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ARISTOTLE'S AND HEGEL'S CONTEXTUAL APPROACHES TO JUSTICE AND THE
DISTRIBUTION OF KNOWLEDGE

By

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A DISSERTATION

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ABSTRACT

ARISTOTLE'S AND HEGEL'S CONTEXTUAL APPROACHES TO JUSTICE AND THE DISTRIBUTION OF KNOWLEDGE

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I argue that Aristotle and Hegel can be interpreted in a useful manner as *contextual* thinkers. Critical analysis of Aristotle's and Hegel's social theories suggests that these philosophers form their conception of justice in important respects on the basis of their understanding of the relationship between the distribution of knowledge and key features of social context such as conflict and the division of labor. A contextual approach helps in the statement of practical questions about the structure and control of knowledge within society.

My second thesis is the claim that a contextual approach informed by the work of Aristotle and Hegel is useful for framing a normative conception of a democratic distribution of knowledge within contemporary institutions of education in our own society. The normative conception of justice that I argue for is defined in terms of a democratic control of the production and the distribution of knowledge within social institutions.

To my parents,

Howard and Martha Howell

ACKNOWLEDGMENTS

I would like to thank the members of my committee Dr. Esquith, Dr. Garelick, and Dr. Walsh for their patience in helping me work through a difficult project and especially my dissertation director, Dr. Richard Peterson, who made my obscure existence tolerable through his effort on my behalf. Dr. Seaton, the outside reader from the English Department, provided valuable substantive comments on this dissertation and editorial assistance.

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ABBREVIATIONS

ARISTOTLE

Met. = *Metaphysics*, Oxford University Press, 1989; Princeton
University Press, 1984, translated by W. D. Ross.

MM = *Magna Moralia*, Princeton University Press, 1989, tr. by St.
G. Stock.

NE = *The Nicomachean Ethics*, Harvard University Press [Loeb
Classical Library], 1982, translated by H. Rackham;
Princeton University Press, 1984, translated by W. D.
Ross.

Poet. = *Poetics*, Princeton University Press, 1984, translated by
I. Bywater.

Pol. = *Politics*, Harvard University Press [Loeb Classical
Library], 1977, translated by H. Rackham; Princeton
University Press, 1984, translated by Jowett.

Rhet. = *The "Art" of Rhetoric*, Harvard University Press [Loeb
Classical Library], 1982, translated by John Henry Freese;
Princeton University Press, 1984, translated by W. Rhys
Roberts.

HEGEL

GPR = *Grudlinien der Philosophie des Rechts*, Reclam, 1970.

HOP = *History of Philosophy*, 3 Vols., University of Nebraska
Press, 1995, translated by E. S. Haldane.

POR = *Elements of the Philosophy of Right*, Cambridge University
Press, 1991, translated by H. B. Nisbet.

POS = *Phenomenology of Spirit*, Oxford: Oxford University Press,
1977, translated by A. V. Miller.

OTHER AUTHORS CITED

CPrR = Immanuel Kant, *Critique of Practical Reason*, Macmillan
Publishing Company, 1985.

CS = J. J. Rousseau, *Du Contract Social*, Flamarion, 1966.

HET = Allen W. Wood, *Hegel's Ethical Thought*, Cambridge
University Press, 1990.

HTMS = Shlomo Avineri, *Hegel's Theory of the Modern State*,
Cambridge University Press, 1972.

PL = John Rawls, *Political Liberalism*, Columbia University
Press, 1993.

Rep. = Plato, *Republic*, Harvard University Press [Loeb Classical
Library], 1982; Hackett Publishing Company, 1992.

SOR = Immanuel Kant, *Science of Right*.

TOJ = John Rawls, *A Theory of Justice*, Harvard University Press,
1971.

CHAPTER 1

Introduction

ἡ γὰρ νοῦ ἐνέργεια ζωή
For the actuality of thought is life . . .
—Aristotle, *Metaphysics*, 1072b 26, tr. Ross—

What is rational becomes real, and the real becomes rational.[1]
—Hegel, *Natural Law and the Theory of the State*—

In writing this dissertation on a contextual approach to

justice in the work of Aristotle and Hegel, I'm reminded of

Hegel's comment that philosophy is considered to be like the

funeral shroud that Penelope wove for Laertes—lasting only a

day, unraveled and begun again:

> . . . man sich vorstellt, das, was die Philosophie
> vor sich bringe, sei ein so übernächtiges Werk als
> das Gewebe der Penelope, das jeden Tag von vorne
> angefangen werde.
> (*GPR* 43-44)

> . . . it is imagined that what philosophy puts
> forward is as ephemeral a product as Penelope's
> weaving, which is begun afresh every day.
> (*POR* 10)

I believe the discussion of justice with respect to the

distribution of knowledge is an area that requires continual

examination and reformulation, and so my intention is to be open

to further discussion rather than otherwise. This dissertation

has a number of interwoven strands so that the structure is complex rather than a chain of deductive argumentation; nevertheless, the design is constructed through the development of two theses which can be stated quite plainly.

First, I argue that Aristotle and Hegel can be interpreted in a useful manner as *contextual* thinkers. Critical analysis of Aristotle's and Hegel's social theories suggests that these philosophers form their conception of justice in important respects on the basis of their understanding of the relationship between the distribution of knowledge and key features of social context such as conflict and the division of labor. There are two related elements of my interpretation of Hegel and Aristotle as contextual thinkers.

(1) I argue that a contextualizing theory of justice is informed by and developed on the basis of an understanding of inherently variable social conditions which require empirical analysis. One aspect of my analysis of Aristotle and Hegel as contextual thinkers is a contrast with abstract formulations of systems of justice based on the logical development of first principles.

(2) More specifically, in the formation of normative principles, Hegel and Aristotle consider important social phenomena such as conflict and the division of labor insofar as these features of society are related to the production and the social distribution of knowledge.

A contextual approach helps in the statement of practical questions about the structure and control of knowledge within society. The first aim of this dissertation is to achieve a critical understanding of Aristotle's and Hegel's methods of social analysis as these bear on a conception of justice as a normatively grounded structure of society. In other words, in this dissertation I examine the relationship between social analysis and the normative principles developed on this basis.

My second thesis is the further claim that a contextual approach informed by the work of Aristotle and Hegel is useful for framing a normative conception of a democratic distribution of knowledge within contemporary institutions of education in our own society. The normative conception of justice that I argue for is defined in terms of a democratic control of the production and the distribution of knowledge within social institutions. I argue that the distribution of knowledge (which is a political function in essential respects) should be determined through democratic procedures.

In discussing knowledge in terms of distribution, it may be argued that I am making a category mistake in considering knowledge to be an object that can be parceled out like potatoes or shoes. I recognize that it is too simplistic to conceive of knowledge in this fashion. Education and the distribution of knowledge are, in fact, inseparable. Education is the means though which knowledge is distributed and differential capacities in individuals developed. In short, it can be claimed

that conceiving of the distribution of knowledge as distinct from education is too abstract; for purposes of analysis, I'm separating things which in fact go together. As Aristotle said (*EN* 1.13.1102a 31), the convex and concave sides of a curved line can be abstracted in thought, but, in reality, they are inseparable. I claim, however, that certain features of our system parcel out knowledge in this fashion (consider classes conceived as credit hours and grades as an indication of intellectual progress). I will argue that the means of control over the educational process (as a means to distribute knowledge through the formation of intellectual capacities) should be democratic.

Now that the two theses of the dissertation have been introduced, I want to turn to the problem of equivocation in the notion of justice. I note this difficulty of definition in order to indicate the notion of justice that I will be using throughout this dissertation. The variability of the meaning of the term *justice*[2] makes it difficult to discuss the notion. This is a difficulty that has to be recognized, but it does not preclude the possibility of achieving greater clarity on the concept. Aristotle recognizes that there are a number of different connotations for the word *justice* (*NE* 5.1.1129a 27-32). Both Aristotle and Hegel begin their main work in practical philosophy with a concept of justice that is undeveloped and in certain respects inadequate to the task at hand. There are certain essential connotations of the initial concept that will

remain and direct the further evolution in thought undertaken by these philosophers. The depth of their thought is indicated by the fact that they are able to develop these initial concepts in a logical way which leads to a more concrete conception of justice related to actual social institutions.

Instances of variability in meaning of the notion of *justice* can be found in Greek thought, where one finds a contrast between justice regarding the actions of *individuals as just* (virtue) and justice regarding a *particular structure of the state* legitimated through normative claims.[3] Aristotle initially conceives of justice as a habitual state (ἕξις) of the individual (*NE* 5.1.1129a 8-12) consistent with virtue. Aristotle's discussion develops into a conception of justice as a distribution of political power in the state among social groups (*Pol.* 3.12-13). Contextual analysis aims to take into account the complex structural articulation of society rather than conceiving of individuals exclusively as autonomous, where justice is a matter of the character of individuals. A contextual approach is more useful as a means to examine conflict between groups with different social interests because such an approach extends beyond the limits of a discussion of justice as virtue possessed by an individual.

It may be helpful at this time to provide a general overview of what follows in this introduction itself:

(1) First, I present a schematic characterization of the notion of *contextuality* to provide a framework for

understanding how education and the distribution of knowledge relate to social context in the formation of normative principles.

(2) Next, I provide a general discussion of a contextual approach to justice. At this point, I am not trying to provide a definitive description of a contextual method but, rather, I am trying with broad strokes to provide an initial perspective on the problem of developing a theory of justice which takes into account the relationship between important features of social context and the distribution of knowledge.

(3) Finally, I present an overview of how the dissertation proceeds—a summary in outline of the individual chapters of the dissertation.

I. Initial Characterization of the Philosophical Conception of Contextuality.

In order to provide a framework for the further discussion of this dissertation, it may be useful to provide an account of the notion of contextuality. The notion of *contextuality* can be given an initial characterization which serves to differentiate the senses of the term under discussion. Since certain senses of the term are more relevant than others to the dissertation, these distinctions will allow further refinement and articulation of the structure of the dissertation. By a philosophical notion of *contextuality* I understand three interrelated meanings of the term:

(1) A philosophical approach that is contextual considers contemporary social conditions as a starting point in arguing for normative principles. For example, Aristotle believes that the law and constitution structure the distribution of political power within society. One feature of Aristotle's contextual approach is to relate distributions in power to knowledge. Aristotle argues that particular forms of political power are justified on the basis of an ability to bring expert knowledge to bear on problems that concern the state as an organic whole. In other words, Aristotle considers education and the distribution of knowledge when arguing for a just distribution of political power among groups of citizens with conflicting interests. Hegel develops his discussion of the organization of the state in the *Philosophy of Right* along similar lines. The law and constitution are concrete manifestations of the rational, historical development of humanity. This is to say that rationality is essential for legitimately structuring the organic whole of society, and the distribution of knowledge within society serves primary functions of social organization and control.

(2) Another sense of contextuality concerns the philosophical discourse which surrounds the use of a concept and contributes to its meaning. Philosophers and social theorists develop central philosophical concepts within the context of specialized discourse. For Aristotle and Hegel, this is a

critical engagement (often polemical) with their
contemporaries and their immediate predecessors concerning a
particular philosophical issue. The context of this discourse
delineates the subject matter of the philosophical discourse
by providing a starting point for discussion and the
boundaries within which the concept applies. As an example,
present day discussion of justice occurs in the context of
the debate defined by Rawls, Walzer, MacIntyre and Habermas,
among others.

(3) Finally, a contextual approach can also be characterized
as a retrospective examination by later social theorists of
the historical conditions that determine the manner in which
philosophers form their conceptualization of an issue—even
though the influence of such conditions may be obscure to the
philosophers themselves.[4] For instance, Aristotle was a
privileged member within a a society that accepted slavery—an
historical fact that requires recognition in order to
properly interpret the ways in which his use of social
context may be distorted by his own status in society. It is
possible to make the claim that Hegel's political theory is
likewise affected by his social and historical position as
well.

The central focus of this dissertation is on the first
sense of contextuality given above: how Aristotle and Hegel
make use of principal features of social context in relation to
the distribution of knowledge in arguing for a particular

conception of justice. The relevance of the other two notions of contextuality to this dissertation are discussed briefly below before I turn to a further clarification of the first notion of contextuality.

An examination of the critical philosophical discourse that Aristotle and Hegel undertake with their immediate predecessors and teachers (as in (2) above) is an important element in understanding the development of their own thought, especially as a means of orienting the discussion of their conceptions of justice. The method of both Aristotle and Hegel is dialogic—they are involved in a critical discussion that develops normative principles within a philosophical community of discourse. In order to understand their methods adequately it is helpful to point out the relevant aspects of their philosophical engagement with their own contemporaries (especially Plato and Kant, respectively) concerning the notion of justice. While recognizing the importance and interest of this discussion among philosophers for the development of normative arguments concerning justice, it is necessary to limit my analysis in this regard in order to keep this dissertation to a reasonable length. Particular reference will be made to this discourse among philosophers only insofar as it is directly relevant to the discussion at hand.

Identifying the historical influences on the thought of a philosopher (my third sense of a contextualizing approach) can clarify why a particular philosopher may have taken a certain

position. Although there are respects in which this manner of thinking about the issue of justice is crucial, such an approach is historical rather than philosophical, and is therefore secondary to the more philosophical aims of this dissertation.

Ultimately, my discussion will require determining in what respects Aristotle and Hegel fail to justify their particular conceptions of social justice. It is important to realize the limitations of a contextual approach to justice as it relates to the issue of the distribution of knowledge within society. When I argue for a normative conception of a democratic distribution of knowledge the use of a contextualizing approach will, therefore, be critical and reflective.

II. General Discussion of a Contextual Approach to Justice.

A. The basis of normative principles within a contextual approach to justice.

Since it is clear that a contextual approach makes normative claims, it is reasonable to inquire what the basis is for the normative claims that are being made. My understanding of a contextual approach is that it is not *radical* relativism. By *radical relativism* I mean the acceptance of the principle that the validity of normative claims can only be evaluated from the perspective of the society in which they occur. If this were the case, then there would be no basis for a critique of any actual or ideal constitutions from a perspective outside that society. Such a view would be the social equivalent of the

position of Protagoras that "man is the measure of all things"
(Kirk, Raven and Schofield 411). A contextual approach
apprehends that an understanding of social context is useful for
the formation of practical principles of justice relevant to a
particular society, but it is not a sufficient condition. In
other words, a contextual approach is not the view that
normative principles derive from social conditions in a
deterministic, mechanical fashion. My intention in this
dissertation is critical—to achieve an understanding of the
value of a contextual approach as well as its limitations.

In the previous paragraph I have argued that a contextual
approach does not reduce the formation of normative principles
to a radically relativistic basis in which the social conditions
of a particular society *necessarily* determine the normative
principles that direct practical activity. It could be argued
then that, after all, there must be some absolute, non-
contextual principles as the basis of a theory of justice.[5] To
argue against this view it is necessary to show that there are
social, historical sources of normative principles which can be
used for the development of a contextual theory of justice.

In a contextual approach to justice it is reasonable to
make use of two contextual sources for the formation of
normative theory. Constitutions, laws, and the morality of
various cultures, including one's own, can serve as an inherited
social, historical basis for forming normative principles. The
rationality of constitutions, laws, and morality can be assessed

by those who have gained practical judgment through political experience and education. The assessment of the practical knowledge contained in these social resources can be used for the development of normative principles of justice applicable to society.

Secondly, a contextual approach to justice is an engagement in a philosophical discourse with contemporary and past social theorists about the nature of justice. It is important to note that this discourse involves intellectual expertise, since the participants have access to knowledge that is not widely dispersed. A feature of the philosophical discourse in which social theorists are involved is the formation of normative principles which have reference to immediate social conditions. Those involved in this specialized discourse consider the practical applicability of theories of justice to contemporary social conditions. Although a "utopian" discourse, as the etymology of the name suggests, is oriented toward the development of a perfectly rational and just society which presently exists "nowhere," in general even utopian social conceptions serve a critical function in reference to actual, contemporary social conditions.

It is important to recognize that a contextual approach to justice and an approach based on "universal" principles are not necessarily mutually exclusive. For instance, the United Nations has treaties concerning the rights of all people. The ideal is that such treaties become universally accepted.[6] This is a case

in which it can be argued that international social conditions
have reached a point in which normative principles of a
universal nature (applying to all societies) are a possibility.
This is not to say, though, that such agreements have a basis in
"absolute" moral imperatives; rather, in this case it is clear
that the basis of the agreement to the rights of all humans are
the conventions to which member states agree. The agreement
appears to be based in expediency rather than a universal,
common conception of social justice among autonomous nations.
The possibility of achieving this normative agreement is due to
the present state of historical, international social
conditions.

B. A contrast to "non-contextual" methods as a means of
clarifying the notion of a contextual approach to justice.

In order to better define a contextual approach to social
theory, I adopt the principle that it is useful to contrast such
an approach to what I call "non-contextual" methods. By the term
"contrast" I mean to clarify the differences between these
approaches in the emphasis they give to social context, and the
role that social context plays in theory formation. It is
important to recognize that it is inaccurate to represent non-
contextual theories and contextual theories as in complete
opposition. This appears too extreme, so I have adopted the
notion of a *contrast class*. So it is not a matter of always
painting this comparison in terms of black and white but of
trying to discern a contrast in the subtle gradation of hue.

By "non-contextual" approaches to the theory of justice I mean methods which proceed in an *a priori* fashion to construct ideal conceptions of society on the basis of procedures which in essence do not take account of contemporary historical, social conditions in the formation of normative principles oriented toward the organization of society. I argue that non-contextual methods that develop principles of justice for ordering society in an *a priori* fashion are problematic, since the relationship to actual social conditions is an issue that arises only after the theory has been formulated. The relationship of actual social conditions to abstract theory is a problem, because it is not always evident how the theory will apply to the reality of a social situation that is far from ideal.

In point of fact, both types of method may refer to social context. Plato (as well as contemporary social constructivists such as Rawls) bring contextual issues into their theories; Plato is in some respects a contextual thinker insofar as the catalyst of his notion of the guardian class is Sparta. Nevertheless, it is clear that in the case of non-contextual philosophers the intention is to form a theory of justice in the logical fashion of a deduction from first principles. For such non-contextual approaches to social theory the formation of normative principles oriented toward structuring society does not fundamentally require a sense of historical, social conditions.

In a contextual approach social context is an essential consideration in the formation of norms, whereas non-contextual theorists construct principles initially without reference to actual social conditions. A factor that gives support to this claim is that Aristotle and Hegel themselves recognize this distinction through the critical attitude they take to social theorists who are developing abstract theories of justice. This contrast with theories that are abstract or formal is an element of both Hegel's and Aristotle's own work.

At this point it is necessary to at least note the issue concerning the degree to which contrast classes are useful for defining what something is in itself. In offering a contrast to non-contextual approaches the intention is not merely to say what a contextual approach *is not,* but at the same time to specify, explicitly, what such an approach involves. For instance, saying that a particular non-contextual approach does not consider history a relevant factor for the adequate development of an abstract construction of social theory from given principles implies that a contextual approach to social theory considers an understanding of historical context to be essential.

C. Relation of this general discussion to Aristotle and Hegel.

In this section I want to begin to relate the general discussion of a contextual approach that I have presented in the preceding sections to relevant issues and problems that arise in

Aristotle's and Hegel's social theories. This presentation will
be developed in more detail as the dissertation proceeds.

A contextual approach is a means of considering normative
principles as intrinsic to human practices, institutions, and
social organization. Humanity's purposive activity, organized by
the laws and institutions of a particular society, is the point
of reference from which a contextual approach develops. This
clarifies the purpose of the quotations that precede this
dissertation: "ἡ γὰρ νοῦ ἐνέργεια ζωή . . . " "For the actuality
of thought is life . . ." (*Met.* 1072b 26, tr. Ross) and "What is
rational becomes real, and the real becomes rational" (quoted
from Dallmayr, p. 95). It is clear that for Hegel and Aristotle
notions of justice inherently arise within the historical,
social context of human activity.

I claim that in Aristotle's and Hegel's contextual
conceptions of justice their arguments for a particular social
order are based on an understanding of the relationship between
key features of society and knowledge. For a contextual approach
it is essential to consider a specific distribution of knowledge
when debating the legitimacy of a specific social structure. For
instance, this claim is exemplified by Hegel's notion that the
division of labor in modernity requires a differentiation in
knowledge between those who have intellectual expertise (e.g.,
the class of civil servants) and those who are involved in
skilled and unskilled labor. By way of contrast, in Plato's
construction of the state presented in the *Republic*, a

particular form of the distribution of knowledge produced
through education gives rise to the hierarchical divisions
between the classes (*Rep.* 4.425B-C, 428C-429A). This relation
between knowledge and political structure arises within the
development of an ideal conception of justice within the state.
The main point of difference is that Plato's conception of the
distribution of knowledge occurs in his highly idealized account
of a just state so that the relevance to actually existing
conditions is not entirely clear. In particular, it is not
evident that the distribution of knowledge he envisions can
arise from any contemporary social system.

Aristotle achieves an understanding of Greek social and
political life through the examination of his extensive
collection of constitutions. This inquiry into contemporary
constitutions exemplifies Aristotle's contextual thinking.
Aristotle considered these constitutions repositories of
practical knowledge which are useful resources when regarded
critically. As Newman notes (Newman, Vol. I, 57), the bulk of
Aristotle's work is essentially the study of the order of the
world from a biologist's perspective; such an approach involves
empirical analysis oriented toward classification. Ingemar
Düring makes the important point, though, that even Aristotle's
empiricism is oriented toward theory:

> Wenn sich Aristoteles auch auf die Erfahrung und den
> *consensus omnium* stützt und empirische Tatsachen als
> Beweismittel anführt, so dominiert bei ihm doch immer
> das spekulative Element. Seine Biologie ist durchweg
> eine philosophische Biologie.

