

HEGEL'S DEFENCE OF THE CONSTITUTIONAL MONARCHY

A DEFESA DE HEGEL DA MONARQUIA CONSTITUCIONAL

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RESUMO: Na *Filosofia do Direito*, Hegel defende a monarquia constitucional como um elemento-chave da soberania política. No entanto, comentadores como M.O. Hardimon, Klaus Vieweg, Z.A. Pelczynski e Thom Brooks defendem que um governo racional exige que o poder da monarquia seja muito limitado. Por conseguinte, estes pesquisadores ignoram que, para Hegel, o poder da monarquia é crucial para ultrapassar os limites das concepções liberais de soberania política. Estes pesquisadores liberais, parece-me, são influenciados pela concepção de Montesquieu da divisão de poderes. No entanto, Hegel argumenta com razão que, embora Montesquieu tenha tomado a direção certa ao conceber o Estado como uma unidade orgânica, não conseguiu formular corretamente a relação entre a constituição política e a divisão de poderes. Assim, Hegel afirma que as teorias políticas liberais não conseguem assegurar a soberania política, uma vez que consideram a constituição política como logicamente anterior e juridicamente superior aos poderes políticos. Em contrapartida, Hegel defende que a soberania política genuína só pode ser assegurada na medida em que o poder monárquico faz a mediação entre os poderes executivo e legislativo e a monarquia constitucional funciona como a unidade superior do poder monárquico e da constituição política. O poder monárquico, portanto, não é um poder único e absoluto, mas representa a monarquia constitucional como um todo.

PALAVRAS-CHAVE: Hegel; Monarquia Constitucional; Filosofia do Direito; Montesquieu; Divisão de Poderes

ABSTRACT: In the *Philosophy of Right*, Hegel defends the constitutional monarchy as a key element of political sovereignty. Commentators such as M.O. Hardimon, Klaus Vieweg, Z.A. Pelczynski and Thom Brooks, however, argue that a rational government requires that the power of the monarchy be very limited. Accordingly, these scholars ignore that, for Hegel, the power of the monarchy is crucial to overcome the limits of liberal conceptions of political sovereignty. These liberal scholars, it seems to me, are influenced by Montesquieu's conception of the division of powers. Yet Hegel rightly argues that while Montesquieu takes the right direction in conceiving the state as an organic unity, he failed to properly formulate the relation between the political constitution and the division of powers. Thus, Hegel claims that liberal political theories fail to secure political sovereignty, since they consider the political constitution to be logically prior and legally superior to the political powers. By contrast, Hegel argues that genuine political sovereignty can only be secured insofar as the monarchical power mediates between the executive and the legislative powers and the constitutional monarchy functions as the higher unity of the monarchical power and the political constitution. The monarchical power, thus, is not a single absolute power, but, rather, represents the constitutional monarchy *qua* whole.

KEYWORDS: Hegel; Constitutional Monarchy; Philosophy of Right; Montesquieu; Division of Powers

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1. Introduction

In the *Philosophy of Right*, Hegel argues that the constitutional monarchy is a key element of political sovereignty.¹ His defence of the constitutional monarchy is a most controversial issue, to say the least, that has divided authors into various camps. Three main camps can be identified. The first two camps focus on one specific issue: the weight of the monarch's power. Authors such as M.O. Hardimon, Klaus Vieweg, Z.A. Pelczynski and Thom Brooks argue that Hegel conceives of constitutional monarchy either as the least powerful institution or as the most powerful one, or else just as one of the elements of the political constitution.² What is at stake in this debate is whether Hegel's defence of constitutional monarchy is rational, for it is assumed that a rational government requires the constitutional monarch to have little power. By contrast, the third camp, which includes M. Tunick and B. Yack, sees no problem with the decision power granted to the monarch, but seeks to provide a justification for why Hegel's defence of constitutional monarchy is rational in other terms.³ As I see it, the third camp rightly defends the decision power granted to the constitutional monarch against its ardent opponents. This camp, however, does not take seriously two of the main objectives of the *Philosophy of Right*, namely, to provide a critique of both liberal conceptions of political sovereignty and the liberal conception of the division of powers represented by Montesquieu. This is mainly due to their failure to see the logical link between Hegel's account of the political powers and his view of how they secure political sovereignty, which is the focus of this paper.

In this paper, I will argue against the first two camps insofar as they either tend to interpret Hegel's conception of political sovereignty as in line with the liberal tradition or argue

¹ See HEGEL, G.W.F. **Elements of the Philosophy of Right**. Trans. H. B. Nisbet. Cambridge: Cambridge University Press, 1999 (hereafter PR followed by paragraph numbers, Hegel's remarks are indicated by 'R' and the additions by 'A' next to paragraph numbers in the body of the text).

² See HARDIMON, M. O. **Hegel's Social Philosophy: The Project of Reconciliation**. Cambridge: Cambridge University Press, 1994, p. 215; VIEWEG, K. The State as a System of Three Syllogisms Hegel's Notion of the State and Its Logical Foundations by Hegel's Political Philosophy. In: Brooks, T.; Stein, S (Ed.). **On the Normative Significance of Method and System**. Oxford: Oxford University Press, 2017, p. 124-41; and PELCZYNSKI, Z.A. Hegel's Political Philosophy: Some Thoughts on Its Contemporary Relevance. In: Pelczynski, Z.A (Ed.). **Hegel's Political Philosophy**. Cambridge: Cambridge University Press, 1971, p. 230-241. The second camp argues that the opposite is the case. See BROOKS, T. No Rubber Stamp: Hegel's Constitutional Monarch. **History of Political Thought**, n. 28, Issue 1, 2007, p. 91-119.

