One of the most serious limits of contemporary political philosophy consists is the fact that it has been decoupled from the practice of social analysis, and thus become fixated on purely normative principles. Although every theory of justice has the task of formulating normative rules according to which the legitimacy of the social order is to be judged, these principles are currently drafted wholly independent of the ethics embodied in given practices and institutions, and then only secondarily “applied” to the prevailing social reality. The opposition thus created between what is and what should be, this philosophical degradation of moral facticity, is the result of a theoretical development that reaches far into the past, and which is significantly linked to the fate of Hegel’s philosophy of right. After his death, Hegel’s intention to reconstruct rational institutions – those that guarantee liberty – on the basis of the social relations prevailing in his time came to be understood in two opposing ways. Whereas the one side took this attempt merely as a conservative theory of restauration, the other side read it as a theory of revolution. This division into Right Hegelians and Left Hegelians allowed later generations, after nearly all revolutionary ideals had died out, to place Hegel’s political philosophy squarely in the conservative camp. The only thing that remains of Hegel’s idea of setting the theory of justice on a foundation of social analysis is the rather primitive notion that existing institutions should be lent an aura of moral legitimacy. This nearly sealed the victory of a Kantian or Lockean theory of justice, in which the normative principles that serve as the standard for judging the moral legitimacy of the social order may not be developed from within the existing institutional framework, but only

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independent of that framework as free-standing normative principles. This situation has remained mostly unchanged up to the present day.

Of course, there have been numerous objections to the dominance of Kantianism over the field of justice theory. In the second half of the nineteenth century, there was an attempt within British Neo-Hegelianism, a school of thought that for political and cultural reasons never had any followers in Germany, to revive Hegel’s project for the purpose of formulating a theory of justice. And more recently, we could cite the works of Michael Walzer, David Miller and Alisdair MacIntyre as evidence that the impulse to overcome purely normative theories of justice, and thus to revive the project of social analysis, has never really disappeared. But precisely these efforts make clear just how far we have gone off the path laid down in Hegel’s “Philosophy of Right.” Current attempts to overcome the deficiencies of Kantian theories of justice, which are blind to existing institutions, nearly always consist in hermeneutic readjustments of normative principles to the existing institutional framework or prevailing moral convictions, without taking the additional step of proving the rationality or legitimacy of these principles themselves. Because of their tendency to merely accommodate normative principles to official theories not supported by social reality, but by moral reason, these attempts remain without purchase. Hegel, by contrast, sought to do both: to present the institutional reality of his time as already having decisive rational features, and to prove that moral reason had already been realized in the major modern institutions. The notion of “right” he thereby employed was intended as a way of naming those elements of social reality that had both moral existence and legitimacy due to their role in enabling and realizing individual liberty.
In taking up Hegel’s approach two hundred years later, I realize of course that not only have social relations been altered dramatically, but also philosophical argumentation itself. It has become impossible to merely resurrect the intent and the line of argumentation found in the “Philosophy of Right.” On the one side, social reality, within which we are to identify those institutions and practices that enjoy the status of moral facticity, is completely different from the early industrial constitutional monarchies of the early nineteenth century. All the institutional relations whose normative stability Hegel could once be so sure of have lost their original status in the course of accelerated, so-called “reflexive” modernization. In the process, they have largely been replaced by new and much more flexible [verhaltensoffen] structures and organizations. Moreover, the experience of a “breach of civilization,” i.e. the realization of the possibility of a holocaust in the midst of civilized societies, has put a serious damper on the hopes that Hegel placed in the continual development of modern society within the framework of reason. On the other side, the theoretical premises of philosophical discussion, the conditions that determine what we are ultimately capable of thinking, have also shifted considerably since Hegel’s time. The ontological monism in which he anchored the dialectical notion of spirit is for us, the children of a materialistically enlightened age, no longer really conceivable. If we were to revive Hegel’s project, therefore, we would thus have to find another basis for his idea that an objective spirit is realized in social institutions.

