy of marriage holds a unique place within the "metaphysical" theories of marriage that developed in German Idealism and Romanticism, giving his approach a unique purchase to critique the history of political romanticism that drew from this tradition.<sup>8</sup> Hegel asks how marriage might fashion a new identity among the wills of two spouses, but he stands out for his views that love and marriage might coincide, that marriage remain a communal, legal institution, and above all for imagining that this identity could influence the polis rather than simply be determined by it.

Daub gestures toward the significance of this German history for current debates, but the striking resonances between Hegel's insights and contemporary events are worth exploring in greater detail. Speaking on the steps of the Supreme Court after oral arguments on March 26, 2013, for instance, the plaintiffs in *Hollingsworth v. Perry*—the case challenging California's Proposition 8—declared:

Hi, I'm Sandy Stier, and I, like all Americans, I believe in equality, I also believe in our judicial system, I have great faith in it. But more than anything I believe in love.

Hi, my name is Paul Katami, and for me from the beginning this case has been about securing the right to marry the person that I love, and also having the equal access to the most important relationship that I know in life, and that's marriage. So, I look forward to the day where I can be married to the person I love and start a family like Kris and Sandy have. It's our constitutional right, and I cannot wait to start my family with Jeff.<sup>9</sup>

This public testimony is remarkable as much for its ambiguity as its clarity. It invokes several values—love, family, equality—that all claim a cultural significance one might call sacred, that are bound up with the identity of citizenship, but none of which can rightfully be called instrumental. It is ironic that the 5-4 decision in this case ducked the substantive issues of marriage equality for a limited ruling on the basis of standing, while Anthony Kennedy's majority opinion in *United States v. Windsor*—a case about tax benefits—spoke plainly and poignantly about "personhood and dignity."<sup>10</sup> For all the "confusion in the courts" that marriage seems to provoke, as Metz has put it, the rhetoric of these plaintiffs reflects political strategies that have been stunningly successful and swift in transforming same-sex marriage from something almost unimaginable in the United States into what conventional wisdom now calls inevitable.<sup>11</sup> And for all their differences, Metz and Hegel both conclude that state-sponsored marriage begs the same questions: What makes marriage such a special institution, and why does it hold such a powerful place in politics? Why should it be bound up with civil law and citizenship? Or is this link a historical accident that ought to be cast aside?

Even readers sympathetic to Hegel's conception of the state—what Peter Steinberger calls an "unlimited," "absolute," and "organic" structure of intelligibility, "the idea of an organically interconnected system of rules that establishes the very possibility of choice"—find his

<sup>8</sup> Adrian Daub, *Uncivil Unions: The Metaphysics of Marriage in German Idealism and Romanticism* (Chicago: University of Chicago Press, 2012).

<sup>9</sup> See <http://www.youtube.com/watch?v=4Iv2hccfyuU> (accessed July 1, 2013).

<sup>10</sup> 570 U.S. 22; 133 S. Ct. 2675 (2013).

<sup>11</sup> Michael J. Klarman, *From the Closet to the Altar: Courts, Backlash, and the Struggle for Same-Sex Marriage* (Oxford: Oxford University Press, 2013), 208–19.

philosophy of marriage to be flawed.<sup>12</sup> Steinberger concludes that Hegel needs something like marriage—an institution in which individuals recognize themselves as concretely situated, as “ethically embodied” in the world—but that he fails to give a persuasive account of why marriage must fulfill this function, just as his account of women in modern life fails.<sup>13</sup> Indeed, Hegel’s exclusion of women from the public sphere is a stark reminder that citizenship has long been defined through “embodied” exclusions—of gender, race, or as Margot Canaday has recently argued about American citizenship specifically, sexual identity.<sup>14</sup> Yet even if one were to conceive of citizenship freed from these discriminatory conditions, the question remains of how political action might be informed, motivated, and ultimately justified by subjects who put aside, at the doorway to politics, neither their embodied, desiring selves nor the particular ties of pleasure, affection, care, and dependency that arise from intimacy. Can conceptions of citizenship be blind to these forms of belonging? Or does a rationally conceived political process *require* recognition of these aspects of subjectivity, if nothing more than in the sense that the state recognizes the right of citizens to *belong* in this way and for this belonging to matter politically? These questions go beyond arguments on the grounds of equality—that if the state recognizes some intimate relations, it should recognize all of them equally. They touch upon the tension between intimacy and citizenship and what this tension means for conceptions of public reason as a discursive space or set of practices common and open to all.

Unlike any other philosopher, Hegel approaches marriage in a way that goes to the core of contemporary debates about the nature of public and private. In asking about the universal intelligibility of relationships defined as particular, intimate, or private, Hegel also sets the stage for asking how the particular, contingent, embodied conditions of subjectivity might transform the polis rather than be controlled or regulated by it. The question of why marriage should demand recognition by the state implies the larger question of what ethical authority might be universal, might ethically undergird democratic self-determination, and yet also recognize the contingent, embodied particularities of embodied subjectivity and intimacy. By posing this question in terms of the sexual difference between men and women, Hegel’s exclusion of women from public life forces the question, in other words, of what might be sexual about Right.

### 3. NATURAL SEXUAL DIFFERENCE

The question of what is sexual about Right can be restated in terms of Hegel’s philosophy as several questions. It is the question, first, of whether Hegel’s exclusion of women from public life is

<sup>12</sup> Peter J. Steinberger, *The Idea of the State* (Cambridge: Cambridge University Press, 2004), 36–37, 322.

<sup>13</sup> Peter J. Steinberger, *Logic and Politics: Hegel’s Philosophy of Right* (New Haven, CT: Yale University Press, 1988), 187–88.

<sup>14</sup> Work by scholars such as Patrick Weil on French nationality and Dieter Gosewinkel on German nationality or by Nancy Cott and Hendrik Hartog on marriage in North America nevertheless makes clear that the significance of sexual difference for the rights and responsibilities of citizenship was much more complex than fictions of original contract, with their implicit sexual contract, or even the explicit law of coverture, might suggest. See Patrick Weil, *How to Be French: Nationality in the Making since 1789*, trans. Catherine Porter (Durham, NC: Duke University Press, 2008); Dieter Gosewinkel, *Einbürgern und Ausschließen: Die Nationalisierung der Staatsangehörigkeit vom Deutschen Bund bis zur Bundesrepublik Deutschland* (Göttingen: Vandenhoeck und Ruprecht, 2001); Nancy Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, MA: Harvard University Press, 2002); Hendrik Hartog, *Man and Wife in America: A History* (Cambridge, MA: Harvard University Press, 2000); Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton, NJ: Princeton University Press, 2009).

fundamental to both his account of Right and his metaphysical system, as many feminist critics have argued, or whether it is mere prejudice that can be “ignored” or “jettisoned” from attempts to reconstruct his ethics, as others such as Allen Wood and Dudley Knowles have suggested.<sup>15</sup> More importantly, it is the question of whether Hegel’s exclusion of the female sex stands in for a more general exclusion of *all* sexual difference from public life.

