

RESEARCH

'Shameful is the Only Word for It': Hegel on Kant's Sexual and the Social Contract

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This paper engages with Hegel's criticism of the Kantian marriage contract from an unconventional angle. After showing that the Hegelian argument uncovers a parallel between the sexual and the social contract in modern contractarian theories, I illustrate how Kant's theory of marriage is consistent with his Republican theory and engenders the same conceptual difficulty, that is, a gap between the contracting individuals and the production of the common will. My goal is to suggest that, by illustrating how the logic of the sexual contract works, Hegel enables us to outline a very peculiar notion of 'patriarchy' that his ethical *Aufhebung* of the modern bourgeois family resolutely calls into question. As I will elucidate in the conclusion, this does not imply ignoring the patriarchal structure of the Hegelian family, but gives us the possibility to discriminate between two very different forms of patriarchy: whereas Hegel's family relies on cultural and therefore conditional masculinist prejudices, the contractarian model is paradoxically indifferent to any such bias but establishes a deeper and more elusive form of patriarchal entitlement.

Keywords: Patriarchy; Sexual contract; Social Contract; Hegel; Kant

While Hegel's criticism of the social contract has been extensively scrutinized (see, for instance, Kervégan 2018, 58–63; Losurdo 2004, 53–58; Patten 2002, 108–21; Ritter 2003, 203–309), the attention given to his condemnation of the marriage contract is still insufficient. In this paper, I would like to elaborate on how the former impacts on the latter. To this purpose, I will concentrate on the question of marriage in Kant, not only because Hegel repeatedly refers to it but also because it is one of the clearest formulations of the 'sexual contract' in contractarianism. It is well-known that whenever Hegel speaks of marriage, he accuses Kant's views of being shameful and barbaric. However, the reasons for this verdict have not yet been adequately accounted for, and I believe that re-contextualising Hegel's argument within his refusal of contractarian theories can help us to better frame the problem. My goal is to suggest that, by illustrating how the marriage contract works, Hegel enables us to outline a very peculiar notion of 'patriarchy' that his ethical *Aufhebung* of the modern bourgeois family resolutely calls into question. This does not imply ignoring the sexist nature of the Hegelian family, but gives us the possibility to discriminate between two very different forms

of patriarchy: whereas Hegel's family relies on cultural and therefore contingent prejudices, the contractarian model is paradoxically indifferent to any such bias but establishes a deeper and more elusive form of patriarchal entitlement.

1. The Aporia of Contractarianism

Let us begin with Hegel's criticism of the marriage contract. In paragraph 75 of the *Philosophy of Right* he writes:

To subsume marriage under the concept of contract is thus quite impossible; this subsumption – though shameful is the only word for it – is propounded in Kant's *Doctrine of Right*. It is equally far from the truth to ground the nature of the state on the contractual relation, whether the state is supposed to be a contract of all with all, or of all with the monarch and the government. The intrusion of this contractual relation, and relationships concerning private property generally, into the relation between the individual and the state has been productive of the greatest confusion in both constitutional law and actuality (Hegel 2008, 85).

Interestingly, Hegel seems to draw a parallel between the family and the state; every time he engages with Kant's marriage contract, he immediately compares it with the theory of the social contract. My hypothesis is that this analogy is inherent in the very logical structure of contractarianism and can be found at least in Thomas Hobbes (see Rustighi 2020), Jean-Jacques Rousseau (see Rustighi 2018), and, of course, Immanuel Kant. Also, it is my contention that Hegel provides us with unique insights to get to the bottom of this question. The key to my analysis lies primarily in Hegel's elucidation of how contractual relationships work. Paragraph 75 of the *Philosophy of Right* is again explicit:

The two contracting parties are related to each other as immediate self-subsistent persons. Therefore (α) contract arises from the arbitrary will. (β) The identical will which is brought into existence by the contract is only one posited by the parties, and so is only a will shared in common and not a will that is universal in and for itself (Hegel 2008, 85).

In a contract, at least two wills posit themselves as reciprocally indifferent, that is, as equal. As a consequence, their object is a common will which is supposed to be the same for both of them. This is why Hegel calls it 'identical will' (Rousseau had called it 'general will' in the *Social Contract*). Yet a contradiction surfaces, for the 'identical will' is inevitably different from, not identical with, the particular wills that have posited it: universality falls out of these particularities and stands alongside them (see Kervégan 2018, 83–6).

