

CHAPTER I

Ethical Community as the Framework for Family Ethics

The Rationale for the Renewed Turn to Ethical Community

In both theory and practice, controversy over framing conduct and institutions has increasingly revolved around the idea of ethical community. Advanced more and more frequently under the banner of “communitarianism,” this idea has cast an alluring spell. However vaguely it be drawn, ethical community is widely entertained as a practical panacea to the alienations and anomies of modern life, where instrumental rationality and atomistic self-interest have allegedly supplanted tradition without supplying any new bonds of intrinsic worth. And just as commonly, the concept of ethical community is appealed to as a remedy to the complementary dilemmas of the two leading competitors in contemporary ethical theory, teleological and procedural ethics. On both fronts, a turn to ethical community has taken center stage. If this turn sometimes has a nostalgic air, yearning for the faded spirit of ancient assemblies, town meetings, and village commons, it equally reflects the perennial character of the underlying issues, as much in dispute when Plato and Aristotle argued for the polis in opposition to the natural ties of tribal association and the instrumental association of social contract, as when Hegel defended the ethical life of family, civil society, and state against the advocates of restoration and the contractarians of his day. Although we can take advantage

of the experience of past ages that have grappled with ethical community in theory and practice, the worth of their achievements can only be known by first certifying the valid content of ethical community and the place it should command in the conception and reality of conduct. If instead particular forms or general ideals of ethical community are examined solely in respect to their internal coherence or historical success, the *de jure* question of what normativity ethical community possesses will remain unanswered.

The current rehabilitation of ethical community, comprising the communitarian turn in ethics, has its own lessons for reconstructing theory and practice provided one rethinks its formulations with the same critical autonomy that needs to be applied to every earlier experience. Above all, what the communitarian turn uncovers of the inherent logic of ethical community must be distinguished from what it ignores and perverts.

To its credit, the communitarian appeal to ethical community is grounded in an understanding of the complementary limitations of teleological and procedural ethics. Admittedly, teleological ethics adopts a plausible strategy by seeking the legitimacy of conduct in the given nature of its ends, transforming ethics into a science of a highest good. Since all conduct is purposive, assessing the value of actions and institutions readily seems to depend upon ranking the worth of their ends and overcoming a paralyzing disunity of aims by locating one goal to which all others are subordinate. Every candidate for a highest good, however, ultimately succumbs to the skeptical doubt that its particular content is devoid of universal validity: Since any putative ultimate end, be it happiness or human perfection, cannot retain its normative primacy if any other factor grounds its archimedean role, its authority must reside in its own immediate givenness. Yet every particular content can be ascribed an immediate givenness, especially when no higher tribunal can be relied upon without undermining the primacy of the end it is intended to sanction. Indirect proof offers no salvation, since any attempt to show that no other ends can possess value without contributing to the putative highest good still leaves open the possibility that the ends of action are not what make conduct and institutions valid. Hence, teleological ethics remains caught in the bind of rooting conduct in a particular content, whose universality remains doubtful.

By contrast, procedural ethics falls into precisely the inverse dilemma. Abandoning any attempt to found normativity in privileged ends, procedural ethics instead appeals to a privileged form of willing, involving a principle that determines conduct indepen-

dently of any particular end.¹ Right hereby precedes the good, insofar as what makes conduct valid is conformity to an antecedently prescribed formal requirement that first allows an end to qualify as good. Yet, because the privileged form of willing is prior to all particular ends and actual conduct requires that something particular be willed, this content must derive from some other source. But no further law can mandate how to decide which extraneous end should be chosen as the goal of action in conformity with the privileged procedure since the procedure has exclusive normative primacy. Whatever end is willed thus enters in arbitrarily as far as the privileged procedure is concerned. For just this reason, procedural ethics is haunted by the specter of formalism, according to which its formal principle of willing cannot mandate any particular end and determine actual conduct unless some privileged good is surreptitiously introduced. As a consequence, no achieved goal can be certifiably right, as such, leaving the ethical an unrealizable ought to be and the agent trapped in an interminable struggle to act in independence of given ends without benefit of any unequivocally sanctioned alternative. Hence, whereas teleological ethics stamps conduct with a particularity lacking universality, procedural ethics leaves conduct governed by a universal law devoid of any intrinsic particular content.

On both sides, the root of failure has a common logical form: an inability to unite the particular and universal dimensions of conduct. Accordingly, overcoming the limits of each side involves a common solution: somehow arriving at a form of willing whose universality is concrete, possessing a lawfulness that specifies particular ends of its own, or, to put it inversely, involving action in pursuit of particular ends that intrinsically enjoy a common legitimacy.