Most of Hegel’s pronouncements about sexual difference seem preposterous or ridiculous today. But the structure of the appearance of this topic in the *Philosophy of Right* merits attention. If one leaves aside Hegel’s supplemental comments, as well as the lectures notes that were added by editors to the main body of Hegel’s text, then Hegel is well into his arguments about ethical life before the topic of sexual difference even arises. The topic makes no appearance in his introduction to *Sittlichkeit* in §§142–57, and Hegel’s exclusion of women from public life occurs only midway (in §166) through the discussion that follows, from §158 to §180, of the subjective sphere of ethical life, the family, and its founding moment, marriage. Before §166, Hegel does not speak at all of men and women but only abstractly of the “persons” who are members of a family or a marriage and—in two crucial passages, §161 and §165—of the “natural sexes” or the “natural determination of both sexes.” Since the charge against Hegel from many readers is that he builds irrational, essentialist prejudices about men and women into his system, it is these two passages that must answer first to the question of what might be sexual about Right.

It is in §165, which comes directly before Hegel’s exclusion of women from public life, that Hegel appears to rationalize these prejudices most directly:

Die *natürliche* Bestimmtheit der beiden Geschlechter erhält durch ihre Vernünftigkeit *intellektuelle* und *sittliche* Bedeutung.

Diese Bedeutung ist durch den Unterschied bestimmt, in welchen sich die sittliche Substantialität als Begriff an sich selbst dirimiert, um aus ihm ihre Lebendigkeit als konkrete Einheit zu gewinnen. (§165, 318)

The *natural* determinacy of the two sexes acquires an *intellectual* and *ethical* significance by virtue of its rationality.

This significance is determined by the difference into which the ethical substantiality, as the concept in itself, divides itself up in order that its vitality may thereby achieve a concrete unity. (§165, 206)

Hegel’s language here derives from his metaphysics. He is describing what he considers the most basic or fundamental movement of spirit, in which spirit recognizes or cognizes or “determines” something as natural in a reflexive movement of self-determination. “Spirit” can be understood here as the meaning-making, ordering activity of a self-consciously rational being—of “human mindedness,” to take up Robert Pippin’s language.<sup>16</sup> This holds true regardless of whether one follows Hegel to the argument that this idea of spirit gives rise to the idea of absolute spirit, that is, to the idea of a totality of determination that would transcend the point of view and knowledge of any individual, finite, subject.

<sup>15</sup> Allen W. Wood, *Hegel’s Ethical Thought* (Cambridge: Cambridge University Press, 1990), 5; Dudley Knowles, *Routledge Philosophy Guidebook to Hegel and the “Philosophy of Right”* (London: Routledge, 2002), 258.

<sup>16</sup> Pippin, *Hegel’s Practical Philosophy*.

The older translation into English by Knox renders “natürliche Bestimmtheit der beiden Geschlechter” as “the difference in the physical characteristics of the two sexes.”<sup>17</sup> Nisbet’s translation is more careful to render the phrase as “the natural determinacy of the two sexes” (206). Yet even this is not entirely adequate, since the sense of *having been determined*, of the act of determination, gets lost. Emphasizing this act of determination means accepting that this “natural” moment is not external to the determination of reason but that it has rather been determined *as* natural in opposition to spirit and thus, in an important sense, been comprehended by spirit. Spirit does not simply find something natural in the world; it determines something as natural in a movement that distinguishes apparently natural givens from rational reality. The question is not just whether nature can be sublated by spirit but what counts as nature to begin with or, more precisely, what spirit *determines as nature* in sublating it—in determining its “intellectual and ethical significance” in distinction from its apparently natural givenness.

There is something paradoxical about the shape of this argument, in which nature proves to be secondary and spirit primary, but it is neither incoherent nor does it necessarily reduce to the charge of rationalizing nature. It marks, rather, one view of Hegel that has recently gained currency, a “critical” reconstruction of Hegel developed in the work of Béatrice Longuenesse and Rolf-Peter Horstmann, among others. Horstmann reconstructs German Idealism as a project that is critical in the wake of Kant in that, for all its differences, it seeks to reject as “natural” *any* given that cannot stand as legitimate before the autonomous, self-grounding determination of reason.<sup>18</sup> Hegel’s “rejection of representation,” to use Longuenesse’s term, marks his systematic interpretation of the idea that rationality cannot look beyond the space of its own reasons for the ultimate truth of its claims. His systematic difference from Kant, she argues, consists in thinking this project of philosophy from the absolute standpoint of God rather than the limited, finite, human perspective of the “I think” of Kantian apperception, and her suggestion that one can nevertheless read Hegel with an eye toward the practical implications of this metaphysical project while preserving “Kant’s prudent restriction of any metaphysical endeavor to the strictures of the ‘human standpoint’” shares an impulse with many contemporary readers of Hegel who similarly emphasize the critical dimensions of his social and political thought.<sup>19</sup> Read in this light, any “natural determination of the two sexes” should prove legitimate only in light of a critical act of thought that also articulates the “conceptual and ethical significance” of this determination in contradistinction to nature.

Hegel specifically turns to the relation between “nature” and “ethical life” in the first passage in which he speaks of sexual difference as natural, §161, where he writes:

Die Ehe enthält, als das *unmittelbar sittliche Verhältnis*, *erstens* das Moment der *natürlichen Lebendigkeit*, und zwar als substantielles Verhältnis der Lebendigkeit in ihrer Totalität, nämlich als Wirklichkeit der *Gattung* und deren Prozeß. (*S. Enzyklop. der phil. Wissensch.* §167 und 288 ff. [3. Aufl. §22 off.]) Aber im Selbstbewußtsein wird *zweitens* die nur *innerliche* oder *an sich seiende* und eben damit in ihrer Existenz nur *äußerliche Einheit* der natürlichen Geschlechter in eine *geistige*, in selbstbewußte Liebe, umgewandelt. (§161, 309–10)

<sup>17</sup> Hegel’s *Philosophy of Right*, trans. T. M. Knox (Oxford: Clarendon Press, 1942), 114.