In his most extensive examination of contractarianism, the 1802 essay *On the Scientific Ways of Treating Natural Law*, Hegel clearly expounds this mechanism (see Nance 2017): both Hobbes's empiricism and Kant's formalism produce an unbridgeable gap between the many and the one, or, in other words, between the citizens contracting with one another and the unity of the state. This discrepancy is inevitable once the state is regarded as the upshot of a series of unrelated particularities (individuals): 'the universal separates itself from the particular, as if the particular were absolutely and in and for itself what it certainly is, and the universal did not make it that which it is in truth' (Hegel 1894, 93). The starting point of all social contract theories is indeed the notion of 'multitude,' a sequence of separate wills that have no intrinsic unity. Consequently, the question is how to unify a multitude, how to turn many wills into one, and the answer lies in the concept of authorization: only if all individuals authorize a further will can they engender a common will. Such an act must be autonomously

performed by each contractor, but it must also be unanimous: in this sense, the 'identical will' can only emerge as a sum of identical wills.¹ The concept of authorization, however, would make no sense without the concept of representation, because the unity of a multitude must be necessarily brought to presence outside the multiplicity.² Hobbes puts it as follows:

A Multitude of men, are made One Person, when they are by one man, or one Person, represented; so that it be done with the consent of every one of that multitude in particular. For it is the unity of the representer, not the unity of the represented, that maketh the person one. And it is the representer that beareth the person, and but one person: and unity, cannot otherwise be understood in multitude (Hobbes 1998, 109).

Here is where the inconsistency arises: the common will is in principle immanent in citizens, for every single one of them authorizes it, but only comes into existence in the shape of a different will that transcends them (see Duso 2013, 61–67). Representing the totality of a multitude is contradictory, because unity falls outside of the whole and the universal manifests itself only provided that the particular disappears. This is exactly what Hegel highlights in 1802: in the social contract, 'the positive unity, expressing itself as absolute totality, must ... be added on to this multiplicity as a further and alien factor' (Hegel 1999, 112). Again, the identity of the multitude is not identical with the multitude, it is only juxtaposed to it as something unfamiliar, which 'merely hovers above the multiplicity without penetrating it' (ibid., 113).

In Hegel's eyes, this logic necessarily engenders tyranny: 'the association is an external quality for the associated many, whose relationship with it can only be that between ruler and ruled ... within which only domination and obedience are possible' (ibid.). As a matter of fact, citizens are called upon to obey a will that is formally legitimate and undisputable, because it is supposed to be their own (see Duso 2010), but such a will is actually unavailable to them, independent from their judgment and consequently unaccountable. Rousseau expresses this paradox in a famous way: 'if anyone refuses to obey the general will he will be compelled to do so by the whole body; which means nothing else than that he will be forced to be free' (Rousseau 1994, 58).

If we bear this in mind, it is clear why Hegel claims that the only possible *Wirklichkeit* of the contract is its negation, that is, the 'wrong.' The contracting individuals are unable to recognize themselves in the 'identical will,' which 'is only relatively universal, posited as universal, and so is still opposed to the particular will' (Hegel 2008, 93). As a result, the contract 'leaves the remaining, wholly universal particularity of individuals still in mutual opposition, including all of their *contingency* and *arbitrariness*' (Hegel 1995, 90). The true nature of the contract thus emerges only insofar as individuals experience their opposition to a universality by which they must be however immediately subsumed, such that they can be literally forced into identifying themselves with it. Political obligation becomes just an external

¹ This is quite clear in one of Hegel's critical remarks about Rousseau: the Genevan 'says that the laws of a State must emerge from the general will (the *volonté générale*), but that they do not at all need on that account to be the will of all (*volonté de tous*). With regard to the theory of the State, Rousseau would have achieved something sounder if he had kept this distinction in mind all the time' (Hegel 1991, 240–41). On Hegel's criticism of Rousseau, see also Nuzzo 2011.

² In contractarian theories, to represent no longer means to be appointed to deliver someone's wills to the sovereign. To the contrary, it means to bring the unitary will of all individuals to empirical presence, such that the representative and the sovereign come to coincide (see Hofmann 2003). Hobbes could not be clearer in this respect: 'I know not how this so manifest a truth, should of late be so little observed; that in a monarchy, he that had the sovereignty ... was notwithstanding never considered as their representative; that name without contradiction passing for the title of those men, which ... were sent up by the people to carry their petitions, and give him ... their advice' (Hobbes 1998, 124).

bond: 'since the individuality of the person was thus made the basis, the state became a state based on need [*Notstaat*], on coercion; for the individual subjects it became a third party' (Hegel 1995, 88). The state is separated from citizens and is nothing but coercive power or, in Hegel's terms, *police* (see Cesaroni 2017; Huddock 1994; Luther 2009, 203–7). Not by chance, Hegel reproaches Rousseau with having confused the state with the system of needs that characterizes 'civil society,' that is, with a sum of inclinations that cannot be unified but by an alien command.

2. The Question of Family Governance

Hegel sees the same paradox in the marriage contract. This is already clear in the *Lectures on the Philosophy of Spirit* of 1805–1806:

This self-enclosed totality is not a contractual tie; the parties contract their property, certainly, but not their bodies. It is a barbaric view on the part of Kant [to regard marriage as a contract] for the use of one's sexual organs, with the rest of the body included in the bargain. (Soldiers could also force the marriage partners together in this fashion) (Hegel 1983, 134).