It is just such a solution that the communitarian turn purports to find in its idea of ethical community. Defined in function of the remedy it is to provide, ethical community is here conceived as an association in recognition and pursuit of shared values, where membership involves fulfilling a role carrying with it the obligation of consciously reproducing the bonds of community that comprise the very association in which that role can alone be performed. On this basis, each member is able to pursue particular aims that are automatically shared in common by all other individuals who duly fulfill the roles defined by their membership in the community. Alternately, what is recognized by all individuals as a condition for belonging to and participating in the community is a common good that contains within itself the activities that realize it. That

is, the structure of the community is itself what all participants realize in reaching the aim of their role, just as their activity is nothing but a constituent element of the association they perennially seek to sustain in fulfilling their station.

This intrinsic connection between the agency of membership and the unity of the community overcomes the one-sidedness of teleological ethics insofar as the particular ends that are sought in occupying one's station are inherently universal with respect to the community. Indeed, their conformity with the ends of every other member consists in nothing other than the reproduction of the unity of the community, which exists in nothing but their congruent activity.

On the other hand, the limits of procedural ethics are equally overcome in that the universality of conduct consists in acting in conformity to actual roles that presuppose and reproduce the very good that they seek to realize. What ought to be is no longer an unreachable beyond, but rather a form of community that must already be at hand in order to make possible engagement in the very roles that aim at its reproduction. Accordingly, agents are no longer caught in the dilemma of choosing between arbitrary goals and conformity to an empty lawfulness, where morality is an endless striving, always falling short of the fulfillment of duty. Instead, members of the community actually achieve ethical virtue by fulfilling their role, whose fulfillment is the very life of the community to which they belong.

The Fatal Limits of the Communitarian Turn

From F. H. Bradley through such current figures as Alasdair MacIntyre, Michael Sandel, Charles Taylor, and Michael Walzer,² the proponents of the communitarian turn have left the idea of ethical community with little further content, with the result that they have committed themselves to two fateful qualifications that ultimately undermine the solution they seek: 1) that ethical community is the exclusive structure of normative conduct, and 2) that the concept of ethical community does not itself mandate the particular content of the roles, ends, and association that it may take.

These qualifications of the idea of ethical community reflect an embrace of the type of thinking underlying Wittgenstein's private language argument.³ That argument took the inability to find resources in the structure of consciousness for distinguishing between certainty and truth, or between subjective stipulation and

objective validity, as indicative of how objectivity must be sought in given intersubjective conventions whose shared practices provide standards of justification that can be distinguished from merely subjective belief. Such conventions, however, cannot themselves be susceptible of any justification, since that would require appeal to some other measure of "objectivity," which is impossible if shared practices are the exclusive source of normativity. Accordingly, the intersubjective conventions that provide nonsubjective meanings and knowledge are themselves contingent, ungrounded practices, with the same arbitrary lawfulness as games.⁴ Similarly seeking to overcome the limits of appealing to "the given" or to the form of individual willing as sources of normativity, communitarians have turned to ethical community as a historically contingent structure of shared practices with the same arbitrary content and the same exclusive norm-sustaining role as the language games to which Wittgensteinians turn as the locus of meaning and truth.

Thereby, on the one hand, communitarians absolutize ethical community, identifying all normative conduct with the activities ingredient in ethical community. Rendering the domain of ethics coextensive with the roles animating ethical association, this absolutization excludes any morality without community as well as any property entitlements that might be given independently of the distributive prerogatives enjoyed through membership in such putative ethical institutions as the family, the market, and the state. Such denial of any normative action existing apart from ethical community rests upon the assumption that the only alternative is an atomistic ethic, grounding conduct in the acts of the self upon itself or upon external things and succumbing to the same pitfalls that undermine teleological and procedural theories. That there might be other forms of interaction involving rights and duties given independently of membership in some existing community is simply not considered.

Complementing this absolutization is a commitment to the formality of the concept of ethical community. At the same time that ethical community is advanced as the exclusive framework of normative conduct, the idea of that framework is held to leave undetermined what particular institutional configurations and correlative roles and aims it may involve. Since these details are not contained in the concept of ethical community, they are beyond a priori prescription. Instead, they must be left to the grasp of a historical understanding that describes the contingent conventions of history that alone provide content to the otherwise empty scaffold of the idea of ethical community.

This formality is of crucial significance for it directly resurrects the very same problems that the appeal to ethical community is designed to overcome. Just as teleological ethics can not demonstrate the universality of its particular candidate for the good, so communitarianism here renders the content enshrined in ethical community an arbitrary and transient phantom of history. And just as procedural ethics cannot tie the universal form of willing that it privileged to any particular ends without falling back upon teleological appeals, so communitarianism has ended up leaving the universal idea of ethical community powerless to specify any particular institutions to concretize its unity. Although each putative ethical community may well comprise an institutional system reproduced by the roles its members constitutively perform, the historical contingency of its content renders its universality something wholly relative to the particular conditions of its existence. Far from being genuinely universal, the specific content of institutions and agency is only common to a particular, contingently given community, whose own existence is devoid of any further justification. Hence, it makes no sense to judge one community by the values of another. Moreover, the legitimacy of no community can be upheld from within, for all that any can lay claim to is the accidental fact of its own existence. Any successful transformation of one regime into another institutional order will thus have no more and no less rationale than the preservation of the status quo. Whatever community results will possess the same purely internal validity, whose fortuitous foundation makes its authority an arbitrary fate, which its members have no more reason to flee than to embrace. Although the roles they assume carry with them duties tied to the reproduction of the community to which they belong, once that membership be questioned, no ethical imperative remains. In effect, the communitarian turn offers little more than an injunction to occupy one's station. This might satisfy an Eichmann, but it otherwise reflects a formality in the idea of ethical community that rivals that of any categorical imperative.