<sup>18</sup> Rolf-Peter Horstmann, *Die Grenzen der Vernunft: Eine Untersuchung zu Zielen und Motiven des Deutschen Idealismus*, 2nd ed. (Weinheim: Beltz Athenäum Verlag, 1995), 52.

<sup>19</sup> Béatrice Longuenesse, *Hegel’s Critique of Metaphysics* (Cambridge: Cambridge University Press, 2007), xix.

Marriage, as the *immediate ethical relationship*, contains *first* the moment of *natural* vitality; and since it is a substantial relationship, this involves life in its totality, namely as the actualization of the *species* and its process. (See *Encyclopaedia of the Philosophical Sciences*, §§167ff. and 288ff.) But *secondly*, in self-consciousness, the *union* of the natural sexes, which was merely *inward* (or had being only *in itself*) and whose existence was for this very reason merely external, is transformed into a *spiritual* union, into self-conscious love. (§161, 200–201)

This definition of marriage—its first appearance as a topic in the *Philosophy of Right*—concludes and turns on the word *umgewandelt*, “transformed.” Many readers traditionally take Hegel to be linking sexual desire, sexual reproduction, and marriage: to cite Alison Stone, marriage “translates” or “converts” what would have no intrinsic ethical purposes into the ethical meaning of social roles, which is part of a process by which the state, as an organic unity of life, “envelops” nature.<sup>20</sup> But a reading of these lines that is also attentive to the critical impulse within Hegel’s thought strongly suggests that this constitutes a misunderstanding of Hegel’s views on marriage and what it means for his philosophical system.

Hegel’s own reference to his *Encyclopedia of the Philosophical Sciences*, which was published in three continually expanding editions between 1817 and 1830, underscores the systematic framework within which he situates his *Philosophy of Right* and, conversely, the pivotal pressure that his philosophy of marriage brings to bear on his conception of spirit. Hegel thinks of the organizing principle of spirit in “organic” terms, which Frederick Neuhouser summarizes to mean a being that is a teleologically organized, self-reproducing whole, articulated into specialized, semiautonomously functioning components, and that is determined “conceptually,” meaning according to a unified will.<sup>21</sup> But this concept of organic unity leaves much to be explained about the rational social and political realities that Hegel calls ethical life. It leaves open, for instance, whether “earlier” forms of life such as plants or animals can have any meaning for an account of the state beyond serving as a model or symbol of these principles.<sup>22</sup> And it further leaves open the question of how citizenship in a state—or, to put it more precisely, how identification with and participation in the political process leading to the formulation of universally applicable laws—might integrate or respect the individual realization of freedom, as Neuhouser has emphasized by comparing Hegel’s conception of the state to Rousseau’s idea of the *volonté générale*.

Here again, English translations prove revealing. Nisbet, for instance, makes a number of decisions that are all tendentiously misleading. Rendering *Gattung* in the passage above as “species,” Nisbet then appends a note about the “strong overtones” to the “related word *Begattung* (mating, copulation)”; but his inconsistent translation of *Lebendigkeit* as both “vitality” and “life” is already one sign that such a heavily biological slant is out of place here. If the Grimms’ dictionary is any indication, the use of the word *Gattung* to mean the “human species”—common to the anthropologies of the Enlightenment—had given way by the time Hegel was writing to a

<sup>20</sup> Alison Stone, “Gender, the Family, and the Organic State in Hegel’s Political Thought,” in *Hegel’s Philosophy of Right*, ed. Thom Brooks (Oxford: Wiley-Blackwell, 2012), 154.

<sup>21</sup> Neuhouser, *Foundations of Hegel’s Social Theory*, 122.

<sup>22</sup> Alison Stone, “Matter and Form: Hegel, Organicism, and the Difference between Women and Men,” in *Hegel’s Philosophy and Feminist Thought: Beyond Antigone?*, ed. Kimberly Hutchings and Tuija Pulkkinen (New York: Palgrave Macmillan, 2010), 211–32.

distinction between biological genus (*Gattung*) and species (*Art*).<sup>23</sup> In any case, Hegel does not seem to use the word here with such technical precision. On the contrary, his usage reflects the social dimensions—the sense of kinship or belonging that the word implied—manifest in the definitions and historical examples that Grimms' dictionary provides. Almost forgoing any definition, the first entry takes recourse to textual examples organized under three rubrics. The first, “of animals,” mocks Plato's pretensions to found a state, contrasting his command that all men and women should be common to each other against the natural truth, known even by a little bird, “dasz es sein eigen nest sucht, dasz es sich zu seiner Gattung hält” (that it seeks its own nest, that it keeps to its own kind). The second, “of humans,” specifies the meaning as “Ehegattung, und zwar vom mann”—perhaps translated best as “husband”; the textual example speaks of a woman accused in 1624 of being a witch, who was asked how it was possible that neither her infant son nor her husband did not awaken or notice her absence during the night until she returned from her evil dancing. The third derives *Gattung* from *sich gatten* (to mate) and then speculates that the word may have arisen in a transformation of the abstract into the concrete. According to the dictionary, “sich gatten” means “to pair up” but in the sense of two things that fit or belong together,<sup>24</sup> and this third rubric expands this sense of belonging by explicitly denying that *Gattung* derives from a designation for marriage and pointing, instead, to one of the oldest Germanic texts, the *Hildebrandslied*, in order to note a resemblance with the term used to describe the kinship of the son and father (discovered, in the song, only after a mortal combat). The second entry in the dictionary leaves behind questions of origins, etymological or genealogical, to note the meaning of “people or things that belong together, that fit together.” But even as the third entry describes a more “abstract” use of the word to denote things that are of a similar kind because they share common characteristics, it also admits that “sharply distinguishing” examples according to these two senses is difficult.