> Even if, by the *consensus omnium*, Aristotle has a
> basis in experience and states empirical facts as
> evidence, still, for him the speculative element
>
> always prevails. His biology is, therefore, a
> philosophical biology.
> (Düring, *Aristoteles: Darstellung und Interpretation
> seines Denkens,* vii-viii, my translation)

It is important to consider the consequences this
empirical perspective has for his political philosophy. His
method is to examine social justice empirically through an
analysis of actually existing political institutions, social
practices, and organization. Aristotle's intention is not merely
descriptive but is speculative empiricism in the sense that it
is oriented toward understanding the rational elements within
various constitutions in order to form normative principles of
social order.

It is reasonable to approach the study of justice by
making use of historical context rather than merely arguing for
abstract ethical principles. There is a reciprocal relationship
between normative principles and social conditions in the
thought of both Aristotle and Hegel—an interaction that is well
worth examining as a means to better understand the nature of
the relationship between theory and practice in political
thought in general. On the one hand, the intention of Hegel and
Aristotle clearly was to develop a social theory that would
ultimately be realized in normatively structured social
activity—so they develop normative principles to direct social
activity rather than merely to describe it. On the other hand,

both philosophers form their normative theories with regard to already established cultural practices (including the activity of social theorists), institutions, and political forms—in this manner, social reality contributes to each philosopher's development of social theory.

Alfredo Prados notes the view that Aristotle's political work has a certain form due to its empirical and practical nature. "En cambio, el espíritu du Aristóteles, más realista y prático, y más atento a lo experiencial, conduciría su obra política hacia un sistema más participativo y dialógico." "However, the spirit of Aristotle, more realistic and practical, and more attentive to the empirical, leads his political work toward a system that is more participatory and dialogic" (Prados 9, my translation). The proposition that a certain way of thinking (empirical and practical) leads to political thought that has elements of democratic procedure is interesting, but it is not immediately evident why this would be the case. Part of the solution to this difficulty is that both Aristotle and Hegel are concerned with the distribution of political power in order that different segments of society can participate in the constitution of the state as a means of ensuring *social stability*. In this respect justice manifested through political participation in society serves to legitimize political systems. This argument will be developed more fully within the following chapters. In particular, I examine practical rationality as a

human activity which mediates social conflict and the division of labor in order to achieve greater social stability.

Aristotle and Hegel conceive political participation within their systems according to actual forms of differentiation within knowledge between intellectual expertise and the knowledge involved in skilled/unskilled labor. The level of effective political participation that one has in society is directly related to the type of specialized knowledge that one has. In the political constructions of both Aristotle and Hegel, laborers have limited (if any) real input into the political functioning of society. Even among those with intellectual expertise, the political machinery is run by experts whose particular specialization is running the state.

Internal inconsistencies occur in the thought of Aristotle at this point. Aristotle feels that "Man is by nature a political animal" (*Pol.* 1.2.1253a 3). Aristotle is making the claim that a universal characteristic of humans is involvement in practical activity of a political nature. It follows that if there is a restriction of political activity, it has to be based on the claim that certain types of humans (slaves, women) are not fully human in their rational capacities. Aristotle's position in effect legitimates the established power structures of ancient Greek society insofar as the ruling order is based on the exploitation and exclusion of women, slaves and common laborers based on claims concerning knowledge. Aristotle connects his conception of the structure of political power to a

differentiation of knowledge. Even though, as Prados notes,

there are aspects of Aristotle's approach that are

"participatory and dialogic," clearly a contextual approach does

not inherently lead to democratic political activity based on

knowledge. It will be necessary, then, to show how a contextual

approach to justice *can* contribute to a democratic distribution

of knowledge.

Hegel introduces the claim that rationality is a process

of historical development from the abstract *to* the concrete. It

is important to emphasize Hegel's intention to submit the notion

of *rationality* in his philosophy to the judgment of empirical

evidence, which is to say that rationality must refer to an

actual social context. In other words, rationality is not an

abstract idea but is manifest in the social, historical context

of humanity's development:

> It is *this very relation of philosophy to actuality*
> which is the subject of misunderstandings, and I
> accordingly come back to my earlier observation that,
> since philosophy is *exploration of the rational,* it
> is for that very reason the *comprehension of the*
> *present and the actual,* not the setting up of a *world*
> *beyond* which exists God knows where . . .
> (*POR* 20)

Hegel conceives of actual historical conditions of human history

as corresponding to levels of rationality about which normative

claims concerning social reality can be made.

Hegel considers dangerous the notion that freedom is

compatible with irrationalism in any of its various

manifestations. A central Hegelian critique of Romanticism is

that the association of freedom and irrationalism is a
questionable move both philosophically and in terms of social
practice. For Hegel this was not an abstract question; he was
concerned about trends in his society that can be characterized
as protofascist—especially insofar as ultra-nationalist rhetoric
makes an appeal to the heart and feelings in opposition to
rational consideration of right. In our century there is a
similar philosophical tendency towards irrationalism due to the
perception that the rationalization of society is a threat to
human freedom. It may be reasonable to argue, though, that the
problem is not rationality *per se,* but the misapplication of a
particular type of rationality to a sphere in which it does not
apply. Aristotle constantly reiterates the error of applying
methods of validation from one sphere of rationality (e.g.
mathematical rationality) to the sphere of practical reason.

III. Summary of the Individual Chapters of the Dissertation.

This section contains a summary account of the four
remaining chapters of the dissertation.

CHAPTER 2

The aim of this chapter is to justify my interpretation of
Aristotle and Hegel as contextualizing thinkers in their
development of normative theory. In the first section a
comparison is made between the approaches of these philosophers,
since I'm claiming that there is a similarity in the social
theory of Aristotle and Hegel. The second section of this

chapter deals more specifically with Aristotle's account of
flexibility in the application of normative rules as an example
of a contextualizing approach to justice. In the third section I
first examine Hegel's critique of formal (Kantian) accounts of
human freedom as inadequate due to a disregard of the context of
social activity. Next I examine Hegel's analysis of the French
Revolution and the Terror to show what for Hegel are the
practical social consequences of applying an overly abstract
normative concept.

In the following two chapters I examine in turn
Aristotle's and Hegel's contextual approaches to the
distribution of knowledge within their own societies in relation
to social conflict and the division of labor respectively. There
are four parallel sections in which the contextual nature of
Aristotle's and Hegel's social theories are examined in these
chapters.

CHAPTER 3

Section 3.1

In section 1 I examine specifically how Aristotle is a
contextual thinker. It is evident for both philosophers that
certain contextual categories are more important than others for
the development of their conceptions of justice. I claim that
Aristotle's understanding of *conflict* as a contextual focal
point in society is central to his construction of social
justice. Social conflict is both external and internal to the
Greek city-state.

Aristotle conceives justice as a distribution of political power by referring to the interests of well-defined social collectives within the state. The notion of justice as a social order is developed in the *Nicomachean Ethics* and *Politics* through an analysis of *conflicting interests* between social groups. Aristotle argues that, in general, the universal interest of society as a whole serves to justify normative claims among political groups with conflicting interests. Aristotle argues that the best structure for the distribution of political power corresponds to a particular form of the distribution of knowledge within society: the political order that can most effectively utilize practical knowledge oriented toward the interest of the state as a whole should run the state. This will be achieved by having greater numbers of people participate in political activity rather than just a few or one person.

The perpetual external conflict endemic to the Greek city-states can be seen as a struggle not only of economic interests but also as conflict over the type of constitution that is proper for the city-state. Aristotle collects constitutions to comprehend the practical rationality they contain through an analysis of their merits and weaknesses. Actual constitutions (such as the Spartan, Cretan, Carthaginian) are representations of justice as a social order in various states. He argues from this contextual analysis for a certain social order justified, in part, on the basis of a particular distribution of knowledge.

Section 3.2

The aim of this section is to show how Aristotle conceives of social context in relation to education and the distribution of knowledge in order to develop his conception of social justice. Since states achieve justice through the mediation of internal conflict by practical, political knowledge, understanding the relationship between knowledge and conflict is essential for developing a political conception of justice.

Section 3.3

Here a critical assessment of Aristotle is provided. In particular, I will show how his contextual arguments go wrong—especially in the sense that the central universalistic tendencies of his thought make his arguments for a highly restricted distribution of social power based on knowledge inconsistent. The basis for a broader political inclusion in Aristotle's political system is evident, since the criterion for the distribution of political power is knowledge of the *universal interest* of society. It is nevertheless true that Aristotle excludes slaves, women and workers from actual citizenship on the basis of a distinction between intellectual expertise and the types of knowledge involved in skilled and unskilled labor. So the general interest of society as a whole ends up being in actuality the interests of a fairly restricted class of citizens.

Aristotle's position is ultimately inconsistent with a democratic viewpoint, and so the problem arises whether the use

of contextual categories can be justified for the development of a democratic distribution of knowledge.

Section 3.4

In this section I examine how Aristotle's contextual approach, which confronts normative claims about justice with social conditions, is useful for the development of a democratic distribution of knowledge. There are elements of Aristotle's contextual approach that can be redeemed for a democratic approach to knowledge: his insistence on practical rationality as a means to mediate social conflict between groups, his notion that in applying the rules generated through practical rationality flexibility is essential, and his conception of a legitimate, constitutional state as founded on informed, knowledgeable participation by individuals.

CHAPTER 4

Section 4.1

Hegel's intention in his construction of a political system based on right *(Recht)* is to delineate the conditions of the modern state. My particular focus is Hegel's claim that the division of labor and the material basis of society contribute to a more universal culture based on concrete freedom. He argues that universal freedom is realized through the fact that the universal interdependence of humans on one another has become established by the division of labor. The division of labor is structured to a large degree through differentiation in knowledge related to the development of individual capacities.

In this sense the notion of the division of labor is central to Hegel's philosophical thought represented in *The Philosophy of Right*.

An important aspect of Hegel's contextual social analysis is his understanding of the division of labor as a source of conflict arising within modern systems of production. Those who are excluded from the system of production become a source of social conflict. Furthermore, it is clear that for Hegel differentiation in knowledge associated with the division of labor is tied to differentiation in identity formation of individuals—much as in our own culture.

Section 4.2

It is clear that social position in Hegel's system is largely based on distinctions in knowledge between those with intellectual expertise and those having knowledge involved in skilled and unskilled labor. This primary distinction in knowledge arises on the basis of the division of labor in modern society. Hegel recognizes that one unfortunate consequence of this distribution of knowledge is the social disenfranchisement of those who are excluded from the social sources of knowledge. The modern form of the division of labor also gives rise to extreme specialization in knowledge. This specialization is particularly problematic given the importance that Hegel attaches to the informed political participation of individuals in the state.

Section 4.3

A critique of Hegel's account is developed in which I argue that Hegel's acceptance of the form of the differentiation of knowledge that arises with the modern structure of the division of labor is inconsistent with his conception of universal freedom. The division of labor in modernity is based on a distinction between those having intellectual expertise and those educated to skilled and unskilled labor. It is apparent that the universal class of civil servants have true political power, while the participation of others is restricted to discourse mediated by their estates within a public sphere only informally connected to the actual functioning of the state. Furthermore, although Hegel's work does contribute a great deal to the understanding of the type of alienation that modern systems of production create, the rigid type of identity formation of individuals that the division of labor requires is not thoroughly challenged by Hegel. This situation is inconsistent with his positive conception of freedom.

Section 4.4

In examining Hegel's contextual account a number of positive social possibilities are evident which can contribute to the development of a democratic conception of the distribution of knowledge. Hegel feels the development of a public sphere of discourse connected to political processes is necessary to promote the dissemination of practical knowledge

throughout society. Such a public sphere of discourse serves to solidify the bonds of community and lends legitimacy to the social system. Hegel's positive construction of freedom can be contrasted with accounts of freedom developed on a Kantian, *formal* basis. Hegel argues that the relationship between actual freedom and knowledge within modernity cannot be understood independent of the conditions and institutions of society.

CHAPTER 5

In this chapter I argue for a normative conception of justice as a democratic distribution of knowledge based on the preceding analysis of the work of Aristotle and Hegel. A number of arguments are presented which aim at justifying a democratic distribution of knowledge by means of a contextual approach. I argue that in our society knowledge within educational institutions is shared social wealth. Furthermore, in a democratic society I argue that the educational institutions of that society should be run democratically. It follows that the distinction between intellectual expertise and knowledge involved in skilled and unskilled labor should not be constituted within educational institutions on the model of economic forms of the division of labor but should be mediated through democratic procedures.

Another argument for a democratic approach to the distribution of knowledge is that such an approach serves to stabilize conflict within institutions in a legitimate manner. Conversely, if the distribution and mediation of knowledge is

not democratic, certain forms of conflict within educational institutions may be justified. This can be contrasted with the approach of Cohen and Arato, who argue that state institutions are not the proper sphere for developing democratic structures.

Furthermore, it is argued that democratic procedures for mediating the distribution of knowledge are best able to provide the required degree of flexibility in dealing with the control of knowledge in our social institutions under conditions that are far short of ideal. The social context of contemporary educational institutions will define in a manner the types of normative principles that can be developed to govern educational activity.

CHAPTER 6

This chapter is a brief conclusion to the dissertation. In the first section I review what has been accomplished in reference to the two main theses of the dissertation. In the next section I address some remaining considerations that are relevant to the dissertation but could not be adequately dealt with in the body of the dissertation itself. In particular, I bring up the case of a contrast between democratic means for mediating the distribution of knowledge and the present trend toward privatization of control over educational institutions. In this section, I also bring up the fact that my approach to a democratic distribution of knowledge is limited to our society, but it is evident that with advances in communication technology this issue can no longer be restricted to a discussion of the

distribution of knowledge in one state. Lastly, I point to some areas in which further research is possible using a contextualizing approach to a democratic distribution of knowledge. For instance, it is useful to consider how a contextual approach to justice can be put into critical relation to the contemporary approaches to justice of Rawls and Habermas.

CHAPTER 2

Development of a Contextual Approach to Justice in the Work of Aristotle and Hegel

The aim of this chapter is to explain my interpretation of Aristotle and Hegel as contextual thinkers. In the first section (chapter 2.I.) I begin with a general comparison of Aristotle and Hegel with the intention of showing that there is a similarity in their philosophical approaches. The perspective that these philosophers begin with is an informed critique of inherited normative principles from the most noteworthy of their philosophical predecessors, as well as a consideration of normative principles embodied in laws and constitutions. Both philosophers point to the inadequacy of normative theory that does not take into account fundamental aspects of social context. Finally, both philosophers arrive at a more adequate conception of central philosophical normative principles by reformulating these inherited normative principles in reference to crucial features of social context. It should be noted that in these respects my contextualizing approach to the construction of a democratic distribution of knowledge is comparable to Hegel and Aristotle. In the last two sections of

this chapter, I substantiate the general exposition given in the
first section by providing specific instances of the
contextualizing methods of Aristotle and Hegel.

I. Comparison Between Aristotle's and Hegel's Contextualizing
Approaches to the Formation of Normative Principles.

A. Aristotle's and Hegel's use of inherited normative
rationality as an initial basis for discussion.

In the first chapter of this dissertation I make reference
to three forms which a contextualizing approach to justice can
take. One of these forms (chapter 1.I.(ex. 2.), see pp. 7-8) is
the appropriation for critical analysis of contemporary
philosophical discussion surrounding central normative
principles. In other words, both Aristotle and Hegel begin their
social philosophy from a position of inherited normative
principles formulated by their predecessors.

Aristotle often begins his major philosophical inquiries
with a survey and examination of the relevant thought of his
predecessors. For instance, in the *Metaphysics* (Book A.) his
discussion of material first principles covers the relevant
doctrines of the Presocratics in a systematic, critical fashion
that is unique for that time in Greek thought. Within
Aristotle's political thought, the starting point of his
discussion often turns on an analysis of prevalent debate around
central philosophical conceptions—such as the key notion of
justice within Greek society. As an example, in the *Politics*
Book 2 Aristotle begins his discussion with a critique of ideal

constructions of the state. Aristotle has Plato in particular in mind here. The touchstone of Aristotle's critique of Plato is the impracticality of Plato's thought when confronted with the reality of social conditions in the Greek city-state and actual human nature.

Plato argues that the structural unity of the state arises due to the virtues of *temperance* (σωφροσύνη) and *justice* (δικαιοσύνη). *Temperance* is the agreement of all of the citizens about who should rule—the few elite guardians who have the virtue of wisdom in regard to the interest of the whole state (*Rep*. 4.9.431D-E). *Justice* is the virtue of each person operating in their own restricted sphere of activity. "τοῦτο τοίνυν, ἦν δ' ἐγώ, ὦ φίλε, κινδυνεύει τρόπον τινὰ γιγνόμενον ἡ δικαιοσύνη εἶναι, τὸ τὰ αὐτοῦ πράττειν." "This, then," I said, "my friend, if taken in a certain sense appears to be justice, this principle of doing one's own business" (*Rep*. 4.10.433B, tr. Shorey). Aristotle's critique is an examination of the inadequacy of Plato's conception of the unity his ideal state achieves through the realization of the virtues of justice and temperance. "The error of Socrates must be attributed to the false supposition from which he starts. Unity there should be, both of the family and of the state, but in some respects only" (*Pol*. 2.5.1263b 30-32, tr. Jowett).

This general point of criticism against the Platonic conception of unity runs through the particular points of

criticism that Aristotle brings against Plato: the nature of a state is a plurality of individuals with different functions (*Pol.* 2.2.1261a 14-25), but the unity Plato's conception achieves is undefined; in a state of equal citizens, having a small group rule continually is inconsistent with equality (the "principle of reciprocity") (*Pol.* 2.2.1261a 30-1261b 10)[7] and, furthermore, incompatible with the necessary diversity of offices (*Pol.* 2.2.1261b 4-6); if community of property, women and children is thought to bring about unity, it remains unclear whether this communal sharing applies to all of the society or only to the guardians (*Pol.* 2.5.1264a 14-19).

In Hegel the confrontation with received normative principles is an explicit part of his philosophical dialectic. In the *Philosophy of Right* there is a development from an inadequate conception of formal right to a more concrete conception of right consistent with the modern differentiation of social spheres:

> In opposition to the more formal, i.e. *more abstract* and hence more limited kind of right, that sphere and stage of the spirit in which the spirit has determined and actualized within itself the further moments contained in its Idea possesses a higher right, for it is the *more concrete* sphere, richer within itself and more truly universal.
> (*POR* 59)

Hegel feels that concrete right is more universal because it does not receive its legitimacy from the individual conscience itself, but is formed in reference to historical developments in law and the constitution as realized in the objective order of

the state and society. Formal right is "subjectivistic" in that

its normative basis is found in the individual conscience. It is

clear that the object of Hegel's critique of formal right is

Kant's formulation of right given in his works on practical

reason.

Hegel also argues against normative principles that are

formed on a non-rational basis rather than beginning with an

understanding of inherited norms set forth concretely in law and

morality. This is in response to tendencies within protofascist

political movements that make appeals to the "heart" and

"feeling" for the basis of the structure of the state.⁸ It is

clear that Hegel discerns the rational basis for the formulation

of his normative principles in the inherited normative

principles of laws and constitutions:

> The truth concerning *right, ethics, and the state is*
> at any rate *as old as its exposition and promulgation*
> in *public laws and in public morality and religion.*
> What more does this truth require, inasmuch as the
> thinking mind *[Geist]* is not content to possess it in
> this proximate manner? What it needs is to be
> *comprehended* as well, so that the content which is
> already rational in itself may also gain a rational
> form and thereby appear justified to free thinking.
> For such thinking does not stop at what is
> given . . . but starts out from itself and thereby
> demands to know itself as united in its innermost
> being with the truth.
> (*POR* 11)

This passage is important in a number of respects. First, for

Hegel the basis of the truth in inherited normative principles

is found in law, morality, and religion. Second, there is a

further confrontation of these principles structuring human

activity with the understanding that discerns what is rational within law, religion and morality. It is necessary to point out, however, that Hegel is not attributing rationality to every aspect of actual social reality. Hegel often points out the inadequacy and arbitrary nature of Roman law (*POR* 19) and the danger of applying religious *conviction* to every aspect of society, as if this were sufficient for the rational organization of the state (see Hegel's extended discussion attached to §270, p. 291-302).

Aristotle's and Hegel's confrontations with inherited principles take various forms, but it is evident that a common critical theme of both philosophers concerns the inadequacy of applying norms formulated in a non-contextual fashion to society. Hegel's and Aristotle's critiques of the non-contextual formulation of normative principles does not concern theory alone. Both philosophers make it clear that attempts to apply such formulations of normative principles are not just ineffective but are dangerous as well, since such attempts may end in violent social chaos. Aristotle states:

> The government, too, as constituted by Socrates, contains elements of danger; for he makes the same persons always rule. And if this is often a cause of disturbance among the meaner sort, how much more among high-spirited warriors?
> (*Pol.* 2.5.1264b 7-10, tr. Jowett).