³ See TUNICK, M. Hegel's Justification of Hereditary Monarchy. **History of Political Thought**. n. 11, Issue 3, 1991, p. 481-96; YACK, B. The Rationality of Hegel's Concept of Monarchy. **American Political Science Review**, n. 74, Issue 3, 1976, p. 709-20.

that it should fit into the latter.⁴ They assume that Hegel's defence of the constitutional monarchy would be rational only if the monarch had no real decision power or, in Hegel's own words, if he or she would only dot the 'i' (PR 280A). Yet commentators such as Pelczynski and Vieweg claim that Hegel in some passages of the *Philosophy of Right* states that the monarchy should be vested with sovereign power and, thus, that Hegel's conception of political sovereignty is either ambiguous or invalid.⁵

For instance, in his 'A system of Three Syllogisms', Vieweg interestingly attempts to clarify the conceptual relation between the three powers. Contrary to Hegel's claim, which states that the sovereign power is the ground of the whole, Vieweg argues that the legislative power is "the ground of the whole, i.e., the foundation of the political organization of the state".⁶ He further suggests that historical circumstances such as censorship led Hegel to disguise what should have been stated by expounding on the true syllogistic relation between the three powers.⁷ Accordingly, he claims that applying the syllogistic logic correctly to the relation between the three powers "entails *the theoretical legitimization of a republican, democratic constitution* and of the fundamental meaning of the legislative assembly as expression of a representational-democratic structure".⁸ Vieweg states that "the universal, reasonable will manifests itself in the form of the constitution and in the form of the legislative power".⁹ While this is not exactly wrong, I hold that Vieweg ignores the crucial role Hegel assigns to the constitutional monarchy.

⁴ For the sake of limiting the scope of the paper, I consider a parliamentary system of governance, which consists of the legislative, the executive and the judiciary, to represent the liberal conception of the division of powers pioneered by Montesquieu. Obviously, the term 'liberal' covers different positions such as the position of individual liberalists and communitarian liberalists. I use the term 'liberal' to refer to political theories that consider the freedom of individuals and their attempt to actualize their own ends to be an absolute principle, as it is enshrined in many modern political constitutions. I think Hegel rightly rejects the liberal view that deems the state as an instrument to achieve the ends of self-interested individuals, and I hold that his defence of the constitutional monarchy overcomes the problem of political sovereignty in liberal conceptions of the division of powers.

⁵ See, among others, PELCZYNSKI. Hegel's Political Philosophy, p. 230-231; VIEWEG. A System of Three Syllogisms, p. 124-141.

⁶ Hegel states that "the power of the sovereign" is the power "in which the different powers are united in an individual unity which is thus the apex and beginning of the whole" (PR 273). See VIEWEG. A System of Three Syllogisms, p. 140.

⁷ I am not convinced that Hegel's position stems from fear of censorship in this case because his logical analysis of the relation between political powers and the constitutional monarchy is intelligible as it is. In my view, Vieweg's interpretation undermines Hegel's key insight into political sovereignty, which has the potential to understand the limits of liberal conceptions of the division of powers. For an opposite view, see STEIN, S. Hegel's Monarch, the Concept and the Limits of Syllogistic reasoning. *Hegel Bulletin*, n. 37, Issue 1, 2016, p. 145-155.

⁸ VIEWEG. A System of Three Syllogisms, p. 140.

⁹ VIEWEG. A System of Three Syllogisms, p. 140.

For Hegel, a sovereign state in its formal sense requires both a constitution and the division of powers (PR 273, PR 276 & PR 277). However, I will argue in this paper that, in its concrete sense, such a state requires first and foremost the constitutional monarchy. Only the constitutional monarchy, Hegel argues, can maintain both the division of powers and their unity, hence establish political sovereignty. Contrary to many scholars, I hold that one of Hegel's central objectives in the *Philosophy of Right* is to overcome the limits of liberal political theories, which in his view fail to secure political sovereignty. Hegel's critique of Montesquieu's conception of the division of powers, for instance, clearly shows that his conception of political sovereignty is not in line with the liberal tradition.

In order to understand Hegel's defense of the constitutional monarchy, it is important to distinguish between the monarchial power *qua* single power and the monarchial power *qua* key element of the constitutional monarchy as a whole. Hegel does not conceive of the monarchial power as a particular power but, rather, as a power that represents the whole by mediating between the legislative and executive powers, which are both historically and logically opposed to one another. The view that the monarchial power is an absolute power is defended by despotic regimes, and Hegel states that he does not defend this view (PR 278).¹⁰ To be sure: one can still be skeptical of the attributes Hegel assigns to the monarchial power, which is held by a particular individual, like everyone else. Yet the point I want to make is that Hegel defends the monarchial power on the basis of its capacity to mediate between the legislative and executive powers, and hence to establish the actual unity of the political constitution and the political powers. Nonetheless, it is not my intention to argue that the constitutional monarchy is the best form of government in all respects. For instance, a central issue of contestation that I do not want to defend is the hereditary aspect of the monarchy as conceived by Hegel.¹¹

I begin by briefly discussing the position held by scholars on Hegel's conception of political sovereignty, which I take to be clearly represented by Z.A. Pelczynski in his essay on 'Hegel's political philosophy' (section 2). I then provide an account of Hegel's conception of the state and his defence of the constitutional monarchy in the *Philosophy of Right* (section 3).

¹⁰ The term 'monarchial power' has the same meaning as the term 'princely power', yet the monarchial power, for Hegel, is not an absolute power, since it decides on the basis of principles rather than arbitrarily. However, the monarch takes the ultimate decision as regards its mediating role between the legislative and executive powers. Both the political constitution and the monarchial power are key elements of the constitutional monarchy, yet only the monarchial power can represent the constitutional monarchy *qua* whole.