The natural wisdom of a little bird, the demonic invisibility of a dancing witch, the ill-fated kinship of father and son: these examples testify to the limits to human belonging rather than to any self-reproducing, self-evident conception of the human species. They suggest that the overtones of the word *Gattung* are closer to the first and ostensibly oldest etymology that the Grimms give for the word, namely *Gatte*, which by Hegel's time had come to mean “spouse” but which the Grimms define simply as *Form und Geschlecht*. In its semantic capaciousness, *Gattung* is similar to the word that Hegel uses here to mean sex—*Geschlecht*—but which could also mean “generations,” “dynasties,” or “the human race.” By rejecting genealogy—or indeed biology—as a defining characteristic of any human *Geschlecht*, Hegel correspondingly limits the meaning of the word: for Hegel, it is marriage that solely determines *Geschlecht*, and the only *Geschlecht* that matters to marriage is the *Geschlecht* of sexual difference. Reading the “determination” or “unity” of the “natural sexes” in these passages as references to scientific theories of natural sexual reproduction is a profound mistake. Rather, the two moments of “natural” vitality that Hegel speaks of in §161 must be understood in light of the ethical rationality that Hegel attributes to marriage and the determination of nature that the concept of marriage provides.

<sup>23</sup> Jakob Grimm and Wilhelm Grimm, *Deutsches Wörterbuch*, 16 Bd. in 32 Teilbänden (Leipzig, 1854–1961), 4:1512ff., Quellenverzeichnis Leipzig 1971, <http://woerterbuchnetz.de/DWB/?lemid=GA00001> (accessed June 6, 2013).

<sup>24</sup> *Ibid.*, 4:1500.

Indeed, the following two paragraphs of Hegel's treatise spell out how an ethical concept of marriage produces a radically different understanding of the "natural" moment within the sociability of love. Whereas §162 considers both love and free agency as "immediately natural" moments of marriage, §163 spells out a new understanding of nature that results from marriage:

Das *Sittliche* der Ehe besteht in dem Bewußtsein dieser Einheit als substantiellen Zwecks, hiermit in der Liebe, dem Zutrauen und der Gemeinsamkeit der ganzen individuellen Existenz,—in welcher Gesinnung und Wirklichkeit der natürliche Trieb zur Modalität eines Naturmoments, das eben in seiner Befriedigung zu erlöschen bestimmt ist, herabgesetzt wird, das geistige Band in *seinem Rechte* als das Substantielle, hiermit als das über die Zufälligkeit der Leidenschaften und des zeitlich besonderen Beliebens Erhabene, *an sich* Unauflöbliche heraushebt. (§163, 313)

The *ethical* aspect of marriage consists in the consciousness of this union as a substantial end, and hence in love, trust, and the sharing of the whole of individual existence. When this disposition and actuality are present, the natural drive is reduced to the modality of a moment of nature which is destined to be extinguished in its very satisfaction, while the spiritual bond asserts *its rights* as the substantial factor and thereby stands out as indissoluble *in itself* and exalted above the contingency of the passions and of particular transient caprice. (§163, 202)

At the risk of belaboring the point: it is only *after* marriage has been comprehended as ethical, so Hegel argues, that it becomes possible to distinguish ethical love from contingent passions and appetites. Far from adopting ideas from the natural sciences or political theories about natural rights, Hegel's account of marriage provides a new explanation for what is "natural" about human sociability. Seen from this social, ethical point of view, whatever instinct natural science may have explained as a biological drive to reproduce is seen in a more differentiated, more precise light in terms of a newly conceived opposition between ethical love and contingent passion.

Among Hegel's most profound insights was the thesis that any understanding of nature changes over time and that both science and technology redefine what counts as nature, even as natural science posits universal laws. From a present-day perspective, for instance, the "natural" moment of sexual reproduction is the joining of a sperm with an egg, not the joining of male and female bodies, and procreation can be achieved in ways other than "natural" heterosexual intercourse between one man and one woman. By analogy, Hegel's understanding of natural sexual difference must—on his own standard of rationality—be open to critical historical reflection, just as it would be a cardinal mistake to take any understanding of nature to be ethically normative. On Hegel's standard of rationality, it is incoherent to explain the ethical significance of love between two self-conscious individuals in terms of the function of two particular organ systems that do not, in any case, naturally occur only in two forms. Equally unclear is why sexual difference must come in only two categories, or why any individual should have a stable sex at all. Critics of Hegel who have emphasized the gendering of his metaphysics confirm these principles. Most recently, for instance, Alison Stone and Laura Werner have reiterated that Hegel's conception of sexual difference is metaphysical rather than biological,<sup>25</sup> continuing a line

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<sup>25</sup> Stone ("Gender, the Family, and the Organic State") argues persuasively, for instance, that Hegel understands reproductive anatomy as natural expressions of more fundamental metaphysical distinctions between concept (active, determining, form-giving) and matter (passive, determined, formless). Laura Werner similarly traces

of interpretation that feminist critics opened with the argument that this gendering expresses a logic of the supplement that destabilizes Hegel's entire philosophical system.<sup>26</sup> But granting these arguments also means opening Hegel to the same process of critical reflection that he employs: it means accepting that concepts of sexual difference are historical products of spirit, even as they mark the natural contingency of embodied subjectivity. Nowhere is this more apparent than in Hegel's philosophy of marriage.

There is little doubt that Hegel intended the phrase "both sexes" to refer to the two sexes of male and female. But it is a simplification and misreading of §165 to equate the "conceptual and ethical significance" of the "natural determination" of these sexes with concepts of sexual difference derived from ideas about sexual reproduction, or to impute to the social roles of men and women any function, quality, or characteristic that natural science may posit to explain the teleology of nature. Similarly, even if Hegel's ideas about men and women reflect social prejudice, his philosophical system demands that these judgments be open to critical reflection. Far from being a "rationalization" of scientific knowledge or irrational prejudice, Hegel's mentions of "natural sexual difference" in these paragraphs epitomize the tension between the givenness of nature and the determinations of spirit that he holds to be the proper object for philosophical reflection. This project of reflection presupposes a disjunction between ethical life and nature in which spirit determines nature as given and thereby both eliminates and preserves it as conceptually and ethically significant. I have no intention of invoking any mystifying, stultifying magic of Hegelian words like "sublate" in order to explain this mediation between nature and spirit in Hegel's system. Yet whether translated as "suspend," "repeal," "undo," or "preserve," the "transformation" inherent in Hegel's conception of *aufheben* does not mean anything like "convert" or "translate." Hegel's philosophy of marriage as a concept, agreement, and institution that itself determines sexual difference demands that any "natural" determination of this difference prove rationally legitimate only if it stands a critical test, that is to say, only if it proves to actualize freedom in the strong, autonomous sense of what he calls Right.