For Hegel the abstract formulation of right may lead to a subjectivistic morality, but, since there is no objective

element grounding such morality, the will may just as well be

expressed in an arbitrary fashion as either good or evil:

> Where all previously valid determinations have
> vanished and the will is in a state of pure
> inwardness, the self-consciousness is capable of
> making into its principle either *the universal in and
> for itself* or the *arbitrariness* of its *own
> particularity,* giving the latter precedence over the
> universal and realizing it through its actions—i.e.
> it is capable of being *evil.*
> (*POR* §139, p. 167)

If principles based on arbitrary particularity remain on

the level of the individual, the outcome may certainly be

tragic—as in Dostoevsky's portrayal of Raskolnikov. If, however,

such principles of arbitrary freedom are taken as the foundation

of state authority, the result may not be indeterminate freedom

for individuals within such a state, but a state willing to

negate positive dimensions of society on arbitrary principles of

self-determination.

**B. Hegel's and Aristotle's contextualization of inherited
normative principles.**

In the foregoing section I have tried to show that a

central aspect of Aristotle's and Hegel's social theories is a

critical examination of inherited normative principles.

Aristotle's and Hegel's explicit and thorough examination of

such principles is itself an element of the method through which

they form their own normative theory. I have indicated that this

corresponds with one conception of a contextualizing approach to

the formation of a normative theory of justice (chapter 1.I.(ex.

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I turn now to another aspect of a contextualizing approach to justice as stated in the introduction (chapter 1.I.(ex. 1.), see p. 6-7). According to this formulation of a contextualizing approach, Aristotle and Hegel confront normative principles with central features of social reality in the process of forming a more adequate conception of social justice. It is important to note that this element of the contextualizing method of Aristotle and Hegel is the main concern of my dissertation. The main focus of chapter five is to examine respects in which a contextualizing approach is useful for the development of a democratic distribution of knowledge. Since this aspect of a contextualizing approach to justice is the central concern of this dissertation, it is necessary to show that Aristotle's and Hegel's approaches are similar in this regard.

The general schema of a contextualizing approach is explicit in Hegel's dialectical method. In Hegel's conception of the dialectical development of a notion, an initially abstract idea is shown to be inadequate as a representation of phenomenal experience. Through a comparison with experience a new notion is developed which is capable of subsuming the truth of the original notion and experience, and the process is then repeated. The experience of the phenomenal world itself becomes richer through the development of the idea, and the idea becomes more adequate (or concrete) as a representation of experiential phenomena.

Aristotle does not set forth in an explicit manner his method in practical philosophy. Nevertheless, it is reasonable to argue that Aristotle's method is similar to Hegel in this regard in showing that normative principles become more adequate and concrete when they are confronted with central features of actual social context. For instance, Aristotle's development of the norm of justice is not simply a criticism of Plato's approach with the intention of establishing a more adequate abstract conception of justice. Aristotle examines actual constitutions of Greek societies as well to consider in what respects they are rational and in what respects they fail in realizing their fundamental principles:

> On the subject of the constitution of Sparta and that
> of Crete, and virtually in regard to the other forms
> of constitution also, the questions that arise for
> consideration are two, one whether their legal
> structure has any feature that is admirable or the
> reverse in comparison with the best system [τὴν
> ἀρίστην νενομοθέτηται τάξιν], another whether it
> contains any provision that is really opposed to the
> fundamental principle and character of the
> constitution that the founders had in view.
> (*Pol.* 2.6.1269a 29-34, tr. Rackham)

For instance, Paul Cloché notes that Aristotle considers education a positive democratic element of the Spartan constitution insofar as it tends toward stability. The Spartan state provides for equality of education to the children of citizens:

> Proclamant son estime pour les régimes mixtes, où
> sont heureusement mélangées la démocratie et
> l'oligarchie, il fait observer qu'il en est ainsi
> dans "la *politea* des Lacédémoniens" (*Pol.*, IV, VII,
> 4). En effet, d'une part, "bien des personnes

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> entreprennent d'en parler comme d'une démocratie
> parce qu'elle possède nombre d'éléments
> démocratiques". Quels sont ces éléments? D'abord,
> l'éducation des enfants, qui est identique pour les
> riches et les pauvres; "cette égalité persiste à
> l'âge suivant et quand ils sont devains hommes", rien
> ne distinguant alors visiblement le riche du
> pauvre . . .
>
> Proclaiming his esteem for mixed systems of
> government, where democracy and oligarchy are happily
> combined, he [Aristotle] makes the observation that
> it is thus in "the constitution of the
> Lacedaimonians" (*Pol.*, IV, VII, 4). In effect, on one
> hand, "many people undertake to speak of it as a
> democracy because it possesses numerous elements of
> democracy". What are these elements? First, the
> education of children, which is identical for the
> rich and the poor; "this equality persists into the
> following years and when they have become men",
> nothing visibly distinguishes, then, the rich from
> the poor . . .
> (Cloché, "Aristote et les Institutions de Sparte", my
> translation)[9]

Such an egalitarian form of education has the merit of

establishing equality among the citizens as political agents so

that distinctions between the rich and poor are less evident.

This form of education in turn lends legitimacy to the state

through the stability that it engenders. In effect, this form of

education is a means through which a form of mutual recognition

between citizens arises through an equal distribution of

education in their society.[10]

In the following two sections I point to particular

aspects of Aristotle's and Hegel's thoughts which exemplify

particular cases of a contextualizing approach. For Aristotle

this is an examination of the relationship between equity and

the inherently variable nature of human activity. For Hegel I

examine his critique of Kantian formalism with respect to the notion of freedom and the actual social disorder that results from an application of inadequately developed normative principles. The claim that Hegel is making is examined in light of Rousseau's conception of the *general will* as a form that abstract freedom takes within the French Revolution.

II. Aristotle as a Contextual Thinker

Aristotle argues that human activity is a type of social "material" conformable to law. At the same time human activity in some measure determines the form of law itself. Aristotle considers it useful to take into account contemporaneous social realities in the process of forming normative principles that direct human activity. For Aristotle such a method indicates a *contextual* approach to practical reasoning. In other words, the social reality of human activity influences the application and formation of normative principles. To clarify how Aristotle uses this method, I will examine Aristotle's conception of the role of flexibility in the formation and application of law. In this discussion I indicate the distinguishing features of a contextual approach for Aristotle, and I point out the features of his conception of justice I will discuss in later chapters.

A. Discussion of equity as a form of justice: flexibility in the formation and application of normative principles.

In this section of the dissertation I want to explicate the important philosophical notion of *flexibility* in the

institution and application of laws that Aristotle develops in the context of his discussion of *equity* (ἐπιεικές) in Book V of the *Nicomachean Ethics* (*NE* 5.10.1137a 31-1138a 4). The notion of equity is central to Aristotle's theory of justice. In the *Nicomachean Ethics* Aristotle's conception of justice at times gives the impression of being a fairly mechanical method for distributing social or material goods according to a correct proportion. In his discussion of equity it is clear that Aristotle has a far more subtle account of justice which requires practical judgment based on a life thoroughly grounded in the experience of practical, political activity.

Aristotle's discussion of *equity* illustrates the nature of Aristotle's contextual approach to justice, and so an examination of Aristotle's conception of equity is useful for an understanding of Aristotle's method. In addition, I will argue in chapter five of the dissertation that the notion of flexibility in application and formation of laws is useful for a democratic construction of education within our own society, so the material developed here has application for the further development of normative principles.

Starting from the claim that law is a construction of human practical rationality that aims to structure human conduct, it is appropriate to ask whether and how flexibility in the formation and application of laws occurs. This will apply to the study of the particular way in which political judgment relates to law and the institutions of the state as well. As

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Aristotle argues, it is not merely a matter of comparing all the laws written and choosing somehow those that are best, even such choice demands judgment that is well-constituted. The notion of political judgment itself can be viewed as one means through which the notion of flexibility in the formation and application of norms comes into effect.

1. Philosophical contention over the Aristotelian discussion of equity.

At one point Aristotle states that in some manner equity is the form of justice *par excellence*:

> τό τε γὰρ ἐπιεικὲς δικαίου τινὸς ὂν βέλτιόν ἐστι
> δίκαιον, καὶ οὐχ ὡς ἄλλο τι γένος ὂν βέλτιόν ἐστι τοῦ
> δικαίου. ταὐτὸν ἄρα δίκαιον καὶ ἐπιεικές, καὶ ἀμφοῖν
> σπουδαίοιν ὄντοιν κρεῖττον τὸ ἐπιεικές.

> For equity, while superior to one sort of justice, is
> itself just: it is not superior to justice as being
> generically different from it. Justice and equity are
> therefore the same thing, and both are good, though
> equity is the better.
> (*NE* 5.10.1137b 7-11, tr. Rackham)

Given the importance that attaches to this notion, it is reasonable to inquire further into its nature.

Gauthier and Jolif in their superlative commentary on the *Nicomachean Ethics* state that the basis of equity according to Aristotle can be found in nature (natural right). "... l'équité n'y est pas définie comme indulgence, elle n'est pas en dehors de la sphère du droit, elle est au contraire source de droit, et d'un droit supérieur, puisque inserit dans la nature." "Equity is not defined here [Book V] as indulgence, it is not outside the sphere of right, it is on the contrary the

source of right, and of a superior right, since it is contained

in nature" (Gauthier and Jolif, 433). By "indulgence" Gauthier

and Jolif apparently mean an enactment that arbitrarily

circumvents a particular law. Gauthier and Jolif feel it is

important to eliminate any sense that the Aristotelian notion of

equity involves *arbitrary* enactments pertaining to law.

The attempt to base the equitable in natural law points to

a problem that by all appearances is inherent to the concept—

without an external foundation the notion of equity is open to a

charge of arbitrariness in application and, hence, is

inconsistent with justice. I argue below, though, that the

argument that equity is based on natural law cannot be derived

from the text as we have it, and, even further, it is

inconsistent with the text. The issue is of broader interest to

understanding Aristotle's contextual approach, because it

appears reasonable to argue that any form of justice that takes

account of particular circumstances is arbitrary unless there is

an objective basis (such as nature) on which it is founded. It

is important to show that even without a basis in natural law

Aristotle's conception of equity is a legitimate normative

principle, and that this principle is inherently based on a

contextual approach to justice.

With respect to the conception of equity as based in some

sense on nature, there are difficulties involved in trying to

extract a coherent, explicit view of natural law and justice

from Aristotle's work. In Appendix A to this dissertation, I

offer a critique of an account of natural justice in the work of Aristotle. Aside from this issue, it should be noted that the discussion of equity in Book 5.10 of the *Nicomachean Ethics* nowhere makes reference to natural law. In this chapter the term *phusis* (φύσις, *nature, essential quality*) is used only in the sense of *essential character* of a thing, as it is used, for example, when we say that the *nature* of Socrates' philosophical method is dialectical.

The claim that equity is based in natural law is derived from the *Rhetoric*. It is evident that the characteristics of equity are not so much at issue for Aristotle in the passages of the *Rhetoric* as the more immediate question of how best to argue a case.

> πρῶτον μὲν οὖν περὶ νόμων εἴπωμεν, πῶς χρηστέον καὶ προτρέποντα καὶ ἀποτρέποντα καὶ κατηγοροῦντα καὶ ἀπολογούμενον. φανερὸν γὰρ ὅτι, ἐὰν μὲν ἐναντίος ᾖ ὁ γεγραμμένος τῷ πράγματι, τῷ κοινῷ νόμῳ χρηστέον καὶ τοῖς ἐπιεικέσιν ὡς δικαιοτέροις . . . . καὶ ὅτι τὸ μὲν ἐπιεικὲς ἀεὶ μένει καὶ οὐδέποτε μεταβάλλει, οὐδ' ὁ κοινός (κατὰ φύσιν γάρ ἐστιν), οἱ δὲ γεγραμμένοι πολλάκις . . .
>
> Let us first then speak of the laws, and state what use should be made of them when exhorting or dissuading, accusing or defending. For it is evident that, if the written law is counter to our case, we must have recourse to the general law and equity, as more in accordance with justice . . . that equity is ever constant and never changes, even as the general law, which is based on nature, whereas the written laws often vary . . .
> (*Rhet.* 1.15.1375a 25-33, tr. Freese).

If the written law is against the matter we have in hand to argue (ἐὰν μὲν ἐναντίος ᾖ ὁ γεγραμμένος τῷ πράγματι), then one strategy is to argue that there are natural, immutable laws

common to all that transcend the written laws. In this passage Aristotle practically gives a list of persuasive techniques suitable for the case at hand. If, on the other hand, the written law is advantageous to a position, Aristotle presents another set of arguments that can be used in support of the written law:

> If however the written law supports our case, we must urge that the oath 'to give my verdict according to my honest opinion' is not meant to make the judges give a verdict that is contrary to the law, but to save them from the guilt of perjury if they misunderstand what the law really means . . . . Or that not to use the laws is as bad as to have no laws at all, etc.
> (*Rhet.* 1.15.1375b 16-20, tr. Roberts).

Clearly, in these passages the conception of natural law that Aristotle puts forth is subservient to the purpose at hand of winning a legal case; so it is highly questionable whether a coherent philosophical conception of equity can be based on the notion of natural law derived from these passages. In other words, Aristotle's intention in these passages was not to give his considered view on the definition of *equity*. Furthermore, Aristotle only says (see *Rhet.* 1.15.1375a 25-33 above) that equity is like the general law in terms of constancy, but Aristotle only states *specifically* that the *general law is according to nature.*[11] There is additional external evidence which makes it difficult to accept these passages of the *Rhetoric* as Aristotle's definitive position on the notion of equity. In the discussion of equity (ἐπιεικὲς) given above Aristotle says that "equity is ever constant and never changes,"

but in the *Nicomachean Ethics* Aristotle repeatedly argues for

flexibility in the determination of what equity is. These

considerations make it difficult to adopt his argumentation in

the *Rhetoric* as his considered philosophical view on this issue.

Finally, the evidence of the discussion in the *Nicomachean*

Ethics itself is explicitly against the notion that equity has

its basis in a conception of natural law that is universal and

immutable. In Book V of the *Ethics* Aristotle indicates that the

equity that is required with respect to the laws of a state is

not according to an immutable standard of natural law. The

application of flexibility in the laws is itself a human

construction, and the standard is itself human practical

rationality:

> ὅταν οὖν λέγῃ μὲν ὁ νόμος καθόλου, συμβῇ δ᾿ ἐπὶ
> τούτου παρὰ τὸ καθόλου, τότε ὀρθῶς ἔχει, ᾗ
> παραλείπει ὁ νομοθέτης καὶ ἥμαρτεν ἁπλῶς εἰπών,
> ἐπανορθοῦν τὸ ἐλλειφθέν, ὃ κἂν ὁ νομοθέτης αὐτὸς ἂν
> εἶπεν ἐκεῖ παρών, καὶ εἰ ᾔδει, ἐνομοθέτησεν.

> When therefore the law lays down a general rule, and
> thereafter a case arises which is an exception to the
> rule, it is then right, where the Lawgiver's
> pronouncement because of its absoluteness is
> defective and erroneous, to rectify the defect by
> deciding as the lawgiver would himself decide if he
> were present on the occasion, and would have enacted
> if he had been cognizant of the case in question.
> (*NE* 5.10.1137b 20-24, tr. Rackham)

No mention is made of an appeal to natural law. It is even

unclear how humans would become cognizant of such laws in nature

that apply to humans, or how such natural laws are to be

institutionalized within society. Given the difficulties that

arise in the notion of equity from the above considerations, it

may be useful to provide a fuller explication of this concept in Aristotle's work.

2. Approach to a social conception of equity.

My initial interest in the topic of equity in the formation and application of normative principles resulted from reading the following passage of Aristotle's *Nicomachean Ethics*:

> τοῦ γὰρ ἀορίστου ἀόριστος καὶ ὁ κανών ἐστιν, ὥσπερ καὶ τῆς Λεσβιάς οἰκοδομῆς ὁ μολίβδινος κανών· πρὸς γὰρ τὸ σχῆμα τοῦ λίθου μετακινεῖται καὶ οὐ μένει ὁ κανών, καὶ τὸ ψήφισμα πρὸς τὰ πράγματα.

> For what is itself indefinite can only be measured by an indefinite standard, like the leaden rule used by Lesbian builders; just as that rule is not rigid but can be bent to the shape of the stone, so a special ordinance is made to fit the circumstances of the case.
> (*NE* 5.10.1137b 29 ff., tr. Rackham)

A difficulty in the interpretation of this quotation of the leaden rule of the builders of Lesbos is the metaphorical nature in which it is expressed. This metaphor seems to require explication, since "πᾶν γὰρ ἀσαφὲς τὸ κατὰ μεταφορὰν λεγόμενον" "Everything said metaphorically is unclear" (*Top.* 6.2.139b 34, tr. Guthrie).[12] The following explication is, in part, an attempt to arrive at a clear, non-metaphorical conception of Aristotle's notion of equity and to determine its relevance to Aristotle's contextual conception of justice.

3. **Flexibility in moral conduct and judgments** *according to rule*.

a. Do not demand more precision than the subject matter admits.

πεπαιδευμένου γάρ ἐστιν ἐπὶ τοσοῦτον τ' ακριβὲς
ἐπιζητεῖν καθ' ἕκαστον γένος ἐφ' ὅσον ἡ τοῦ πράγματος
φύσις ἐπιδέχεται· παραπλήσιον γὰρ φαίνεται
μαθηματικοῦ τε πιθανολογοῦντος ἀποδέχεσθαι καὶ
ῥητορικὸν ἀποδείξεις ἀπαιτεῖν. ἕκαστος δὲ κρίνει
καλῶς ἃ γινώσκει, καὶ τούτων ἐστὶν ἀγαθὸς κριτής.

. . . for it is the mark of an educated man to look
for precision in each class of things just so far as
the nature of the subject admits; it is evidently
equally foolish to accept probable reasoning from a
mathematician and to demand from a rhetorician
scientific proofs. Now each man judges well the
things he knows, and of these he is a good judge.
(*NE* 1.4.1094b 24-1095a, tr. Ross)

This passage is of primary significance to the discussion
at hand. It is essential not to search for more accuracy in the
inquiry than the subject matter demands. In general, a person
knowledgeable in terms of practical judgment determines the
degree of flexibility allowed for a particular subject matter
under question. With respect to the equitable application of
normative principles, the subject matter is human practice
ordered by law.

It is first necessary to note that there are
different requirements of proof according to the type of
inquiry under question. This point is central to
Aristotle's method:

Our discussion will be adequate if it has as much
clearness as the subject-matter admits of; for
precision is not to be sought for alike in all

> discussions, any more than in all the products of the
> crafts.
> (*EN* 1.4.1094b 12-14, cf. 1.4.1094b 24 ff. and
> 1.7.1098a 25 ff., tr. Ross)

The point is not simply that practical reasoning is less rigorous than theoretical reasoning, but that the subject matter (human action) is inherently variable, so anyone demanding the same sort of clarity in understanding of practical matters as in geometry, for instance, is not so much showing scientific rigor as lack of education. The types of validity claims that are made and supported in theoretical and practical reason are clearly different. Furthermore, as is well-known, the ends to which these types of reasoning lead are different: "θεορητικῆς μὲν γὰρ τέλος ἀλήθεια πρακτικῆς δ᾽ ἔργον." "For the end of theoretical knowledge is truth, but for practical knowledge it is the act" (*Met.* 2.1.993b 19-20, tr. Ross).

From this introductory perspective a number of concerns arise which this present section attempts to formulate and respond to. How does Aristotle's conception of a flexible rule relate to action, in contrast to absolute laws that are literally inscribed in stone? It is important to note that being flexible does not mean that Aristotle falls into absolute moral relativism here, since, while the subject matter with regard to human action does require flexibility in practical judgments, there are limits to the degree to which principles can bend. Just as the leaden rule of the builders of Lesbos can be bent to

fit the form of a curved object, the rules of human conduct can
be instituted to allow for mitigating circumstances.

The person that determines what is appropriate to the
situation has knowledge of the subject matter; in the passage of
the *Nicomachean Ethics* stated above it is the lawgiver. Ideally,
in an educated democracy one would suppose this function could
be filled by the average citizen. Certain difficulties arise,
though: why accept this account of what is morally acceptable
rather than, say, a moral system built on absolute imperatives?
What are the advantages for human existence and activity in a
political community based on Aristotle's account of practical
rationality?

b. What determines the degree of flexibility?

(1) The subject matter involved in the formation of norms.

It is necessary to determine more precisely the sphere in
which the notion of *flexibility* applies. The purpose is to
discern in what manner human practical rationality is flexible,
not due to something non-rational, but as a particular mode of
rationality which inherently applies to a certain social
context.

The evident variability of the subject matter with which
practical rationality deals (human conduct) requires flexibility
in spheres involving practical judgments.

> ". . . matters concerned with conduct and questions
> of what is good for us have no fixity, any more than
> matters of health. The general account being of this

nature, the account of particular cases is yet more
lacking in exactness; for they do not fall under any
art or precept (παραγγελίαν) but the agents
themselves must in each case consider what is
appropriate to the occasion, as happens also in the
art of medicine or of navigation (*NE* 2.2.1104a 4-9,
tr. Ross)."

The subject matter of an inquiry often determines the

degree of accuracy which obtains concerning it. If the object

under scrutiny is justice as a structure of the state that

organizes human activity, then it is indispensable to realize

the inherent variability of the subject matter to which justice

as a system of normative principles applies. Stewart provides

the following enlightening quotation by Eustratius on the

relation of the knowledge in ethical inquiries to the underlying

subject matter.