What Hegel suggests here is that in a sexual contract the spouses may be 'forced to be free,' that is, obliged to comply with their own contractual will, as happens in Rousseau. As a matter of fact, Kant explicitly construes the marriage contract after Rousseau's *Social Contract* (see Hanley 2014).³ In the *Lectures on Ethics*, for instance, he observes: '*Matrimonium* signifies a contract between two persons, in which they mutually accord equal rights to one another, and submit to the condition that each transfers his whole person entirely to the other, so that each has a complete right to the other's whole person' (Kant 1997, 158). Kant thus evokes the concept of mutual alienation on which Rousseau bases the constituent contract. If individuals are equal and free, indeed, no obligation is possible unless it results from reciprocal alienation.

We already saw what impasse this mechanism brings forth: the simple identity that is supposed to subsist between the individuals and their totality is negated by the fact that one of them must rule over their association. In Kant's sexual contract, this is the husband. Feminists have thus rightfully criticized Kant for reintroducing difference within his egalitarian conception of marriage, emphasising how masculine rule contradicts its formal terms (e.g., Mendus 1992; Okin 1982; Pateman 1988; Schott 1997). It is however important to highlight that Kant is aware that male governance raises a structural difficulty and feels compelled to demonstrate that it is not incompatible with the contract. In the *Metaphysics of Morals*, he writes:

If the question is therefore posed, whether it is also in conflict with the equality of the partners for the law to say of the husband's relation to the wife, he is to be your master (he is the party to direct, she to obey): This cannot be regarded as conflicting with the natural equality of a couple if this dominance is based only on the natural superiority of the husband to the wife in his capacity to promote the common interest of the

³ It has been the merit of Ryan Patrick Hanley to point out that Kant's sexual contract should be read in light of Rousseau's social contract and that 'it is in willing subjection to a state of mutual dominance that Rousseau and Kant think genuine freedom lies' (Hanley 2014, 924). This interpretation, however, should be reconsidered in at least two respects: firstly, the extension of the logic of the social contract to the marriage contract is not a Kantian idea but is already present in Rousseau (see Rustighi 2017 and 2018); secondly, as Hegel makes clear, this extension is much broader than Hanley suggests and involves the very structure of family governance.

household, and the right to direct that is based on this can be derived from the very duty of unity and equality with respect to the *end* (Kant 1991, 98).

For Kant, then, taking the indifferent wills of the individuals as a foundation does not eliminate but in fact demands postulating a further moment, namely the moment of governance, that necessarily transcends these wills and thus entails the re-emergence of the very same difference that had been previously negated. As Hegel observes, the universal will can paradoxically subsist only as a particular will vis-à-vis the particularities that posit it. If we consider the lexicon that Kant employs – he speaks of ‘the common interest of the house’ and of ‘the duty of unity’ – we realize that he is obliged to regard this element in continuity, not in conflict with the generality of the contract, of which it appears to be in fact the necessary accomplishment even though it cannot be explained by the contractual act.

This, I argue, is confirmed by a famous and controversial passage from Kant's *Anthropology*:

Who, then, should have supreme command in the household? ... I would say, in the language of gallantry (though not without truth): the woman should *dominate* [*herrschen*] and the man should *govern* [*regieren*]; for inclination [*Neigung*] dominates, and understanding governs. The husband's behavior must show that to him the welfare of his wife is closest to his heart. But since the man must know best how he stands and how far he can go, he will be like a minister to his monarch who is mindful only of enjoyment. For example, if he undertakes a festival or the building of a palace, the minister will first declare his due compliancy with the order, even if at present there is no money in the treasury, and even if certain more urgent necessities must first be attended to, and so on – so that the most high and mighty master can do all that he wills, but under the condition that his minister suggests to him what this will is (Kant 2006, 211).

Some scholars have pointed out that Kant is clutching at straws here. Jane Kneller observes that ‘his coy distinction between the wife's “reign” [*herrschen*] and the husband's “governance” [*regieren*] represents a rather desperate attempt to paper over this assumption with what he himself admits is only an illusion of equality’ (Kneller 2006, 468). Heather Benbow (2005) suggests instead that Kant is ironic, for the attribution of sovereignty to women is only apparent. However, this reading misses the point of Kant's theory of marriage, first and foremost because it does not appropriately understand how the Kantian – and more broadly contractarian – concept of ‘sovereignty’ works. I believe to the contrary that Kant is tremendously serious in the *Anthropology*. Also, if we accept to consider the fact that there is a systematic parallel between the family and the state in contractarianism, as Hegel suggests, Kant's account of marriage is liable to appear more rigorous than it may seem at first. Before going back to Kant's sexual contract, therefore, the next question we should ask is: how does Kant's social contract work?

3. Kant's Social Contract

Kant's distinction between *Respublica phaenomenon* and *Respublica noumenon* is well-known. In the *Respublica noumenon*, conceived in accordance with the idea of right, ‘those who obey the law should also act as a unified body of legislators’ (Kant 2003a, 187). Although reality is made of phenomenal republics, not of ideal ones, it is possible to comply with the idea by establishing the form of government (*forma imperii*) that Kant calls republican: ‘any true republic is and can only be a system *representing* the people’ (Kant 1991, 149), because ‘*Republicanism* is that political principle whereby the executive power (the government) is

separated from the legislative power' (Kant 2003b, 101). Republicanism thus goes together with representativity, but what does it mean to 'represent' the people for Kant? It means that 'the state would be administered by a single ruler (the monarch) acting by analogy with the laws which a people would give itself in conformity with universal principles of right' (Kant 2003a, 184). In this sense, it is possible 'to *rule* autocratically and at the same time to *govern* in a republican manner' (ibid.): the ruler may at the same time legislate and govern, provided that she makes the laws as though they had been made by citizens in keeping with the principles of right. Put differently, the republican ruler must take citizens as a sovereign people and not just as a multitude, as long as the form of government 'relates to the way in which the state, setting out from its constitution (i.e. an act of the general will whereby the mass becomes a people), makes use of its plenary power' (Kant 2003b, 101).

