TYRANNY AND ETHICAL LIFE IN HEGEL’S POLITICAL THOUGHT: THE TYRANT-LEGISLATOR AND CONSTITUENT POWER*

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ABSTRACT
This article examines the intersection in Hegel’s political thought between Aristotelianism – with its ideas of custom, the ethical life of the polis – and constitutional modernity. It shows how Hegel appropriated the classical issue of tyranny as well as Rousseau’s legislator, Machiavelli and Spinoza to evolve a unique concept of constituent power. Ethical life, in Hegel’s hands, was bent to political modernity. This resulted in a doctrine of the substance of the political that was simultaneously constituent and constituted power. The article argues that this led to a system of law that was also a metaphysic of spirit, which linked a given constitutional order perpetually to its organising form. The ontological status of political authority and its relation to law is a core problem of modern constitutionalism, which often reverts to a founding event, a regulative (normative) order or existential agency to justify itself. Through placing the notion of constituent power in a broader historical continuum, this study shows how Hegel’s political thought reveals how constitutions are neither a mere creature of law nor of sovereign decision.

KEYWORDS
Hegel, tyranny, ethical life, Aristotelianism, constitutionalism, modernity, constituent power

Often the discussion of the origins of a polity involves the myth of a legislator or – in contemporary terms – a constituent power, placed at the moment where all laws and

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customs emerge or, conversely, giving form to the positive legal order and system of governance. For the classical tradition, the Attic hero Theseus perhaps serves as the best model here. Following closely behind, but for all of that far less shrouded in myth, is Solon the Athenian poet and legislator as well as the first tyrant of Athens, Pisistratus. If one looks to modernity, the French Revolution is exemplary in the way it constitutes an entirely new order, as is the name attached to it, for better or worse, Maximilien Robespierre. What all these figures have in common is that they are utilised by G.W.F. Hegel in his early political thought as part of a wide-ranging explanation of the historico-mythical origin of the state, the rule of law and the constitution.¹ This at once betrays his esteem for the classical tradition, particularly Aristotle, but also for modernity – Machiavelli, Spinoza, Rousseau, the French Revolution and the difference between the ideas of the polis and the state.²

My examination of tyranny and ethical life in this article is divided into three sections. I turn to political Aristotelianism and reflect on Hegel’s relation to this tradition (I). This involves an analysis of tyranny, Machiavelli and his reception in Germany. In treating the modern side of this question, I analyse Hegel’s engagement with natural law individualism and his appropriation of Rousseau’s legislator and interpretation of the French revolutionary state. Resuming the discussion of Hegel’s grasp of the traditional Aristotelian understanding of ethics and politics (II), I turn to an examination of his concept of the state and its emergence in the individual will. I discuss the tyrant-legislator, the democratic state form and constitutional monarchy before proceeding to a study of the distinctive idea of public law in Germany, the rise of conscience and subjectivity. With this in mind, I analyse Hegel’s demands for a new system of legislation. Lastly, I discuss the dialectical character of Hegel’s political thought and show how this is part of a system of law that is also a metaphysic of spirit, which links a given constitutional order perpetually to its substantial organising form. I then place this in the context of Hegel’s doctrine of ethical life.

² G.W.F. Hegel, Über die Reichsverfassung, ed. H. Maier, text version K. R. Meist (Hamburg, 2004), p. 12. I will be using this paperback, which is based on the definitive critical edition (idem, ‘Fragmente einer Kritik der Verfassung Deutschlands’, in Gesammelte Werke, Band 5. Schriften und Entwürfe (1799–1808), ed. M. Baum and K. R. Meist (Hamburg, 1998), pp. 1–219). This has previously unpublished material and has surpassed all older versions in terms of text chronology and reconstruction. Existing translations are based on previous, outdated, editions. All translations from this work are my own. The German, for comparison, will be provided in the footnoting.
Political discourse down to Hegel’s time and in his works can be generally characterised by eclecticism. Above all, it is important to recognise the persistence of Aristotelianism in Germany. The latter formed part of the basis of Christian Wolff’s approach to natural law in his *Deutsche Ethik* (1720) and *Deutsche Politik* (1740), for example. Universal practical philosophy in Wolff’s sense fell into the remit of the traditional understanding of politics, which was not limited to questions of rule and order but also encompassed ethics and economics, the latter being understood on the basis of the Aristotelian house community. The roots of this tradition stretch back to Philipp Melanchthon’s Protestant Aristotelianism, which became a reigning orthodoxy in the seventeenth century until it slowly disappeared under the sway of the novel doctrines of natural law and reason of state (*ratio status*). Nevertheless, its staying power cannot be underestimated. This can be discerned in how Hegel determines both the legal and political sciences as parts of *philosophy*. This is not to mention the fact that the structure of the mature *Rechtsphilosophie*, divided into ethics, economics and politics, roughly corresponds to the Aristotelian approach.