ὕλη δὲ ἐφ᾽ ἑκάστης μεθόδου καὶ τέχνης λέγεται τὸ
ὑποκείμενον αὐτῆς περὶ ὃ καταγίνεται, ὑποκείμενον δὲ
τῇ ἠθικῇ καὶ πολιτικῇ τὰ ἐν βίῳ ἐστὶ πράγματα καὶ αἱ
περὶ ταῦτα τῶν ἀνθρώπων πράξεις τε καὶ ἐνέργειαι,
ἅτινα τῶν ὡς ἐπὶ τὸ πολὺ ἐνδεχομένων εἰσὶ καὶ οὐκ
ἀεὶ ὡσαύτως ἔχοντα . . .

The "matter" of each inquiry and art means the
underlying subject in regard to which that science
comes about, the underlying subject in ethics and
politics consists of those matters in life concerning
the practice and activity of humans—whatever is
capable of not being thus, or not always holding in
such a manner . . .
(quoted from Stewart, 28, my translation)

To arrive at a proper notion of the Aristotelian

conception of equity it is important to keep in mind that

normative principles consistently involve a reference to a

variable subject matter. To disregard this subject matter (i.e.,

to take a non-contextual approach to the normative issues of

justice as equity) leads to error.

(2) Argument for flexibility in practical judgments according to rule.

For Greek thought in general the function of the rational

faculty of humans (λόγος) is to properly define limits, so the

proper activity of the practical rationality of humans is for

Aristotle a manner of making determinations in this sphere

according to reason (*NE* 1.7.1098a 13 ff.). The etymology of the

Greek word λόγος (generally, *rationality*) has relevance in this

regard. Etymologically, λόγος is related to λέγω (*to say*, or

relate), which originally meant *to enumerate;* λόγος is

associated with proper ratios. This is readily apparent, for

example, in the definition of virtue:

> Virtue, then, is a state of character concerned with
> choice, lying in a mean, i.e. the mean relative to
> us, this being determined by a rational principle
> (ὡρισμένη λόγῳ), and by that principle by which the
> man of practical wisdom would determine it.
> (*NE* 2.6.1106b 36-1107a 2, tr. Ross)

Flexibility in the *application* of rational principle is inherent

to this definition insofar as it concerns a mean that is

relative to us. Furthermore, with respect to the issue of virtue

in general, the *formation* of principles is flexible as well, in

that such principles are determined by a person of practical

wisdom. The nature of practical wisdom is different from pure

theoretical knowledge due to the variable subject matter to

which it applies, and for a variable subject matter a flexible

rule is required. Reason demarcates the extent to which any rule can bend within the parameters of a mean relative to us and the variable circumstances inherent in human activity.

An argument for flexibility in the application of rule according to reason is not explicitly given by Aristotle, but I believe can be consistently drawn from various places within the text:

(1) The subject matter of moral inquiry is *human action*.

(2) The subject matter (practice) is naturally such as to allow a *range* of conduct that is appropriate within a given situation. Furthermore, the circumstances themselves determine the range of practice—the proper time, the proper degree, the attitude involved etc., (*NE* 3.7.1115b 17 ff.). All these factors require a range in which judgment concerning moral action can occur.

(3) It is not reasonable to ask for more in terms of reason (as forming normative principles) than the subject matter allows.

(4) Since the subject matter of moral inquiry does not admit of absolute exactness, it would show a lack of education to demand exactness rather than flexibility in the formation and application of the normative principles which guide human practice.

At this point it would be reasonable to respond to objections to Aristotle's position on flexibility in the application and formation of normative principles. Since my aim

was to show how Aristotle's discussion of equity illustrates a contextualizing approach in relation to the formation of normative principles, the examination of objections is a digression in the line of argument of the dissertation. In order not to neglect an examination of the objections to such an approach, the difficulties that arise for Aristotle's conception of equity as flexibility in the formation and application of normative principles are given in an appendix (B) to this dissertation.

B. Conclusion to this section.

In summary, I review two reasons from the foregoing discussion that indicate why Aristotle's notion of equity as flexibility in the formation and application of normative principles requires a contextualizing approach:

(1) The material activity of social beings itself requires application of flexible rules insofar as it is not amenable to a strictly uniform characterization. " . . . the material of conduct is essentially irregular" (*NE* 5.10.1137b 19-20, tr. Rackham).

(2) Universal, abstract laws are inherently inadequate in that general rules cannot cover all particular cases:

> And this is the nature of the equitable, a
> correction of law where it is defective owing to
> its universality. In fact this is the reason why
> all things are not determined by law, that about
> some things it is impossible to lay down a law, so
> that a decree is needed.
> (*NE* 5.10.1137b 26-29, tr. Ross)

It may be useful to restate the essential points that can be drawn from the discussion that have importance for what follows:

(1) The discussion of flexibility in the formation and application of normative principles indicates the development of a normative theory that is neither universal nor based in natural law. In other words the theory is contextual in that it is related to the practical activity of human beings.

(2) The material which is the subject matter of practical rationality (human activity according to rational rules) influences the formation of principles.

(3) The formation and application of principle is not entirely relative even though it is flexible, but is determined by those possessing *phronēsis* (φρόνησις, *prudence, thoughtfulness*), i.e., flexibility is related to practical knowledge.

In the preceding discussion the intention has been to examine the contextual approach that Aristotle uses in his discussion of equity as a form of justice in order to gain understanding of how such an approach can contribute critical insight into the relationship between the development of normative principles and practical social activity. In this regard, Aristotle's notion of equity merits more consideration than it is usually accorded, insofar as it provides a concrete example of the practical application of a method that is contextual.

III. Hegel as a Contextual Thinker.

In this section of the dissertation I present Hegel's contextualizing approach to the formation of normative principles by demonstrating that Hegel bases his philosophical-political theory on an analysis of concrete historical social conditions. I begin with Hegel's view that rationality is an evolving process inherent in the actual historical course of humanity's development. Next, referring to Hegel's analysis of the French Revolution, I examine a particular instance in which he argues that an instantiation within society of an inadequate rational conception of freedom (formalism) can have destructive consequences.

A. Hegel's concrete, historical conception of rational norms.

Hegel argues that rationality is a historical and actual phenomenon in the world. A difficulty in accepting Hegel's account of historical development is that Hegel conceives of this development as the dialectical unfolding within the world of an Idea that is already inherent in history from the beginning. "For, like the soul-conductor Mercury, the Idea is in truth, the leader of peoples and of the World; and Spirit, the rational and necessitated will of that conductor, is and has been the director of the events of the World's History" (POH 8). Even granting the problematic nature of Hegel's teleology, the manner in which Hegel analyzes the course of concrete historical events retains great value, because he argues that his theory

must be consistent with the empirical facts of history:

> It is only an inference from the history of the
> World, that its development has been a rational
> process; that the history in question has constituted
> the rational necessary course of the World-Spirit—
> that Spirit whose nature is always one and the same,
> but which unfolds this its one nature in the
> phenomena of the World's existence. This must, as
> before stated, present itself as the ultimate result
> of History. But we have to take the latter as it is.
> We must proceed historically—empirically.
> (*POH* 10)

Characterizing Hegel's thought, as Marx does, as a

peculiar sort of logical mysticism tends to diminish these

features of Hegel's thought that are in fact concrete. Marx's

analysis of Hegel's political thought in the *Critique of Hegel's*

Doctrine of the State is important for an understanding of the

Hegelian method, but Marx appears at times to stress his point

to the extreme:

> Hegel's sole concern is simply to re-discover 'the
> Idea', the 'logical Idea', in every sphere, whether it
> be the state or nature, whereas the real subjects, in
> this case the 'political constitution', are reduced to
> mere *names* of the Idea so that we are left with no
> more than the appearance of true knowledge.
> (Marx, *Critique of Hegel's Doctrine of the State*, 67)

> He [Hegel] does not develop his thought from the
> object, but instead the object is constructed
> according to a system of thought perfected in the
> abstract sphere of logic. His task is not to
> elaborate the definite idea of the political
> constitution, but to provide the political
> constitution with a relationship to the abstract
> Idea . . .
> (Marx, *Critique of Hegel's Doctrine of the State*, 69)

In contrast to Marx, others have considered Hegel's

thought to be mainly a response to the social circumstances that

existed at his time—a social philosophy solely oriented toward

political expediency. As Fries said, "Hegel's metaphysical mushroom has grown not in the gardens of science but on the dunghill of servility."[13] In my view, it is a misconception to suppose that either Hegel or Aristotle's project is essentially a description and, implicitly, a support of the established political structure.

The intention of the following is to make clear that Hegel is developing normative claims—not merely through an elaboration of an idea in the "abstract sphere of logic"—but in relation to actual social institutions and practical activity. As indicated by the comparison between Aristotle and Hegel given in the first section of this chapter, the general notion of contextual thinking for both Hegel and Aristotle is a method of philosophical theorizing that confronts prevalent normative principles by taking account of main features of social context in order to form more practical, realizable principles for ordering social activity. As such, there is an immediate concern with the relationship between theory and practice in contrast to attempts to come to terms with this issue only after abstract normative principles have been developed. In this respect forming principles according to a contextualizing method can be distinguished from formalistic approaches that develop normative principles in an a priori fashion. Such a formal method conceives of practical rationality according to the paradigm of mathematical reasoning in its application to the physical world. A non-contextualizing approach considers that once a universal

norm has been worked out in abstraction it can be applied to the
social realm—just as in physics the mathematical formula that
describes gravitational attraction applies everywhere in the
universe: "But just as those conceptions presented in dynamics
are founded upon a merely formal representation of pure
mathematics as presented in geometry, reason has taken care also
to provide the understanding as far as possible with intuitive
presentations a priori in behoof of a construction of the
conception of right"[14] (Kant, *SOR*).

In the following section, I examine two aspects of Hegel's
critique of formalism in the construction and application of
normative principles. First, Hegel argues that the theoretical
foundation of formal approaches to the construction of normative
principles can be found in Kant's conception of practical
rationality. In order to understand Hegel's critique of Kantian
formalism it is necessary to examine the features of Kant's
theory that Hegel characterizes as "formal." Second, through an
examination of Rousseau's conception of the *general will* I
present an analysis of a formal principle that Hegel argues is
inadequate in its practical, social application. Within this
analysis the elements of Hegel's critique of formalism will be
identified. Following this examination, a contrast to a
formalistic approach is given by Hegel's conception that
"universal history" is the historical development of the
consciousness of concrete, positive forms of freedom (in section
c.).

B. Hegel's critique of formalism.

1. Formalism in theory: Hegel's critique of Kant's formal approach to normative theory.

The debt that Hegel owes to Kant's moral theory is evident throughout Hegel's practical work. Hegel explicitly acknowledges the contribution that Kant has made in this regard: "In doing my duty, I am with myself *[bei mir selbst]* and free. The merit and exalted viewpoint of Kant's moral philosophy are that it has emphasized this significance of duty" (*POR* 161). At the same time, in his discussion of the problems inherent in formal approaches to the formation of normative theory Hegel constantly returns to Kant as the wellspring of formalism. In order to understand Hegel's critique of formalism in moral theory it is necessary to grasp the aspects of Kant's theory that Hegel argues are problematic. The focus of this discussion of Kantian formalism will be on the conception of freedom in its relation to individual will.

Kant claims that freedom is the foundation of moral law, so that by following the moral law a person is acting in accordance with freedom as it is generally understood. "Freedom, however, among all ideas of speculative reason is the only one whose possibility we know a priori. We do not understand it, but we know it as the condition of the moral law" (*CPrR* 4).

An understanding of Kant's conception of freedom can be attained through an analysis of his conception of *autonomy*.

Autonomy is, in effect, the very nature of the will according to Kant. Autonomy is the nature of the will such that it is not determined by any *empirical* conditions, whether subjective (e.g., psychological, emotional) or objective (for instance, profit). An act can only be considered autonomous if the condition for its action arises within the individual rather than through some external constraint. Within Kant's philosophy a further condition for moral autonomy is that internal influences (such as desire and self-interest) must not determine the free functioning of the will. Autonomy of the will is required for applying the categorical imperative—otherwise there is always the question whether some interest is behind the formation of particular maxims according to the pure form of moral law as set forth in the categorical imperative. Kant maintains that the only principle of moral law that is consistent with the autonomy of the will (and, hence, for Kant is a determining ground of the free will) is the categorical imperative.

a. **Hegel's critique of Kant's *formal* conception of freedom.**

One of Hegel's primary criticisms of Kant's formalism is that it essentially provides a "subjectivist" basis for a theory of human freedom based on human will (a theory of right) that is inadequate in its application to social-political theory:

> The perpetually recurring misapprehension of Freedom
> consists in regarding that term only in its *formal*,
> subjective sense, abstracted from its essential
> objects and aims; thus a constraint put upon impulse,

desire, passion—pertaining to the particular
individual as such—a limitation of caprice and self-
will is regarded as a fettering of Freedom. We should
on the contrary look upon such limitation as the
indispensable proviso of emancipation. Society and
the State are the very conditions in which Freedom is
realized.
(*POH* 41)

Kant puts forward a negative conception of freedom as the

condition of subjective will which is not determined by anything

empirical (*CPrR* 15). The only legitimate restriction of right is

a limitation of an activity of will which would interfere with

another person's *free* activity of will:

> In the Kantian definition *[Bestimmung]* of
> right . . . the essential element *[Moment]* is 'the
> *limitation* of my freedom or *arbitrary will* in such a
> way that it may coexist with the arbitrary will of
> everyone else in accordance with a universal
> law'. . . . The definition of right in question
> embodies the view, especially prevalent since
> Rousseau, according to which the substantial basis
> and primary factor is supposed to be not the will as
> rational will which has being in and for itself or
> the spirit as *true* spirit, but will and spirit as the
> *particular* individual, as the will of the single
> person *[des Einzelnen]* in his distinctive
> arbitrariness.[15]
> (*POR* 58)

In this respect it is clear that only *conscience* can

determine moral action. Hegel argues that according to such a

formal account the content of universal law is in fact empty so

that any activity can be willed as a universal law without

contradiction:

> However essential it may be to emphasize the pure and
> unconditional self-determination of the will as the
> root of duty . . . to cling on to a merely moral
> point of view without making the transition to the
> concept of ethics reduces this gain to an *empty*
> *formalism,* and moral science to an empty rhetoric of

duty for duty's sake. . . . The fact that *no property*
is present is in itself *[für sich]* no more
contradictory than is the non-existence of this or
that individual people, family, etc., or the complete
absence of human life. But if it is already
established and presupposed that property and human
life should exist and be respected, then it is a
contradiction to commit theft or murder; a
contradiction must be a contradiction with something,
that is, with a content which is already
fundamentally present as an established principle.
(POR 162-63)

While Kant's notion of freedom based on a subjectivistic

account of the will occupies a certain stage of moral

theorizing, its application in spheres where it is inadequate

can be detrimental:

One of Hegel's major arguments against the Kantian
heritage is that just as the categorical imperative
is inoperative in the family—where it is superseded
by love—so its writ does not run in political life.
(HTMS, Avineri 137)

Formulations of the nature of freedom in human activity that

have their basis in formal, or "pure", practical theory *(CPrR* 4)

such as Kant presents, are problematic when it comes to

providing a concrete account of liberty within society. Hegel

feels that Kant can be viewed as the theoretician of the French

Revolution, whereas Rousseau's political work is the practical

application of this mode of theorizing. In the following

section, I examine Rousseau's conception of freedom realized

through the *general will* in order to clarify Hegel's claim that

a consistent application of a formal approach to right based on

individual will is dangerous in application to determinate,

modern social conditions and, hence, leads to the atrocity of

the Terror in which the development of any determinate social

group is a threat which must be negated through death.

2. Formalism in practice: An examination of Hegel's critique of
the practical application of formal approaches to right in his
analysis of the French Revolution.

　　　Hegel's examination of the French Revolution is an example

of a contextual approach to social theory, insofar as Hegel

argues that the actual historical results of the French

Revolution are an application of an inadequately developed,

subjectivistic conception of freedom. In the course of this

examination it will become clear what Hegel takes to be a more

concrete conception of freedom sufficiently structured to be

adequate to modern social circumstances.

　　　According to Hegel, the French revolution itself is

related to developments in historical forms of human

rationality. The assertion of the freedom of will as a principle

of political power indicates that humans, as individuals, are

fundamentally free, or self-determining. Hegel accepts the

principle of the freedom of individuals as the central

achievement of the modern world. Within Rousseau's political

theory human freedom is brought about within society through the

instantiation of the *general will.* Hegel argues that the

formulation of freedom within the conception of the general

will—realized in the French Revolution—is inadequate due to its

"formal" nature. Hegel argues that in the French Revolution the

general will is arbitrary particularity itself, so the notion of

the general will is negative—only a universalization of arbitrary particularity which opposes anything positive. The formation of any social institution with positive content is inconsistent with such a conception of freedom.

a. Examination of Rousseau's conception of the *general will*.

In order to understand the point of reference of Hegel's view on the French Revolution it may be useful to briefly examine Rousseau's conception of the *general will (volonté général)*.

According to Rousseau no absolute authority can be based on even an explicit revocation of freedom due to the fact that liberty is a right that is inalienable. "*Renoncer à sa liberté c'est renoncer à sa qualité d'homme.*" "To renounce liberty is to renounce one's humanity" (*CS* 46).[16] Since there is no *legitimate* authority based on force through which rule can be established, it follows that legitimate authority is based on agreements (*les conventions*) among people. So, the only means through which individual liberty can be secured within society under conditions of scarcity (whether artificial or not) is through the establishment of a contract embodied in the general will.[17]

Rousseau states that each individual subsumes his or her will within the general will and that the general will is an "indivisible" association of each individual's will (*CS* 51-52). The general will is a means to transform society so that the

state association as the "moral and collective body" respects

the inherent freedom of each individual.

Describing some of the elements of this social association

may help to clarify what individual liberty is under the social

contract. One element of the constitution of the general will is

that "all voices be heard" (*CS* 64), since any exclusion would

destroy the basis of the general will. The opportunity to voice

political concerns is, then, one of the elements that indicates

liberty within a society—at least the means to express one's own

particular will must be available. Rousseau also maintains that

equality is essential for the maintenance of liberty (*CS* 88). By

this Rousseau does not mean that there is an exact equality of

wealth, but that no inequality can legitimately be maintained by

violence against others.

At this point certain questions arise concerning the

formation and application of the general will to those who may

be reluctant to enter into the agreement, and to those who feel

that they have little faith in the political association. First,

Rousseau states that anyone not agreeing to the general will is

to be forced to agree to it:

> Afin donc que le pacte social ne soit pas un vain
> formulaire, il renferme tacitement cet engagement qui
> seul peut donner de la force aux autres, que
> quiconque refusera d'obéir à la volonté générale y
> sera contraint par le corps: se qui ne signifie autre
> chose sinon qu'on le forcera d'être libre . . .

> Therefore so that the social pact may not be an empty
> formula, it is tacitly affirmed that only the
> following obligation is able to give force to the
> others: whoever refuses to obey the *general will*

will be constrained by the social body; this means
nothing other than that person will be forced to be
free . . .
  (*CS* 54)

This clearly goes against the notion that the social

contract is in some sense an *agreement* between individuals.

There is a tendency for Rousseau to talk as if the individual

will is totally subsumed within the general will. The radical

nature of this subsumption of the particular by the *volonté*

générale Hegel believes is the basis of the horror of the French

Revolution. Under these conditions individual liberty is in

danger of becoming just an empty abstraction.

Originally, it appears as if Rousseau's intention is to

provide a social theory that supports human liberty within a

social context. The reality, though, is that the liberty of the

individual in Rousseau's theory is under constraint through the

enforcement of the general will:

> Il y a donc une profession de foi purement civile
> dont il appartient au souverain de fixer les
> articles. . . . Que si quelqu'un, après avoir reconnu
> publiquement ces mêmes dogmes, se conduit comme ne
> les croyant pas, qu'il soit puni de mort; il a commis
> le plus grand des crimes, il a menti devant les lois.

> There is, therefore, a profession of purely civil
> faith concerning which it belongs to the sovereignty
> [of the people] to establish the articles. . . . So
> if anyone, after having public recognized these
> articles of faith, acts as if they do not believe in
> them, let them be punished by death. They have
> committed the greatest of crimes—they have lied
> before the law.
>   (*CS* 179)

Hegel notes that according to such a conception of freedom

actual humans are themselves an abstraction, so that under such

a principle killing may become a matter of complete

indifference:

> The sole work and deed of universal freedom is
> therefore death, a death too which has no inner
> significance or filling [Erfüllung], for what is
> negated is the empty point of the absolutely free
> self. It is thus the coldest and meanest of all
> deaths, with no more significance than cutting off a
> head of cabbage or swallowing a mouthful of water.
> (POS 360).

C. Hegel's contextual approach to freedom within society.

In this section a contrast is provided to a formalistic

account of freedom—whether theoretical in Kant, or applied

practically as in Rousseau—through a brief examination of

Hegel's contextualizing approach to the nature of freedom as a

historical result of rational social development.

Hegel argues that formalism is inadequate to resolve the

duality between subjective will and social context, because it

reduces the content of individual subjectivity to

"arbitrariness". Subjective will can be anything, so, in fact,

its essential nature has the inherent potentiality of being

sheer negativity. Similarly, there is a relationship between

pure will as an abstraction and universal (formal-categorical)

imperatives that Hegel feels are devoid of content and,

therefore, are capable of specifying any normative claim

whatsoever without contradiction. It is difficult to see how a

formal approach can adequately address the issue of conflict,

for instance, at a level of abstraction that ex hypothesi

excludes context in the formation of principles that are then

applied to a social substratum that is mistakenly taken to be
undifferentiated. The basis of social activity according to this
view ultimately rests on a conception of the will associated
with subjective conscience. The difficulty for Hegel arises when
this abstract, formal conception of will is applied
inappropriately to social and political spheres.