There seems, however, to be a vicious circle here: citizens must be already regarded as a people to be represented, but they cannot be regarded as a people unless they are already represented. Kant puts it as follows: 'since a people must be regarded as already united under a general legislative will in order to judge with rightful force about the supreme authority (*summum imperium*), it cannot and may not judge otherwise than as the present head of state (*summus imperans*) wills it to' (Kant 1991, 129). In fact, 'this head of state (the sovereign) is only a thought-entity (to represent the entire people) as long as there is no physical person to represent the supreme authority in the state and to make this Idea effective on the people's will' (ibid.). On one side, sovereignty is the 'act of the general will' that turns a multitude into a people, but on the other the general will itself can only be put into shape by the ruler. Once again, a separate empirical will represents the common will of a sum of individuals in the literal sense that it brings it into existence. In *Perpetual Peace* Kant makes it explicit that the unity of the many remains exterior to them:

The problem of setting up a state can be solved even by a nation of devils (so long as they possess understanding). It may be stated as follows: '... The constitution must be so designed that, although the citizens are opposed to one another in their private attitudes, these opposing views may inhibit one another in such a way that the public conduct of the citizens will be the same as if they did not have such evil attitudes.' ... That mechanism of nature by which selfish inclinations [*Neigungen*] are naturally opposed to one another in their external relations can be used by reason to facilitate the attainment of its own end (Kant 2003b, 112–13).

This is again the situation described by Hegel, where the contracting individuals are left in a condition of reciprocal opposition and arbitrariness:

Because they are *immediate* persons, it is a matter of chance whether or not their particular wills actually correspond with the will in itself, although it is only through the former that the latter has its real existence. If the particular will is for itself [*für sich*] at variance with the universal, it assumes a way of looking at things and a volition that are capricious and fortuitous and comes on the scene in opposition to that which is right in itself [*an sich Recht*] (Hegel 2008, 92).

The ruler's effort to rule 'as if' citizens were sovereign is thus nullified by the fact that the common will is imposed over individuals from the outside. This universality, indeed, coincides with the ruler's exercise of practical reason, independently of the empirical wills that it unifies: 'pure unity constitutes the essence of practical reason' (Hegel 1999, 122), abstracted from 'sensuousness, inclinations, the lower appetitive faculty, etc. (the moment of the multiplicity of the relation)' (ibid., 121). At the same time, Kant's practical reason is obliged to

elevate a particular content to absolute universality: 'the essence of this reason consists in having no content at all. Thus, before this formalism can pronounce a law, it is necessary that some material [aspect], some determinacy, should be posited to supply its content; and the form which is conferred upon this determinacy is that of unity or universality' (ibid., 124). This is why Hegel reproaches Kant with being no less of an empiricist than Hobbes (see Sedgwick 1996): 'formalism itself sinks totally into empirical necessity and lends the latter a semblance of genuine absoluteness by means of the formal identity' (Hegel 1999, 109).

This means that the will of the people is identified with the empirical determination of the ruler's decision, such that universality is posited in an arbitrarily chosen particularity: but this is nothing but the 'identical will' that we saw in Hobbes, that is, an artificial form of unanimity deduced by the *a priori* universalization of a specific determinacy to each and every citizen indifferently. The only thing that citizens are demanded to do is to comply with external legality, which even a random gathering of devils could do without any actual unity of purpose and action being required. Kant thus fails to think of 'the absolute unity of the one and the many' (Hegel 1999, 109), such that the common will is again reduced to external coercion:

So long as it is not self-contradictory to say that an entire people could agree to such a law, however painful it might seem, then the law is in harmony with right. But if a public law is beyond reproach (i.e. *irreprehensible*) with respect to right, it carries with it the authority to coerce those to whom it applies (Kant 2003c, 80–1).

Unsurprisingly, even though Kant explicitly lays down his doctrine of right against Hobbes, the equation between political rule and the identical will of the totality leads him to make legitimate authority no less formally irresistible than Hobbes's Leviathan. Precisely because the Kantian ruler governs 'as if' her will was that of the people, indeed, we must postulate 'an *original contract* ... based on a coalition of the wills of all private individuals in a nation to form a common, public will' (Kant 2003c, 79). Even though such a contract is an idea of reason, not an empirical fact, its consequences are cogent, for it presupposes a unanimous act of authorization: 'the executive power of the supreme ruler (*summi rectoris*) is irresistible' (Kant 1991, 127), because 'when someone makes arrangements about another, it is always possible for him to do the other wrong; but he can never do wrong in what he decides upon with regard to himself (for *volenti non fit iniuria*)' (ibid., 125), and 'this requires no less than the will of the entire people (since all men decide for all men and each decides for himself). For only towards oneself can one never act unjustly' (Kant 2003c, 77).