¹¹ For a critique of this aspect, see AVINERI, S. *Hegel's Theory of the Modern State*. Cambridge, Cambridge University Press, 1974, p. 185-89.

Next, I will introduce Montesquieu's conception of the state and the division of powers in his *The Spirit of Laws* (section 4) and Hegel's critique of Montesquieu's conception of the division of powers (section 5). Finally, I discuss an account of a Hegelian reply to scholars who consider Hegel's conception of political sovereignty to be in line with the liberal tradition (section 6).

2. Z.A. Pelczynski's Formulation of the Argument

In his essay on 'Hegel's political philosophy', Pelczynski states that Hegel rightly pointed out that political sovereignty represents "the unified character of the public authority (...), - or, more strictly, the domestic or internal aspect of a state's sovereignty".¹² Nonetheless, Pelczynski holds that Hegel's theory of sovereignty is either ambiguous or invalid, since Hegel considers the princely power to have both constitutional and absolute power.¹³

For Pelczynski, Hegel rightly holds that the "crown as an institution is only one of the elements of the whole differentiated constitutional structure, which is logically prior and legally superior [to the monarch]".¹⁴ He writes,

It would seem to follow from this concept that the constitutional power of the monarchy is limited by the equally legitimate powers of the other organs (the executive, the legislature, the electorate and the lower public authorities) which together with the crown form the 'organism', or the constitution of the political and civil state.¹⁵

In this regard, Pelczynski argues, Hegel claims that the constitutional monarchy to have limited power, that is, to be just one power among others. Since the different powers are branches of the political constitution conceived as a single public authority, each power must be prevented by the political constitution from possessing "excessive independence".¹⁶ Accordingly, the power of the monarch should be limited by equally legitimate powers such as the executive and the legislative power. Thus, the political constitution as a whole maintains its primacy and superiority by preventing each power from becoming self-subsistent. Pelczynski argues that

¹² PELCZYNSKI. *Hegel's Political Philosophy*, p. 230.

¹³ PELCZYNSKI. *Hegel's Political Philosophy*, p. 230. and 231.

¹⁴ PELCZYNSKI. *Hegel's Political Philosophy*, p. 230.

¹⁵ PELCZYNSKI. *Hegel's Political Philosophy*, p. 230.

¹⁶ PELCZYNSKI. *Hegel's Political Philosophy*, p. 230.

Hegel's account of the political constitution ensures political sovereignty if it is interpreted in this way, that is, if it grants limited power to the monarchy.

Yet, Pelczynski claims that Hegel contradicts himself by also considering the princely power to be an absolute monarchy. Hegel indeed seems to be holding an ambiguous position, while claiming that the princely power must be vested with sovereign power, since the monarch, rather than the political constitution, is conceived of as "the ultimate source of the validity of all legal acts and rules in a state, as the basis of a particular, positive legal system".¹⁷ In this regard, Pelczynski argues, Hegel would maintain that other political powers are inferior to the monarchy, from which they derive their power and can even be deprived of their power in some cases.¹⁸ Thus, in Pelczynski's view, Hegel in such passages would contradict his true conception of political sovereignty, i.e., his affirmation of the logical primacy and legal superiority of the political constitution, which prevents the self-subsistence of any political power from maintaining their equilibrium. Yet I do not believe that Pelczynski's qualified critique of Hegel is warranted. The next section will elaborate on Hegel's conception of the state and the reasons why he defended the constitutional monarchy.

3. Hegel's Defence of the Constitutional Monarchy in the Philosophy of Right

Hegel's defence of the constitutional monarchy is intimately related to his conception of the state. Thus, I will take two steps to discuss Hegel's defence of the constitutional monarchy. First, I will elaborate on Hegel's conception of the state. Second, I will analyse Hegel's defence of the constitutional monarchy from the perspective of his conception of the division of powers.

As regards the first step, Hegel conceives of the state as "the actuality of ethical idea" (PR 257). He claims that the main rational institutions of ethical life consist of the family, the civil society, and the state. Contrary to family and the civil society, the state represents the actuality of the substantial will, which is "manifest and clear to itself" (PR 257). This means that citizens think of and know the laws of the state and implement what they know accordingly (PR 257). He writes:

¹⁷ PELCZYNSKI. *Hegel's Political Philosophy*, p. 230-231. See also PR 279.

¹⁸ PELCZYNSKI. *Hegel's Political Philosophy*, p. 231.

If the state is confused with civil society and its determination is equated with the security and protection of property and personal freedom, the interest of individuals as such becomes the ultimate end for which they are united; it also follows from this that membership of the state is an optional matter. (PR 258R)

Hegel takes the substantial will to be acknowledged by citizens who raise their will beyond the pursuit of private interests to actualizing public freedom (PR 258). For Hegel, the state exists in two ways, that is, in custom and in the self-consciousness of citizens. Citizens have such self-consciousness because they recognize the state as their essence, end, and the product of their activity (PR 257). Hegel argues that citizens relate to the state as both an external necessity and their immanent end (PR 261). They perceive the state as an external necessity because personal, moral and social freedom are dependent upon the state. In this sense, the state is the higher power to which everything else must be subordinated (PR 261). On the other hand, it is the duty of individuals to be members of the state and to relate to the state as their immanent end, since only as citizens can they actualize their rights. Just as individuals have rights that should be respected, so too they have the duty to be a member of the state and act in accordance with its laws (PR 261). Hegel, thus, argues for a strong state that has “the unity of its universal and ultimate end with the particular interest of individuals” (PR 261).