It cannot be the aim of this article to trace the complex evolution of Hegel’s political thought, which has been so astutely done in the critical literature. Perhaps one note suffices, however, to qualify the reference to the traditional Aristotelian viewpoint. Already in the later phase of Hegel’s development in the Jena period (1805–1807), he begins with the individual in the state of nature or the principle of subjectivity, intelligence and the will, which are slowly identified with an elementary legal order of...

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recognition, qua Hobbes and Fichte. This is before civil society appears as a concept that retains ‘remnants of the state of nature,’ which implies that the legal condition involves an elementary conflict between individuals. Hegel gives the Aristotelian point of view a new meaning to counterbalance modern natural right individualism, which has been realised as the basis of the state with the French Revolution. If the rupture with the classical tradition comes with the orientation of Hegel’s thought to the present and the real, which transforms practical philosophy and politics into a more modern understanding of political science, nonetheless, in the ‘universally acknowledged’ perspective of the state or in ‘the complex inner articulation of the ethical, i.e. the state, the architectonics of its rationality’, the earlier Aristotelian tradition is likewise preserved. Moreover, Hegel’s political philosophy and its concept of objective spirit has been rightly recognised as a uniquely modern form of political Aristotelianism.

The point to take away from this initial discussion is that in traditional practical philosophy, politics and ethics were in no way opposed. The ancient grasp of ethics runs against the current of contemporary usage, which conjoins it to or confuses it with morality. Ethics, for Aristotle, on the contrary, was akin to ethos, the customs and habits of a political community. Of first importance, for Hegel, was replacing ‘the original and purely natural will’. The immediacy of nature here is supplanted by the immediacy of law, which eventually entails reciprocal recognition: the ‘limitation of freedom’ replaces ‘the arbitrariness of freedom in the individual, contingency’. In other words, the ‘knowing will’ emerges whereby one individual recognises another as a person: ‘ethical life in general, but immediately [as] law’. Here the eclecticism of Hegel’s conception can be observed. On the one hand, he speaks of the savagery of the state of nature where the uneducated will does violence to the Idea of freedom. On the other, through the coercion that establishes the state, this natural condition is overcome. In

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8 Hegel, Jenaer Systementwürfe III, pp. 171ff, 186ff, particularly 196ff; Siep, ‘Der Kampf um Anerkennung’, p. 191.
11 Hegel, Philosophy of Right, pp. 12 15–16 (Preface) (original emphasis).
13 Hegel, Philosophy of Right, p. 195 (§151).
14 Hegel, Jenaer Systementwürfe III, p. 204 (in the margins): ‘Beschränkung der Freiheit, d.h. der Willkür der Freiheit im Einzelnen, Zufälligen’.
15 Ibid., p. 204: ‘[..] Sittlichkeit überhaupt, unmittelbar aber Recht’.
16 Hegel, Philosophy of Right, p. 120 (§93).
this way, ‘the ethical [das Sittliche]’ can become ‘simply identical with the actuality of individuals, as their general mode of behaviour [...]’; the habit of the ethical appears as second nature.\(^7\) Whereas the latter directly follows Aristotle where ethical virtue – and law in this case – is identical with custom and habit,\(^8\) the concept of individualism in the state of nature were at home in natural law discourse and essentially alien to the Greek tradition.\(^9\) For Hegel, the tyrant-legislator and the hero have the role of putting an end to the state of nature and establishing the second nature of custom and ethical life [Sittlichkeit]. In this sense ‘tyranny, pure horrible domination [...] is necessary and just insofar as it constitutes and preserves the state as this real individual.’\(^10\)

For the longest time the modern concept of politics did not come into conflict with the tradition. This can be seen in the fact that it remained a part of philosophy, as mentioned above. Indeed, it had only slowly emerged from the latter. At first, politics continued to be nothing more than prudence and the salus publica; it remained identical with ethos – the ethics or customs of a given political community in the Aristotelian sense. In other words, the apparent separation between what is right and just and what is merely useful (justum and utile) long remained united in the common good. This was predominant in both the political Aristotelian tradition as it was in the early modern humanism that took Cicero as a model. One of the most important historical consequences of Machiavelli’s thought as well as of Renaissance Tacitism was the apparent separation between justum and utile.\(^11\) That being said, this was a gradual process that in no way can be identified with a single stroke. Quite the opposite: the dictates of the Aristotelian and Ciceronian traditions remained prevalent. The very notion of the autonomy of politics, the political and the establishment of modern political science entail little more than their progressive separation from and rejection of the philosophical tradition that lies at their origin. Thus, the coming of age of political science cannot be grasped without having this philosophical tradition in view.\(^12\) The continuity of politics with philosophy can readily be observed in Hegel.