4. Gendering the Contract

Let us now turn back to Kant's marriage contract. When Kant claims that women are sovereign in the family, I argue, he means it in the same way as when he says that citizens are sovereign in a republic. In both cases, their sovereignty makes sense only as far as their will is represented by someone else. The Kantian husband literally puts the common will of the family into empirical shape as though he was the representative of a little republic: he acts 'as if' his wife was sovereign.

Properly speaking, therefore, the subordination of women in Kant's sexual contract does not result from any pre-emptive gender bias but depends exclusively on the rationale of the contract: as hierarchy is the contradictory yet unavoidable consequence of the contractual logic, which must necessarily negate itself to realize itself, the gendering of the differences that it produces is not a presupposition but a secondary operation. The very question of (sexual) difference appears as the effect of an egalitarian relationship, not as the cause of a hierarchical one. The starting point of the contract is absolute equality, and it would be naïve to claim that Kant does not really mean it: the partners are reciprocally indifferent when they

establish the 'identical will' under which they are unified, but, since this will is purely general, it can have no particular content unless a *different* will personates it.

This further explains the distinction between feminine inclination (*Neigung*) and masculine reason in the *Anthropology*. The inclination of which Kant speaks is nothing but the absolute accidentality of the individual wills, which, as Hegel underscores, are at the same time identified with generality and separated from it. It is the same capriciousness that characterizes the multitude of Kant's devil-citizens, whose unity is alien to them as much as the unity of the family is alien to the (feminized) arbitrariness of the contractors. What Kant does not tell us, however, is that such an arbitrariness must not only concern the woman but also the man: they are equally sovereign, for both have established the identical will, but they both remain (as to their subjective inclinations) non-identical with it.

The real difference between the spouses, therefore, lies in the fact that the man is also the representative. Indeed, the husband does not just represent his wife, for, if he did, he would have to represent a determinate and pre-existing will. Rather, he brings into particular *existence* the will of both partners taken as an undetermined totality and, to this purpose, he must transcend such a totality – because he represents the same unity that he, as a contractor, has posited outside of himself. This is properly the moment of 'reason,' that is, of universality: however, since this universality is only immediate generality it still stands in pure opposition to the 'inclination' of the individuals. Elizabeth Wolgast has efficaciously sketched out this structure:

Husband and wife are different individuals with wills of their own. One would think that, in the last determination, they form a small organisation which has to make decisions in its own way, for which its members are jointly responsible. But this would conflict with the atomistic model: from the point of view of society, the parties would then neither be fully individuals, nor together be one. It is simpler to say that the husband will represent them: that saves the surface features of atomism (Wolgast 1980, 145–56).

This, of course, does not make the male will less arbitrary than the female one, but renders it formally legitimate, for his subjective inclination is now the law: the woman cannot dispute his decisions, not because she is a woman but because he bears the identical will that she has authorized through the contract – to such an extent that she could be legitimately forced to obey it by soldiers, as Hegel provocatively emphasizes.

Even in the marriage contract, the absolute necessity of the common will is at odds with the absolute contingency of individual inclination, and it is precisely this opposition, I argue, that Kant reframes as the male-female difference: then again, Kant's prejudice regarding the sexes comes to the scene *a posteriori*, once this conflict has emerged, not *a priori*. His identification of the general will with masculinity (which entails charging the man with representation) is thus in turn arbitrary and accidental, nothing in the marriage contract justifies it: such a choice does not further explain the woman's subordination to the 'identical will,' only the contract does. Now, this is the relational structure on which I would like to draw attention. I call this relationship 'patriarchy,' but I am not so much interested in the empirical sex of the subjects that it brings into play as in the logic of command and obedience that it construes – which is the object of Hegel's criticism⁴ – and in the subsequent process of its gendering. Only in such a formalistic framework, I contend, can domination be really naturalized on the

⁴ Some scholars have engaged with Hegel's criticism of Kant but have not focused on what I believe to be the core of the Hegelian argument. De Laurentiis, for instance, employs Hegel to underscore the fact that 'Kant's reasoning must lead to a treatment of sexual relations between persons as transactions regarding absolutely

basis of sexist standards: gender is now arbitrarily employed to justify a relationship of governance that is incomprehensible and even troublesome vis-à-vis the contractarian rationale but at the same time does not really need any justification whatsoever, for its legitimacy has already been affirmed in advance and cannot be jeopardized by any question regarding its fairness. Patriarchy, I argue, appears precisely when such an uncontrolled re-emergence of governance is ideologically framed through standardized gender narratives that conceal its formal absoluteness: what matters here is no longer the fact that men exercise good (or bad) governance based on specific virtues that distinguish them from both women and the other members of the family, as in the ancient patriarchal tradition, but only the abstract logic that presides over the marital bond.⁵ Again, patriarchy here is not grounded on difference but on indifference – even in the sense that the modes and purposes of legitimate rule are irrelevant as to the scopes of the family – and the marriage contract can paradoxically produce subordination only provided that we take such an indifference as an inalienable premise. As long as Hegel pulls this mechanism apart, I argue, he also shows us a way to overthrow the operation of patriarchy in the form that modernity has given to it: he develops the concept of *Sittlichkeit* precisely to overcome the effects of domination engendered by the contractarian foundation of what he calls 'abstract right.'