In Hegel's view, a political state consists of both a political constitution and the division of powers. Thus, the basic determination of a political state is not only “the substantial unity as ideality of its moments”, but also that “the particular functions and activities of the state belong to it as its own essential moments” (PR 276 and 277). Hegel claims that the particular functions and powers of the state are “rooted in the unity of the state as their simple self”, that is, “the sovereignty of the state” (PR 278). He states that “sovereignty is the ideality of every particular authority”, that is, each of the political powers is a totality, for each power contains the other moments within itself as active powers (PR 272).

Yet, as was mentioned above, Hegel rejects despotism, in which a particular power is completely self-sufficient, since the latter signifies “the condition of lawlessness in general, in which the particular will as such [...] counts as law” (PR 278R). For Hegel, sovereignty is “to be found specifically under lawful and constitutional conditions as the moment of ideality of the particular spheres and functions within the state (PR 278). As I see it, this means that the constitutional monarchy expresses the ideality of the legislative and executive powers, that is, the insight that they are mutually dependent elements of an encompassing whole. As Hegel states, “the power of the prince (*fürstliche Gewalt*) [...] presupposes the other moments, just as

it is presupposed by each of them” (PR 285). Thus, particular powers are “not independent or self-sufficient in their ends and modes of operation”, but, rather, are “determined by and dependent on the end of the whole” (PR 278).

Hegel further claims that the ideality of political sovereignty does not manifest itself in times of peace, since “the particular spheres and functions within the state pursue the course of satisfying themselves and their ends” (PR 278). Yet in a situation of crisis, he argues, “it is around the simple concept of sovereignty that the salvation of the state is entrusted, while previously legitimate functions are sacrificed; and this is where that idealism already referred to attain its distinct actuality” (PR 278). In my view, Hegel holds that in times of peace the monarchial power may not be visible, for in this case immediate decisions are not needed.¹⁹ Yet the fact that in time of crisis the monarchial power manifests itself is a proof that the true sovereignty of the state can be instantiated only by the constitutional monarchy.²⁰

Nonetheless, a political constitution must be expressed in various powers that are determined in accordance with the constitution. These powers, Hegel argues, maintain the state's continual existence (PR 269). He writes:

The political disposition takes its particularly determined content from the various aspects of the organism of the state. This organism is the development of the idea in its differences and their objective actuality. These different aspects are accordingly the various powers within the state with their corresponding tasks and functions, through which the universal continually produces itself. It does so in a necessary way, because these various powers are determined by the nature of the concept; and it preserves itself in so doing, because it is itself the presupposition of its own production. This organism is the political constitution. (PR 269)

Obviously, the political constitution *per se* must be immediately instantiated in political powers to be actualized, namely, in the legislative and executive powers, while the latter must be further mediated by the monarchial power to be a stable unity. Thus, contrary to the liberal conception of the division of powers, in Hegel's view each power is both distinct from the others and

¹⁹ Of course, Hegel states the role of the monarch is just dotting the I (PR 280 A). Yet this claim, in my view, refers to what the monarch does during peaceful times.

²⁰ In this regard, Carl Schmitt is right when he states that the sovereign power is “the one who decides on the normal and emergency situation” (See SCHMITT, Carl, **Political Theology: Four Chapters on the Concept of Sovereignty**. Trans. G. Schwab. Cambridge, MIT Press, 1985, p. 10). For Hegel's exposition of the category ideality, see Hegel, G. W. F. **Encyclopaedia of the Philosophical Sciences in Basic Outline. Part I: Science of Logic**. Trans. G. di Giovanni. Cambridge: Cambridge University Press, 2010, § 213, p. 381.

constitutes the whole political constitution (PR 272). As he puts it, “each of the powers in question is in itself the totality”, for each power contains the other moments within itself as active powers (PR 272). As will be discussed below, Hegel further claims that political sovereignty must be vested primarily in the constitutional monarchy rather than the political constitution *per se*. Although the division of power is a key component of a political state, Hegel rejects the absolute self-sufficiency of powers. Only if the monarchial power mediates the division of powers, namely, the legislative and executive powers, can the other political powers be relatively self-sufficient (PR 272R). In my view, each power mediates between the other powers, yet only because the monarchial power mediates between the legislative and the executive powers that the relative self-sufficiency of political powers can be secured. By contrast, if the political constitution *per se* is conceived of as instantiated in subordinate political powers, including the monarchial power, the struggle for domination cannot be avoided. I will now turn to the second step, which concerns Hegel's defense of the constitutional monarchy.

Hegel's central objective in his defence of the constitutional monarchy is to provide a genuine account of how relative self-sufficient political powers can be secured, that is, without compromising their unity. Unlike the liberal approach, Hegel holds that the idea of the state consists in an organic division of powers that has universal, particular and individual aspects. He argues that the immediate form of the political constitution consists of a twofold division of powers, namely, the legislative and the executive powers (PR 276 & PR 277). In his view, the legislative power is the power of the state that corresponds to universality (PR 273). The executive is the power of the state that corresponds to particularity (PR 283). As he argues, a political state has its particularity, that is, the executive power, within it (PR 273, note 1). By contrast, liberal political theories distinguish between the legislative, executive and the judiciary powers. As will be discussed in Hegel's critique of Montesquieu's conception of the division of powers (section 5), Hegel claims that the judiciary power should not be seen as the third power, for its role primarily concerns the sphere of civil society and so lies “outside the above spheres” (PR 272A).