Accustomed to identifying Machiavelli’s Il Principe (1532) with the dissolution of traditional practical philosophy, a more complex genealogy of political thought is

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\(^7\) Ibid., p. 195 (§151) (original emphasis).

\(^8\) Nicomachean Ethics 1103a32. I owe this discussion to Ritter, “Politik” und “Ethik”, p. 111.

\(^9\) See Aristotle’s reference to Homer and his discussion of the god or beast, however, in Politics 1253a6, 1253a27-9.

\(^10\) Hegel, Jenner Systementwürfe III, p. 236 (original emphasis): ‘[...] Tyrannei, reine entsetzliche Herrschaft, aber sie ist notwendig und gerecht, insofern sie den Staat als dieses wirkliche Individuum konstituiert, und erhält.’


necessary. Of first note here is the fact that in Germany *Il Principe* was received within the context of political Aristotelianism. Indeed, Aristotle’s *Politics* already contained a detailed discussion of tyranny and autocratic rule. From this perspective, *Il Principe* was simply viewed as continuing the tradition, perhaps supplementing it with a more modern analysis of tyranny - it was thus in no way identified as a mirror for princes. In this way, as Hermann Conring suggested, Machiavelli’s book was better titled *Tyrannis*. Moreover, Aristotle in the *Politics* had extensive discussed how different forms of state or constitution could be preserved or destroyed. Thus the very *ratio status* discourse that was later to dissolve Aristotelianism at the close of the seventeenth century was strangely enough already contained within it in embryonic form. Whereas it is indeed important to emphasise ‘the two roots of the modern concept of politics: the Aristotelian legacy and Machiavelli’s idea of power’, it is equally as essential to observe how these were readily combined. Hegel’s use of Theseus, tyranny and Machiavelli can only be understood by having this in view.

In order to understand Hegel’s position, it is important to have his historical context in mind. By this I do not only mean the continuation of political Aristotelianism alongside the doctrine of tyranny - or, more precisely, how this was read into Machiavelli’s *Il Principe* - , but above all the applicability of such concepts to the constitutional crisis of the Holy Roman Empire in the epoch of the First War of Coalition (1793–1797) and Second War of Coalition (1798–1802). The encounter between the old empire and revolutionary France proved fertile ground for Hegel’s reflections on the historical emergence of the revolutionary state and the meaning of a modern constitution, just as it mirrored the logic behind his use of Machiavelli and turn towards Aristotle. Additionally, for Hegel, tyranny is a concept directly related to constituent power, which subordinates the individual to obedience whereby

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consciousness is raised to the level of the state and knowledge of its laws.\textsuperscript{28} Modernity and tradition collide. Ethical life is the unity of the individual with the universal. The subjectivist perspective of natural law, absent from the \textit{polis} of antiquity, but underlying the modern revolution, now becomes the essential part of the universal \textit{substantial} order of the state.

An apt remark can be made on the connection between Hegel’s tyrant and the legislator in Rousseau’s political thought.\textsuperscript{29} For Hegel, the tyrant serves the function of educating the natural, immediate, untamed will. This corresponds to Rousseau’s insight that the legislator is capable ‘of changing human nature; of transforming every individual, who in himself is a complete and independent whole, into part of a greater whole, from which he receives in some manner his life and his being’.\textsuperscript{30} For Hegel, following the idealism of Fichte, this is part of the process of \textit{re-cognition}: subjective right must be forced beyond its natural \textit{cognition} or immediacy and externalised by becoming other and then return to itself.\textsuperscript{31} In this way, ‘the human being has his existence, being and thinking in law alone’.\textsuperscript{32} In other words, the individual will now knows the universal as its own will and wills this universal in turn; the subjective has been mediated by the objective. Through tyranny, ‘spirit’ has now become identical with ‘the nature of individuals, their immediate substance, and their movement and necessity [...]’.

As Rousseau saw it, the office of the legislator, ‘which constitutes the republic, does not enter into its constitution’.\textsuperscript{33} The same is true of the tyrant: ‘Through this education to obedience – to know the universal rather as the real will – tyranny has become superfluous and the rule of law steps in’.\textsuperscript{34} What Rousseau had arguably isolated in the office of the legislator is what would later be known as constituent power, which ‘has nothing in common with human jurisdiction’.\textsuperscript{35} Here he thus rightly distinguishes this power from both magistracy and sovereignty; the latter are corruptible insofar as they

\begin{itemize}
  \item Ibid.: ‘Der Geist ist die Natur der Individuen, ihre unmittelbare Substanz, und deren Bewegung und Notwendigkeit’.
\end{itemize}
seek to unite ‘in the same hands legislative authority and sovereign power’. By contrast, constituent power in no way controls legislation; it merely brings the force of law into being by establishing the political order or the state. For Hegel, this arguably colours the meaning of Robespierre, the tyranny of virtue and terror: ‘his strength left him because necessity had left him, and so he was overthrown by force’. The universal first becomes a reality through tyranny – the state, its doctrine of public law and constitution then the norm. Robespierre took the first step to establish the general will.