Moreover, Hegel's criticism enables us to problematize the supposed contradiction between the social contract and the marriage contract, that is, between a political and an unpolitical sphere. Even when there is disagreement as to the nature of contractarianism, this point remains undisputed. While Pateman entirely rejects the contractarian logic (see Pateman 1988), for instance, Okin advocates that it should also incorporate the family (see Okin 1982 and 1989), but both agree that there is a conflict: as Pateman puts it, 'the social contract is a story of freedom; the sexual contract is a story of subjection' (Pateman 1988, 2). When it comes to Kant, Mendus remarks that 'by the marriage contract woman relinquishes her equality and allows the man to dominate in political life in exchange for her own domination in domestic life' (Mendus 1992, 178).

Hegel shows us that these two sides do not contradict one another but are the two manifestations of one and the same contradiction. As Hegel suggests, indeed, there is no true divide between freedom and coercion in contractarianism, they are always tied together in one and the same respect. We may thus rephrase Pateman's observation by saying that both the social and the sexual contract are a story of subjection insofar as they are a story of freedom: citizens do not participate in the determination of the will of the state any more than women participate in the determination of the will of the family. Rather than regarding women's domestic subordination as the tacit condition for men's political freedom, I would say that patriarchal rule and political rule have the same paradoxical structure – for they must affirm domination to affirm liberty – and are therefore nothing but the mirroring opposite of each other.

Such an interpretation further illuminates why contractarianism rejects the family-state analogy supported between the 16th and the 17th century, not only by James I and Robert Filmer but also by mercantilist and 'reason of state' doctrines (see Schochet 1975; Hanley 1989; Merrick 2009). This analogy involved indeed the problem of good governance, whereas social contract theories no longer pivot on such a problem but on the question of authorization, which is irreconcilable with fatherly guidance (see Pateman 1989). Contractarianism

(or "merely") external goods' (De Laurentiis 2000, 298), but does not touch on the patriarchal structure of the Kantian marriage contract.

⁵ Pateman correctly highlights how modern patriarchy parts ways with classic patriarchy in that it no longer conceives of governance within what we may call 'the whole house' ('das ganze Haus': see Brunner 1956; Weiß 2001), i.e., the overall dimension of domestic management, but gets progressively whittled down to male domination over women (see Pateman 1988). This shift, I argue, also depends on the introduction of the contractarian idea of legitimacy into the family.

thus reverses the perspective: it is not the sovereign who is regarded as the father of a big family, but the housefather who is reconceptualized as the sovereign of a small state. This, however, makes sense only if we grasp the new meaning of the concept of sovereign power, even in Kant's eccentric theory, which entails the *a priori* legitimation of a formal function of command. Fatherhood itself is now entirely identified with such a function and does not contemplate any form of superiority based either on nature or on virtue, as Hobbes makes perfectly clear (see Rustighi 2020). Now, when Kant masculinizes this function of power, he does it in response to a question that makes in fact no sense in the contractual framework, that is, the question 'who is better suited to govern?' But if this question makes no longer sense, neither does his answer, for it is totally accidental (it is indifferent as to its object, i.e., legitimate rule) and merely naturalizes a role that has already been unconditionally fixed. This means that the true cornerstone of Kant's theory lies in the logical justification of authority, to which sexual difference is per se superfluous. It would be consequently inaccurate to say that in the Kantian marriage different roles are bestowed upon different sexes: what we really witness, to the contrary, is the gendering of predetermined positions within a specific opposition between command and obedience.

Reversing the roles of the sexes would be evidently insufficient to solve such a difficulty. Rousseau, for instance, genders the family in the exact opposite way – to him the husband is the sovereign and the wife is the governor (see Rustighi 2017 and 2018) – without affecting in the least the structure of legitimate rule.⁶ This relational logic is in fact patriarchal regardless of any possible understanding of sexual difference, primarily because it does not really make difference as such thinkable: difference always manifests itself *a posteriori* and emerges only as naturalized domination.

5. Conclusion

I have attempted to show how Hegel helps us to confront the aporias of the contractarian conception of marriage. To conclude, I address two possible objections: 1) the Hegelian family is also characterized by women's subordination; 2) the man is also regarded by Hegel as the representative of the family.