One of the most charitable recent readers to assume a "feminist" approach to Hegel, Kimberly Hutchings, suggests that we read Hegel as a philosopher of an "emergent modernity."<sup>27</sup> It is in this sense, she argues, that the feminist criticism and appropriation of Hegel that began with Simone de Beauvoir provide resources for an "ontology of sexual difference" that might mobilize the "normative resources of the liberal state."<sup>28</sup> My approach here takes inspiration from this suggestion. Hegel clearly saw that marriage in the modern world possessed the capacity to effect a profound rejection of nature—of social practices and power relations that had come to seem natural. In returning to Hegel's philosophy of marriage, my approach also attends to the lesson from feminist thinkers to conclude that Hegel's gendering of metaphysics and his ideas about sexual difference reflect important, unavoidable questions about social rationality. Hegel

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Hegel's conception of gender difference to the metaphysical categories of identity and difference, arguing that he follows the one-sex model postulated by Thomas Laqueur. See Laura Werner, "The Gender of Spirit: Hegel's Moves and Strategies," in Hutchings and Pulkkinen, *Hegel's Philosophy and Feminist Thought*, 195–210. On this view, the male sex emerges out of the formless identity of the female sex through this act of determination by spirit. On this reading, (female) identity figures as an undifferentiated, unformed stage of the development of spirit, whereas (male) difference emerges as spirit begins to make conceptual distinctions.

<sup>26</sup> Cf. the essays in Patricia Jagentowicz Mills, ed., *Feminist Interpretations of G. W. F. Hegel* (University Park: Pennsylvania State University Press, 1996).

<sup>27</sup> Kimberly Hutchings, *Hegel and Feminist Philosophy* (Cambridge: Polity Press, 2003), 235.

<sup>28</sup> *Ibid.*, 4–5.

predicates his account of subjects as rational, that is to say, as beings possessing self-reflexive consciousness and the potential to actualize freedom from apparently natural determination, upon an account of intersubjective social recognition. To be a subject means to be recognized as a subject by other subjects, which also means to be recognized in one's difference—a difference of wills and desires but also a difference of standpoint that derives from the finite position of each perspective on the world. For Hegel, this difference is conditioned by the material conditions of being that include the body and, as Hegel argues in his philosophy of marriage, by the intimate attachments and commitments that make up freely chosen kinship.

#### 4. THE SEX OF FREELY CHOSEN KINSHIP

In the ambiguous impulse to both ridicule and rescue Hegel that motivates so much criticism, one detects sympathy toward his attempt to understand the family as the sphere of modern life in which individuals are valued for their subjective particularity. In the family, as Frederick Neuhouser glosses Hegel, family members are of value to each other simply because of who they are and not “because of the use they have for one another”; in the family one's qualities are “affirmed by others for no reason at all other than they happen to be mine.”<sup>29</sup> The crux of Hegel's account of subjectivity and sociability is that it makes no sense to speak of a “me” or a “mine” in this way without speaking of the “we”—the community of spirit—by which these qualities are recognized and given meaning.

Some contemporary readers of Hegel who are sympathetic to his aims preserve some features of his account without his philosophy of marriage. Axel Honneth, for example, reconstructs Hegel's theory of right as the “nucleus of a theory of justice, which aims at assuring the intersubjective conditions of individual self-realization to all,” but he mentions Hegel's exclusion of women from public life only in passing.<sup>30</sup> Ascribing this exclusion to “prejudice” that can be eliminated with a few “robust amendments,” Honneth turns instead to including friendship within the family in order to avoid having this sphere of ethical life be reduced to “a single type of relationship.”<sup>31</sup> But this approach puts aside exactly those questions about sexual difference and its significance for ethical life that, for Hegel, are the crux of his philosophy of marriage. Frederick Neuhouser, by contrast, insists that Hegel's view of the family need not imply the “dogma of male superiority” and speculates, in a footnote, that a more “up-to-date Hegelian account” would “attempt to recover” sexual difference as constitutive of the individual particularity recognized in the family “by locating the essential differences between spouses in the characteristics they have as different particular individuals rather than in characteristics they allegedly have merely by being a member of one sex rather than the other.”<sup>32</sup> Yet Neuhouser does not elaborate on this suggestion, nor does he critically examine this allegation that in Hegel's account marriage “essentially” determines the sexual difference between spouses as members of one sex, male or female.

The significance that marriage accords to sexual difference marks, in other words, one of the key reasons why Hegel considers marriage to be such a unique social institution: it marks the significance of the embodied particularity that, for Hegel, must gain recognition within a family

<sup>29</sup> Neuhouser, *Foundations of Hegel's Social Theory*, 144.

<sup>30</sup> Axel Honneth, *The Pathologies of Individual Freedom: Hegel's Social Theory* (Princeton, NJ: Princeton University Press, 2010), 7.

<sup>31</sup> *Ibid.*, 67–68.

<sup>32</sup> Neuhouser, *Foundations of Hegel's Social Theory*, 276, 331n60.

founded by marriage. For Hegel, marriage originates a new family in two ways. As a moment of explicitly willed agency and consent, it interrupts existing bonds of kinship and claims an autonomous origin for a new form of belonging. And in the “metaphysical” language of his theory, it does so by “conceptually” articulating the ethical significance that is, in the feeling of love, only implicit. The shape of Hegel’s arguments reflects this interruption of genealogical chronology: Hegel’s discussion of the subjective dimensions of Right begins not at all with marriage but with subjects as members of a family bound together in love. Hegel calls this feeling “die unmittelbare Substantialität des Geistes” or “sich empfindende Einheit”—the “immediate substantiality of spirit” or “self-feeling unity”—by which family members have a consciousness of being not a person alone but a member of the family (§158, 307 and 199). Tracing the development of Hegel’s thought, Daub has shown that Hegel’s conception of marriage as a conceptual determination of this unity both incorporates and moves beyond an earlier, romantic “politics of the copula” in which Hegel equated love and marriage.<sup>33</sup> Whereas this earlier view rendered marriage an “absolute, remainderless unification of two relata”<sup>34</sup> unintelligible beyond lovers themselves, Hegel’s later view treated marriage as a form of the logical operation upon which he built his philosophical system, the syllogism, or *Schluß*, which states a relation of subject to predicate in terms of a third concept. One consequence of this shift was to explain marriage as a promise and institution that is rationally, outwardly intelligible. But this also makes marriage the object of critical reflection—including its determination of sexual difference as one radical implication of his idea that this union might express individual particularity in universally conceptual, ethical terms.