This is the advantage of the great man, to know the absolute will and to express it; all gather around his standard, he is their God. - In this way Theseus instituted the Athenian state, in this way a terrible force preserved the state, the totality as such in the French Revolution.

When Hegel penned these words, it had become more than clear that the Holy Roman Empire was destined to dissolve or had already done so. The Napoleonic armies decimated what the great powers Austria and Prussia had already divided, according to the historical vacillations of their own state interest. The Confederation of the Rhine sounded a new epoch. The lesson to be drawn from the failures of the First War of Coalition and Second War of Coalition was that unity under a common state authority was impossible with the simultaneous preservation of a pure form of private, civil law that accorded strictly with individual interest and was unable to understand the necessity of the state. In his argument in the Verfassungsschrift, Hegel placed the blame here on ‘every individual member of the political hierarchy, every princely house, every estate, every city, guild, etc.’ What the preservation of such individual freedoms meant was simply the protection of the status quo of the ancien régime. Since the Germans ‘could not tolerate a tyrant, they have disappeared as a people’. Hegel thus shifted allegiances. As a Rheinbund publicist and newspaper editor, he became a follower of Napoleon. Moreover, Hegel now championed the introduction of the French civil code, rational codification in general and the production of constitutions

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37 Ibid. p. 182. This is what he understands by tyranny using the Roman Principate as an example.
38 Hegel, Jenaer Systementwürfe III, p. 237: ‘seine Kraft hat ihn verlassen, weil die Notwendigkeit ihn verlassen, und so wurde er mit Gewalt gestürzt’
40 Hegel, Reichsverfassung, p. 64: ‘[…] jedes einzelne Glied der politischen Hierarchie jedes Fürstenhaus jeder Stand, jede Stadt, Zunft u.s.w.’.
41 Hegel, Jenaer Systementwürfe III, p. 236 (in the margins): ‘[…] keinen Tyrannen ertragen konnten, sind sie als Volk verschwunden […]’.
and constitutional law in the modern state. In part, this responded to his earlier desire for a system of legislation that ‘perfectly expresses reality, or the living customs [Sitten] of the present’. Enlightened natural law and revolution are combined here with political Aristotelianism where the soul of the individual was at one with the polis.

II

Individual disposition or virtue – the standpoint of the subject, for Hegel – was indistinguishable from custom and habit, the substance of the political community. The role of the tyrant-legislator introduced the regularity of the legal condition that provided the ethical basis of the state. The blending of Rousseau’s ideas with Aristotle’s or the German politica tradition and Machiavelli can be observed here. Hegel speaks of constituent power – though he does not employ the term directly – as the universal; the people [Volk], as a multitude of individuals, an existent whole and universal force ‘constituting the commonwealth’. On the one hand, ‘the universal will [...] has to first constitute itself’ as universal out of the will of individuals so that this appears as the principle element’. On the other, ‘it is primary and the essence’.

In the latter respect, the universal will can be considered both the constituent and constituted power. There is little differentiation here. Hence, it is telling that Hegel at the moment of his return to natural law, to Hobbes, Fichte and Rousseau, goes on to quote Aristotle’s ontological principle of physei proteron: the political community ‘is by nature clearly prior to the family and to the individual, since the whole is of necessity prior to the part’. That being said, ‘the absolute and self-determining ground’ of the constitutional state is equally the individual legal person, or ‘abstract concept of the will’, certain of itself, which eventually leads to ‘the completely concrete objectivity of the will, [...] the personality of the state, its certainty of itself’. Qua simply, there is no easy way of understanding how Hegel simultaneously legitimates the objective order of the constitutional state through a subjective principle and vice versa. This is the basis of his idealism.