Let us begin with the first problem. At first glance, Hegel's family seems even more patriarchal than the Kantian one. For Hegel, indeed, man 'is powerful and active,' woman is 'passive and subjective': 'man has his actual substantial life in the state, in learning [*Wissenschaft*], and so forth, as well as in labour and struggle with the external world and with himself ... Woman, on the other hand, has her substantial vocation in the family, and her ethical disposition is to be imbued with family piety' (Hegel 2008, 168–69). This is undoubtedly a major blind spot in his philosophy of right. It is indeed unclear why the principle of subjective freedom, which Hegel considers undeniable (although insufficient), should not apply to women. Hegel does not provide any explanation thereof and, needless to say, his naturalistic characterization of the sexes is deplorable. As Benhabib and Bobako emphasize (see Benhabib 1992, 248; Bobako 2008), Hegel's account cannot even be said to reflect the *status quo* of his time, as he had come

⁶ What would seem to be a mere inversion of roles must be contextualized within specific operations concerning the concept of legitimate power. In Rousseau, the construction of women as domestic governors parallels the construction of state rulers as feminine (and maternal) subjects. This is because Rousseau refuses to represent the people's will in legislation and admits representation only in execution – executing, indeed, means complying with the law without making it. Accordingly, women are defined as nothing but the family's 'executive power' under the legislative control of their husbands. Things work differently in Kant: since the emergence of sovereign power is essentially a matter of representation, as we saw, Kant masculinizes the representative (even in the family) and feminizes the sovereign. However, nothing has really changed: in both Rousseau and Kant the family is patriarchal for the same reason, i.e., because of a specific way of masculinizing the expression of the legitimate will.

into contact with advocates of women's emancipation in Jena and was well aware that gender roles could be taken as historical constructs. We must therefore suppose that Hegel deliberately refused to make room for women's social and political engagement. Accordingly, the Hegelian family has an ambiguous status vis-à-vis the processes of subjectivation of modernity, and women are the most blatant testament to it: as Kimberly Hutchings highlights, 'Women are outside the historical stage of modern ethical life' (Hutchings 2017, 107).

As much disconcerting as this point may be, however, there is no such thing as formally legitimated male power in the Hegelian family. Family roles are not gendered on the basis of any fixed command/obedience dichotomy. Being a matter of subjective responsibility and capability, male governance is intrinsically exposed to failure and injustice,⁷ which makes no sense in the contractual logic, and the ethical fulfilment of the family relies entirely on disposition (on virtue, we may say). In this sense, I argue, it is possible to bring Hegel far beyond his own text. Precisely because no *a priori* rationale of legitimacy is at play and the determination of family roles is based on nothing but a sexist bias, we can rethink the Hegelian family in accordance with principles of gender justice and equality: Hegel's *Sittlichkeit* can be coherently employed in a much more plastic way than Hegel himself envisaged (see Hutchings 2000; Pulkkinen 2010), whereas the Kantian 'sexual contract' remains essentially patriarchal even though and indeed exactly because its positions can be occupied by anyone indifferently.⁸ In Hegel's ethical bond, family members are always entrusted with the contingent yet not merely arbitrary task of responsibly fulfilling their roles, such that 'the lived experience of wives, husbands and sons is always both necessary and dangerous to the work of freedom' (Hutchings 2017, 115). There is no possible formal entitlement to rely on: even for the family, then, we may say that "If God gives someone an office, he also gives him sense [*Verstand*]" is an old joke which in these days surely no one will take wholly in earnest' (Hegel 2008, 11). In contractarianism, to the contrary, the immediate affirmation of abstract freedom wipes out the question of disposition, but this question violently falls back onto the family in the shape of domination.

Hence the second objection. It might be said that the Hegelian husband is also the representative of the family: 'The family as a legal [*rechtlich*] person in relation to others must be represented by the husband as its head' (Hegel 2008, 171). However, Hegel's use of the category of 'representation' is opposite to the contractarian one, not only in the *Ständeversammlung* but also in the family: the housefather does not bring the general (i.e., contentless) will of the family into existence, because there is no such thing for Hegel, but represents the family's existing wills before other families in civil society and, through the mediation of the latter's corporate organisations, before the state. Accordingly, representation does not coincide with family governance but implies expressing determinate interests outside of it, a possibility that the contractarian concept of representation negates (see endnote 2). This confirms that there is no contractual element at all in the Hegelian marriage.⁹ Marriage is not the union

⁷ This is clear, for instance, with regard to the housefather's administration of property: 'While no member of the family has property of his own, each has his right in the common stock. This right, however, may come into collision with the head of the family's right of administration owing to the fact that the ethical disposition of the family is still only at the level of immediacy (see §158) and so is exposed to particularization and contingency' (Hegel 2008, 171).

⁸ As we saw in Section 1, the same applies to the state in the contractarian model that still shapes mainstream democratic theory: democratic representatives do not really represent anybody in particular, they are only entitled to express the will of the undifferentiated totality.

⁹ Interestingly, Carole Pateman's reading is biased by the 1952 Oxford translation of the *Philosophy of Right* (see Pateman 1996). In §163 it is said that 'though marriage begins in contract, it is precisely a contract to transcend the standpoint of contract' (nothing changes in the 2008 revised edition, see Hegel 2008, 165). This sentence is nowhere to be found in the German text: 'Daß die Ehe nicht das Verhältnis eines Vertrags über ihre wesentliche Grundlage ist, ist oben bemerkt worden (§75), denn sie ist gerade dies, vom Vertragsstandpunkte der in ihrer

of two independent persons, for which a contract would be necessary, but is the constitution of one: 'The family becomes *one person* and its members become its accidents' (Hegel 2008, 165). The housefather can represent the interests of his family before other families precisely insofar as his family has been constituted as a legal person (and there are no such persons within the family itself). It is only between legal personalities that contractual bonds can occur, and this happens exclusively through the system of needs in civil society: it is thus impossible, for Hegel, to apply the same rationale either to the family or to the state.