Marriage for Hegel thus moves beyond one consequence running through the metaphysical theories that Daub examines: instead of a “thing” with the uncanny potential to produce yet another third thing, namely a child, marriage functions for Hegel as a structure of intelligibility for recognizing all forms of kinship as ethical. To cite David Ciavatta, Hegel’s concept of familial love constitutes an affective “terrain” of “ingrained, customary practices of recognition,” and the phenomenological genealogies of Ciavatta’s interlocutors suggest that what he has in mind is something like a habitus, an acquired way of being in the world that structures possibilities of intelligibility and articulation.<sup>35</sup> On these terms, it is easy to see how children come to find themselves recognized as subjects within an existing social fabric; for Hegel, the explicit, self-conscious articulation of marriage originally interrupts this second nature by putting aside as “natural” the particular inclinations that drew spouses together and setting forth a willed foundation for ethical love. But Ciavatta’s definition also points beyond marriage as a moment of consent to the fact that spouses, too, enter into an affective terrain of familial love, built up among themselves over time as lived intimacy produces dispositions and habits that come to appear natural or unquestioned. Hegel’s “ethical thought,” as Wood calls it, imagines that ethical choices might become ethical dispositions of virtue and rectitude.<sup>36</sup> As an agreement and promise to love a spouse, and to realize that love as the shared intimacy of a family, marriage encapsulates like no other social institution or identity the crux of ethical practice as Hegel imagines it.

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<sup>33</sup> See Daub, *Uncivil Unions*, 191–206.

<sup>34</sup> *Ibid.*, 204.

<sup>35</sup> David V. Ciavatta, *Spirit, the Family, and the Unconscious in Hegel’s Philosophy* (Albany: State University of New York Press, 2009), 12.

<sup>36</sup> Wood, *Hegel’s Ethical Thought*, 209–18.

Hegel says a great deal about the wedding ceremony but not much at all about married life afterward, and what he does say reinforces prejudices about men and women. He leaves little doubt that the wife subordinates her agency to that of the husband, that the husband speaks for the family and represents it outwardly as the head of the household, and that both husband and wife have distinct, clearly defined roles and duties. But a view of marriage as lived ethical practice gives added weight to a more critical view of sexual difference from which these identifications derive. If marriage ethically and conceptually determines sexual difference, then a view of marriage that extends beyond the wedding entails a rejection of stable, predetermined sexual identities. Hegel focuses the moment of rational agency and articulation on wedding vows, but only the most static, inflexible conception of marriage could imagine that this vow is an end rather than a beginning, and on Hegel's conception of ethics this holds true especially if marriage is outwardly enforced by custom or law. Habits and dispositions among spouses may or may not be expressions of love, they may or may not be ethical in Hegel's sense of the word, and determining this difference may be exceptionally difficult inasmuch as it depends upon finding a common will and point of view, to the benefit of the family, in two individuals defined by particular feelings, needs, capabilities, and thoughts. But Hegel's understanding of marriage as a conceptual articulation can be extended beyond the wedding to mean that living a promise of love requires an ongoing, critical process of communication and judgment; that the promise to love as the promise to nourish, develop, and maintain this commitment must be realized in practices that are ethical *because* they are open to critical reflection. Hegel's own standard of ethics, in other words, allows that spouses must be able to subject their own lived experience of love to a conceptual standard of judgment, to bring into discourse their own understanding of whether their practices of love fulfill the promise they made to each other and the community.

A reading that opens Hegel in this direction—doubtless against the grain of some of his intentions—highlights the profound implications of his philosophy of marriage for contemporary theories of intimate love as a “code” of communication, to cite Niklas Luhmann, or as what Anthony Giddens calls “plastic sexuality,” in which the fulfillment of sexual desire or the practice of an *ars erotica* is subordinated to emotional, psychological desires.<sup>37</sup> For Luhmann, this code produces a paradox of incommunicability: when intimacy comprises a horizon of understanding according to which everything that matters to me should matter to you, this agreement itself cannot be communicated without placing into question its own premises. Hegel's insistence that marriage be a conceptual, discursive structure resists both this “romantic” vanishing point and Luhmann's structural differentiation that renders intimacy a private realm removed from relationships of power and inaccessible to any critique or critical action. Like Giddens, Hegel insists instead that intimacy possesses a powerful political potential. Yet even before the technological development of birth control that Giddens takes to be a precondition for plastic sexuality, Hegel insists on divorcing the ethical meaning of love from the exigencies of reproduction. This divorce is for Hegel no historically contingent achievement of technology or science but a fundamental demand of reason. The tensions in his account between autonomy and embodiment, between assumptions of equality and gendered conceptions of inequality, may be reflections of historical

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<sup>37</sup> Niklas Luhmann, *Liebe als Passion: Zur Codierung von Intimität* (Frankfurt am Main: Suhrkamp, 1982); Anthony Giddens, *The Transformation of Intimacy: Sexuality, Love and Eroticism in Modern Societies* (Cambridge: Polity Press, 1992).

prejudice, but they can also be read as harbingers of the dilemmas of recognition that confront queer forms of sexual identity, kinship, and belonging.

In sum, Hegel's philosophy of marriage can be read as an early attempt to formulate an ethics of sexuality: a theory of desire recognized to be ethical as love and a theory of social recognition rooted in the socially reproductive power of this recognition. This ethics of sexuality uncovers, within Hegel's thought, an erotic conception of knowledge: a critical sexuality in the sense that it seeks to articulate the ethical significance of the desire to know that, for Hegel, motivates the self-reflexive awareness of spirit. In the opening passages of the *Philosophy of Right*, Hegel largely retells the story of subjectivity that unfolds in the *Phenomenology of Spirit*: the story of a self-positing subject who, in its desire to know, discovers itself as an object of knowledge not only in the sense of a body distinct from its mind but also as a mind that can be estranged from itself in its willing and desiring. Hegel's philosophy of marriage moves beyond this story, however, in crucial ways. In the place of an agon fought within the self, it locates ethical recognition of subjective particularity within the family and—originally and autonomously—within marriage. It conceives of subjects as always already situated within ethical social structures, recognized and called to responsibility by love, and of marriage as a moment in which the ethical significance of this love is made explicit and expressed as a promise. In this sense, his philosophy of marriage imagines an ontology of bodies as subjects of desire that differs radically from the account developed in the *Phenomenology of Spirit*: a conception of bodies that are substantial, that ethically matter—to speak with Judith Butler—as the bodies of subjects, as the material conditions of selves who are more than objects and yet, as objects of knowledge, also objects of desire.