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46 Ibid., p. 234: ‘der allgemeine Willen [...] hat sich zuerst aus dem Willen der Einzelnen zu konstituieren als allgemeiner, so dass jener das Prinzip und Element scheint’.
47 Ibid.: ‘ist er das Erste und das Wesen’.
49 Hegel, Philosophy of Right, pp. 315 (§278), 317 (§279).
Hegel recognised the incommensurability between the democracy of antiquity, based on the uniformity of custom and habit, and the modern state, which gains its strength precisely through the diversity of the individual principle or standpoint of subjectivity, which is realised in the pluralism of civil society. This sphere of difference that intervenes between the family and the state is where the individual principle is realised, where differences exist in terms of language, dialect, education and religion. Modern individualism or subjectivity would have destroyed the substantiality of the Attic polis. Hegel recognises this in Plato. Subjective opinion is only permitted if it is submerged ‘in the substantiality of the Idea’. In modernity, rather, civil society destroys the family; it is the liberating force that clefs the individual from hearth and home; it ‘represents in the first instance the loss of ethical life’ or ‘constitutes the world of appearance of the ethical’. From the perspective of ‘universal world history’ that envelops the formation of modern ethical life, ‘constitutional monarchy’ sublates the ‘old classification of constitutions into monarchy, aristocracy, and democracy’. Such a classification ‘presupposes a still undivided and substantial unity which has not yet attained its inner differentiation’: ‘These forms, which in this instance belong to different wholes, are reduced, in constitutional monarchy to moments’.

What is important to take away from this discussion is the fact that Hegel did not direct his interest in the tyrant-legislator to a far off ancient ideal in the Verfassungsschrift or Jenaer Systementwürfe III – to his early enthusiasm for the Greek polis – but had directed it to a concrete historical situation. This element of realism to his introduction of Aristotle’s corrupt constitution or state form can also be observed in his use of custom as a form of conflict, which accords with the mores of the Germans that had been described by Tacitus in Roman antiquity. If tyranny is justified given the natural or barbaric condition, this is equally the case in a situation where competing systems of constitutional law were a mere expression of the conflicting private or feudal interests of territorial rulers, which had turned imperial public law into a system of private law. Inevitably, this pushes Hegel’s conception towards the modernity of the state and its distinction from civil society, which increasingly overtook the place of the state of nature as a natural – qua legal – condition.

For Hegel, the Holy Roman Empire provided a largely negative example. The imperial constitution and public law since the Peace of Westphalia saw the sanctification of conscience, which implied the political separation of the territories and

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50 Hegel, Jenaer Systementwürfe III, pp. 240–1 n 2.
51 Hegel, Philosophy of Right, p. 180 (§140).
52 Ibid., p. 219 (§181).
53 Ibid., pp. 308–9 (§273).
54 Ibid., p. 309.
the individual utterly from the whole. The emperor was in no way in possession of the *iura maiestatis*. On the contrary, individual conscience, morality and the territorial control of religion were sovereign, which tore the political totality apart. This was clear in the history of imperial public law after the treaties of Münster and Osnabrück. Not only was the freedom of the religious sphere of conscience an integral element of the new constitutional compromise (Art. VII §1 IPO), but, even more importantly for our discussion here, was the expression of the territorial control over religion (Art. V §31 IPO).

In this context, Hegel – just like Kant before him – stressed the ‘jural’ dimension to the concept of the state of nature by conceiving it as a ‘status iuridicus’. Above, we saw how this led to reciprocal recognition and the legal person, the knowing will as a universal following the dictates of natural law (Hobbes and Fichte), which became abstract right in the mature *Rechtsphilosophie*. In the imperial constitution, Hegel was concerned with documenting the evolution of another form of law: the German reception of Roman civil jurisprudence and its successful use by the territories. For Hegel, this can be observed in imperial public law after 1648 that gave legal expression to the purely private interests of the princes. The ability of the territories to conclude peace with foreign states represented the legalisation of internal or constitutional war. This provides a rather alternative interpretation of ethical life. Tacitus’s ethnographic account of the Germanic tribes and the exploits of Arminius show how ‘the saga of German freedom’, already from the beginning, was characterised by dissent. When the Holy Roman Empire had taken over the alien legal system of its predecessor, civil law was applied to the princes. This ‘constituted the estates as states, because private law is certainly not applicable to them; but then Germany is not a state’. A situation that glorified the rights of the individual above all may have led to distinctive institutions and corporate representation, but the damage to the political whole was irreparable: ‘the original unrestrained character of the German nation

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58 Ibid., p. 49 ‘[…] die Sage von der deutschen Freiheit […]’

59 Ibid., p. 161: ‘[…] konstituirten die Stände als Staaten, dann ist PrivatRecht freilich nicht anwendbar auf sie; aber dann ist Deutschland kein Staat’.
determined the iron necessity of its fate; it is a higher law that the same people who have given a new universal impetus to the world themselves over all others come to an end. Incapable of making the transition from barbarism to culture, the Germanic tribes were ‘disorganised’ by the very representative structures they conveyed to modernity. From this perspective, representation did not develop into a regular system of parliament, but was a stumbling block on the path to modernisation. Ethical life in the empire was identical with Hegel’s early characterisation of Hobbes’s ‘empirical’ natural law: ‘the isolated energies of the ethical [Sittlichen] [...] must be thought of as embroiled in a war of mutual annihilation’.