As Alan Wood points out, an abstract conception of freedom
lacks any realization of the development of individual liberty
and conscience as a social process that has to be consistent
with the empirical facts of history:

> Hegel rejects liberal theories on the basis of their
> abstract, impoverished, and ahistorical view of human
> beings, their preference for a fictional human nature
> in place of historically situated self-
> understanding. . . . The real significance for us of
> Hegel's conception of ethical life is that it shows
> how we can accept a historicized and communitarian
> critique of liberalism without renouncing the
> Enlightenment's confidence in universal standards of
> reason.
> (*HET* 208)

This quotation is important because it brings to light the
nature of the concrete relation between historical, interested
individuals and universal law that Hegel's political theory
seeks to resolve dialectically.

Hegel maintains that an adequate account of human freedom
has to take account of the prevailing social conditions that are
related to the historical development of the awareness of human
freedom:

> The History of the world is none other than the
> progress of the consciousness of Freedom; a progress
> whose development according to the necessity of its

nature, it is our business to investigate. The general statement given above, of the various grades in the consciousness of Freedom—and which we applied in the first instance to the fact that the Eastern nations knew only that *one* is free; the Greek and Roman world only that *some* are free; while we know that all men absolutely (man *as man*) are free—supplies us with the natural division of Universal History, and suggests the mode of its discussion. (*POH* 19)

Hegel maintains that the historical dialectic between individual, particular interests and the universal nature of freedom is resolved on the level of the state: "The State is thus the embodiment of rational freedom, realizing and recognizing itself in an objective form. The State is the Idea of Spirit in the external manifestation of human Will and its Freedom" (*POH* 47). According to this view human freedom is associated with the progressive evolution of practical rationality within the state characterized by, on the one hand, universal principles set forth in law, the constitution and moral codes and, on the other hand, by the civil sphere of particular human activity.

The intention of chapter four of this dissertation is to examine whether Hegel is consistent in his account of the resolution between the particular social activity of human beings and the universal normative principles that direct such activity. I address this issue through an analysis of the adequacy of Hegel's conception of the relationship between the division of labor as a development specific to modernity and the distribution of knowledge. If Hegel is to achieve his goal of a

social structure that is universal in the extent of its rationality, there must be actual historical conditions in the social realm capable of fostering social universality. I claim that in the *Philosophy of Right* Hegel argues for a specific form of the distribution of knowledge that is capable of serving social universality through its mediating function within the state. It will be shown that the form of the distribution of knowledge that is based on distinctions inherent to the modern construction of the division of labor is inconsistent with Hegel's account of the universal nature of human freedom.

CHAPTER 3

Aristotle's Contextual Approach to a Theory of Justice

I. Justice and Conflict in the *Nicomachean Ethics*.

An adequate approach to understanding Aristotle's
conceptualization of justice must provide a clear account that,
as far as possible, is not biased toward a preconceived notion
of justice. In this section I want to explicate Aristotle's
conception of justice as he presents it in the fifth book of the
Nicomachean Ethics. Primarily this will be useful for the
subsequent discussion of the relation between justice and the
distribution of knowledge within society.

A. General and particular types of justice distinguished.

Aristotle explicitly moves from a discussion of justice in
general to an analysis of particular forms of justice. Aristotle
recognizes that the term δικαιοσύνη (*justice, or accordance
with right*) is a term that has a multiplicity of meanings that
roughly bear a common sense. The sense that is common to the
term *justice* Aristotle says is virtue in general, but it is
necessary to distinguish between the more particular types of
justice.

ὅτι μὲν οὖν εἰσὶ δικαιοσύναι πλείους, καὶ ὅτι ἔστι τις
καὶ ἑτέρα παρὰ τὴν ὅλην ἀρετήν, δῆλον· τίς δὲ καὶ
ὁποία τις, ληπτέον.

Thus it is clear that there are more kinds of Justice
than one, and that the term has another meaning
besides Virtue as a whole. We have then to ascertain
the nature and attributes of Justice in this special
sense.
(*NE* 5.2.1130b 6-8, tr. Rackham)

The notion of justice, then, has a plurality of meanings.
This insight is important for the analysis of the contextual
aspects of Aristotle's conception of justice. There is a
realization here that one exclusive meaning of the term *justice*
does not exist. As Aristotle says in the *Metaphysics,* "And there
are as many parts of philosophy as there are kinds of substance
. . . For being falls immediately into genera; for which reason
the sciences too will correspond to these genera (*Met* 4.2.1004a
4-6, tr. Ross)." "ὑπάρχει γὰρ εὐθὺς γένη ἔχον τὸ ὄν· διο καὶ αἱ
ἐπιστῆμαι ἀκολουθήσουσι τούτοις." As Aristotle says, it is
reasonable that spheres of knowledge are ordered according to
the genera that are being studied. There is a sense in which the
notion of justice for Aristotle falls immediately into genera of
justice. This leads to the conclusion that there is no
overarching conception of justice that is definitive for the
more concrete notions of justice that Aristotle focuses on.

Aristotle's project in book five of the *Nicomachean Ethics*
is to articulate the various meanings of the term *justice*. I
want to first draw the general lines along which Aristotle
presents his discussion, but my main intention is to focus on

Aristotle's account of distributive justice, since this particular type of justice is most relevant to the dissertation. Furthermore, a practical understanding of justice is more likely to be achieved by examining particular forms than from considering justice in general. Aristotle himself quickly leaves aside the notion of justice as "virtue in general" and focuses on particular types of justice (*NE* 5.2.1130b 16 ff.).

First of all, he divides the particular forms of justice (rather than justice in general) into *distributive justice* and *compensatory justice*. This distinction corresponds roughly to justice in the public and justice in the private spheres. Compensatory justice is then divided again into voluntary and involuntary forms.

B. Analysis of particular forms of justice.

1. Compensatory justice.

I only discuss compensatory justice sufficiently to distinguish it from distributive justice. Compensatory justice involves transactions between individuals in which someone has unduly suffered a loss or gain. The degree of corrective justice applied in such cases is determined by the material loss or gain directly and is not proportional to any claim related to the distribution of some social good according to a criterion separate from the loss or gain itself (i.e., the "worth" of the individuals involved).[18] The question is not whether someone

acted ethically or not, but what amount is required to equalize transactions between two people (*NE* 5.4.1132a 2-6).

As noted earlier, compensatory justice is either voluntary or involuntary. Examples of voluntary actions are selling, buying and loaning money; theft, assault, adultery are forms of involuntary actions. Aristotle characterizes certain actions as "involuntary" because they involve an injury to some party. In the case of adultery the injured party is someone not directly involved in the activity, although one could argue that adultery does, in some sense, injure even those actively engaged in the practice. Both voluntary and involuntary actions of this sort involve "transactions" between at least two people, and this appears to be the distinguishing feature between compensatory justice in general and distributive justice as the distribution of common social goods.

The reason that Aristotle subsumes voluntary and involuntary action under a conception of compensatory justice is not immediately evident. There is not an essential feature or mark under which voluntary monetary exchanges and involuntary ones such as theft and assault can be subsumed. The notion of compensatory justice is less relevant to the topic of this study, so I proceed directly to a discussion of distributive justice.

2. Distributive justice.

a. Distributive justice involving public goods.

Distributive justice deals with the distribution of goods that are public rather than with private transactions between individuals. This general statement requires clarification on a number of points. First, the type of goods that are distributed may be material, such as money and material goods collected through taxation or war, or the distribution may involve non-material social benefits such as honor:

> τῆς δὲ κατὰ μέρος δικαιοσύνης καὶ τοῦ κατ' αὐτὴν
> δικαίου ἓν μέν ἐστιν εἶδος τὸ ἐν ταῖς διανομαῖς† τιμῆς
> ἢ χρημάτων ἢ τῶν ἄλλων ὅσα μεριστὰ τοῖς κοινωνοῦσι
> τῆς πολιτείας (ἐν τούτοιν γὰρ ἔστι καὶ ἄνισον ἔχειν
> καὶ ἴσον ἕτερον ἑτέρου). . .
> (†διανομαῖς < διανέμω, to distribute,
> apportion.)

> Of particular justice and that which is just in the
> corresponding sense, one kind is that which is
> manifested in distributions of honour or money or the
> other things that fall to be divided among those who
> have a share in the constitution (for in these it is
> possible for one man to have a share either unequal
> or equal to that of another) . . .
> (NE 5.2.1130b 30-33, tr. Ross)

Aristotle also says that distributive justice concerns those goods which are an intrinsic resource of the political community. When Aristotle discusses distributive justice, his concern is not only to provide an account of the distribution of material goods. The discussion proceeds on two levels: (1) distribution in material wealth and labor and (2) distribution of political power through honor attaching to public offices. In an important respect, justice is conceived as a social

distribution of political power. The specific type of justice involved is social justice rather than the general notion of justice as *virtue*, or some ideal notion of justice that is apart from real relations between citizens. The nature of the social/political conception of justice that Aristotle is developing will become clearer as the discussion proceeds.

An essential aspect of political justice is the distribution of social power. Already the nature of distributive justice as a means of apportioning social power is beginning to be drawn out. Aristotle mentions that one of the advantages being distributed is *honor* (τιμή). The acquisition of public honors would certainly have been as politically useful in ancient Greek society as it is in ours. In addition, the distribution that is occurring is according to those who are enfranchised in the political community through the constitution. In other words, levels of power are already being articulated through which the direction of the social distribution of various sorts of "goods" takes place.

(1) Social groups and conflict over the distribution of social goods.

Aristotle recognizes that one of the main difficulties involved in questions concerning the distribution of social goods is conflict over the criteria for determining social distributions. This issue is complex because it is not merely a matter of determining a procedural mechanism for efficiency of distribution so that the outcome will be balanced. While

different social groups may agree that it is necessary for any distribution to be according to merit; nonetheless, there is contention over what constitutes merit:

> τὸ γὰρ δίκαιον ἐν ταῖς διανομαῖς ὁμολογουσι πάντες κατ' ἀξίαν τινὰ δεῖν εἶναι, τὴν μέντοι ἀξίαν οὐ τὴν αὐτὴν λέγουσι πάντες [ὑπάρχειν], ἀλλ' οἱ μὲν δημοκρατικοὶ ἐλευθερίαν, οἱ δ' ὀλιγαρχικοὶ πλοῦτον, οἱ δ' εὐγένειαν, οἱ δ' ἀριστοκρατικοὶ ἀρετήν.

> . . . for all men agree that what is just in distribution must be according to merit in some sense, though they do not all specify the same sort of merit, but democrats identify it with the status of freeman, supporters of oligarchy with wealth (or with noble birth), and supporters of aristocracy with excellence.
> (*NE* 5.3.1131a 24-28, tr. Ross)

This passage indicates that distributive justice occurs according to claims made on the basis of merit. The discussion proceeds in a dialectical fashion, since fundamentally there is agreement over the initial assumption that the basis of the distribution must be merit. It is not the case that there is a presumption in Aristotle's thought that the basis of such claims is necessarily aristocratic. Aristotle recognizes conflicting claims for control over the organization of a just distribution: (1) according to wealth, (2) citizenship, or (3) excellence of an aristocratic class.

The appearance of a consensus surrounding merit is in one sense problematic—power structures that are already instituted along lines of social interest are primary. The forces of competing social power structures make a disinterested distribution of public goods difficult—if not in principle, then

at least in practice. In this regard the question arises whether justice as a distribution of social goods can be achieved through a rational, practical procedure under conditions of such divergent social interests. The resolution of this question is fundamental to any conception of justice that intends to aim at a just distribution of knowledge within society, since, clearly, the distribution of knowledge is structured along lines of interest as well.

In the *Nicomachean Ethics* Aristotle recognizes the difficulty of distributive justice within a society articulated according to socially constituted formations of power but does not extensively investigate this issue here. This difficulty is examined on the more concrete structural level of society in Aristotle's *Politics*. Aristotle's analysis in the *Politics* of issues related to this discussion will be addressed later in this dissertation. The immediate concern is to understand more clearly how Aristotle characterizes distributive justice so that it may serve as a normative basis for the allocation within the state of social goods (such as political power) particularly as this relates to the distribution and control of knowledge within society.

C. Attempt at a normative resolution of competing claims among social groups.

1. There is a distribution according to a proportion which reflects the validity of claims that exist between social parties.

The first step that Aristotle makes in further defining the conception of distributive justice is to characterize the division that does take place as *proportional*. At one point Aristotle goes so far as to simply equate the proportional with the just. "This, then, is what the just is—the proportional (τὸ ἀνάλογον); the unjust is what violates the proportion" (*NE* 5.3.1131b 17-18, tr. Ross). By *proportional* Aristotle means that the distribution is not necessarily a strict equality of shares. Distribution is according to a ratio of shares that corresponds to the degree to which a legitimate claim can be made on social resources:

> τὸ μὲν γὰρ διανεμητικὸν δίκαιον τῶν κοινῶν ἀεὶ κατὰ τὴν ἀναλογίαν ἐστὶ τὴν εἰρημένη (καὶ γὰρ ἀπὸ χρημάτων κοινῶν ἐὰν γίγνηται ἡ διανομή, ἔσται κατὰ τὸν λόγον τὸν αὐτὸν ὅνπερ ἔχουσι πρὸς ἄλληλα τὰ εἰσενεχθέντα) . . .

> For justice in distributing common property always conforms with the proportion we have described (since when a distribution is made from the common stock, it will follow the same ratio as that between the amounts which the several persons have contributed to the common stock) . . .
> (*NE* 5.4.1131b 27-31, tr. Rackham)

One problem with this procedure for determining a proper proportion for distribution of common goods is that in Greek society the contributions of certain members are consistently not taken into account. For example, women have always

contributed immensely to social welfare through their labor in child-rearing and household management. There are no public honors that attach to this kind of labor—this is an indication of the proportion of social benefit that those involved in this activity may count on receiving for all their effort. Aristotle does mention a sort of "domestic" justice between a husband and wife (*NE* 5.6.1134b 8-17). It is clear, though, that this type of justice is restricted to the household. For Aristotle domestic justice nowhere overlaps with political justice, and, like the type of justice that exists between a master and a slave or a father and a child, this type of justice is only "analogous" to political justice.

Another difficulty involved in this conception is that some groups are preempted from contributing to society in terms of political activity on the basis of their inclusion in a class that is not accorded equal membership within the society; Aristotle often refers to common workers in this regard. The fact that they have not contributed to the social welfare is then used as grounds to justify their exclusion from receiving benefits from the community. I want to develop these comments further in the discussion of Aristotle's understanding of justice as a distribution of knowledge related to political power within the *Politics*. So those people who do not have leisure to acquire the type of knowledge necessary to participate in a substantial way to politics are excluded from political activity on this basis. There is a sense in which

Aristotle intends to strengthen the normative basis for his conception of distributive justice by claiming that political knowledge of the interest of society as a whole is an essential condition for justifying a particular political structure.

2. Justice and proportionate equality.

Aristotle's intention in the *Nicomachean Ethics* is to discern the essential attributes of distributive justice itself, and then to determine what the implications are for this conception. One feature of Aristotle's normative conception of distributive justice is equality based on proportional merit:

> καὶ ἡ μὲν δικαιοσύνη ἐστὶ καθ' ἣν ὁ δίκαιος λέγεται πρακτικὸς κατὰ προαίρεσιν τοῦ δικαίου, καὶ διανεμητικὸς καὶ αὐτῷ πρὸς ἄλλον καὶ ἑτέρῳ πρὸς ἕτερον οὐχ οὕτως ὥστε τοῦ μὲν αἱρετοῦ πλέον αὐτῷ ἔλαττον δὲ τῷ πλησίον, τοῦ βλαβεροῦ δ' ἀνάπαλιν, ἀλλὰ τοῦ ἴσου τοῦ κατ' ἀναλογίαν, ὁμοίως δὲ καὶ ἄλλῳ πρὸς ἄλλον.

> And justice is that in virtue of which the just man is said to be a doer, by choice, of that which is just, and one who will distribute either between himself and another or between two others not so as to give more of what is desirable to himself and less to his neighbour (and conversely with what is harmful), but so as to give what is equal in accordance with proportion; and similarly in distributing between two other persons.
> (*NE* 5.5.1134a 1-7, tr. Ross; cf. 5.3.1131a 10-14, 5.4.1132a 28-29)

Aristotle develops this notion of distributive justice progressively through an analysis of concrete aspects of justice. The attempt to relate justice to the other virtues as a mean is also evident (*NE* 5.5.1133b 29 ff.), but this appears to

be an attempt to maintain consistency in a discussion that has advanced beyond his previous understanding of the virtues.

It does seem reasonable that diverse groups are allowed social benefits in proportion to the merit that their claims have. Still, an initial problem with Aristotle's conception of proportionate distribution is that it is not exactly clear how the correct proportion or ratio for distribution is to be determined. It is problematic to claim that a distribution exclusively according to a particular form of social power is Aristotle's intention, as he does recognize that there are competing claims for the control of social distribution. To accord any group a greater portion of social goods merely because they have a greater proportion of social power may be a persistent social reality, but it is difficult to see how such a state of affairs could be normatively justified. The problem is in the assumption that the concept of proportional social worth between individuals is adequate to resolve questions of social justice:

> καὶ ἡ αὐτὴ ἔσται ἰσότης οἷς καὶ ἐν οἷς· ὡς γὰρ ἐκεῖνα ἔχει (τὰ ἐν οἷς), οὕτω κἀκεῖνα ἕξει· εἰ γὰρ μὴ ἴσοι, οὐκ ἴσα ἕξουσιν, ἀλλ' ἐντεῦθεν αἱ μάχαι καὶ τὰ ἐγκλήματα, ὅταν ἢ ἴσοι μὴ ἴσα ἢ μὴ ἴσοι ἴσα ἔχωσι καὶ νέμωνται. ἔτι ἐκ τοῦ κατ' ἀξίαν τοῦτο δῆλον . . .

> And the same equality will exist between the persons and between the things concerned; for as the latter— the things concerned—are related, so are the former; if they are not equal, they will not have what is equal, but this is the origin of quarrels and complaints—when either equals have and are awarded

> unequal shares, or unequals equal shares. Further,
> this is plain from the fact that awards should be
> according to merit . . .
> (*NE* 5.2.1131a 20-24, tr. Ross)

Aristotle also makes the stronger and more comprehensive claim that without equality political justice is not possible (*NE* 5.6.1134a 24-29). Political justice subsumes distributive justice insofar as it has as its aim a common life oriented toward self-rule (κοινωνῶν βίου πρὸς τὸ εἶναι αὐτάρκειαν)— distributive justice serves to further this political end. In the movement to a more comprehensive notion of justice essential for politics Aristotle recognizes that the basis for sustaining political justice is the establishment of a form of equality that is less restrictive. The advantage of a comprehensive conception of social equality for maintaining political stability in a state in which self-determination or "self-rule" exists will be examined further in the discussion of Aristotle's *Politics* below. Especially important is the relation between social equality and the distribution of knowledge that structures social and political relations. Social equality is itself based on the state function of education.

Aristotle makes the reasonable claim that social conflict arises as a result of inequalities in social distribution. Proportionate equality, then, is a means to achieve an equitable distribution according to the validity or legitimacy of claims that groups or individuals make on social benefits.

II. Distributive Justice within the State and the Mediating
Function of Knowledge in Aristotle's *Politics*.

Aristotle says that the state is "prior" to the individual
in the sense that the individual exists as an integral part of
an already established social order:

> καὶ πρότερον δὲ τῇ φύσει πόλις ἢ οἰκία καὶ ἕκαστος
> ἡμῶν ἐστιν. τὸ γὰρ ὅλον πρότερον ἀναγκαῖον εἶναι τοῦ
> μέρους· ἀναιρουμένου γὰρ τοῦ ὅλου οὐκ ἔσται ποὺς
> οὐδὲ χείρ. εἰ μὴ ὁμωνύμως, ὥσπερ εἴ τις λέγοι τὴν
> λιθίνην·

> Further, the state is by nature clearly prior to the
> family and to the individual, since the whole is of
> necessity prior to the part; for example, if the
> whole body be destroyed, there will be no foot or
> hand, except in an equivocal sense, as we might speak
> of a stone hand; for when destroyed the hand will be
> no better than that.
> (*Pol.* 1.2.1253a 19-22, tr. Jowett)

Similarly to Hegel, Aristotle recognizes the priority of the
state in relation to the individual in the sense that a
distinguishing feature of humans is their social existence.
Given the importance of already established state institutions
to the distribution of social wealth, it is reasonable to adopt
a contextual approach to understanding the issue of the
distribution of knowledge in society. Part of this examination
is descriptive, insofar as it is based on an analysis of social
conditions together with the development of a philosophical,
normative theory. Aristotle's intention is to derive
prescriptive claims from this approach taking into account
existing social conditions.