No remedy is to be found by appealing to historical necessity and claiming that, although no ethical community is universal, each particular shape arises in a necessary sequence, leaving it the exclusive ethical option for its time. This gambit, offered by F. H. Bradley⁵ and commonly misattributed to Hegel,⁶ only further weakens the ethical claims of communitarianism. To begin with, upholding the claim of any necessity in historical development is problematic enough. No empirical study of history can

establish necessity, since not only is the accuracy, representative character, and trustworthiness of all historical testimony subject to doubt, but all any study of historical fact can confirm are particular patterns of association in what happened to have been observed. Alternately, any attempt to conceive a priori some necessary development in history is at pains to maintain the difference between history and nature upon which reference to anything historical depends. Once the willful caprice of convention drops out of consideration, cultural development hardly becomes distinguishable from a natural evolution. Yet even if historical necessity be granted, it can provide no remedy to the formalism afflicting the communitarian turn. For if the content of every ethical community is not only particular to a historical period, but a necessary product of historical development, how can the activities of its members possess the basic autonomy on which ethical responsibility depends? Far from being a regime in which duties and virtues have their life, ethical community would become a prisoner of necessity, resembling more the instinctual society of social insects than an association in recognition of any good. Instead of obtaining normative validity, a historically necessitated ethical community would be removed from the sphere of ethics and take its place as one more background condition beyond which the domain of right and wrong begins.

Liberating Ethical Community from Its Communitarian Deformation

If the concept of ethical community is to provide a solution to the dilemmas plaguing contemporary ethics and serve as a guide to reconstructing modern institutions including the family, the two defining dogmas of the communitarian turn must be supplanted. For this to be achieved, the concept of ethical community must undergo a dual transformation.

On the one hand, ethical community can no longer be conceived as a formal framework, whose content is relegated to historical accident. Instead, ethical community must obtain a universally valid content, bringing necessary concreteness to its concept. As the experience of teleological and procedural ethics testifies, such normative content cannot be supplied by appeal to privileged givens masquerading as highest goods or by recourse to privileged forms of willing posing as archimedean procedures of ethical construction. In both

cases, factors are immediately advanced as sources of normativity that cannot be legitimated in accord with the very standard of legitimacy that they impose. So long as what is justified is different from what supplies justification, the justifying element cannot possess the character of being justified that it confers upon what derives justification from it. Whether the legitimating standard be a privileged given content or a privileged determiner of sanctioned ends and institutions, the abiding distinction between legitimated conduct and legitimating factor, a distinction generic to foundational justification, introduces this debilitating incoherence.

What alone eliminates the distinction and the foundational dilemma it reflects is the identification of normativity with the reality of self-determination. This identification is implicit in the internal dilemma of foundationalism in that what confers legitimacy can possess legitimacy only if it loses its distinction from what it legitimates and serves as its own standard. In that case, what is justified and what justifies become one and the same, enabling the erstwhile foundation to meet its own normative requirements by grounding itself and thereby ceasing to be the determiner of something other than itself, of something determined from without. By finally satisfying its own standard of normativity, the foundation cancels itself as a foundation, rendering self-determined bestower and bearer of validity alike. Through this self-elimination of foundationalism, freedom emerges as the very being of normativity. No other alternative is possible, for what is not self-determined is determined by something else, reinstating the situation of foundationalism, whose own internal demands can only be met by removing the ground-grounded distinction and reverting to self-determination.

Far from being relative to the historical contingencies of Western culture, self-determination commands an unqualified validity. Unlike any other shape of conduct, self-determination owes its measure to nothing but itself, overcoming the gap between legitimating factor and legitimated conduct that fatally haunts foundational justification, to which postmodernism dogmatically limits rationality and ethics.⁷ Because reason and action need not be conditioned by foundations, we are not condemned to exercises of ideology critique or reflective equilibrium, unmasking the privileged vocabularies allegedly underlying our values and becoming self-conscious of how we can accommodate our given historical conventions in a consistent manner. The autonomy of reason and action provides the remedy to these misadventures in pragmatism: because self-determination alone escapes dependence upon extrinsic foundations,

it enjoys the self-grounding, presuppositionless character that normativity ultimately requires.⁸

If ethical community is to escape the relativity of an externally conditioned content and take its place as a genuinely ethical structure, it must therefore be reconceived as an association of freedom, whose agencies, ends, and institutions are defined by nothing other than their role as constituents in the reality of self-determination.