At this point several of those aspects that I have touched on so far in my analysis come to a head. There is the isolation of individual religious conscience, the freedom of conscience, which for Hegel characterises German modernity. This distinguishes its history of religion from that of France and conveys an important component of pluralism to the development of civil society. For Hegel, the Greeks ‘knew nothing of conscience’. In early Christianity, conscience thus alienated the individual from the polis or political community. Moreover, this coincided with the rise of legal formalism in Rome or private law. These two forces combined destroyed the original character of Greek Sittlichkeit: ‘the living in and with and for one’s people, leading a universal life dedicated wholly to the public interest’. In Rome’s later imperial period, the diversity of language, dialect, religion, education and custom could only be held together by ‘the overwhelming severity of force’. Hegel’s constitutional state, by contrast, lives on the diversity of custom and religion.

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\(^{60}\) Ibid., p. 92: ‘Der ursprüngliche nie gebändigte Charakter der deutschen Nation bestimmte die eiserne Notwendigkeit ihres Schicksals’.

\(^{61}\) Ibid., p. 111: ‘es ist ein höheres Gesetz, daß dasjenige Volk, von dem aus, der Welt ein neuer universeller Anstoß gegeben wird, selbst am Ende vor allen übrigen zu Grunde geht’.


\(^{63}\) I have treated these questions elsewhere in detail, see N.J. Boyd, ‘Hegel’s Hobbes: From the Historical Context of the Constitution to Conscience and Consciousness’, History of Political Thought 40, 2 (2019), 327–56.


\(^{67}\) Hegel, Reichsverfassung, p. 12: ‘die überwiegende Schwere der Gewalt’.

\(^{68}\) Hegel, Philosophy of Right, p. 295, (§270) where he famously discusses the case of Quakers, Anabaptists, etc. as purely private persons and Jews as a foreign people, which nevertheless must be granted civil rights on the basis of the fact that they ‘are primarily human beings’, which brings about ‘self-awareness as recognized legal [rechtliche] persons in civil society’.
Given this line of argumentation, Hegel had no simple way of rehabilitating the ethics of the *polis* or Aristotle’s political thought. On the contrary, a complex eclectic philosophy underlies his understanding of legislation and the equation of ethics to politics. This blends the classical tradition and the modern (Protestant) freedom of conscience and religion with natural law and the French Revolution. How could the individual isolated from the mechanisms of the modern state in its own conscience – or abstract legal personhood and morality, for that matter – be once more united with the ethical whole? How could the particular individual principle, different and distinctive, be guided to a self-conscious universal disposition at one with the state? In answering these questions, Hegel in no way discarded the central elements of modern subjectivity, but identified them with the legal substance of the constitution. The free isolation of the individual in modernity – in conscience, religion, private life, abstract legal personhood and morality – provides the very basis for a rehabilitation of *polis* ethics. Individualism, in all the diversity of its forms, remains ‘the absolute and self-determining ground’. The development of self-consciousness, in distinct contrast to conscience, was subjective and objective at the same time. It was part and parcel to the doctrine of the state and its laws. In this self-consciousness as ethical life, Hegel was able to distinguish the legal substance or constitutionality of the state from ‘fanaticism’, which set out by ‘demolishing the whole existing social order, eliminating all individuals regarded as suspect by a given order, and annihilating any organization which attempts to rise up anew’. This was Robespierre’s tyranny of virtue and terror, the constituent power that belied all form and made individual disposition suspect and punishable.

III

Aristotelianism has its limits. This much we have seen. To a certain degree, Hegel’s Aristotelianism was constantly confronting materials for which it had in no way been designed. Nevertheless, the consistency with which he applied Aristotle’s *physei proteron* or the ontological precedence of the *polis* ‘by nature prior’ to the individual cannot be understated. While it may indeed be true that Hegel’s overcomes his ‘onesided orientation towards classical politics’, which results in a rapprochement to

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71 Hegel, *Philosophy of Right*, p. 38 (§5).

72 Riedel, *Tradition and Revolution*, p. 94.
natural law and the ‘concept’ of the legal person or the standpoint of subjectivity, there is also a great deal of continuity in his political thinking with the Aristotelian tradition. This can be observed in both the ‘architectonic’ and ‘organological’ approach. Not to mention the fact that he affirms an idea of rule in the political community under ‘good laws’, which follows both the *Nicomachean Ethics* as well as the Pythagorean or pre-Socratic tradition. This contrasts the rule of universal, actual laws to the private property relation and rule by men – specifically the intransigence of the princes in Germany. Moreover, there is a transition to be indicated here that collapses the somewhat mystical passage from tyrant-legislator to legislation and the rule of law and the constitution: ‘The force that the tyrant exercises is the force of the law as such. [...] The rule of law is now not this legislation, as if there was nothing prior, rather *there are laws there* –, and the relationship is the movement of education to obedience toward the community’.