To further illustrate this point, it is useful to underscore that for Hegel contracts have the same formal structure as the process of sexual reproduction, which has to do precisely with a dimension of need. As Alison Stone remarks, 'Reproduction is a process with a telos or purpose, which produces a third entity that incarnates the identity of the two animals that contribute to it' (Stone 2018, 180). What we observe is again a universality posited as the generality of two particularities. However, such a process is destined to fail, and universality stands alone as an alien moment. This is what Hegel calls *Gattungsprozess*. The *Gattung* or 'genus' is a formal identity that transcends individuals and engenders bad infinity, that is, pure repetition, because the universal emerges only through the vanishing of the particular. As Hegel puts it, 'The contradiction is, therefore, that the universality of the genus, the identity of individuals, is distinct from their particular individuality; the individual is only one of two, and does not exist as unity but only as a singular' (Hegel 2004, 412). This is a decisive point. We may say indeed that reducing marriage to a contract is the same as reducing it to pure reproductivity – as a matter of fact, Kant's marriage contract concerns the reciprocal use of genitalia. The family would be whittled down to a little system of needs, in the same way that contractarians reduce the state to *Notstaat*.

A similar argument can be made in relation to the modern concept of love – the distinctive trait of the bourgeois family – which involves the same subjective arbitrariness as the marriage contract: 'This moment of particularity is based on the view that one's own particular qualities must be one's starting point. ... But this being in love vanishes through satisfaction, and this subjectivity disappears as soon as marriage comes on the scene; the heroes of novels become like everyone else' (Hegel 1995, 142). Once again, universality is unfamiliar to the individual: 'The subject demands that its particular inclination, its particular free choice be satisfied, and it hesitates to place itself in a universal relationship' (ibid., 143). If marriage depends exclusively on such an individual choice, it loses the unity to which it aspires as soon as the sexual need is extinguished, thus also annihilating the very same individuality that was supposed to be its foundation: the individual and the universal remain opposed and the partners perceive the marital bond as coercive.

Now, the Hegelian marriage is the *Aufhebung* of these three concepts – i.e. contract, reproduction, and love-passion – that are inextricably correlated in the modern concept of the family (see Kuster 2008). Hegel explicitly underscores it in the *Philosophy of Right*:

Einzelheit selbständigen Persönlichkeit auszugehen, *um ihn aufzuheben*.' It is easy to see that, by suggesting that marriage originates in a contract, the translator has illegitimately added something that Hegel did not write. It may still be argued that in §213 Hegel seems to imply that there is a contractual element in marriage: 'Right ... becomes determinate in content by being applied both to the material of civil society ... and also to ethical relations based on the heart, on love and trust, though only insofar as these involve abstract right as one of their aspects (see §159).' Hegel's reference to §159 is however important. In §159, indeed, he does not speak of the family but of its dissolution, which is also the dissolution of *Sittlichkeit* and determines a transition to the standpoint of civil society, which is made precisely of contractual relations between independent persons: 'At that point those who should be family members both in their disposition and in actuality begin to be self-subsistent persons, and whereas they formerly constituted one specific moment within the whole, they now receive their share separately.' If we keep §163 in mind, it is evident that contracts concern only self-subsistent personalities and can play no role in marriage.

Formerly, especially in most systems of natural law, attention was paid only to the physical side of marriage or to its natural character. Consequently, it was treated only as a sexual relationship, and this completely barred the way to its other characteristics. This is crude enough, but it is no less so to think of it as only a civil contract, and even Kant does this. On this view, the parties are bound by a contract of mutual caprice, and marriage is thus degraded to the level of reciprocal use governed by contract. A third view of marriage is that which bases it on love alone, but this must be rejected like the other two, since love is only a feeling and so is exposed in every respect to contingency, a shape which ethical life may not assume (Hegel 2008, 163–64).

We saw how and why the Kantian contract depoliticizes at once the public and the private. Hegel's immanent critique of contractarianism turns the modern family into a truly political unity, which is different from the state but implicates the same ethical foundation: it is essentially open to the question of justice, which can never be answered in advance by any naturalisation of predetermined roles, even despite Hegel's reiteration of uncritically accepted sexist models. It is the very ethical-political structure of this bond that makes it necessary to leave it exposed to a never-ending interrogation concerning the best order and the preferable choices, a problem that the contractarian notion of legitimacy has made invisible. In this sense, I argue, Hegel points towards the dissolution of abstract modern binaries such as production-reproduction, male-female, state-family, public-private, that have long been the cornerstone of the Western patriarchal culture.

Competing Interests

The author has no competing interests to declare.

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