Aristotle maintains that justice is the order of actually
existing states:[19] "ἡ δὲ δικαιοσύνη πολιτικόν· ἡ γὰρ δίκη

πολιτικῆς κοινωνίας τάξις ἐστίν, ἡ δὲ δικαιοσύνη τοῦ δικαίου

κρίσις." "But justice is the bond of men in states, for the

administration of justice, which is the determination of what is

just, is the principle of order in political society" (*Pol.*

1.2.1253a 37-39, tr. Jowett). Since there are different social

structures for different states, for Aristotle it follows that

different forms of justice exist. Aristotle's uses his

collection of 158 constitutions as a means to understand the

forms in which different city-states are structured. According

to Aristotle, the conditions which constitute various social

structures are contextual factors. This approach is in contrast

to the intent of ordering the state on a unitary moral

conception, such as that based on Plato's conception of the

Good.

In considering the Aristotelian notion of justice in the

state, a number of issues can be addressed which serve to orient

the discussion. First, it is clear that for Aristotle the state

is the concrete manifestation of the constitution. Richard

Robinson correctly notes that the notion of the constitution for

the Greeks is not limited to a system of laws but has a meaning

that is more "sociological".[20] This refers to the fact that the

political organization is not only founded on written law but

also on traditional morality, established social relationships

such as the family and clan, as well as religious practices. On

this basis justice is a distribution of political power within

the state among the citizens. The questions that are of

immediate concern and which will structure the following

discussion are:

(1) What is the guiding normative principle for Aristotle

such that he can claim that some states are correct and some

are "divergent (παρεκβεβηκυίας) forms"?

(2) How does Aristotle arrive at this normative principle?

(3) What are the particular possibilities under which a

political structure can be organized for Aristotle or,

otherwise stated, what are the possible ways of distributing

political power?

(4) How are the distribution of political power and

distribution of knowledge related for Aristotle?

**A. The notion of distributive justice developed in the
Nicomachean Ethics applied to politics.**

**1. Distributive justice concerns the distribution of political
power.**

Aristotle conceives of justice as a concept that undergoes

a dialectical development, so that eventually it is sufficient

to serve as a justification for the legitimate structure or

order the state. In the beginning of the *Politics*, this

conception of justice is presented in its most abstract form

simply as the order of the polity:

> ἡ δὲ δικαιοσύνη πολιτικόν· ἡ γὰρ δίκη πολιτικῆς
> κοινωνίας τάξις ἐστίν, ἡ δὲ δικαιοσύνη τοῦ δικαίου
> κρίσις.
> (*Pol.* 1.2.1253a 37-39)

> But justice is the bond of men in states, for the
> administration of justice, which is the determination

of what is just, is the principle of order in
political society.
(tr. Jowett)

Justice on the other hand is an element of the state;
for judicial procedure, which means the decision of
what is just, is the regulation of the political
partnership.
(tr. Rackham)[21]

It is important to note that for Aristotle justice is not
an abstract ideal; in fact, different states will have different
forms of justice. The *Politics* has as a main goal the
determination of the different forms that justice takes in
various states, and how humans are bound together in inter-
relationships under different forms of the ordering principle of
justice. Such an approach is consistent with the Aristotelian
method of defining an area of inquiry in terms of categories. In
general the initial categorization of states is a *priori*: rule
must be by one person, a few, or many. Later on in the inquiry,
these initial categories are divided more concretely according
to the empirical evidence of actually existing constitutions.

The passage noted above does not go further into the issue
of the nature of this political bond than to say that the
structure of political and social relationships has a basis in
justice. In dealing with the political ramifications of the
legitimate form of justice, Aristotle is dealing with an inquiry
over which there is a great deal of contention. Different
definitions of the central political conception of justice can
be equated with different interest groups, each of which desire
to have different political power structures established within

the state. A main concern of Aristotle's work in the *Politics* is to arrive at a sense of justice which takes account of these actual conflicts and which results in a normative position that mediates these conflicts. Before this analysis can proceed, the nature of justice within the state requires further definition.

An aspect of Aristotle's writings that clarifies the notion of justice within the state is the interconnection between the conception of justice developed in the *Nicomachean Ethics* and his references to justice within the *Politics*. As shown above (chapter 3.I.B.-C.), in the *Nicomachean Ethics* the nature of distributive justice consists of a distribution according to some merit between competing social groups within a state. Such merit may be wealth, intellectual worth, or freedom in virtue of being a citizen. The means of adjudicating within the city between these various claims does not appear to be thoroughly worked out within the *Ethics*, and it is only in the *Politics* that the legitimacy of such claims for political power becomes evident.

B. Conflict over the basis of the political distribution of power.

1. Division of constitutions, or political organizations, into correct and incorrect forms.

Within the *Politics*, Aristotle accepts the initial notion of distributive justice as set forth within the *Nicomachean Ethics*. Furthermore, there is a principle that determines the division of political power into correct and incorrect forms.

Aristotle distinguishes between correct and incorrect forms of government on the basis of the political intention of those in power. Aristotle considers whether their political aim is to establish private interest (incorrect forms) or to further the interest of the state as a *political community of individuals* (correct forms). As previously noted, there is an initial a *priori* division of political control according to whether one person rules, or few, or many. In terms of the actual context of the Greek city-states this initial division yields six forms of government according to whether the political formation functions according to the good of the state as a collection of citizens or is based on the particular interests of a group within the state. This gives rise to the well-known division into kingship, aristocracy, and constitutional government for forms that have the interest of the state in mind; and tyranny, oligarchy, and democracy for incorrect forms.

There are important relationships between these forms of government for Aristotle, and it may be useful to organize them here in a schematic way:

a priori division	Incorrect	Correct	Basis of contextual division	
			Incorrect	Correct
one ruler	tyranny	kingship	"greed" (πλεονεξία)	virtue & law
few	oligarchy	aristocracy	wealth	virtue (ἀρετή)
many	democracy	constitutional government	poverty	education, equality & law

Two points can be made: (1) The basis of incorrect forms of government involves primarily economic considerations. For Aristotle, basing government on economic self-interest leads to incorrect forms of government. (2) It is necessary to clearly distinguish *democracy* as it is used by Aristotle from *constitutional government*. The term *democracy* as it is used by Aristotle has the pejorative sense of "rule of the rabble" (to use Hegel's terminology).

a. The other-relatedness of Aristotelian justice.

Aristotle maintains that those constitutions that are "correct" have as their end not particular interests but what is best for the community.[22]

The conception of justice as inherently oriented to others is an interesting contrast to conceptions of justice that are based on an attempt to understand in a systematic fashion the functioning of atomistic, possessive individuals—as exemplified in early theories of political economy, such as Adam Smith's conception of the "invisible hand". It is possible to relate the conception of justice as an orientation towards others to issues of autonomy. Concerning the issue of autonomy raised here one may ask what the idea of autonomy accomplishes in Kantian ethics. The notion of autonomy serves to justify ethical principles through the following considerations: (1) there is a separation of judgment from self-interest in the moral agent,

(2) there is a resolution to act according to one's own moral sense, rather than through external pressure or in relation with others. Interestingly, the notion of autonomy in this sense arose at the time when capitalism was becoming a world force. So just as Weber analyzed the relations between the spirit of the Protestant religion and capitalism, it is interesting to postulate an underlying relation between the development of the philosophical notion of autonomy and developments in the economic sphere.

One difficulty that arises in the issue of justice as an orientation toward others is that inevitably the intention of political agents is to do good or benefit those who belong to their own group. So even by this criterion of justice there is ultimately a restriction that makes it clear that the underlying principle involved is not in any sense universal. The intention (as in the Kantian conception of *autonomy*) is to arrive at a notion of disinterestedness toward one's own self in order to justify a particular normative position.

Aristotle's approach to justice as inherently oriented toward others (rather than individuals acting in an atomistic fashion) has two advantages. First of all, through a distribution of the material and non-material goods of a society, moderate wealth for a largely middle-class society arises. Under this situation Aristotle reasonably proposes that the self-interested pursuit of material wealth is likely to be minimized in comparison to societies in which there is a great

deal of conflict due to inequalities of wealth (*Pol.* 4.11.1295b ff.). Second, as Aristotle clearly recognized, a process of education has a stabilizing effect so that citizens are socialized to moderate their material needs, to recognize the social equality of other citizens, and to orient themselves to the development of human capacities (*Pol.* 2.7.1266b 26-31, see discussion below, Chapter 3.C.1.c.).

C. Knowledge and the determination of political organization.

If one of Aristotle's aims is to consider the relationship between the distribution of knowledge and political organization, then there is a question of how far his social theory is primarily *descriptive*. If Aristotle's orientation is essentially pragmatic, then how does he develop and support the *normative* claims of his political conception of justice? To resolve this difficulty requires an examination of the normative basis of his conception of justice.

At times Aristotle's portrayal of the distribution of knowledge and the manner in which society is structured on this basis appears to be almost instrumental. According to this view it may even be possible to argue that an adequate normative basis is lacking in Aristotle's work. In this dissertation I argue against such a position and propose instead that practical knowledge gives rise to justice as a system of normative principles which structures the distribution of political power within society. For Aristotle the level of practical, political

knowledge is almost a quantitative function; of those political structures that are correct, the best is that one which is capable of directing its political activity to the largest extent on knowledge and least influenced by emotional persuasion.[23]

Among the correct forms of government the determining factor for a choice of political organization is the political formation which attains the *highest level of practical knowledge* oriented towards the interest of the state as a community of individuals. For Aristotle justice as a distribution of political power is correlated with the degree of practical knowledge that can be embodied within a political formation or "constitution". Aristotle recognizes, of course, that this *embodiment* is, as the word suggests, through the individuals who are actively engaged in political functions. The highest level of practical knowledge oriented toward the guidance of practical activity occurs within a constitutional government.

One of the concrete problems concerning justice as a distribution of power and knowledge is related to political education. If the aim of political education is political control, then it is possible to argue that those with expert political knowledge ought to exercise political control. It is reasonable to argue that this is the view of both Aristotle and Hegel. On the other hand, if political knowledge and power is in the hands of a few experts (though they may claim to be impartial, and servants of the public interest, etc.), it is

difficult to see how such an arrangement can contribute to a democratic reconstruction of the distribution of knowledge. This presents a problem for modern constructions of democracy. I will address this important difficulty for modern democracy in the final chapter of this dissertation.

1. Aristotle's conception of constitutional government and the distribution of knowledge.

a. Equality.

The constitutional form of government for Aristotle is based on equality in terms of practical political knowledge among those who are capable of ruling:

> ἐν μὲν οὖν ταῖς πολιτικαῖς ἀρχαῖς ταῖς πλείσταις μεταβάλλει τὸ ἄρχον καὶ τὸ ἀρχόμενον (ἐξ ἴσου γὰρ εἶναι βούλεται τὴν φύσιν καὶ διαφέρειν μηδέν) . . .

> But in most constitutional states the citizens rule and are ruled by turns, for the idea of a constitutional state implies that the natures of the citizens are equal, and do not differ at all.
> (*Pol.* 1.12.1259b 4-8, tr. Jowett)

Ruling and being ruled in turn is a procedure for the distribution of political power in an egalitarian fashion among those with equal citizenship, since there is no reason why one should have political authority over another. Equality in terms of knowledge as a political capacity entails that there be equality of political control. Given the equality of the citizens there is no basis for a distribution of political control in a fashion that is not equal. It follows that political participation will be distributed equally through some

mechanism within the constitutional form of government. If it is reasonable to argue that an equitable distribution of knowledge is essential for forms of government that are more universal and participatory, then it is necessary to determine how to constitute the political function of knowledge. Clearly, this is also an issue that is important in our own society.

Political activity requires control of knowledge in two respects: (1) the formation of character through a process of education (or social enculturation) that will allow the individual to participate within the social organization realized through the constitution of the state, and (2) the use of practical knowledge itself in the functioning of the state. The issue of the distribution of knowledge within the state is central to Aristotle's political conception, hence, it is necessary to further clarify his understanding of the relationship between the distribution of knowledge and political power.

b. Education.

Aristotle's discussion of the role of education is oriented to the types of political institutions actually existing in Greece at the time. Education is a means to preserve certain forms of constitution, but at the same time Aristotle acknowledges that some forms are better than others—an indication that Aristotle is making normative claims concerning

the social/political role of knowledge based on his

understanding of social realities:

> Now nobody would dispute that the education of the
> young requires the special attention of the lawgiver.
> Indeed the neglect of this in states is injurious to
> their constitutions [τὰς πολιτείας]; for education
> ought to be adapted to the particular form of
> constitution . . . for instance the democratic spirit
> promotes democracy and the oligarchic spirit
> oligarchy; and the best spirit always causes a better
> constitution.
> (*Pol.* 8.1.1337a 10-19, tr. Rackham)

As stated earlier, Aristotle divides the types of

constitution according to the number who rule: one, few or

many. Each form exists in a correct form and an incorrect form:

rule of a king/tyrant, aristocracy/oligarchy and constitutional

rule of the many/"democracy" (in the sense of "rabble"). A

primary concern of the *Politics* is to determine the basis for a

normatively justified distribution of political power within the

state. To achieve the good life, which is the aim of politics,

Aristotle argues that this choice should be according to

education and virtue (rather than by wealth, or family nobility

for instance):

> πρὸς μὲν οὖν τὸ πόλιν εἶναι δόξειεν ἂν ἢ πάντα ἢ ἔνιά
> γε τούτων ὀρθῶς ἀμφισβητεῖν, πρὸς μέντοι ζωὴν ἀγαθὴν
> ἡ παιδεία καὶ ἡ ἀρετὴ μάλιστα δικαίως ἂν
> ἀμφισβητοίησαν . . .
>
> If the existence of the state is alone to be
> considered, then it would seem that all, or some at
> least, of these claims are just; but, if we take into
> account a good life, then, as I have already said,
> education and virtue have superior claims.
> (*Pol.* 3.13.1283a 22-25, tr. Jowett)

Aristotle argues that in actuality the state which most readily realizes the rule of educated and virtuous individuals is the constitutional rule of the many. Aristotle justifies this conclusion on the grounds that even though a few individuals can be expected to show preeminent superiority in terms of understanding or virtue, still the understanding of many individuals together will exceed that of just one person or a few together:

> τοὺς γὰρ πολλούς, ὧν ἕκαστός ἐστιν οὐ σπουδαῖος ανήρ, ὅμως ἐνδέχεται συνελθόντας εἶναι βελτίους ἐκείνων, οὐχ ὡς ἕκαστον ἀλλ᾽ ὡς σύμπαντας, οἷον τὰ συμφορητὰ δεῖπνα τῶν ἐκ μιᾶς δαπάνης χορηγηθέντων· πολλῶν γὰρ ὄντων ἕκαστον μόριον ἔχειν ἀρετῆς καὶ φρονήσεως, καὶ γίνεσθαι συνελθόντας ὥσπερ ἕνα ἄνθρωπον τὸ πλῆθος, πολύποδα καὶ πολύχειρα καὶ πολλὰς ἔχοντ᾽ αἰσθήσεις, οὕτω καὶ περὶ τὰ ἤθη καὶ τὴν διάνοιαν.

> For the many, of whom each individual is but an ordinary person, when they meet together may very likely be better than the few good, if regarded not individually but collectively, just as a feast to which many contribute is better than a dinner provided out of a single purse. For each individual among the many has a share of excellence and practical wisdom, and when they meet together, just as they become in a manner one man, who has many feet, and hands, and senses, so too with regard to their character and thought.
> (*Pol.* 3.11.1281a 42-1281b 6, tr. Jowett)

Furthermore, Aristotle argues that it is not only those who have expert knowledge within a certain sphere who are best able to judge their own work.

> ἀλλ᾽ ἴσως οὐ πάντα ταῦτα λέγεται καλῶς διά τε τὸν πάλαι λόγον, ἂν ᾖ τὸ πλῆθος μὴ λίαν ἀνδραποδῶδες (ἔσται γὰρ ἕκαστος μὲν χείρων κριτὴς τῶν εἰδότων, ἅπαντες δὲ συνελθόντες ἢ βελτίους ἢ οὐ χείρους) . . .

> Yet possibly these objections are to a great extent
> met by our old answer, that if the people are not
> utterly degraded, although individually they may be
> worse judges than those who have special knowledge—as
> a body they are as good or better.
> (*Pol.* 3.11.1282a 14-17, tr. Jowett)

For instance, an artist may not always be the best judge of her own creation, nor is the carpenter alone fit to judge the construction of a house, but the judgment of those who live in the house must in some sense be primary (*Pol.* 3.11.1282a 17-23). These passages reveal that under general conditions the distribution of political power among those who are politically equal should properly be based on which political structure engenders the highest degree of practical rationality within the state oriented toward the promotion of a conception of the good life.

It is necessary here to recall the point that the constitutional government for Aristotle is highly restricted, and the notion of equality in the distribution of political power means "equality among equals", explicitly disqualifying women, slaves, aliens and menial laborers. This restriction in the distribution of political power makes clear the inadequacy of Aristotle's account for a contemporary conception of democracy. It is reasonable to suggest that what Aristotle is attempting here is to avoid the undesirable situation in which those who have not been educated in terms of practical rationality are running the state. Aristotle's solution is to restrict control to a very limited class of male citizens who

have expert political knowledge about running the state. This result is unacceptable for us as a contemporary political construction due to the undemocratic nature of the result. It is also clear that our own political structure at various levels of social organization does not approach a democratic ideal but is a system in which political authority is invested in politicians who we believe, often mistakenly, have expert authority in running social institutions.

To attain a positive notion of equality among citizens there must be education that is oriented toward the formation of citizens with sufficient practical knowledge to function in a political manner. For Aristotle this involves learning that occurs in political activity itself and the training of social character. It is necessary to note that knowledge alone is not sufficient to achieve this social enculturation of the individual: "οὐ γὰρ ἵνα εἰδῶμεν τί ἐστιν ἡ ἀρετὴ σκεπτόμεθα, ἀλλ' ἵν' ἀγαθοὶ γενώμεθα . . . " "For we are inquiring not in order to know what excellence is, but in order to become good . . ." (*NE* 2.2.1103b 28-29, tr. Ross).

c. Knowledge and the mediation of social conflict over the material basis of society.

For Aristotle a political organization oriented toward stability, or the elimination of conflict, requires that the material basis of property be maintained. Within the *Politics* Aristotle considers it necessary for the state to secure the interests of property for the sake of the good of the citizens

of the *polis:* "δοκεῖ γάρ τισι τὸ περὶ τὰς οὐσίας εἶναι μέγιστον

τετάχθαι καλῶς· περὶ γὰρ τούτων ποιεῖσθαί φασι τὰς στάσεις

πάντας." "In the opinion of some, the regulation of property is

the chief point of all, that being the question upon which all

revolutions turn" (*Pol.* 2.7.1266a 37-38, tr. Jowett).

One of the main factors in securing the stability of the

polis is the distribution of wealth among the citizens. With

respect to wealth or property within the state, Aristotle argues

that the distribution which leads to the greatest stability is

one in which the citizens in general will have moderate means

for their maintenance. Equality in material possessions is not

sufficient to maintain stability, but citizens must also be

educated so that they realize the danger to social stability in

the insatiable desire to acquire material possessions. In the

polis one of the functions of political education is the

formation of character with respect to material needs.

> Clearly, then, the legislator ought not only to aim
> at the equalization of properties, but at moderation
> in their amount. Further, if he prescribe this
> moderate amount equally to all, he will be no nearer
> the mark; for it is not the possessions but the
> desires of mankind which require to be equalized, and
> this is impossible, unless a sufficient education is
> provided by the laws.
> (*Pol.* 2.7.1266b 26-31, tr. Jowett).

This view can be related to the theory in the *Nicomachean*

Ethics that such needs should be regulated according to the

mean. The distribution of property is not merely a matter of the

mathematical distribution of material goods but involves

considerations of political education with respect to what

citizens actually require. If there is no political education in this regard, no distribution of wealth would result in political stability, since individuals would never be satisfied with the means that they have. In other words, education serves a mediating function between the needs of individuals and the material wealth which exists in society. This mediating function of education is political in the sense that it is a source of social stability through engendering a reasonable sense of moderation within citizens.

d. Justice achieves concrete embodiment in law through practical rationality.

Aristotle considers the basis of law to be practical rationality within both the *Nicomachean Ethics* and the *Politics*. In both ancient society and modernity how the law is interpreted is an indication of the fundamental political organization of a society. Within the sphere of practical rationality, law is a normatively governed steering mechanism for social activity. The constitution is the primary means through which justice as a distribution of political power is achieved within the state. For both Aristotle and Hegel it is clear that the formation and administration of law is governed by expert knowledge.

One of the essential elements that legitimizes constitutional government is rule according to law. Aristotle lists a number of advantages to rule by law: it serves as a mechanism for organizing the distribution of political power through office in a state composed of equals, especially in

regulating the succession of those in office (*Pol.* 3.16.1287a 15-24). Law diminishes the deleterious effects of desire on political decisions: "ἄνευ ὀρέξεως νοῦς ὁ νόμος ἐστίν." "The law is reason unaffected by desire" (*Pol.* 3.16.1287a 31-32, tr. Jowett). Constitutional law has the interest of the state as a whole in mind rather than self-interest; in this sense law is "impartial" (*Pol.* 3.16.1287b1-4).

The relation to the *Nicomachean Ethics* is evident in this section of the *Politics,* in that Aristotle recognizes that not everything can be legislated, and so practical judgment is required in conjunction with the law (*Pol.* 3.16.1287b 20-21). This recognition of the limits of law is discussed above in the section on flexibility. Aristotle recognizes further that progress has occurred historically with the change of law. So cautious change of the laws can be beneficial to the state as tending to the common good (*Pol.* 2.8.1268b 26 ff.)