Nevertheless, we would do well to take up Hegel’s intention of developing a theory of justice out of the structural preconditions present in our current society. The premises for such an undertaking cannot be so easily justified in advance; instead we would have to show in the course of the investigation that they are indeed justified. On the other hand, we cannot avoid giving an abstract outline of the requirements that make the structure and path of our investigation
comprehensible. Why should anyone find it reasonable to subsume the outline of a theory of justice under the idea of liberty, if I haven’t already elucidated at least the most basic premises that will guide the subsequent steps of my argumentation? The *first* premise of a theory of justice as an analysis of society is that social reproduction hinge on a common orientation toward certain fundamental ideals and values. Such ethical norms determine not only from above, in the form of “ultimate values” (Parsons), what social measures or developments are conceivable, but also co-determine from below, in the form of more or less institutionalized educational goals, the guidelines that each individual’s life path should follow. The action-theoretical model developed by Talcott Parsons still offers the best example for this kind of concept of society – an approach that explicitly claims to stand within the tradition of German idealism as represented by Hegel, Marx and Weber. According to Parsons, the ethical values that constitute the “ultimate reality” of any given society flow into its individual segments via the cultural system, and shape the action of its members through mechanisms such as role-expectations, implicit obligations and socialized ideals – in short, through an arrangement of social practices. The members of society, whom Parsons takes to be conflictually integrated subjectivities in the Freudian sense, normally follow the norms that have been established as specific objectifications of higher values in the most diverse subsystems. He even sees the economic subsystem as being “ethically” permeated; unlike Luhmann or Habermas, he sees the economy as a normatively integrated sphere of action – nowadays, for instance, via the principle of achievement. What specifically characterizes Parson’s model of society, and what makes it particularly appropriate for actualizing Hegel’s intention, is the fact that it makes the existence of all social orders contingent on their legitimation in terms of ethical values and ideals worth striving for: *Quote*

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Even the existence of “heterogeneous” societies, i.e. those displaying a measure of ethnic or religious diversity, only marginally affects the “transcendental” nature of the compulsion to normative integration. Although in heterogeneous societies there is a need to formulate ethical values in a more comprehensive and general manner, material reproduction and cultural socialization must inevitably follow a set of commonly shared norms. In this weak sense, every society is to a certain extent an embodiment of objective spirit, insofar as its institutions, social practices and routines contain the normative convictions of its members about the aims of their social interaction. We will have to demonstrate later that this notion of “objective spirit” must be further enriched if it is to justify all the intentions I associate with the idea of a theory of justice as an analysis of society.

The second premise of such a theory of justice is that in constructing a normative point of reference, we only draw on those values or ideals that are actually embodied in the conditions of reproduction prevailing in a given society. For Hegel, and also for other authors in the Hegelian tradition such as Marx, the idea of justice is not an independent, free-standing concept that can be explained on its own terms. This could also be the reason why these thinkers seldom use it in a non-polemic and constructive manner. In the classic sense handed down from antiquity, the term “justice” indicates the “binding and permanent intention to render to everyone his due” (Justitian, Cicero, Thomas von Aquinas). In essence, this is the demand that we treat every person in a way that is adequate to his or her individual personality, which can imply treating others both in an equal or unequal manner. Hegel was convinced that to achieve this adequacy required by justice, the concept cannot contain an independent, free-standing criterion. Thus we cannot take up a neutral perspective through which to analyze the features of those to whom we must do justice, because our relationship to them is always permeated by practices in which we are both involved. For Hegel, therefore, the
internal meaning of the already established practices in a particular society is what determines what it means to “render to everyone his due.” And because this meaning results solely from the ethical value possessed by a given subsystem within the context of the society as a whole, criteria of justice can only be analyzed with reference to the ideals that are genuinely institutionalized within that society. As a result, what counts as “just” is what promotes adequate and just action in terms of the role assigned to a particular social sphere in the context of the ethical “division of labor” in a given society.

By merely demanding that our analysis be immanent, however, I haven’t yet demarcated the difference between this approach and what I have termed “Kantian” theories of justice. After all, the latter also present the moral principles they derive “constructively” as an expression of a given value orientation. Both Rawls’s theory of justice and Habermas’s theory of right, for instance, have their point of departure in the historical congruence between free-standing principles of justice and normative ideals of modern societies. The difference between these theories and the one I am presenting here is that in taking up Hegel’s approach, we must abstain from constructively justifying free-standing norms of justice before we have immanently analyzed the norms institutionalized in society. This preliminary step becomes superfluous, if by comprehending the meaning of prevailing values we can already demonstrate that they are normatively superior to the values of previous social ideals or “ultimate values.” Although this immanent approach admittedly employs an element of historical-teleological thought, this kind of historical teleology is inevitable insofar as it is likewise presupposed in those theories of justice that assume a congruence between practical reason and an existing society.