According to Hegel, the political state consists of the legislative, the executive and the power of the sovereign. Yet, he argues that only the constitutional monarchy *qua* whole can properly actualize political sovereignty. He argues:

If the powers - e.g. what have been called the executive and legislative powers - attain self-sufficiency, the destruction of the state, as has been witnessed on a grand scale [in our times], is immediately posited; or if the state is essentially preserved, a unity of one kind or another is established for the time being by means of a conflict whereby one power subjugates the others, and it is by this means alone that the essential [object], the survival of the state, is achieved. (PR 272R)

As I see it, this passage indicates that some sort of unity is necessary to overcome the struggle for domination between the executive and legislative powers. Thus, the legislative and the executive powers can overcome the danger of collapsing into a unitary power only if those political powers are mediated by a third power, i.e., the monarchial power.²¹ As stated, Hegel claims that “each of the powers in question is in itself the totality”, for each power contains the other moments within itself as active powers (PR 272). Yet I argue that only the monarchial power is a concrete universal, since only the monarchial power possesses its own particularity within it. Thus, for instance, although the legislative power is mediated by both the monarchial power and the executive power, it does not possess the monarchial and the executive powers as its own particularity. Hegel, thus, conceives of the monarchial power as one of the three powers, namely, the legislative, the executive and the monarchial power, yet only the monarchial power represents the constitutional monarchy *qua* whole as their higher unity. He writes:

The third moment in the power of the prince (*fürstliche Gewalt*) concerns the universal in and for itself, which is present subjectively in the conscience of the monarch and objectively in the constitution and laws as a whole. To this extent, the power of the sovereign presupposes the other moments, just as it is presupposed by each of them. (PR 285)

As Hegel puts it, the constitutional monarchy has “its own actuality distinct from that of the other rationally determined moments” (PR 286). The other powers, for their part, have “their distinct rights and duties in accordance with their determination”, that is, in relation to the totality, rather than as absolute self-sufficient powers (PR 286). Thus, the presence of the

²¹ I am not taking a position on whether Hegel sees the monarchial power as the first or third power. I think that it does not matter much if the monarchial power is posited first and the two other powers are related to it in accordance with the logic of the concept. For the sake of clarity, however, I do not follow Hegel's exposition in the *Philosophy of Right*, but rather follow his first ordering of the powers in PR 273 as universality, particularity, and individuality, which correspond to the legislative, the executive and the monarchial power, respectively. In this approach, the monarchial power is the third power.

constitutional monarchy provides a guarantee for the rational constitution of all political powers (PR 286R).

Contrary to the liberal conception of the division of powers, Hegel claims that a rational relation between the political powers is not one of checks and balances that prioritizes the political constitution over any of the powers. For Hegel, a rational state rests both on the political constitution and the actual powers that do the governing, including the legislative, the executive and the princely power. Only the constitutional monarchy, however, is able to secure political sovereignty, for it keeps the legislative and executive powers apart, albeit in a non-absolute manner, while maintaining their unity. Hegel writes:

Public freedom in general and a hereditary succession guarantee each other reciprocally, and their association is absolute, because public freedom is the rational constitution, and the hereditary character of the power of the sovereignty is the moment inherent in its concept. (PR 286R)

Clearly, Hegel make a contrast between the constitutional monarchy and the presence of public freedom to show that the constitutional monarchy as key moment of subjectivity that secures public freedom, which is immediately instantiated as the legislative and executive powers. Thus, as stated, the powers of the legislative and executive can be kept apart as a totality on their own if they can relate to a third power as their higher unity. Otherwise, the struggle domination or their collapse into a unitary power would be the major tendency of particular powers. As was mentioned above, Pelczynski and other scholars defend the liberal conception of the state that consists of a political constitution and political powers that have limited powers. In this regard, they follow Montesquieu. In the next section, I will briefly introduce Montesquieu's conception of the state and the division of powers.

4. Montesquieu's Conception of the State and the Division of Powers in The Spirit of Laws

In his *The Spirit of Laws*, Montesquieu argues that the state is an entity that is entailed by the need to establish laws among citizens who live in a society.²² He distinguishes two types of the state of war in any society and that prompts the need to establish laws. These are the state

²² See MONTESQUIEU. **The Spirit of Laws**. Trans. A.M. Cohler, B.S. Miller, and H.S. Stone. Cambridge: Cambridge University Press, 1989, Book I, chapter 3, p. 7-9.

of war among nations and the state of war among individuals in a society. He states that the laws constitute right of nations, civil rights and political rights.

The rights of nations refers to the relation peoples have with one another.²³ It is “founded on the principle that the various nations should do to one another in times of peace the most good possible, and in times of war the least ill possible, without harming their true interests”.²⁴ By contrast, civil right concerns “the relation that all citizens have with one another”.²⁵ Yet since a society can continue to exist only thanks to a government, laws also concern political rights, i.e., the “relation between those who govern and those who are governed”.²⁶

For Montesquieu, law in general is “human reason insofar as it governs all the peoples of the earth”.²⁷ Each nation’s law, he argues, is “only the particular case to which human reason is applied”, and, for that reason, law should be appropriate to the people for whom they are made.²⁸ In short, Montesquieu argues that any state law must conform to the physical aspect of the country, the way of life of the peoples, the degree of liberty granted in the constitution, the religion of the inhabitants, and other factors such as inclinations, wealth, number, commerce, mores and manners of the inhabitants.²⁹ Moreover, he claims that the laws must be “related to one another, to their origin, to the purpose of the legislator, and to the order of things on which they are established. They must be considered from all these points of view”.³⁰

Regarding Montesquieu conception of the division of power, as it is well known, he argues for the separation of powers, which is largely adopted by liberal theories and contemporary politics.³¹ In his *The Spirit of Laws*, in the chapter titled “On the constitution of England”, he lists three powers that should be kept separate. These are the legislative power, the executive power and the judiciary power. The legislative power makes the law. The executive power executes laws made, while the judiciary power “punishes crimes or judges disputes between individuals”.³² The main objective of the separation of powers, he claims, is to preclude any power, whether a single person or body of government, from single-handedly making and executing the law. For, in this case liberty would be totally lost. The judiciary

²³ MONTESQUIEU. *The Spirit of Laws*, Book I, chapter 3, p. 7.