This does not signify that a normatively valid ethical community must somehow escape having natural preconditions altogether. Like any form of conduct and association, ethical community must share the natural features that underlie the existence of a plurality of agents. Yet these prerequisites, comprising the physical, astronomical, chemical, biological, and psychological conditions without which rational agents cannot interact at all, do not thereby prescribe what shape ethical community should have. Precisely because these natural conditions are the enabling prerequisites of all conduct, they cannot serve as principles for differentiating between the good and bad conduct that they equally make possible. Hence, the presence of such enabling factors in no way undercuts the *normative* independence of a community whose bonds consist in modes of freedom.

By contrast, any community whose roles, ends, and institutions are instead allowed to be prescribed by factors given independently of freedom will at best comprise a "natural" ethical community, with a tainted validity. Although the members of such a community, like the ancient polis or the patriarchal household, perform roles in recognition of a common good that they reproduce as the existing framework of their activity, their stations reflect structures of domination, where hereditary rank, gender, race, cultural traditions, and other heteronomous factors constrict autonomy. This is the terrain of tragedy, for the given particularity of natural ethical community precludes any preestablished harmony between the competing obligations of other associations within the same body politic or between the aims of different "naturally" defined nations. Chance may provide a fleeting respite of compatible norms, but the fate of historical convention may just as readily impose conflicting duties for which no peaceful resolution is possible, except for the capitulation of one side.

Insofar as the communitarian turn leaves ethical community determined by historical accident, it effectively reduces ethical association to a sphere of such "natural" determination, where legitimacy is invested in given conventions devoid of any unconditioned

validity, save for the purely contingent circumstance that history gives rise to institutions of freedom. In that case, which modern times have partially witnessed, normativity resides in the self-determined character of the conventions, rather than in their shared acceptance by those who practice them.⁹

Reconstructing ethical community as an association of freedom might well appear to be at one with the task of determining self-determination that has preoccupied ethics and convulsed modernity ever since the claims of liberty supplanted the teleological appeal to a highest good. The great difficulty that stymies traditional attempts to conceive freedom has been their inability to conceive the free will such that both the form and content of its agency, that is, both who and what are willed, are determined by its volition. Lacking this double reflexivity, the will remains defined by factors it has not imposed upon itself, reducing its freedom to a merely formal capacity of choice, choosing among independently given alternatives with a faculty it has not chosen. So long as the free will is conceived as a function of the self, it cannot help but suffer this dual limitation and have a given, natural form of agency that is the perennial precondition, rather than the product of its willing. In this respect, liberty, the faculty of choice, is a natural will, whose capacity to decide among given ends is indeed the presupposition of any act of volition.

Although the ubiquity of the natural will might persuade one to reduce all volition to its liberty, in the nonnatural, historically emergent context of ethical community, individuals can very palpably exercise an artificial agency whose own character and ends are determined by the very willing that reproduces the association within which it alone can be exercised. For instance, individuals can exercise the specific political freedoms defining the agency of free citizen, but only as a member of a democratic state, whose institutions themselves consist in nothing but the political self-determination of its members. Hence, the character of their agency is itself the product of the institutional freedom they engage in, allowing them to exercise a mode of willing that is genuinely self-determining. One might therefore be tempted to consider normatively valid ethical community as identical with the reality of self-determination. Given the identity of freedom and normativity, one would then end up confirming the second dogma of communitarianism, which absolutizes ethical community as the exclusive framework of legitimate conduct.

Yet the rehabilitation of ethical community cannot take this

route and simply eliminate the formalist assumptions of communitarianism and supplant natural determination with the artificial freedoms of ethical association. The second communitarian dogma absolutizing ethical association as the exclusive mode of normativity must also be overturned. For, far from being coextensive with the reality of freedom, ethical community cannot coherently comprise a structure of self-determination at all unless two other modes of freedom are admitted whose autonomous agencies are not defined by membership in an existing community. These two types of freedom without community are the self-determinations constitutive of property ownership and moral accountability. Ethical community cannot enjoy normativity without recognition of their independent being because both property relations and morality are necessary preconditions for exercising any freedom as member of an existing association.¹⁰

Property and Morality as Preconditions of Ethical Community

Contrary to communitarian dogma, the two freedoms without community are not atomistic in character. Determining oneself as a property owner and as a moral subject both involve interacting with and in respect to other agents who do the same. To exercise the agency of a person, that is, to count as a free individual recognized to have entitled possession, one must objectify one's will in some factor in a manner recognizable to and recognized by another person, whose own will enjoys the same recognized status. Otherwise, one simply has intercourse with what gets treated as things, exercising a technical mastery in which no question of entitlement can enter. Similarly, to act morally, one must will and be held accountable for willing in respect to the right and welfare of other morally accountable agents. Otherwise, one's deeds have no moral dimension.¹¹ In each case, the freedom at issue involves an exercise of right tied to a corresponding duty to respect the correlative freedom of those who are bound to respect one's own like freedom. As such, the freedoms of persons and moral subjects irreducibly involve relations of plurality in which the exercise of right has an objectively recognized existence.