In light of this suggestion, it is worth returning to Hegel's claim: "Die natürliche Bestimmtheit der beiden Geschlechter erhält durch ihre Vernünftigkeit *intellektuelle* und *sittliche* Bedeutung" (The *natural* determinacy of the two sexes acquires an *intellectual* and *ethical* significance by virtue of its rationality) (§165, 318 and 206). Rather than any rationalization of prejudice, this line can be read as a radical deconstruction of the gender norms historically codified in marriage law. If one reads the *Vernünftigkeit* (rationality) of this sentence as the rationality that Hegel accords to marriage, then these two sexes would be just those two sexes determined as ethically significant—as ethically substantial—to each other in marriage. This sexual difference would be substantial as a difference determined by spouses' willed recognition of each other's corporeal particularity as uniquely significant to each other, and by the meaning this particularity acquires beyond these two spouses through its recognition in marriage. Marriage would thus constitute a promise to treat a spouse as an individual who matters in all its particularity, or to put things in more Hegelian terms: the duties and social roles of marriage can be conceived in terms of an ethical, social recognition between individuals who determine that their embodiment matters to each other in uniquely particular ways, and who make a claim that this relationship of particularity—this freely chosen kinship—ought to matter ethically in the Hegelian sense of that word. As a matter of Right, marriage poses the question of how this substantiality might be universally intelligible. The question is not how the state recognizes sex as a category but how it recognizes the freedom of individuals to recognize sexual difference as a difference that ethically matters—in their own lives but also in the lives of all members of a political community.

This determination of particularity is precisely not the "single I" that Hegel rejects in the *Phenomenology* as incoherent, namely the self as certainly grounded immediately in sensibility, a "now, here, or this" that cannot be articulated generally according to concepts (*Werke*, 3:87).

Rather, it arises from within a “we” determined on the terms of its members and accords ethical meaning to embodied particularity only as the bodies of subjects recognized as subjects of love. Conversely, this view of marriage reinforces the unique position it holds within Hegel’s conception of modern society as differentiated into functionally distinct units and spheres within an organically self-reflective social whole. As a lived ethical practice that is also a social institution, and as a determination of concrete particularity that is universally intelligible, marriage marks a pressure point within this system that paradoxically defines and transcends distinctions between public and private. Unlike any other institution or identity in Hegel’s account of Right, marriage entails a public recognition of the freedom to individually recognize embodied particularity. Instead of imposing unchanging conceptions of sexual difference, it would function as an institution that defines and makes possible sexual freedom.

We would give Hegel far too much credit, I think, should we ascribe to his prejudices about men and women any vital influence within a history of sexual citizenship defined by gendered reproductive duties and sexual control—whether over oneself or others, whether as a condition of civic freedom or of domestic purity. The possibility of sexual freedom that I mean to have recovered here would, however, give reason to view his philosophy of marriage as one harbinger of the challenges that modern sexualities pose to rational, universal conceptions of public reason or the public sphere. It may also go too far to see in Hegel’s ideas about the sexes early figurations of counterpolitics and counterpublics. Yet at the very least, his philosophy of marriage forces the question of what kind of ethical kinship might originate in consent and what aspects of belonging might stand in constant tension with liberal presuppositions of autonomy.

As evidence of what this point might mean today, consider *Minimizing Marriage* by Elizabeth Brake, one of the most creative and far-reaching proposals for marriage reform to have been written from a secular, liberal perspective.<sup>38</sup> The marriage Brake proposes is minimal, first, because it has been stripped of its claims to possess a “unique moral value” (107). Examining the moral goods of promise, commitment, and care that liberals often ascribe to marriage, Brake finds no reason to privilege intimacy between couples over other ways of living such as urban tribes, extended families, polyamorous intimate networks, or the life of the single. Arguing that care and justice both inform all “spheres of life,” she suggests that liberals nevertheless have good reasons to reform and not abolish marriage as a legal institution. The marriage she proposes is thus minimal, second, because it regulates only rights and responsibilities intrinsically tied to “caring relationships” between adults—while also granting individuals the freedom to decide among themselves exactly what this means. Her account of this freedom as a limited kind of contract draws upon liberal notions such as a strong distinction between morality and justice or secular public reason. Yet many of her most daringly original ideas reach past these grounds toward more Hegelian terrain: her contention that care (one could also say: “love”) is a “social primary good” because all individuals require it in order to develop their moral capabilities and self-respect; her proposal that we radically redefine kinship by radically redefining marriage; her defense of marriage law as a powerful tool for furthering justice and freedom; and of course the noninstrumental goods of particularity, diversity, plurality, and difference that motivate her moral convictions. Brake’s proposal is one indication of how the fields of political theory and action outlined so clearly and canonically in Hegel’s philosophy of marriage continue to shift in

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<sup>38</sup> Elizabeth Brake, *Minimizing Marriage: Marriage, Morality, and the Law* (Oxford: Oxford University Press, 2012).

sweeping, unexpected ways. It is for this same reason, I suggest, that his philosophy of marriage might offer unexpected resources in its sexual conception of Right.

## 5. WEDDINGS HEGEL NEVER (QUITE) IMAGINED

Reading Hegel's philosophy of marriage in light of contemporary debates foregrounds the radical untimeliness of his ideas—both in his own day and in the continued relevance this essay has attempted to uncover. Following this impulse, I conclude by pushing several of Hegel's arguments past their intentions and against the grain to consequences and questions that he could hardly have imagined. I examine, first, Hegel's insistence that marriage cannot be incestuous (§167); second, that it must coincide with sexual monogamy (§§167–68); and third, that the family dissolves in an ethical sense upon the emancipation of its children (§177). Together with the rereading of Hegel's arguments about sexual difference proposed above, these points sharpen the insight his philosophical approach brings to ongoing disagreements about the relationship between politics, intimacy, and kinship.