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But even this doesn’t suffice to characterize the particularity of the idea of developing a theory of justice directly via an analysis of society. After all, even principles of justice derived immanently could be understood as being only secondarily applied to social reality by serving as a criterion for examining the moral quality of institutions and practices. In this case, nothing would have changed, since this would once again be to presuppose a reality processed and determined by a third party, and upon which normative standards would be applied only after the fact. The division of labor between social sciences and normative theory, between individual empirical sciences and philosophical analysis, would be preserved just as it is in traditional conceptions of justice. In his “Philosophy of Right,” Hegel did not want to have social reality, whose just order he himself sought to determine, externally determined for him. He was just as unwilling as Marx – Hegel’s loyal disciple in this regard – to leave the business of social analysis up to the social sciences (political science, political economy). Because of his idealistic premises, it is only with great effort that we can understand the methodological procedure Hegel sets against the traditional division of labor.\(^\text{10}\) In order to avoid repeating complicated discussions, here I will use the term “normative reconstruction” to indicate this notoriously misunderstood strategy. This is a procedure that seeks to implement the normative intentions of a theory of justice within a theory of society, which it does by taking the immanently justified values as a guideline for processing and sorting the empirical material. One thus analyzes current institutions and practices according to their normative merit, in the order of their importance for the social embodiment and realization of socially legitimate values. In this context, “reconstruction” means that out of the entirety of social routines and institutions, we take up only those that can be regarded as indispensable for social reproduction. And because the goals of reproduction should essentially be determined by accepted values, “normative” reconstruction must mean the

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process by which we sort out social routines and institutions according to the level of their contribution to the stabilization and implementation of these values.

Even though it might appear that Hegel’s procedure is far from meeting the requirements of a theory of society, in fact it overlaps to a surprisingly great degree with the projects of some of the classic sociologists. Both Durkheim and Parsons, to name just two of the more well known authors, do not just sort out the material gained through their empirical studies according to criteria associated with the material or technical necessities of social reproduction. Instead they focus on those social spheres or subsystems whose importance derives from the contributions they make to securing and realizing the dominant values institutionalized in modern society. Both sociologists employ a method of reconstruction in that they examine the course of social reproduction according to how it contributes to the preservation of certain specific, socially accepted values and ideals. Similar to how Hegel proceeds in the “Philosophy of Right,” they sort out individual social spheres according to their respective role in stabilizing and realizing the modern hierarchy of values. Of course, neither Durkheim nor Parsons sought to formulate a theory of justice directly; both restrict themselves to investigating the process of normative integration and potential threats to that process. Hegel, on the other hand, seeks to ascertain the social conditions that combine in these processes to make up the principle of justice in modern society.

The third premise for developing a theory of justice as an analysis of society is thus the methodological procedure of normative reconstruction. In order to avoid the danger of merely applying immanent principles of justice to given reality after all, we mustn’t assume social reality itself to be an already
sufficiently analyzed object. Instead we must first unpack its essential features by showing which social spheres make which contribution to securing and realizing values that are already socially institutionalized. The image of our advanced modern society that thereby emerges may diverge in many respects from the one that currently prevails in the social sciences. After all, it presents us with institutions and practices that generally receive only marginal attention, while shifting other occurrences that normally stand in the foreground into the background. But these shifts between what is significant and what can be neglected are not uncommon in the social sciences – a discipline that consists almost exclusively of controversial concepts.\textsuperscript{12} In the context of this study, such shifts derive from the intention to bring out only those social practices and institutions whose normative character serve to realize socially institutionalized values.

In the attempt to bring to appearance the structural conditions of modern societies, we also gain a systematic sketch of what Hegel meant by the term \textit{Sittlichkeit}, or “ethical life.” After his death, this notion in particular and his “Philosophy of Right” in general both fell into disrepute. In enlightened and progressive circles the term quickly came to stand for the desire to uphold only those practices and moral institutions useful for preserving the prevailing order. Hegel himself, however, chose this term primarily in order to counter the then prevailing tendency of moral philosophy by drawing attention to the network of institutionalized routines and obligations in which moral attitudes were not embedded as an orientation towards certain principles, but in the form of social practices. For Hegel, whose methodology in the sphere of practical philosophy remained mostly Aristotelian, there was no question that intersubjective practices, and not cognitive convictions, were the homestead of morality.\textsuperscript{13}
Nevertheless, Hegel did not intend the notion of “ethical life” merely as a description of existing forms of life. The very method he chooses – “normative reconstruction” – makes clear that he sought to proceed in a much more selective, typifying and normative fashion than would be permitted by Aristotelian positivism. Out of the great variety of ethical forms of life, he placed only those that demonstrably served to realize the universal values and ideals of modern societies under the category of “ethical life.” Those that failed to meet these normative requirements, and therefore anything that represented merely particular values or embodied backward ideals, were not even considered as being worthy of becoming objects of normative reconstruction.