Yet, in engaging in these interactions, property owners and moral subjects still do not respect each other's entitlement on the basis of being members of any preexisting community. The rights

and duties of personhood and moral accountability extend beyond the reaches of every particular institutional framework. It matters not whether one belongs to the same family, participates in the same society, or is the fellow citizen of another person and moral subject. In each and every institutional context, one remains bound to respect the due property entitlements and moral accountability of others and have one's own autonomy as person and moral subject respected. These rights are unavoidably basic because no valid institution, that is, no institution of freedom, can ignore them without undermining itself.

This is most apparent with respect to the right of persons to be respected as an owner. Exercising this right always involves being recognized as inalienable proprietor of one's own body, since otherwise one is liable to being owned by another like any other rightless factor.¹² Consequently, whenever respect for the right of persons is not incorporated in existing conventions, individuals are in the position of slaves, for whom no act is recognized as juridically their own. In such a situation, the individual can no more be held morally accountable than occupy any institutional role, such as family member, economic agent, legal subject, or citizen, to which rights and duties apply. Accordingly, no ethical community can give its members an autonomous agency, be it as codetermining spouse and parent, autonomous member of society, or self-governing citizen, unless they be recognized as persons owning at least their own body.¹³

The recognition of moral accountability is equally indispensable. If individuals are not entitled to be held responsible for acting with both the right purposes and intentions and an understanding of what is good, how can they fulfill any roles as members of a community whose bonds consist in modes of freedom? The determinations of conscience may well conflict with the demands of rectitude required, for example, by citizenship, but if moral autonomy is totally ignored, rather than partially restrained, the possibility of ethical rectitude is itself undercut. Agents can hardly enjoy the rights and observe the duties of self-determined family membership, social responsibility, and citizenship if they are not held accountable for conscientiously acting with the right purposes and intentions. When moral autonomy is ignored, agents cannot determine the scope of their own deeds. Their purposes, intentions, and conscience no longer have any bearing upon what they are held responsible for and how they in turn judge others. Such a situation is commonplace under conditions of "natural" ethical com-

munity, where slavery goes hand in hand with the submission of conscience to the external authority of given tradition, be it secular or sacred. Truncating the autonomy that can be exercised in community, this predicament deprives all roles of any moral dimension, while leaving action at the margin of community, where one's station no longer dictates what is to be done, determined by factors other than freedom.

Ethical Community as the Obligatory Complement of Property Right and Morality

Whereas ethical community can neither be nor be conceived without incorporating the independently determined freedoms of property and morality, these freedoms without community can be exercised prior to as well as spatially removed from ethical institutions. Nevertheless, property relations are no more able than moral strivings to guarantee the realization of their own freedoms by themselves. Neither one can unequivocally determine nor securely uphold its own rights and duties in each and every case. If owners are left to their own devices, as defined by the constituents of property relations, nothing can prevent the outbreak of malicious and nonmalicious violations of property entitlements for which no satisfactory solution is available. Whereas owners can always disagree in good faith in their interpretations of property boundaries and terms of contract, property relations contain no universally recognized authority to provide a binding adjudication of such disputes and award due compensation. Victims of accidental harm to their person and property face an analogous predicament. Those whose own person or property is allegedly responsible for such accidental harm may well dispute their liability as well as the magnitude of damages. In either type of nonmalicious wrong, good faith disagreements or unintended torts, unless owners come to settle their dispute, the violation of right will persist. Similarly, the same absence of some higher respected power leaves malicious wrongs bereft of any authoritative charge, adjudication, or punishment, leaving victims no other recourse than revenge, which risks being interpreted as a wrong of its own.

These limits to the security of person and property call for some remedy and, in the absence of an institutional solution, personal initiative is the only immediate option, an option characteristic of the moral situation, where the individual must independently

determine the particular content of the good and bring it into existence through personal effort. Yet recourse to moral agency only adds problems of its own.

The engagement in moral conduct does indeed actualize freedom to the degree that the limits of responsible action are recognized to be determined by the knowing and willing of the agent, in that moral subjects hold one another accountable only for that part of their deed and its consequences that are prefigured in their purposes, intentions, and conscience. Yet paying heed to the moral prerogative of subjectively determining the realization of right generates a dilemma brought to a head in each agent's effort to act on conscience. Here what purposes and intentions count as good is left to the independent determination of the agent, whose initiative is required to bring right into being. Yet, if others are to recognize the right of the moral agent to act on conscience, they are liable to fall into contradiction with the edicts of their own conscience. What one moral agent knows to be good based on conscience need not conform to what any others hold good. Since the good is not a merely private matter, but something objectively and universally valid, one cannot respect the conflicting conscience of another without denying the claims of one's own. The only escape from this dilemma on the basis of moral accountability is the fortuitous happenstance that one's conscience has spoken in unison with every other. Yet since such harmony depends upon purely external circumstance, it hardly upholds the autonomy of moral action.