Hegel performs a sleight of hand. He refuses the rhetoric of origins that would give precedence to the tyrant-legislator. We saw the same shift above where the universal will was both constituent and constituted power. Instead of laws, however, it would be clearer to speak of ethical life or custom. And they, in fact, form the universal substance or spirit. Thus, it is not the tyrant who educates, but ethical life as such, spirit or ethos: ‘Habit, use (especially dwelling in the works of Herodotus), human conventionality – custom – or place [...]’. This is why Hegel speaks of education as ‘the art of making human beings ethical’.

Ethical life cannot be grasped in a moral sense. Quite the contrary: ‘Conscience, reflection, morality, is not spirit, neither dull innocence’. The tyrant-legislator merely gives expression to the ethos, *second nature* or spirit, which divided the human being

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75 For this interpretation that connects up with Aristotle, see H. Maier, ‘Hegels Schrift über die Reichsverfassung’, in idem, *Politische Wissenschaft in Deutschland: Aufsätze zur Lehrtradition und Bildungspraxis* (Munich, 1969), pp. 61, 265 n 27.
78 Hegel, *Philosophy of Right*, p. 195 (addition Hotho and Griesheim).
79 Hegel, *Naturrecht und Staatswissenschaft im Grundrisse*, p. 301 (Hegel’s handwritten note): ‘Gewissen, Reflexion, Moralität, ist nicht Geist, so stumpfe Unsinn auch nicht’. 
from the natural world. On the one hand, ‘the universal is against individuals as such’ – those akin to the ‘Tribeless, lawless, heartless one’ of Homer or the self-sufficient ‘god’ or ‘beast’ of Aristotle. In this respect, ethical life is tyrannical; it alienates the ‘immediate positive will’ of the individual and educates it. On the other, it is the *substance* of the subject or the subject in ‘eternal mode’: ‘What is ethical must intuit its vitality in its difference’. The spiritual dimension of the absolute, which distinguishes Hegel’s Aristotelianism from all previous forms of empirically oriented *política*, emerges here. The presupposition of the principle of the free individual, which is based on reason, thinking and the will, is its very integration into a Neo-Platonic and Spinozistic philosophy of unitary substance.

Here we are in the position to pose a series of interesting questions. Is ethical life anterior to the state and its constitution? Can it be identified with a normative principle? And does it ideally constrain the exercise of power? In every respect here, fundamental doubt has to remain. Not only does ethical life exceed the normative dimension – remember it is the same as custom, historically preceding both morality and conscience –, but it is also identified with constituent and constituted power, with the development or education of legal consciousness, positive legislation and the institutions of the state. Moreover, it is judged on the basis of its power in history and thus contingency; if the laws are bad so are the customs. Referencing Plato and the pre-Socratic tradition, Hegel stated that ‘the words of the wisest men of antiquity are alone true’: ‘the ethical consists in living in accordance with the customs [*Sitten*] of one’s country; […] as a Pythagorean replied when someone asked him how best to educate his son: “make him the citizen of a well-managed people [*Volk*]”’. Hegel’s later reference to the same passage in the mature *Rechtspolitik* reveals a subtle difference, with the inclusion of law: ‘When a father asked him for advice about the best way to educate his son in ethical matters, a Pythagorean replied: “Make him a citizen of a state with good laws” […]’.

For Hegel, as he put it in the *Naturrecht aufsatz*, a ‘great and pure intuition can in this way express the genuinely ethical in the purely architectonic qualities of its exposition’. The understanding of politics or law here as ‘the most architectonic of

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81 Politics 1253a6, 1253a27-9.
82 Hegel, *System of Ethical Life*, pp. 143, 147.
86 See Hegel, *Philosophy of Right*, pp. 196 (§153), 437 for the possible sources.
87 Ibid., p. 115.
disciplines’ was rooted in the earlier still living tradition of Aristotelianism in Germany. The foundation for any system of law according to ‘the older “empirical” way of treating natural law’ begins from the idea that ‘the people are by nature prior to the individual’. What Hegel attempted to do with the *physei proteron* of Aristotle was to thus topple the ‘modern systems of ethical life’ (sic!), which made ‘being-for-itself’ and ‘individuality into a principle’. In this respect, ‘the old and utterly inconsistent [kind of] empiricism must be vindicated’. Philosophy’s task was one of reconciliation, of overcoming ‘the rigidified opposition between subjectivity and objectivity’. In the latter respect, Hegel also appealed to the pre-critical metaphysics of Spinoza and connected the absolute directly with ‘substance’. Combined with Aristotle’s *physei proteron*, this is nothing other than the *objective* side of Hegel’s early idealism, which in ‘a pure absolute form [...], is to be seen and worshipped as the God of the people’. Even if Hegel’s later doctrine of individualism is a central orienting principle of ethical life, he still claims that ‘we should venerate the state as an earthly divinity’.