But even with this qualification, the concept of “ethical life” still seems to have a tendency to affirm already existing institutions and practices. After all, the only social forms of life that can count as “ethical” are those that embody a universal value, in the sense that the practices needed for the realization of this value already exist in society. Yet, if we take a closer look at the procedure Hegel employs, we will see that he did not merely aim to corroborate and affirm established social practices, but to correct and alter them. In the course of normative reconstruction, the criterion according to which an element of social reality counts as “rational” does not emerge through an uncovering of already existing practices, but as a critique of these practices, or as a sketch of not yet exhausted possibilities of development. It is difficult to adequately characterize adequately this corrective, or rather critical, side of Hegel’s notion of ethical life, because the point is not just to outline what should be and thus to proceed in a merely normative fashion, but to sound out possibilities for praxis within the existing social reality that aid the realization of universal values in a better, more comprehensive or adequate way. In no way did Hegel intend to use such corrections or anticipations to simply leave behind the circle of existing social reality. The existing forms of ethical life were to remain a guideline for all
normative considerations in that not just any abstract, hardly realizable demand could be made on social comportment. Thus when Hegel criticizes in the name of justice or advises certain reforms, he proceeds by peeking only slightly beyond the horizon of existing ethical life in order to sound out any leeway for realistic changes. We would probably be right to think of the term “objective possibility” in this connection, which Max Weber methodologically outlined in his efforts to describe empirically verified ways of presaging social developments.\textsuperscript{14}

The fourth and final premise for developing a theory of justice as an analysis of society is that the method of normative reconstruction must always entail the possibility of critique. The point is not merely to uncover instances of already existing ethical life, but to be able to criticize these instances in the light of the values embodied in the institutions and practices of that society. The criteria upon which this kind of critique is based are the same that serve as the guideline for normative reconstruction. If an instance of ethical life consists of whatever represents universal values or ideals via a bundle of institutionalized practices, then we can also draw on these values in order to criticize existing practices as being inadequate given the social task they are to perform. Such a “reconstructive critique” thus doesn’t simply confront existing institutions and practices with external standards. Instead, the same standards that we apply in order to lift these institutions and practices out of the chaos of social reality can be employed in order to criticize these same institutions and practices as being deficient and incomplete embodiments of universally accepted values. The normative judgments made in this connection therefore have a gradual, and not categorical, character. What is criticized in each case is an institution that we consider “ethical” and that could better, more completely or comprehensively represent the values that serve as an overarching guideline for the reconstruction of ethical life. A good example of this “critical” intention is Hegel’s treatment of

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the “corporations” at the end of the chapter on “civil society.” Hegel is convinced that within the social division of labor involved in realizing universal values, these corporations are entrusted with the task of making the business classes ethically conscious of their contribution to social reproduction. This requires a series of social practices that serve to create a sense of rank and dignity \textit{[Standesehre]}, and to express the intention of universal well-being. In §253 of the “Philosophy of Right,” Hegel draws attention to phenomena of ethical decay arising from the failure of the corporations to fulfill their social task:

> When complaints are made about the luxury of the business classes and their passion for extravagance - which have as their concomitant the creation of a rabble of paupers (§244) - we must not forget that besides its other causes (e.g. increasing mechanization of labor) this phenomenon has an ethical ground, as was indicated above. Unless he is a member of an authorized Corporation, ... an individual is without rank or dignity, his isolation reduces his business to mere self-seeking, and his livelihood and satisfaction becomes insecure. Consequently, he has to try to gain recognition for himself by giving external proofs of success in his business, and to these proofs no limits can be set. He cannot live in the manner of his class, for no class really exists for him.”

This critique of the ostentatious consumption of the business classes is explicitly grounded in the claim that the ethical institutions within the guild system do not integrate their members to the extent demanded by their social function. Hegel does not draw on an external standard, but only criticizes “reconstructively” by drawing attention to the neglected potential of already existing institutions.

With these four premises, I have only outlined the most general methodological prerequisites for the investigation to come. In developing a conception of justice by way of social analysis, it must be assumed that the given form of social reproduction is determined by commonly shared, universal values and ideals. Both the goals of social reproduction and cultural integration are ultimately regulated by norms that are ethical insofar as they embody conceptions of the common good. The second premise claims that the notion of justice cannot be
understood apart from these overarching values. Institutions and practices in a society are “just” if they serve to realize universally accepted values. But it is only the third premise that gives us a clearer sense of what it means to develop a theory of justice as an analysis of society. It means to take the diverse array of practices and institutions that make up social reality and distill or “normatively reconstruct” those that are capable of securing and realizing universal values. Finally, the fourth premise should guarantee that the application of this method does not merely lead us to affirm already existing instances of ethical life. Instead, the process of normative reconstruction must be developed to a point at which it becomes apparent whether given ethical institutions and practices represent the universal values they embody in a sufficiently comprehensive or complete way.

Of course, even if we combine all four premises, it is not yet clear what justice actually means in the following study. The preceding remarks have in fact done no more than outline the theoretical framework in which it makes sense to develop a theory of justice as an analysis of society. Nevertheless, having sketched out these key formal points, I have made clear that such a project is wholly dependent upon how the most general values of modern societies must be determined. Not until after we have accomplished this task can we begin in earnest the task of normatively reconstructing our current, post-traditional ethical life.