²⁴ MONTESQUIEU. *The Spirit of Laws*, Book I, chapter 3, p. 7.

²⁵ MONTESQUIEU. *The Spirit of Laws*, Book I, chapter 3, p. 7.

²⁶ MONTESQUIEU. *The Spirit of Laws*, Book I, chapter 3, p. 8.

²⁷ MONTESQUIEU. *The Spirit of Laws*, Book I, chapter 3, p. 8.

²⁸ MONTESQUIEU. *The Spirit of Laws*, Book I, chapter 3, p. 8.

²⁹ MONTESQUIEU. *The Spirit of Laws*, Book I, chapter 3, p. 8-9.

³⁰ MONTESQUIEU. *The Spirit of Laws*, Book I, chapter 3, p. 8-9.

³¹ MONTESQUIEU. *The Spirit of Laws*, Book XI, chapter 6. p. 156-166.

³² MONTESQUIEU. *The Spirit of Laws*, Book XI, chapter 6. p. 157.

should also be separated from the other powers, since if the judges joined the legislative power, the power of the judges “over the life and liberty of citizens would be arbitrary”.³³ If the judges joined the executive power, then the judges “could have the force of an oppressor”.³⁴

In sum, Montesquieu claims that the liberty of citizens would be lost if there is no separation of powers. The same individual or the same body of governance should never exercise the three powers, namely, “that of making the laws, that of executing public resolutions, and that of judging the crimes or the disputes of individuals”.³⁵ As will be discussed in the next section, Montesquieu fails to see how the separation of powers cannot by itself guarantee political sovereignty and that the constitutional monarchy is key in this regard.

5. Hegel's Critique of Montesquieu's Conception of the Division of Powers

In the *Philosophy of Right*, Hegel endorses Montesquieu's conception of the state insofar as Montesquieu recognizes both that the laws of the state are dependent on the specific character of the state, and that the parts within the state are referenced only with respect to the whole (PR 3 & PR 261).³⁶ What is more, Hegel acknowledges Montesquieu's insight into the principle of the forms of government and the division of powers. In Hegel's view, Montesquieu is right in pointing out that political virtue, as conceived by Rousseauian view, is the principle of democracy (PR 273R).³⁷ Hegel states that Montesquieu rightly argues that the political constitution depends on “the disposition of the citizens as the purely substantial form” (PR 273R).

Nonetheless, Hegel states that Montesquieu is also right to criticize Rousseauian conception of the principle of democracy, namely, political virtue, as inadequate to establish political sovereignty. Montesquieu argues that efforts to establish a democratic state may fail if leaders lack virtue or act against the political constitution (PR 273R). Hegel states Montesquieu argument against Rousseau in the following way:

³³ MONTESQUIEU. *The Spirit of Laws*, Book XI, chapter 6. p. 157.

³⁴ MONTESQUIEU. *The Spirit of Laws*, Book XI, chapter 6. p. 157.

³⁵ MONTESQUIEU. *The Spirit of Laws*, Book XI, chapter 6. p. 157.

³⁶ For the conception of law as human reason, see MONTESQUIEU. *The Spirit of Laws*, Book I, chapter 3, p. 7-9, See also MONTESQUIEU. *The Spirit of Laws*, Book I, chapter 3, p. 7-9.

³⁷ A discussion of Hegel's assessment of Rousseau's theory of the state falls out of the scope of this paper, since the central aim of the paper is to provide an account of Hegel's defence of the constitutional monarchy from the perspective of the division of powers. For an elaboration on this topic, see RIPSTEIN, A. *Universal and General Wills: Hegel and Rousseau. Political Theory*, n. 22, 1994, p. 444.

England, in the seventeenth century, afforded a fine spectacle of how efforts to establish a democracy were rendered impotent by a lack of virtue on the part of the leaders, and [...] when virtue disappears from the republic, ambition takes hold of those whose hearts are susceptible to it and greed takes possession of everyone, so that the state falls prey to universal exploitation and its strength resides solely in the power of a few individuals and unruliness of everyone. (PR 273R)

For Hegel, Montesquieu endorses the Rousseauian conception of democracy, i.e., the view that a political state presupposes the political constitution. Contrary to the Rousseauian view, however, Montesquieu argues that both the legislative power and the executive power are essential elements of the state.³⁸ Thus, in Hegel's view Montesquieu claims that the state's instantiations in the political powers must be recognized, and, thus, that the political constitution must consist of a sum of political powers. In this view, each political power must remain subordinate to the political constitution, since only a sum of political powers can secure the unity of a political state.

For Hegel, thus, Montesquieu's position is more advanced than Rousseau's, since he rightly states that a plurality of political powers must constitute a political state (PR 283). Yet, seen from the perspective of Hegel, Montesquieu fails to see that the opposition between the legislative and executive powers can only be resolved by the constitutional monarchy. Accordingly, Hegel assumes his theory lacks the conceptual resource to establish political sovereignty. He writes:

The principle of the division of powers contains the essential moment of difference, of real rationality; but such is the view of the abstract understanding that, on the one hand, it attributes to this principle the false determination of the absolute self-sufficiency of each power in relation to the

³⁸ In his *The Social Contract*, Rousseau elaborates on the relation between the prince, the sovereign and the people. In this analysis, Rousseau conceives of the state as an immediate unity of the political constitution and the legislative powers, in which he grants a secondary role to other political powers such as the executive power. The prince, in his view, consist of the executive and government, and the sovereign power consist of the active legislative body and the people, which is the same sovereign body but conceived of as passive subjects. Rousseau claims that just as every free act has two causes, namely, moral and physical, so does the body politic possess two driving forces: will and force. In the body politic, the legislative power represents the aspect of will, while the executive power represents the aspect of force. For Rousseau, only the legislative power, which represents the aspect of will, is a sovereign power that constitutes the state *per se*. For him, the legislative power "belongs to the people and can belong only to them", while the executive power represents the political powers that are "used only in particular acts", hence "cannot belong to the people". See ROUSSEAU, J-J. **The Social Contract and the First and Second Discourses**. Translated by Susan Dunn and Gita May. New Haven, CT: Yale University Press, 2002, p. 193.