The law is a form of mediation between the state and the individual—not in an abstract sense, but as a means through which individuals realize themselves as social beings through a process of political education. "The distinctive characteristic of a πόλις according to Aristotle—that which marks it off from an alliance—is to be found in the benevolent care of each citizen for the virtue of all belonging to the State (*Pol.* 3.9.1280b 1 sqq.). In every way the saying of Simonides—Πόλις ἄνδρα διδάσκει[24]—held good" (Newman, Vol. I, 71).

But if justice is *only* the structural embodiment of the constitution, then a difficulty arises. How is it possible to avoid relativism with respect to normative principles, given that various states are structured differently in ways which are even contradictory? Aristotle would say that there are correct structures: those that are oriented toward the common good even though the manner in which this may be achieved can and, indeed, does vary.

III. Critique of Aristotle.

A. Distributive justice is not universal.

Aristotle and Hegel conceive of their political philosophy in terms of a structural analysis at the level of the constitution of the state. Procedures which institute democratic principles of equality with respect to the distribution of knowledge on a broad level are only incipient features of their work. This does not preclude the possibility that Aristotle's and Hegel's political theories are useful for envisioning ways in which society can be structurally transformed to a more democratic system. Newman notes (Vol. I, 74-5) that Aristotle's conception of law (νομός) is not as restricted as ours. Aristotle understood law as extending to principles that order human activity in general, rather than viewing law as essentially prohibitive. In this regard Aristotle's political philosophy is positive, and it is reasonable to consider in what

manner aspects of his political analysis can be appropriated for a democratic politics.

Although the order of society structured by law is thought of in terms of an influence extending throughout the whole of society, it is important to bear in mind that Aristotle thought the distribution of primary benefits essentially extended to only a small segment of society. Both Aristotle and Hegel present arguments for social inequalities based on the view that the distribution of knowledge is in respects natural. The most troubling aspect of Aristotle's political theory is that certain groups of people (women, slaves, and common laborers) are means to serve the ends of an educated elite—the relegation of some humans to the status of "living tools": "τὸ κτῆμα ὄργανον πρὸς ζωήν ἐστι, καὶ ἡ κτῆσις πλῆθος ὀργάνων ἐστί, καὶ ὁ δοῦλος κτῆμά τι ἔμψυχον." "An article of property is a tool for the purpose of life, and property generally is a collection of tools, and a slave is a live article of property." (*Pol.* 1.4.1253b 31-34, tr. Rackham). In addition, there is exclusion from political power through the subordination of women to the rationality of men (*Pol.* 1.13.1260a 12-23). Aristotle indicates that the working class should not be part of the ruling authority because they lack the leisure necessary to develop correct political judgment (*Pol.* 7.9.1328b 34-1239a 2).

It is important to recognize, though, that Aristotle's views on slavery are not unambiguous. Diogenes Laertius relates that Aristotle in his will indicated that his slaves were not to

be sold but employed until they reached the proper age, then set free according to merit (Laertius 459). This is consistent with his view in the *Politics* (*Pol.* 7.10.1330a 32-34) that liberty in general should be given to slaves as a reward. Aristotle also recognizes the opinion of those who consider slavery unnatural:

τοῖς δὲ παρὰ φύσιν τὸ δεσπόζειν, νόμῳ γὰρ τὸν μὲν δοῦλον εἶναι τὸν δ᾽ ἐλεύθερον, φύσει δ᾽ οὐθὲν διαφέρειν, διόπερ οὐδὲ δίκαιον, βίαιον γάρ.

. . . others however maintain that for one man to be another man's master is contrary to nature, because it is only convention [νόμῳ, Jowett: "by law"] that makes the one a slave and the other a freeman and there is no difference between them by nature, and that therefore it is unjust, for it is based on force.
(*Pol.* 1.3.1253b 20-23, tr. Rackham)[25]

Aristotle recognizes that slavery is not natural, but, rather, a function of the economic structure of the polis. Aristotle says, remarkably, that if it were possible to automate work processes then there would in effect be no need for slavery:

εἰ γὰρ ἠδύνατο ἕκαστον τῶν ὀργάνων κελευσθὲν ἢ προαισθανόμενον ἀποτελεῖν τὸ αὐτοῦ ἔργον, ὥσπερ τὰ Δαιδάλου φασὶν ἢ τοὺς τοῦ Ἡφαίστου τρίποδας, οὓς φησιν ὁ ποιητὴς αὐτομάτους θεῖον δύεσθαι ἀγῶνα, οὕτως αἱ κερκίδες ἐκέρκιζον αὐταὶ καὶ τὰ πλῆκτρα ἐκιθάριζεν, οὐδὲν ἂν ἔδει οὔτε τοῖς ἀρχιτέκτοσιν ὑπηρετῶν οὔτε τοῖς δεσπόταις δούλων.

For if every instrument could accomplish its own work, obeying or anticipating the will of others, like the statues of Daedalus, or the tripods of Hephaestus, which, says the poet,

of their own accord entered the assembly of the Gods;

if, in like manner, the shuttle would weave and the plectrum touch the lyre without a hand to guide them,

> chief workmen would not want servants, nor masters
> slaves.
> (*Pol.* 1.4.1253b 34-1254a 1, tr. Jowett)

This statement indicates a recognition of the humanity of
slaves—that their status is an economic function of ancient
society. On the other hand, such statements can in no sense
serve as an apology for Aristotle's views in general in this
regard. It is not unreasonable to consider Aristotle's account
of slavery as ideological: Aristotle justifies the use of
slaves because they fulfill an economic need due to an
aristocratic ruling class requiring a tremendous amount of
leisure time and great material resources.

**B. Reformulation of the Aristotelian conception of "democracy"
is inadequate to resolve restrictions in access to political
power.**

In this section I want to point out that it is
philosophically problematic to attempt to formulate a modern
conception of a universal democracy developed from a conception
of democracy that obtains in the ancient world. It is not
evident what the basis is for such claims as Richard Robinson
makes in his commentary on Book IV of the *Politics:*

> The reason for this almost total absence of
> equality from Aristotle's conception of democracy is
> probably that he takes democracy literally as the
> sovereignty of a demos, and a demos though large is
> not the whole population equally. It is another side
> of the fact that Aristotle's democracy is the eastern
> dictatorship of the proletariat rather than the
> western equal sharing of everybody in the government.
>   It is probable, however, that somebody in
> ancient Greece had the western idea of democracy as
> the equal sharing by everybody in the government, or

Aristotle would not have mentioned this kind of
democracy even once.
(Robinson 82)

A number of connected points arise in this regard. (1)

First, there is general consensus that the legitimate basis for

democracy in modernity is some type of universal access to

political functions within a society. (2) To suggest that

Aristotle saw what we would call modern democratic potential in

the ancient notion of "democracy" is merely a conjecture. (3) It

is more reasonable to argue that Aristotle makes a contribution

to the modern conception of universal democracy in his

understanding of what he calls a constitutional government.

IV. Conclusion: Positive aspects of Aristotle's political
theory.

In this section I briefly summarize features of

Aristotle's social theory which are useful for the discussion of

a democratic distribution of knowledge in our society.

A. Conflicting interests can be mediated by practical
rationality oriented toward the universal interests of the
community.

There is a strong tendency within Aristotle's political

analysis toward the critique of political power that is

interested, i.e., that has as its goals the furtherance of the

interests of a particular class of people above the interest of

the state as a community of individuals. It is clear that

practical knowledge serves a mediating function between

conflicting groups within society insofar as those who have such

knowledge are capable of discerning what in particular is able to benefit the state as a community of individuals.

One reason for a political system that is more universalistic is that it serves as a stabilizing force within the state. Aristotle mentions exclusion from political power of those who have the capacity to govern as a cause of subversion. On the other hand, the strength of the Athenian democracy can in large part be seen as the ability to mediate these conflicting group interests through the appropriation of practical knowledge oriented toward the universalistic interest of the state.

B. Development of political capacity through education.

One of the reasonable assumptions of Aristotle's political thought is that people who exercise political power should have the capacity to exercise this power. This involves issues of the control of the distribution of knowledge within society and its relation to political control. It is difficult to work out such normative issues abstractly, since this problem occurs within an already existing social context.

Given the importance of equality of political capability within the constitutional rule of government, it is reasonable to argue that political, practical rationality, insofar as possible, should be extended to all those involved in the political process, and such capacity should actually be tied to political power within the political structure of society. This

distribution of social power requires a universal distribution

of knowledge to citizens oriented toward the development of

their political capacities.

CHAPTER 4

Hegel's Contextual Approach to a Theory of Justice

This chapter addresses Hegel's contextualizing approach through an analysis of his conception of the division of labor in relation to the structure of the modern state. Hegel considers the division of labor a key organizing principle of modern social institutions. It will become apparent that the notion of the division of labor serves an important philosophical role for Hegel in his development of a social system based on right. His development of this notion draws from historical developments within the economic structure of society. This is the contextual dimension of Hegel's thought that I consider here. My intention is to show that for Hegel the distribution of knowledge within the state serves a mediating function between the spheres of civil society and the state. I will argue that Hegel's philosophical use of the division of labor is ultimately inconsistent with his conception of human freedom as a universal norm of modernity.

This chapter proceeds along the following lines:

(1) First, I provide a brief examination of Hegel's important discussion of the division of labor.

(2) Second, I reconstruct Hegel's normative position with respect to the distribution of knowledge within society and trace the relationship between the division of labor and the structure of knowledge. In particular, my focus will be on Hegel's construction of the particular social distribution of knowledge according to the distinction between intellectual expertise and the type of knowledge involved in skilled/unskilled labor. This primary distinction within knowledge itself is not a natural outcome of the development of human rationality but is a result of the division of labor and serves the modern form of economic production structured by the division of labor.

(3) I examine the ways in which Hegel's approach are problematic, especially how the use of contextual categories (such as the division of labor) in relation to a particular sort of distribution of knowledge within society can be ideological insofar as it leads to results that may appear justified by social circumstances but in fact are questionable.

(4) In conclusion, I note some of the positive aspects of Hegel's work that can be derived from the foregoing discussion that will be useful in the construction of my own conception of a democratic distribution of knowledge within society.

I. The Division of Labor.

A. Explication of Hegel's understanding of the division of labor.

The Scottish political philosophers had considerable influence on Hegel's conception of the division of labor. According to Adam Smith the origin of the division of labor can be found in the peculiarly human activity of trade, or barter. The division of labor has its roots in a form of specialization oriented towards the efficient production of basic necessary goods which are suitable for barter. A person may find that focusing on a particular type of activity is beneficial in circumstances where trade of excess production is possible. The notion of the division of labor is being defined here in a number of important respects. The division of labor is associated with an increase in productivity, the division of labor is a formative process which constrains individuals to specialized tasks, the division of labor leads to greater technological innovation through the introduction of machines to take over the tasks that have become more "abstract" and "simpler" (cf. *POR* §198, pp. 232-33), and, furthermore, there is the conjunction of the division of labor with radically individualistic interest.

Certainly, there is tremendous potential within modern systems of production for the increase of material wealth. A factor of modernity that is equally as evident as a real

contradiction to this potentiality for increased, universal
wealth is the abject poverty of certain sectors of society. The
poverty of segments of the working class population is in large
measure the result of the changes in the relations of production
that occur within modern forms of industrial production
structured by the the division of labor. Since manufacture is so
thoroughly structured by the division of labor, if there is a
change in consumer demand or if the manufacturing process itself
is changed, then entire segments of the working population may
become superfluous due to their association with obsolete forms
of production—as Hegel recognized. Another factor is that the
value of any one person as a worker is for the most part
inconsiderable, since work becomes the repetition of ever more
simple tasks. It will become evident that while Hegel recognizes
the destructive effects of the division of labor, he does not
develop an adequate normative basis for dealing with these
issues.

1. The division of labor in relation to the role of abstraction
and simplification of the manufacturing process for greater
productivity.

The division of labor is in part a function of the
application of abstract thought to material production. In
modern systems of production work itself is broken down into
abstract, simple functions. The notion of work in modernity has
a unique, historical construction (*POR* §198, pp. 232-233):

(1) Work is simpler, so that the individual as such is less important.

(2) The reciprocal dependence of individuals is more important than in craft where one person oversees and is involved in the whole process.

(3) Work is mechanical, so it is possible to supplant human labor with machines.

2. The division of labor is organized into a "systems of needs" differentiated in part by the distinction between "theoretical" and "practical" knowledge.

The process of increasing differentiation within the sphere of production results in ever greater refinement of the division of labor. The divisions of work surrounding the fulfillment of particular needs are organized into "systems of needs":

> The infinitely varied means and their equally
> infinite and intertwined movements of reciprocal
> production and exchange converge, by virtue of the
> universality inherent in their content, and become
> *differentiated* into *universal masses*. In consequence,
> the whole complex *[Zusammenhang]* evolves into
> *particular systems* of needs, with their corresponding
> means, varieties of work, modes of satisfaction, and
> theoretical and practical education—into systems to
> which individuals are separately assigned, i.e. into
> different *estates*.
> (*POR* §201, 234).

At the most general level these systems of needs are organized at the level of the estates of agriculture, trade and industry, and the universal estate of social administration. For each estate there are corresponding requirements for those

involved in a particular system in terms of education, skill and

character traits.

3. The division of labor requires particular identity formations
of individuals; this in turn corresponds to hierarchically
organized social relations.

For Hegel, the initial step in the enculturation of

individuals through education is the subsumption of natural

drives under a "rational system of the will's determination"

(*POR* §19, 51). It is evident that within society the first step

towards socialization is the subsumption of the will to certain

rational presuppositions of society. The individual will is not

simply a manifestation of an idea in the external world. Rather

than postulating a separation between theoretical and practical

rationality, Hegel maintains that they are connected in

important ways:

> The theoretical is essentially contained within the
> practical; the idea *[Vorstellung]* that the two are
> separate must be rejected, for one cannot have a will
> without intelligence. On the contrary, the will
> contains the theoretical within itself. The will
> determines itself, and this determination is
> primarily of an inward nature, for what I will I
> represent to myself as my object *[Gegenstand]*.
> (*POR* §, 36)

What is important in this regard is that, unlike Aristotle,

Hegel does not make a clear distinction between theoretical

rationality and practical rationality. The activity of an

individual's will (the "practical" aspect of subjectivity) is

realized in large measure by the theoretical knowledge that a

subject has. Insofar as the practical activity of the will is

indissolubly linked to theoretical knowledge for Hegel,

questions arise concerning the limitations this suggests if

there are restrictions placed on the types of knowledge that one

can receive—in particular if social restrictions are placed on

the acquisition of theoretical knowledge.

An individual's action is the expression of will in the

external world. The result of such action is not just an

external effect; to an important degree it is also the formation

of the self:

> In so far as I am practical or active, i.e. in so far
> as I act, I determine myself, and to determine myself
> means precisely to posit a difference. But these
> differences which I posit are nevertheless also mine,
> the determinations apply to me, and the ends to which
> I am impelled belong to me.
> (*POR* 36)

In general, the positing of the will in the external world and

the concomitant formation of individuality is accomplished

through *labor*. In the *Phenomenology of Spirit* the activity of

labor serves liberating functions even if it is undertaken in

the most abject servitude: "Through this rediscovery of himself

by himself, the bondsman realizes that it is precisely in his

work wherein he seemed to have only an alienated existence that

he acquires a mind of his own" (*POS* 119). In the *Phenomenology

of Spirit*, though, Hegel's conception of labor is quite

abstract. In particular, it is evident that Hegel does not

distinguish here between the differentiation of the types of

labor according to whether such labor is related to specialized

expertise or to physical labor. Such an account is not an

accurate portrayal of forms of labor in ancient Greek society, for instance, because slave-masters were often employed in occupations requiring intellectual expertise (intellectual labor) whereas slaves were employed in skilled and unskilled manual labor. Furthermore, it is generally agreed that the basis of the freedom and leisure of the aristocratic class in the ancient world was slave-labor. These considerations point to difficulties in Hegel's thought concerning the relationship between forms of knowledge and his notion of human freedom achieved through labor. I argue that in the complex structure of the modern state Hegel's hierarchical structure of political participation according to degrees of intellectual expertise is inconsistent with his account of the universal nature of human freedom, because real freedom belongs essentially to those employed in a sphere requiring "universal" knowledge (intellectual expertise).

The nature of labor oriented towards the fulfillment of needs requires the formation of particular types of individuality. For instance, technological innovation requires abstract thought—consider the role of mathematical thought in ballistics. This requirement entails the formation of individuals involved in intellectual labor. In a section entitled "The Nature of Work" Hegel notes:

> The variety of determinations and objects
> [Gegenstande] which are worthy of interest is the
> basis from which theoretical education develops. This
> involves not only a variety of representations
> [Vorstellungen] and items of knowledge [Kenntnissen],

but also an ability to form such representations *[des
Vorstellens]* and pass from one to the other in a
rapid and versatile manner, to grasp complex and
general relations *[Beziehungen]*, etc.—it is the
education of the understanding in general, and
therefore also includes language.
(POR §197, 232).

Hegel notes that "practical education" involves the

formation of habits of work which are necessary in the form of

the division of labor intrinsic to modern systems of production.

Practical work requires "limitations" on the personality to

conform to particular areas of material production. The division

of labor in production requires the inculcation within the

individual of work habits that correspond to the nature of work

in modernity: the need to be constantly occupied, the

application to tasks that are abstract or "universally

applicable" and, importantly, the trait of conforming one's

activity to the "arbitrary will of others" (*POR* §197, 232). It

should be noted that in our culture the traits that Hegel says

apply to practical education are becoming more and more valued

in theoretical education as well.

At the concrete level of civil society individual needs

and the means to fulfill them have become ever more diversified

(*POR* §191, 229). The proliferation of consumer products and the

generation of needs oriented toward their consumption is one of

the distinguishing marks of our own culture. An important aspect

of this expansion of needs within modern capitalist culture is

that the differentiation of needs and requirements for their

satisfaction gradually corresponds to the formation of constant structural relationships between humans requiring mutual recognition at the social level:

> Needs and means, as existing in reality [als reelles Dasein], become a being [Sein] for others by whose needs and work their satisfaction is mutually conditioned. That abstraction which becomes a quality of both needs and means (see §191) also becomes a determination of the mutual relations [Beziehung] between individuals.
> (POR §192, 229)

The notion that the division of labor involves mutual recognition at the social level becomes essential to Hegel's construction of the state in the *Philosophy of Right.*

One of the characteristics of modern society is that the division of labor does not serve only economic or material ends but involves social differentiation along lines of social status, power and capacities also. Bernard Cullen notes that the division of labor occurs in a "horizontal" manner, i.e., that the divisions of labor can be represented in a non-hierarchical fashion and not associated with a corresponding inequality in power relations. On the other hand, Cullen states that Hegel is aware that the division of labor is associated with "vertical" social structures insofar as it is a means for replicating hierarchical forms of social power:

> Hegel departs from his overall schema of *horizontal* divisions in society *(Stände)* to draw our attention to the *vertical* division between the *Klassen* within the manufacturing *Stand*—the *Stand* which is, after all, the motive force of civil society and the modern state.
> (Cullen 105)

The notion that the will of an individual must be educated to conform to social structures is a fact of our existence as social beings. The point can be argued that education is a universal, social concern (*POR* §187, pp. 224-25). The universal nature of education is apparent in the role that education plays in forming capacities allowing participation in society within various spheres of social activity. Education serves as a mediating function which enables individuals to participate as members of society. Knowledge serves various mediating roles within the state. Even though workers are involved in fairly restricted spheres of economic activity, through participation in public, political discourse they become aware of the relationship between their sphere of activity and the universal, interconnected interests of the state. Such knowledge serves to legitimate the activity of the state. Furthermore, the class of civil servants has a form of expert knowledge which is capable of understanding the role of the different estates so as to coordinate the activity of these particular spheres with the universal interest of the state as an organic whole.

It is reasonable to argue that the breakdown of the family alone could not lead to the type of social decay that Hegel recognizes. Social decay arises, in part, through broad social irresponsibility that does not properly articulate the role of the state in the education of individuals. In this regard the family itself is a limited sphere of society and is not entirely capable of dealing with the social formation of individuals

within modern western culture. Furthermore, religious
institutions for Hegel operate in the sphere of feeling and
faith, so their role in this regard is subordinate to that of
the state (*POR* §270, 293-94). If there is an attempt by
religious institutions to become the primary source of the
education of individuals this is considered by Hegel to be
essentially "fanaticism."

One difficulty, of course, is that recognizing the role of
the state in education raises the very real concern that the
state may become an instrument for which the individual is only
raw material to be used up in the interest of state functions.
The best way to ensure that this possibility does not become an
actuality is to increase the democratic elements within
educational institutions. This will be discussed further in
chapter 5 of this dissertation.

4. Advantage derived from the division of labor engendering
social universality.

Hegel characterizes the starting point of civil society as
the self-interested economic activity of individuals. Hegel
attempts to subsume this self-interested activity in the broader
community of the state. For Hegel it is a historical fact that
we have arrived at a point in which the universal
interconnectedness of humans has been achieved through the
division of labor as an essential aspect of our existence. The
necessity of mutual interdependence within civil society has the
effect of generating social universality. Hegel thinks the

positive outcome of this mutual interdependence is that people

are more aware of their relation to the community embodied as

the state. In a sense this relation between individuals and the

state is similar to the relation of the individual to the Greek

polis in ancient times. The important difference for Hegel is

that now the relation of the individual to the state coexists

with the consciousness of human freedom—the interest of the

individual cannot be subsumed entirely within the state, but the

state has to recognize this aspect of the human condition for it

to be legitimate (rational).