Any simple rehabilitation of the Greeks was impossible. The Attic *polis* may have been a ‘beautiful democracy’ and the ‘organic articulation’ may be thought to already have been present, but the Athenians handed over final decisions to oracles, the interpretation of the entrails of animals or the flight of birds. They ‘had not yet fathomed the depths of self-consciousness or emerged from the undifferentiated condition of substantial unity to attain being for themselves, they were not yet strong enough to perceive this decision within their own being’.

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89 Hegel, ‘On the Scientific Ways of Treating Natural Law’, p 159 (translation modified), referring to *Politics* 1253a25-29. Hegel uses the German *Volk* to translate the Greek *polis*.
90 Ibid.
91 Ibid., p. 115.
93 Ibid., p. 80.
94 Ilting, ‘Hegels Auseinandersetzung’, p. 19 n 18. For Ilting, a certain homology exists between Spinoza’s doctrine of infinite substance and the Aristotelian determination of being – substance is *physei proteron* to its affections or modes. This common ground, as he sees it, is what allows Hegel to join substance metaphysics to Aristotle’s politics. Plato is at the origin of the *physei proteron* thesis (ibid., p. 18). See also Kimmerle, ‘Abgeschlossenheit des Denkens’, pp. 121ff.
96 Hegel, *Philosophy of Right*, p. 307 (§270) (Hotho addition).
97 Ibid., pp. 320 (§279) (original emphasis).
Modernity is distinguished by the capacity for the ‘self-determining decision of the will’. For this subjective aspect of his idealism, Hegel drew philosophically from Rousseau and Fichte who ‘put forward the will as the principle of the state, a principle which has thought not only as its form [...] but also as its content, and which is in fact thinking itself’. The immediate reality of the general will in Rousseau was nothing more than the legally competent person. I referred to this above where ethical life was taken in the immediate sense as law. For Hegel, this can also be observed ‘in the third moment in the power of the sovereign’, which must be ‘present subjectively in the conscience of the monarch and objectively in the constitution and laws as a whole’. The monarch is essential as a natural individual that reveals the ‘I will’ at ‘the absolute apex of an organically developed state’. Sovereignty, however, ‘is to be found specifically under lawful and constitutional conditions’; it is thus to be differentiated from the force of the tyrant-legislator or constituent power - or so it seems.

A system of legislation appears chronologically and logically separate from its foundation. Yet in Hegel’s political thought law is akin to ethical life, which is simultaneously origin and substance. The history of a political community or system of legislation is often written in reverse in an attempt to grasp the obscurity of its own beginnings. The constituent moment is most often understood in the same sense and is observed from this already established legal point of view. By contrast, ethical life, as Hegel understands it, forms a historical continuum with legal authority, custom is the ethos or law of a given polity or state.

Generally speaking, Hegel’s emphasis on the tyrant-legislator - the hero or founder of the state - is superficial when compared to the priority he gives to positive legislation and existing constitutional order: ‘That force and tyranny may be an element in positive law is contingent to the latter, and has nothing to do with its nature’. This is because his focus is on a philosophy of right, which has the whole of the state and its already established civil and legal order - its ethos - as a precondition. By contrast, the right of heroes - or the power of a conqueror such as Theseus - is only possible in the absence of a political community. The state of nature where violence and barbarism
reigns legitimises a form of coercion that renders itself null as a concept: ‘it is therefore not only conditionally right but necessary – namely as a second coercion which cancels an initial coercion’. Here the state of nature is depicted as primary and the constituent moment as right and just insofar as it negates the natural will that ‘is in itself a force directed against the Idea of freedom’.  

A central philosophical tension in modern constitutional doctrine that continues to remain of pertinent concern seems to have been intuited by Hegel: the idea of a constitution as a regulative political and legal order that is, however, grounded in a decision or agency supposedly external to that order. The ontological status of political authority and its relation to law is a core problem of constitutionalism. Hegel’s concept of ethical life and his constitutional thought can be interpreted as possibly overcoming or resolving this tension. To explain laws and norms, a founding event, a regulative order or existential agency is often posited. By contrast, Hegel’s constitutional thought embeds the notion of constituent power in a broader historical continuum. In this way, constitutions are neither a mere creature of law nor of sovereign decision. They are a product of the historical facticity of customs, which have then been formed and shaped into laws. Ethical life is simultaneously constituent and constituted power.

Hegel, Philosophy of Right, p. 120 (§93).
Ibid. (original emphasis)