The requirements for overcoming the limits of property relations and morality are therefore twofold. To overcome the limits of property, the reality of right must not consist simply in an external factor, outside of which willing occurs. Rather, the reality of right must incorporate the activity of willing that brings it into being. Then freedom will have an existence that sustains itself. Alternately, to overcome the limits of morality, the subjective determination of the good must be such that what each agent independently aims at is inherently in consonance with the aims of others. Then, the actions realizing right will have a coherent unity.

Ethical community, reconstructed as an institutional system of freedom, provides a solution on two levels.

On the one hand, since ethical freedoms have as their own prerequisite constituents the respected autonomy of person and moral subject, ethical community provides an existing institutional order in which property relations and moral accountability are objectively observed in conformity with the other community freedoms they make possible. Without incorporation within ethical

community, property and morality either remain prey to incipient conflicts they cannot themselves resolve or get propped up by some convention given independently of freedom, thereby compromising their own validity. By contrast, within ethical community, the freedoms of owners and moral subjects get sustained on the basis of ethical self-determination. This does not involve a limitation upon ethical freedom, undermining its own autonomy. Because property and morality are themselves prerequisite ingredients in ethical freedom, upholding their self-determinations is part and parcel of ethical community's own reproduction.

On the other hand, ethical community overcomes the limits of property and moral self-determination by constituting a mode of freedom uniting their complementary dimensions. In ethical community, the good at which conduct aims contains the activity of its realization insofar as membership involves knowing and willing goals whose achievement reproduces the whole, thereby securing the unity of each member's volition with the performances of the rest. Consequently, the boundaries of the objectification of willing have a common and commonly recognized existence in the unity of the community, removing all incipient conflicts and equivocations so long as members uphold their roles. Moreover, since ethical institutions reproduce themselves in face of possible failures of rectitude, their constitutive activities must also involve overcoming deviations in conduct. In these ways, ethical community provides the objectively recognized realization of right that property relations fail to secure, as well as the universal conformity of subjective initiative that morality is ever seeking.

Hegel and the Rehabilitation of Ethical Community

With ethical freedom presupposing property and morality, and property and morality requiring incorporation in ethical community, the false dichotomy of atomism and ethical community must be supplanted by the threefold differentiation of property right, morality, and ethical community. Only then are the constitutive preconditions at hand for conceiving as well as realizing the institutions of freedom that comprise the complete system of ethical community.

The basic conceptual framework of this threefold differentiation has, of course, been pioneered by Hegel in his *Philosophy of Right*. By conceiving right as the reality of freedom, thereby identifying normativity with self-determination, and by then distinguishing

the three fundamental modes of freedom as Abstract Right, Morality, and Ethical Community, Hegel provides the basic framework for prescribing the different institutions of ethical association without succumbing to the dual dogmas by which communitarianism deforms and delegitimizes ethical community.¹⁴

Yet when Hegel advances to differentiate ethical community as a politically self-regulated system of family, civil society, and the state, he partially capitulates to the communitarian agenda, allowing all three ethical spheres to be branded by natural distinctions. Bending to the history of his and, alas, our own day, Hegel ties the family to a heterosexual monogamous union,¹⁵ where roles are defined by gender, dictating for the husband a privilege to represent the family in society and state and for the wife a bondage to domestic affairs.¹⁶ These measures permit factors given independently of the self-determination at issue to restrict the freedom of competent individuals to marry whom they choose and to codetermine their household affairs. Moreover, these curtailments of family freedom limit social and political freedom by gender, restricting wives' access to civil society and the state. Hegel makes both public spheres further hostage to natural privileges by giving monarchy and estates decisive roles in civil society and the state. Instead of enforcing equal economic opportunity among classes defined by different forms of market earning, Hegel retains estates, whose feudal distinctions define membership partially by hereditary rank and combine corporate and political privileges, undercutting the demarcation between civil society and state.¹⁷ By next making the head of state a hereditary monarch instructing an estate assembly,¹⁸ Hegel allows birth right to curtail the equal political freedoms of representative democracy.

The Place of the Family in the Division of Ethical Community

Despite these major lapses, Hegel still provides a basic conceptual anatomy of family, social, and political association that permits differentiating the modes of ethical freedom independently of extraneous factors. Hegel maintains that the family, civil society, and the state are ethical communities whose unity can be distinguished as immediate, mediated, and both immediate and mediated, respectively.¹⁹ This categorization parallels the threefold division of determinacy into given, determined, and self-determined determinacy that Hegel develops in his *Science of Logic*. Hegel's theory of determinacy there appropriately begins with an account of im-

mediacy, the so-called "Logic of Being," since any putative commencement with mediated or self-mediated determinacy would already presuppose given determinacy as a constituent, either of the ground of what is mediated or of the content that ends up being determined by itself. The sphere of determined or mediated determinacy comes next in the "Logic of Essence," insofar as determined determinacy incorporates determinacy as such (further qualifying it as mediated by a determiner), whereas self-determined determinacy incorporates determined determinacy (since what is self-determined involves determined determinacy, with the qualification that what determines is identical with what gets determined). Logical determinacy accordingly exhausts itself in the "Logic of The Concept" with an account of self-determined determinacy, where what is mediated and what mediates are one and the same. To the degree that determinacy can be given, determined, or self-determined, the differentiation of immediate, mediated, and self-mediated ethical community could be said to exhaust the logical possibilities.²⁰