others, and on the other hand, it one-sidedly interprets the relation of these powers to one another as negative, as one of mutual limitation. (PR 272R)

In the above-quoted passage, Hegel argues that the liberal understanding of the rationality of the division of powers, including Montesquieu's, is the view of the abstract understanding, since the division of powers is reduced to mere 'essential moment of difference', while the concrete rationality of the division of powers must actually be a concrete universality that contains its particularity within it. Put differently, the truth of the division of powers into the legislative and executive power is not their absolute self-sufficiency, but, rather, is their unity in the constitutional monarchy *qua* whole (PR 258). Thus, Hegel rejects Montesquieu's conception of the division of powers insofar as it claims that the relation between the political powers consists in establishing their mutual limitation. Hegel argues that this relation between the powers is only of "a negative determination and of hostility and fear" and aims at establishing an equilibrium rather than a living unity (PR 272R).³⁹ Since the negative starting point makes "malevolence and distrust of malevolence the primary factor", the tendency of the powers is to devise "ingenious defences whose efficiency depends merely on corresponding counter-defences" (PR 272R). If powers such as the legislative and the executive attain absolute self-sufficiency, Hegel writes,

The destruction of the state [...] is immediately posited; or if the state is essentially preserved, a unity of one kind or another is established for the time being by means of a conflict whereby one power subjugates the others, and it is by this means alone that the essential object, the survival of the state, is achieved. (PR 272R)

For instance, the French revolution involved the conflict between the executive and the legislative powers.⁴⁰ Hegel claims that "the legislative power at times engulfed the so-called executive, and at the other times the executive power engulfed the legislative, so that it remains an absurdity in this context to raise, for example, the moral demand for harmony" (PR 272A).

³⁹ In his *Encyclopaedia*, Hegel explains what he means by the difference between understanding and reason. See Hegel. *Encyclopaedia*, § 80-82, p. 214 and p. 221. Hegel writes: "Thinking as understanding does not budge beyond the firm determinateness [of what is entertained] and its distinctness over against others. A limited abstraction of this sort counts for it as self-standing and [as having] being" (Hegel. *Encyclopaedia*, § 80, p. 214). By contrast, thinking as reason "grasps the unity of the determinations in their opposition, the affirmative that is contained in their dissolution and their passing over into something else" (Hegel. *Encyclopaedia*, § 82, p. 221).

⁴⁰ As an anonymous reviewer pointed out to me, this conflict between the executive and the legislative powers did not occur before the French constitution of 1795.

Thus, Hegel rejects Montesquieu's solution, which states that the judiciary power as a mediating power can resolve the problem of political sovereignty in liberal political theories.

Hegel writes:

We usually speak of the three powers – the legislative, the executive, and the judiciary. The first of these corresponds to universality and the second to particularity; but the judiciary is not the third constituent of the concept, because its [i.e., the judiciary's] individuality lies outside the above spheres. (PR 272A)

By contrast, Hegel claims that the solution to this predicament is the constitutional monarchy, which ensures political sovereignty by maintaining the organic unity and the distinctness of the political powers (PR 273).

For Montesquieu, the judiciary power is supposed to secure the primacy granted to political constitution, which is, in Hegel's view, a one-sided determination of political sovereignty. Seen from Hegel's perspective, Montesquieu's liberal conception of the division of powers establishes only their mutual limitation, so that the political powers can be subordinated to the political constitution. By contrast, Hegel argues that the division of powers might collapse into a unitary power if there is no third power that mediates between the legislative and executive powers.

Hegel states that "another form of rational law" rather than the virtuousness of political leaders "is required [...] if the whole is to have the strength to maintain its unity and to grant the forces of developed particularity their positive as well as negative rights" (PR 273R). On Hegel's view, it is not enough to argue for the primacy of the political constitution or just emphasize the point about the need for virtuous political leaders. What is required to secure political sovereignty is a form of rational law that encompasses both the political constitution *per se* and its instantiation in political powers within it. Put another way, another form of rational law, that is, the form of the constitutional monarchy, is required to overcome the collapse of powers into a unitary power such as a totalitarian or authoritarian form of government (PR 273R & PR 285-6). Hegel, thus, opposes the tendency of totalitarianism in popular sovereignty, which grants primacy only to the legislative power, and the tendency of authoritarianism in absolute monarchy, which grants primacy to the decision power of the monarch. In the next and final section, I will discuss a Hegelian reply to liberal conceptions of political sovereignty attributed to Hegel, in particular to Pelczynski's argument.

6. *A Hegelian Reply to Pelczynski's Argument*

As I see it, a Hegelian reply to Pelczynski's argument, which argues for the primacy of the political constitution and its subordination of the political powers, can be drawn mainly from Hegel's critique of Montesquieu's conception of the division of powers. Pelczynski holds that political powers are mere aspects of the political constitution, which is logically prior and legally superior to them.⁴¹ On this view, political powers are mere differentiations of a logically prior and a legally superior political constitution and hence have a secondary status. As seen, Pelczynski claims that the princely power, like other political powers, must be prevented from holding excessive power, so that it can be subordinated to the political constitution.⁴² According to liberal political theories, an abstract conception of the political constitution suffices to secure political sovereignty.