Hegel's conclusions that marriage must be monogamous and that it cannot be incestuous may appear highly traditional, but as with his arguments about sexual difference, his premises have radical implications. Keeping with his "metaphysical" understanding of marriage as a union of two wills, Hegel argues that marriage cannot be incestuous because it constitutes a relationship of unity among difference and because one consequence of his theory is that social differences within a single family have the appearance of being natural. Claudia Jarzebowski, in particular, has pointed to the fact that biological definitions of incest developed only in the nineteenth century after a long history of controversy about what constituted the "blood relations" prohibited from marriage by incest.<sup>39</sup> Against this history and the universal anthropologies of the eighteenth century, Hegel's concept of incest stands out for both its historicity and its universality. Similar to Claude Lévi-Strauss's thesis that incest defines the difference between nature and culture, Hegel's point about incest can be read to mean that recognizing kinship always entails recognizing social difference, while insisting that this elementary structure of kinship is rational only to the extent that it proves ethical.

Hegel similarly argues that marriage must be monogamous because it entails a complete union of two wills in which one freely gives itself up and the other finds freedom by virtue of this sacrifice. This is another explicitly gendered feature of his account, and Hegel leaves no doubt that this sacrifice falls to wives. But again, if one lets go of the idea that any individual has a stable, unchanging gender for the idea that the ethical significance of sexual difference is autonomously determined in marriage, then Hegel's idea holds unexpected insight. It constitutes one attempt to grapple with the ethical implications of relations of dependence and inequality that inhere within any relationship of intimacy. Hegel's gendering of these relations reflects their ineluctably embodied nature, even if the stability he ascribes to this embodiment and his conception of marriage as a single willed act reveal points of tension between the inertial force of social norms and institutions and a more radically autonomous conception of marriage as an ongoing, ethical practice. Hegel's insistence on monogamy can moreover be read as grappling with the exclusive nature of intimacy—not in the sense of possession but as a communication that entails an encounter between one self and another. Even if intimacy extends to include a group of individuals, it will entail a negotiation between a commonly shared sense of familiarity, all possible

<sup>39</sup> Claudia Jarzebowski, *Inzest: Verwandtschaft und Sexualität im 18. Jahrhundert* (Cologne: Böhlau Verlag, 2006).

varieties of encounters, and the limit of sociability as a relation between two individuals. Intimate kinship poses the question, in other words, of whether and how a community sharing an “affective terrain” can coalesce to find a common identity, understanding, or position—both inwardly, among its members, and outwardly, to a wider social context.

Hegel identifies the husband as the head (*Haupt*) of the family (§172), but this recourse to metaphorical anatomy causes problems. If one takes seriously the problem of determining the ethical significance of sexual difference, that is to say, what counts as sexual and what counts as sexual difference and why this should matter in any ethical way, then this identification short-circuits things. Just as it rests upon questionable premises that sexual difference can itself be easily reducible to any one part of the anatomy such as the genitals, or that this difference comes in only two kinds, it fails to specify how or why any one individual should permanently represent the family as a public body. Hegel also argues that a single person, a hereditary monarch, must physically represent the body politic as the head of state, but he thereby stresses the limits of this representation—the accident of birth by which one person represents the state and the purely formal nature of the monarch’s sovereign authority (§§275–86). By contrast, however, the head of a family must fully and substantially represent the concrete particularity of each family member and of their unique meaning to the family. In Hegel’s philosophy of marriage, questions more commonly posed about the nature of political representation become especially acute, encompassing the recognition and ethical significance of particularity, and for this reason his philosophy of marriage provokes questions that touch upon the foundations of an ethically rational political order.

Perhaps most significantly, Hegel’s view of freedom as autonomy means that any account of origins is also an account of an end. In arguing that the family ethically dissolves once its children reach a majority (§177), for instance, Hegel is concerned with the ethical basis governing how the material wealth of a family—that is to say, its property—is used. The ethical purpose of this property, Hegel argues, must be to care for, nurture, and cultivate family members, and when these members leave the family to found families of their own, the spiritual basis for these possessions ceases to exist. Hegel can be taken here, first, as making a deeply relevant point about the ethical rights and responsibilities of individual property ownership, a point motivated by a concern with economic justice and equality that extends beyond the market to the family. But Hegel’s arguments about property have further implications. Hegel’s insight is to define the spiritual meaning of material wealth only from the end of the need it satisfies. Taken as a point about the substantiality of kinship defined through marriage, then Hegel’s arguments become an equally powerful point about the end of love. More could be said about how intimacy might be realized or fulfilled only in *loss*—in bereavement, mourning, and misunderstanding. In the literary code of romantic love, death marks the symbolic horizon against which the promise of love imagines transcendence. Defining love from this end could be the basis for reimagining the ties of citizens to each other in explicitly historical terms, recognizing—as Hegel did—that a polity exists across generations, in practices of memorialization as well as imaginations of future remembrance. This need not mean accepting a romanticizing view of death as a sacrifice for future generations. Quite the opposite: it implies an untimely view of the future, a view oriented toward the present as a moment that has been lost in the realization of freedom.

Taken together, then, these rereadings of Hegel’s ideas provide one answer to the question of why kinship should matter to the state, and why state recognition should matter to kinship.

Pointing toward crucial questions within conceptions of democracy as ethical self-determination, Hegel's philosophy of marriage reaches beyond a theory of kinship or even citizenship in the nation-state toward a theory of human rights. It reaches toward a theory of the political structures necessary to recognize the rights of individuals to develop intimate ties, to have that intimacy recognized as protected and private, and for dependents to make claims to care—not just on the state but on those closest to them.

For these reasons, I call Hegel's philosophy of marriage right queer. Marriage for Hegel is the institution in which the tension between individual self-determination and ethical norms is perhaps most acute—an extreme instance of “doing” gender in which a subject is “undone” by norms outside itself, as Judith Butler writes.<sup>40</sup> No defense of the status quo, Hegel's philosophy of marriage harnesses the socially transformative power of marriage as a means to realize a radically modern conception of kinship. In the *Philosophy of Right*, Hegel turns to marriage in order to determine the ethical significance of the dependency and inequality that arise through desire, birth, and death; through the differences that bodies represent as desired bodies and bodies that need care; and through the public intelligibility of this intimacy as freely chosen kinship. As a public recognition of private freedoms, this conception of marriage cuts across distinctions between liberal and communitarian modes of political thought. Thus, his philosophy of marriage can also be read as a philosophy of a queer body politic. □

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<sup>40</sup> Judith Butler, *Undoing Gender* (New York: Routledge, 2004), 16.