In line with this division, domestic community can be understood as an immediate ethical association in that its unity is based on the shared feeling of its adult members to bond together into a joint private sphere for whose consolidated, but particular right and welfare they are mutually responsible. The shared feeling on which spouses base their ethical commitment to one another is immediate in that no further factors provide necessary conditions for its presence. Individuals are not compelled to marry owing to any qualities they possess or any relations they incur; they must feel like marrying one another and although this immediate resolve may be accompanied by any number of other considerations, none independently mandate that marriage must ensue, let alone who must marry whom. Indeed, it is the very givenness of feeling that permits it to be the vehicle of the immediacy of the marriage commitment.

Similarly, the union of spouses into a joint household is immediate in that the connection of their welfare and interests is the given basis of their family roles, rather than the product of any mediating term, such as some separate commitment or initiative, as in commercial partnerships or political alliances. Precisely because spouses thereby form one united person, with no third terms intervening, their relationship within marriage cannot be formulated in contractual terms, which always concern possession or disposition of some factor external to persons.²¹

Admittedly, the element of feeling in family association introduces a form of passive receptivity in which individuals unite in

virtue of an inner modification that they have not chosen or concluded, but immediately experience. Accordingly, Hegel characterizes feeling as something in which the agent is unfree, that is, naturally bound.²² Yet Hegel goes beyond acknowledging this passive receptivity in feeling to tie the immediacy of family association to further natural givens, restricting marriage to a heterosexual union in which biological sexual differences mandate different family roles for wife and husband. This definition of household unity by natural features, however, undermines the family's status as an institution of freedom, capable of commanding normativity. Not only does it introduce a relation of subordination between spouses, but it ascribes different family roles to adult members independently of their willing. Moreover, it adds factors extraneous to how family association, civil society, and the state differentiate themselves as immediate, mediated, and self-mediated ethical communities.

Comparisons between family and civil and political community make this clear, if only by way of anticipation. In distinction from the immediate ethical community putatively characterizing the normatively valid family, civil society, whose basic structure is the market, associates individuals through the mediation of the pursuit of satisfying self-selected needs for what others have to offer as means of their own self-seeking. Thus, in the network of commodity exchange, individuals satisfy their complementary market needs by obtaining goods from others in return for providing what the latter want. By contrast, individuals belong to their family immediately, as members of a joint private domain in which what each owns belongs directly to the other members of the family²³ and where the right of each member to have his or her welfare upheld is immediately connected to the duty to contribute to the welfare of all. In both cases no other factors intervene as mediating terms of their relation. For example, spouses are responsible for one another's welfare just as are parents for their children's well-being simply by being members of the same family and not because of any particular agreements made among them.

The same absence of mediating conditions applies to the role of feeling and intimacy in family ties. The sentiment underlying marriage and the resolve to preserve the marriage union exhibit immediacy to the degree that nothing but a mutual desire to marry provides necessary or sufficient grounds for marriage between any eligible prospective spouses. Although different individuals might be classed as right for one another by possessing certain general qualifications, no assortment of objective properties can dictate

entry into marriage without the mutual feeling to take the nuptial vow. If any general external grounds sufficed to make individuals spouses, the autonomy of marriage would be undercut. This is especially true since the marriage bond involves specific individuals to the exclusion of all others, rather than the general relations exhibited by law in civil society and political activity, which constitutively aims at governing the whole body politic. Since the individual is an object of feeling, whereas the universal is an object of thought and law, letting other considerations dictate marriage independently of sentiment would subject spouses to an extraneous imposition.

Similarly, the direct unity in the private affairs of family members places individuals in a situation where nothing stands as a barrier to the most personal of ties. Social and political involvements may set individuals in relations of vital importance, but none involve the complete melding of private domains by which family relations take on a personal character, where the feeling to make common cause is a sentiment for removing all juridical distance from the other person, save for ownership of each member's own body.²⁴

Significantly, none of these dimensions of immediacy involve reference to gender differences, sexual orientation, or any other natural distinction. If they did, characterizing the family as immediate ethical community would disqualify the household both as a mode of self-determination and as a form of genuine ethical community.