Montesquieu is well aware of the problem of popular sovereignty that grants primacy to the political constitution such as in the case of Rousseauian conception of democracy. Montesquieu suggests that a third power – the judiciary power – must be included to preclude the collapse of the political powers into a unitary power (PR 272A). However, seen from Hegel's perspective, there are two main reasons why the judiciary power cannot serve this role. First, the judiciary power cannot serve as the means to keep the powers apart, although this should be in a non-absolute manner, as Hegel suggests. The judiciary power rather can converge with the executive power, which, in turn, leads to the collapse of the division of powers (PR 272A). Hegel states that if powers attain absolute self-sufficiency, as in Montesquieu's conception of the division of powers, the survival of the state depends on “a conflict whereby one power subjugates the other” (PR 272A). Second, Hegel claims that “the judiciary is not the third constitution of the concept”, since its individuality lies outside of the legislative and executive powers (PR 272A).

More generally, liberal political theories misunderstand why Hegel rejects the absolute self-sufficiency of political powers: they argue that the absolute self-sufficiency can be precluded by subordinating political powers to the political constitution. Yet the liberal conception of the division of powers is problematic to concretely actualize political sovereignty, which is a higher unity of the division of powers, rather than a mere sum of powers.

⁴¹ PELCZYNSKI. *Hegel's Political Philosophy*, p. 230.

⁴² PELCZYNSKI. *Hegel's Political Philosophy*, p. 230.

It is true that Hegel argues that political powers such as the legislative or the executive power should not be given “the false determination of the absolute self-sufficiency” (PR 272R). Otherwise, the state would be destroyed, as witnessed in the French revolution. In this regard, Pelczynski is right to point out that Hegel rejects the self-subsistence of political powers.⁴³ However, Hegel claims neither that the rejection of the self-subsistence of political powers implies the primacy of the political constitution, nor that all political powers must possess limited power. Contrary to liberal political theories, Hegel rejects the absolute self-sufficiency of political powers because he wanted to avoid what the liberal conception of the division of powers such as Montesquieu and Pelczynski defend, namely, a general equilibrium or mutual limitation among political powers (PR 272R). The latter is defended by Pelczynski and Montesquieu, as Hegel states, as the only way to secure political sovereignty.⁴⁴ Hegel rejects this view, since in this case the relation between political powers is “one of hostility and fear” (PR 272R).

More specifically, Hegel overcomes the liberal conception of the division of powers because he conceived of the princely power as the only one that can secure both the division of powers and their unity and, thus, can secure political sovereignty. Hegel, thus, maintains a clear distinction between the legislative and the executive powers as well as the princely power, such that the latter allows each political power to play its specific role, while all powers together constitute a rational state.

Yet Pelczynski and other commentators, including Hardimon, Vieweg, and Brooks, attribute to Hegel a division of powers that is similar to Montesquieu's so as to protect Hegel's political philosophy from the charges of anti-liberalism.⁴⁵ In sum, Hegel argued that the constitutional monarchy is a key institution that overcomes the limits of liberal conception of the division of powers that fails to secure political sovereignty. Some authors, including Pelczynski, are not justified in attributing a liberal conception of political sovereignty to Hegel, that is, one that defends the primacy of the political constitution and conceives of the relation between the political powers as their mutual limitation. This interpretation of the *Philosophy of Right* is more of an attempt to make Hegel acceptable to modern readers and deviates from Hegel's position.

⁴³ PELCZYNSKI. Hegel's Political Philosophy, p. 230.

⁴⁴ See PELCZYNSKI. Hegel's Political Philosophy, p. 230; and, PR 272R.

⁴⁵ To be sure: I am not in favour of readings of Hegel's *Philosophy of Right* that takes him to be anti-liberal, even though I cannot discuss this issue here. For an anti-liberal reading of Hegel's *Philosophy of Right*, see CRISTI, F.R. The Hegelsche Mitte. **Political Theory**, n. 11, Issue 4, 1983, p. 601.

The charge that his conception of political sovereignty is ambiguous or invalid is more or less a misunderstanding on the interpreters' part. Hegel indeed states all that is required from a monarch is to say 'yes' and to dot the 'i', since the highest office should be "such that the particular character of its occupant is of no significance" (PR 280A). This famous assertion, as I see it, considers the specific identity of the monarch to have little weight. By contrast, authors such as Thom Brooks state that the particular character of the monarch is of great significance, since Hegel holds that the monarch should be a male who recognizes the rationality of the throne.⁴⁶ The latter position of Hegel is indeed indefensible, yet Hegel cannot be taken to mean that the power of such ultimate decision is insignificant. Contrary to the position held by liberal political theories regarding the constitutional monarchy, Hegel defends the constitutional monarchy since he believes that a state only in this case will be able to maintain its internal divisions and so to secure political sovereignty.

7. Conclusion

In this paper, I have argued that most commentators fail to see why Hegel defends the constitutional monarchy. Liberal approaches to Hegel's conception of the state, including Pelczynski's, argue that the political constitution *per se* establishes political sovereignty insofar as the political constitution subordinates a plurality of political powers and their sum is equivalent to the political constitution. This liberal view ultimately maintains that the primacy of the political constitution results in the mutual limitation of political powers. By contrast, I have argued that Hegel provides a solution to the problem of a false separation of powers without destroying the division of powers. Hegel argues that the constitutional monarchy is the true concrete universality, since the constitutional monarchy *qua* whole constitutes the higher unity of the division of powers, that is, of the particularity of a political state. Consequently, it is only by dint of the constitutional monarchy that the various powers can constitute an organic unity, hence secure political sovereignty. For this reason, commentators need not reject the power Hegel attributes to the constitutional monarchy, but, rather, appreciate Hegel's key insight into political sovereignty so that we can address the limits of modern states in this respect.

⁴⁶ See BROOKS. No Rubber Stamp, p. 118.

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