Not surprisingly, the mediated character of civil society can equally be specified apart from any reference to gender, sexual orientation, or any other factor that might have a putatively natural definition. Civil society can comprise a mediated ethical association insofar as its unity reproduces itself through the reciprocal pursuit of self-selected needs for what others have to offer as the instrument for achieving their own particular interests. In this respect, the commodity relations building the basic structure of civil society are not an exercise in a natural, atomistic self-seeking, as much modern economic theory would have one believe. Commodity relations rather comprise a mode of conduct in which market participants exercise economic freedoms that can only be enjoyed within the context of an existing market where economic need and earning inherently involve relations between agents in recognition of their commodity ownership and complementary social interests. What their natural differences may be are otherwise matters of indifference for their participation in this interaction.

Unlike domestic community, the ensuing social community is universal in scope, spinning its web of economic freedom beyond household and national boundaries alike, fostering a world market even though the ends its members aim at always remain particular in content. For this reason, civil society's global community of interest functions as the *ground* of interdependence whose *appearance* is the pursuit of personally selected interests constitutively tied to the satisfaction of the interests of others.²⁵

Free political association, for its part, can easily be seen to have neither a simply immediate nor mediated unity. Its members are citizens not because of some shared feeling, nor through the mediation of aiming at particular ends distinct from political union. Rather, citizens exercise their constitutive political freedom by consciously willing the form of the whole body politic to which they belong. Thereby engaging in acts of self-government whose aims are universal, citizens reproduce the political institutions that preside over particular households and national civil society, allowing the totality of ethical life to form a self-ordered whole, resting on its own freedom. The body politic thus has immediacy by not having its unity determined by some external condition and simultaneously has a mediated character by consisting in a self-rule that continually aims at reproducing the constitutional framework within which its political freedom can alone be exercised. Achieving this self-determined unity, where what is mediated and what mediates are one and the same, normative political community unites the immediacy and mediation characterizing household and social community.

The necessity of the division of ethical community into distinct spheres of family, civil society, and state can be corroborated by supplementing Hegel's differentiation by immediacy and mediation with an architectonic reflecting the scope of each association and the character of its defining ends. Reconstituted as an ethical community of self-determination, the family comprises an association *particular in scope* and *particular in aim*. The household extends only so far as a particular private domain and its members perform their household roles aiming at sustaining the particular welfare of their family. By contrast, in civil society the association is *universal in scope* but *particular in aim*. Although members of civil society interact in pursuit of self-selected interests, they do so through a network of market relations, civil law, and public welfare institutions capable of extending beyond household and national borders, as world markets and international agreements can attest. Even when civilians make common cause

in trade unions, professional associations, employer federations, consumer organizations, tenant leagues, and other social interest groups, their shared interests are still particular, distinguishable from those of other groups, whereas their membership in the social interest group is predicated upon that group's interaction within civil society, to whose universal system of interdependence it must relate in order to achieve its aims. By contrast, in politics the association is *universal in scope*²⁶ and *universal in aim* when a state stands by itself and politics focuses on domestic self-government. Then citizens act politically by seeking to determine the order of the whole to which they belong, a whole that extends as far as domestic affairs. Finally, the association is *particular in scope* and *universal in aim* when one state interacts with others within the sphere of international relations. In that case, the body politic still aims at governing the entirety of its own order, but does so as a particular regime among others. Thereby politics exhausts the logical possibilities of organizing ethical community according to the particularity and universality of its scope and aims, suggesting once more the completeness of the basic division of family, civil society, and state.²⁷

With the conceptual resources underlying these rudimentary divisions, the system of ethical community may be duly reconstructed, purging all residue of illegitimate natural determination and developing the complete reality of the freedoms that should define membership in the household, society, and the state.²⁸ Rescuing ethical community from the communitarian turn, this reconstruction deserves to be the central agenda of ethics today, as much in theory as in practice.

In respect to family ethics, this challenge plausibly involves conceiving the just family as an ethical community whose unity is immediate, with a scope and aim that are equally particular. Indeed, the rational reconstruction of ethical community first must address the family. Whereas the family does not incorporate civil or political association, civil society absorbs families within its market, legal, and welfare institutions, whereas the state presides over both household and civil society. Accordingly, the family is the most elementary ethical community, presupposed by civil society and state. Any theory of civil society or of the state that fails to take into account the family and how it relates to social and political freedom therefore condemns itself to blind incompleteness.

Conceiving the just family as a form of ethical community, of course, does not simply depend on whether either of the above logical schemes certify the completeness of the differentiation of

ethical community and the place of the family within the division. What directly matters is whether a family order can be determined that comprises a structure of freedom *sui generis* and whether the integration of this family regime with the other institutions of freedom can be made intelligible and coherent. If these dual questions can be affirmatively answered, then a mode of family life will be established enjoying the foundation-free normative validity that self-determination uniquely commands.

To help focus how the family can figure as a valid form of ethical community, several preliminary issues warrant exploration. First, how can the family avoid being determined by natural and psychological exigencies compromising its normativity? Secondly, how can family ties be distinguished from friendship without appealing to natural considerations? The answer to the first question will remove lingering obstacles to recasting the family as an institution of freedom, whereas the answer to the second will save family association from reduction to property or moral relations.