Bernard Cullen argues that in section 245 of the

Philosophy of Right Hegel is essentially recommending that those

who are left destitute due to alienation from the system of

production be left to beg in the streets.

> In a conflict between alleviating hunger and
> preserving the 'self-respect' of the hungry
> individual, Hegel seems to choose the latter. In
> fact, he seems to speak approvingly of the situation
> in Scotland, where it was decided that the most
> direct measure against poverty, loss of dignity,
> laziness and so on was 'to leave the poor to their
> fate and instruct them to beg in the streets' (§245R);
> presumably, such displays of individual initiative
> were good for their sense of 'shame and self-respect—
> the subjective bases of society' (§245R).
> (Cullen, 88).[26]

Cullen's claim that Hegel recommends excluding certain

groups from society is cynical and inconsistent with the

universalistic tendencies in Hegel's thought. One of the main

points that Hegel makes in his discussion of the division of

labor is that the modern form of production which it entails

requires the formation of a society that is universalistic. This desire for individual self-respect that arises through involvement or participation in civil society is a central aspect of Hegel's work, but to conclude from this that Hegel can accept the exclusion of certain classes of people due to the material functioning of society is quite a cynical viewpoint, and, I believe, an inaccurate portrayal of Hegel's intent. Cullen's argument, though, is to no effect, since those who are begging on the streets already are alienated from the state and it is questionable how far under such conditions they can be said to be "preserving their self-respect." Hegel's end is to propose a social system in which such desperate human conditions are overcome.

The passage on poverty which Cullen refers to (*POR* §245, 267) is important because it points to an unresolved difficulty in Hegel's system: to alleviate poverty through welfare in the form of hand-outs alienates people from the state, and so has the undesirable effect of creating a class that is disconnected from the society in which it lives. But if the state were to provide work this would only exacerbate the problem of over-production which gives rise to an impoverished class of people who are no longer needed in the system of production. On the one hand, the system of production as organized by the division of labor has universal tendencies in the sense that it requires that people recognize the interconnectedness and interdependence of people in society, on the other hand the system of production

generates social deformations which are destructive to this sense of social community.

5. Social deformations arising through the division of labor and the modern system of production.

There are consequences of the division of labor which Hegel recognizes are detrimental to the formation of individuals who are capable of social participation beyond mere market activity. For instance, the unique individuality of a certain person's character or personality becomes far less important than her or his function as a consumer and producer. Within the system of production and consumption itself there is, as Hegel recognized, the need to "imitate" so that the quantities of mass-produced products will be utilized. On the other hand, there is also the socially generated need to feel some sense of "distinction" (*POR* §193, 230). So, for instance, much modern advertising is oriented toward instilling in consumers the sense that if they buy and use a mass-produced product they will be distinguished individuals in virtue of using that product. This can be seen as the seed of the discussion in critical theory of the formation of "pseudo-individuality". This drive for something distinctive in turn generates the formation of new products (or a distinctive variation on an old product) and correspondingly new social needs are developed through which the division of labor becomes ever more refined.

Hegel identifies a number of respects in which the division of labor leads to social deformations:

(1) over-production due to the tremendous increases in productivity generated in large part through the division of labor,

(2) an increase in poverty due to the fact that over-production goes along with a decreased need for full employment,

(3) a restriction in the intellectual development of the masses who are alienated from the system of production.

The question arises whether Hegel adequately deals with these social disorders in the sense that his system is capable of overcoming these difficulties at the level of the state as he conceives it.

B. Critique of Hegel's construction of the division of labor.

Hegel recognizes conflicting aspects of his account of the division of labor, but the question remains how well he was able to resolve these conflicts theoretically. First, the division of labor has aspects which are socially beneficial: the increase in productivity, and the increased *possibility* of greater social integration of people. It is clear that the technical knowledge of modern material production tends toward the possibility of greater freedom. The issue at this point in history is how the division of labor constitutes social activity and capacities. In particular, there is a division of labor between intellectual expertise and the practical knowledge involved in skilled and unskilled labor. It is evident that positive social freedom for

the most part is associated with intellectual expertise:
through the development of political and social capacities;
increased access to material and intellectual resources; and
greater status and wealth. Since the division of labor is not a
natural phenomenon but a social construction, it is clear that
various ways of mediating the division of labor are possible:
it could be a matter of administrative concern, it could be
regulated by the market (which is imagined to be in some fashion
an autonomous mechanism), or some form of political control over
the division of labor could be instituted. The issue then is to
determine the manner of controlling the divsion of labor which
has the most legitimate normative basis.

Hegel also recognizes the deleterious effects of the
division of labor. These effects of the division of labor can be
considered "unintended consequences" according to the general
view put forth by the Scottish philosopher, Adam Ferguson:

> Every step and every movement of the multitude, even
> in what are termed enlightened ages, are made with
> equal blindness to the future; and nations stumble
> upon establishments, which are indeed the result of
> human action, but not the execution of any human
> design.
> (Ferguson 119)

Presently it is possible to critique the notion of the
inevitability of "unintended consequences" of systems of
production. Richard Peterson contributes to this critique in
Democratic Philosophy and the Politics of Knowledge by arguing
that the division of labor can be surpassed in the sense that
the adverse effects of modern systems of production can and

should be mediated through democratic processes. In this view

the consequences of the division of labor are not beyond

mediation through human rationality:

> To say that scarcity is not inevitable is to assert
> that under certain conditions shortage could be
> experienced without informing such relations. It is
> to suggest that under appropriate conditions, a
> society could confront shortage as a problem for
> politics. Such politics would have to be democratic
> if the inequalities and dominations associated with
> scarcity were to be avoided. Since shortage in some
> form seems unavoidable, the replacement of scarcity
> by politically organized shortage becomes a key theme
> for a democratic politics concerned with challenging
> the division of labor.
> (Peterson 98)

The implications of this view with regard to a democratic

distribution of knowledge will be examined in the last section

of my dissertation.

Hegel presents arguments against social equality on the

grounds that the differentiation that characterizes modern

society is necessary due to the natural differences in the

abilities of people and in the natural resources available to a

particular state (*POR* §200, 233-4). In one sense, this view can

be brought into question by an immanent critique. From what

Hegel is saying about material production and the division of

labor within modern society, the differences generated among

individuals in terms of their social position and function for

the most part is not a result of a natural basis or "the right

of particularity" but is a function of social, material

production. In particular, differences in ability arise due to

the process of educating individuals to function within the

modern form of production constituted by the division of labor. This is evident in that individuals are formed differently according to the type and level of education that they are allowed to receive for the type of labor they do. It is clear that the basis of the hierarchical and unequal division of wealth and social power is not based on contingent, natural factors but is justified in large measure on the socially constructed distinction between intellectual expertise and the type of knowledge involved in skilled/unskilled labor.

The tension between the universal and particular is also evident in Hegel's understanding of universal suffrage. Given Hegel's universalistic outlook, there is a requirement that participation in society must extend to everyone. Hegel claims that this does not entail universal suffrage; Hegel argues against universal suffrage on the basis that such a form of voting is individualistic and atomistic.

> *The many* as single individuals—and this is a
> favourite interpretation of [the term] 'the people'—do
> indeed live *together,* but only as a *crowd,* i.e. a
> formless mass whose movement and activity can
> consequently only be elemental, irrational,
> barbarous, and terrifying.
> (*POR* §303, 343-4)

The division of political power in a state is a specific form of the division of labor, different spheres serve different functions. For Hegel what is definitive is not the separation of spheres of society, but the "organic" nature of this division—there is at some level a unity that supersedes the particular moments within state functions (cf. *POR* §272, 305-6). It is

important to note that Hegel feels the mass of people are not sufficiently educated to this political end, and therefore they make political decisions on the basis of emotion rather than rationality. It is reasonable to argue that Hegel should have recognized that education is essential to a universalistic conception of human freedom oriented toward social/political activity—a democratic distribution of knowledge is surely necessary to achieve this end.

An interesting point that Hegel makes in §303 of the *Philosophy of Right* is that the social activity through which the individual participates in the state occurs through organized groups. Hegel states that the "corporations" should serve this mediating role. "But the state is essentially an organization whose members constitute *circles in their own right* [*für sich*], and no moment within it should appear as an unorganized crowd" (*POR* §303, 344). This is relevant to the notion of social participation that Hegel puts forth. It is comparable to our own modern culture in the sense that effective social change is generally accomplished at the level of group practice—although there is the sense that such change involves conflict more than following pre-established norms through which the interests of particular segments of society are directed. In terms of educational institutions there is presently a sense that some groups have had success in creating institutionalized structures which represent their interests; women studies groups as well as the study of African-American history come to mind.

On the other hand, it seems to be the case that groups formed around these particular areas of study are marginalized within institutions rather than being incorporated into the standard curriculum. There is a sense that the formation of such areas may, in fact, serve to restrict access to the forms of critique that these disciplines can bring to bear on society. In effect, this form of the division of intellectual labor within educational institutions replicates the hierarchical forms of power relations which such areas intend to critique.

The issue of the relation between the division of labor and the instantiation of hierarchically organized power relations along lines of differentiation in knowledge will require further examination. I want to argue in chapter five of this dissertation that a major means through which this tension between universalistic ideals of democracy and the particularizing and alienating tendencies of modernity can be mediated is through democratic distributions of knowledge within our culture.

In conclusion it may be valuable to review the aspects of Hegel's discussion of the division of labor that are relevant to the further development of this dissertation:

(1) The division of labor is related to the enculturation of individuals, since access to knowledge is either restricted or allowed on the basis of the division of labor.

(2) The division of labor is itself a means through which the distribution of knowledge is structured within society. In

particular, it is necessary to note the division between manual and intellectual labor that has persisted throughout history.

(3) Hegel's conception of the division of labor manifests conflicting social conditions insofar as the formation of universalistic tendencies is countered by deleterious effects such as the restriction of understanding that arises from being occupied in labor that is so specialized (this is evident in both intellectual and manual labor).

(4) Since groups most effectively generate social change, it is necessary to examine what groups in our own society may incorporate more democratic procedures for the distribution of knowledge.

II. The Division of Labor and the Mediating Function of Knowledge.

A. Differentiation in types of knowledge and the social distribution of wealth.

Hegel states that property arises as an essential manifestation of the will of individuals through labor. Property comes about when the individual wills that material existing in a natural, self-subsisting state becomes private through the act of taking possession and through the labor of the individual. Inequality arises at this point due on one hand to differences in natural surroundings, resources, technical knowledge, and on the other hand through the particular differences of individual character and ability:

> The demand is sometimes made for *equality* in the
> distribution of land or even of other available
> resources. The understanding which makes this demand
> is all the more vacuous and superficial in that this
> particularity encompasses not only the external
> contingency of nature, but also the whole extent of
> spiritual nature in its infinite particularity and
> differentiation and in its organically developed
> reason.
> (POR §49, 80)

The differentiation that Hegel is considering with respect to unequal divisions of property and material possessions is complex. In part this division of wealth arises through contingent factors such as natural resources available to particular people merely in virtue of their location, in other respects the division of wealth is based on factors which Hegel considers to be the particular characteristic of individuals: one such characteristic is the intellectual capacities which an individual has. Hegel feels, then, that the differentiation inherent in "organically developed reason" is the basis for justifying distributions of material wealth that occurs within society.

A distinct aspect of Hegel's social philosophy is that this initial economic theory does not provide a sufficient normative basis for the regulation of a complex, differentiated state. In other words, in Hegel's more advanced conception of the state, the state is an "organic" entity composed of interconnected spheres of social activity. To consider a state as a composite of entirely distinct spheres is an unwarranted abstraction from actuality. The individual is always in various

relationships to others which in effect has a profound effect on the nature of individuality itself. A social theory based on possessive individualism is inadequate for capturing the concrete ethical life of a society. It has to be reiterated that for Hegel the normative basis for establishing social structures with respect to the uneven distribution of material wealth is the differentiation he feels is inherent to *rational* spirit. Although the effects that result from this differentiation of rationality are mediated by society, the normative basis of such a distribution is not adequately worked through by Hegel. It will become evident in later sections how important the distinction between intellectual expertise and the types of knowledge involved in both skilled and unskilled labor is for determining the structure of the modern state for Hegel.

Possession requires *recognition* by other persons of the right of possession. For Hegel inter-subjective relations in this sphere become primary (*POR* §51, 81). This contrasts sharply with the conception of the market as exclusively a system based on atomistic decisions and actions of isolated individuals. The nature of self-understanding developed in the economic sphere is for Hegel more universalistic, since it requires the adoption of inter-subjective social norms and the development of a human consciousness that recognizes the rationality of these principles. Society mediates individual rights in relation to the universalistic concerns of society as a whole. An important feature of Hegel's contextualizing thought is his attempt to

describe a social system which does justice to the rights of the individual and the ethical life of the community as a whole.

Private property is only one element of society and is mediated by higher functions of social control. This is essential in two respects: Hegel develops the important claim that the realm of the material base mediated by individual activity in the sphere of private property within civil society is only one function of a society and should be regulated in a rational, self-conscious way as subsumed in other social ends. This idea opposes the false notion that the marketplace is in some manner an isolated, independent sphere of society. Hegel constantly reiterates the necessity of integration of the spheres of society. Hegel refers to the integrating function of the state through reference to Aristotle's statement that a hand separated from the body is no more a hand in the essential sense of its function than the stone hand of a statue (*Pol.* 1.2.1253a 19-25, sc. *PQR* §270, 302).

Hegel recognizes that life in civil society requires mediation by the state because of disturbances arising in civil society: poverty, estrangement (in the sense of disconnection from the institutions of society), lack of recognition, etc. It even is reasonable to argue that if the functioning of the material basis of society is the only concern of the state, then these social disturbances will become a permanent feature of that society—as appears to be happening in our own culture.

Hegel can be considered one of the most progressive political thinkers of modernity because the notion of the self-consciousness of individual freedom as self-determination is the fundamental principle of his social thought. The *Philosophy of Right* is his attempt to demonstrate the objective nature of this principle in terms of the social context of modernity. The issue of education is important in this regard because for Hegel freedom is not self-evident but is knowledge that has been gained through the historical progress of humanity. If this principle is recognized as applying to humans universally, it still remains that people must be educated to an awareness of this principle. Such a view conceives a direct connection between education and the economic, social and political functioning of a society. It is reasonable to argue that people that have been educated to the degree necessary to realize Hegel's conception of freedom would be less likely to submit to authoritarian modes of control (whether economic or governmental), and also less likely to recognize an external authority that is alien to any sense of individual self-determination. One of the reasons for apathy in our own educational institutions is the lack of policies that allow students to participate in the system in such a way that encourages self-determination.

B. Examining the differentiation between specialized expertise and skilled/unskilled practical knowledge.

Isolating Hegel's position on the division of labor shows how he makes use of this contextual category to justify a structure of society that is universalistic insofar as he considers modernity the realization of positive human freedom. It is possible to demonstrate, however, that Hegel is using a contextualizing theoretical framework to legitimate non-universal distributions of knowledge that conflict with his notion of positive freedom. Such forms of the distribution of knowledge in a sense presuppose certain structures of power. Once the seemingly reasonable distribution of knowledge is accepted, the hierarchical power arrangements are taken as almost natural. The intention of this section is to understand how Hegel's use of the contextual category of the division of labor connects to his conception of the distribution of knowledge. How does Hegel use the category of the division of labor to justify the distribution of knowledge that he is proposing?

The general approach that I take in the following is to focus on one issue in particular with respect to the distribution of knowledge within society: the distinction between those who have the type of knowledge involved in intellectual expertise (some form of theoretical knowledge) in contrast to those with limited access to such knowledge. While such an approach is not all-encompassing, for the most part it

does allow Hegel's understanding of the division of labor to be related to his position on the social distribution of knowledge. In other words, I argue that Hegel is using a contextual approach to support his normative social theory on a particular form of the distribution of knowledge within modern societies.

One of the benefits of such an approach is that it relates the role of theoretical and practical knowledge within educational institutions to concrete consequences within society. There is a sense that in our culture the focus in educational institutions is toward the development of expertise required by the market. This neglects the need for the development of practical, political knowledge necessary in a participatory democracy. At best political knowledge itself is merely an area of specialization within academia open only to a select few. Due to the role of the division of labor in educational institutions, political knowledge (patterned along the lines of other forms of highly specialized knowledge) is primarily the interest of academic specialists within universities: political scientists and social philosophers.

At another level systems of education are not simply conduits of theoretical knowledge, but are systems for excluding classes of society from access to such knowledge. The distinction in knowledge between what Hegel calls theoretical and practical knowledge corresponds to a division of labor between intellectual elites as distinct from those who are involved in manual and service labor.

The most conspicuous benefit to those who possess theoretical knowledge is clear: social power. The basis for justifying the division between theoretical knowledge and the type of knowledge involved in skilled/unskilled labor serves as a justification for the hierarchical, social/economic division between those involved in each form of labor. Laborers are excluded from theoretical knowledge through systems of education, so it is necessary to focus on this issue in the discussion aimed at developing a democratic conception of the distribution of knowledge within our own society.

III. Critique: The inadequacy in Hegel's use of the contextual category of the division of labor in relation to the differentiation of knowledge.

One difficulty for Hegel as a contextual thinker is the possibility that injustices within society can be incorporated into the development of normative principles so that social systems of injustice will be perpetuated and, even worse, appear justified through such an approach. This gives rise to the standard critique that Hegel was a conservative apologist of the Prussian monarchy. The notion that Hegel is conservative in this sense has been refuted, but the issue remains that philosophical methods that incorporate contextual material from the social and political sphere can be a means through which social injustice can be legitimated.

There are respects in which Hegel does not adequately take account of this difficulty in his thought. It is reasonable to

argue, though, that Hegel did see the problem and attempted to deal with it on a general level through an analysis of the relationship between rationality and actuality. For instance, any political system that has existed is "actual" in the commonly accepted sense, but clearly Hegel in his historical analyses did not consider all systems to be entirely adequate as rational exemplifications of the idea of freedom. Social systems are stages in a historical process that Hegel characterizes as a development based on conflict while maintaining a rational orientation:

> But even regarding History as the slaughter-bench at
> which the happiness of peoples, the wisdom of States,
> and the virtue of individuals have been victimized—
> the question involuntarily arises—to what principle,
> to what final aim these enormous sacrifices have been
> offered.
> (*POH* 21)

It is reasonable to argue that for Hegel political systems are actual in a teleological sense; insofar as social systems realize the potentiality for human development that is immanent in the conception of human freedom, they are actual.

A. Exclusion of groups of people from specific spheres of rationality.

In this section I examine the respects in which Hegel's understanding of the division of labor is problematic for developing his conception of the distribution of knowledge within society. The distinction between theoretical and practical knowledge must in some sense be of social utility insofar as it is a distinction that has been maintained since

ancient times. At the same time, the use of contextual issues can be used to support a certain social structuring of this distinction that cannot be normatively justified.

The most evident difficulty in Hegel's position is that ultimately he argues for the exclusion of certain groups (e.g., women and menial laborers) from active political participation on the basis of contextual issues. For instance, Hegel presents the modern form of the division of labor as necessary insofar as it leads to a society which is recognized as universal in its interconnectedness. Hegel does not adequately deal with the restriction of individuals to specific forms of knowledge and the associated limitation in forms of activity and capacities that such a division of labor requires.

Aristotle and Hegel both try to justify the limitation of the political participation of the laboring classes and women based on a pre-existing exclusion of these groups from theoretical knowledge. Hegel maintains that women are defined by feeling rather than rationality and that their place is restricted to the environment of the family. Women are excluded from certain spheres of society through the fact that their natural sphere of activity is the family—in effect, this restricts the degree to which they can participate in the rational order of the state. Hegel justifies the subordination of women on the basis of an exclusion from theoretical spheres of knowledge that in some sense is seen as natural. In this regard Hegel's position is unfortunately similar to Aristotle's.

Hegel argues for a certain type of distribution of social knowledge involving a distinction between intellectual expertise and the expertise associated with skilled and unskilled labor. This distinction is supported through a contextualized understanding of social realities. His strategy can be summarized through the following points that I have set forth in the preceding sections of this dissertation:

(1) The question naturally arises concerning what type of knowledge is necessary for citizens involved in political decision processes. For Aristotle such citizens must have a knowledge of the universal concerns of society. In other words, they must be *disinterested*—trained to focus on the interest of the state (universal interests) rather than their own particular interests. This is similar to the Hegelian conception that those who have have the intellectual expertise to run the government are the "universal" class insofar as they have a conception of the universal ends of society.

(2) Political knowledge/power and activity is associated with intellectual expertise, so that practical, political activity requires forms of specialized, theoretical knowledge.

(3) Through the division of labor and the form of modern material production the laboring classes and women have restricted access to the type of intellectual expertise that Hegel feels is requisite to participate in the actual functioning of the government.

(4) This restriction gives rise to the notion that certain groups can be characterized on the basis of socially limited or even abnormal forms of mentality: the conception of women as human beings operating naturally on the basis of feeling and the "rabble" mentality as a form of resentment against the state and society.

(5) Since political participation is based primarily on intellectual expertise, certain groups are restricted in their ability to participate in state institutions according to the level of intellectual expertise that they have. This means that laborers will have some access insofar as they can participate in public discourse through their status as members of estates having a certain level of practical knowledge. For the "rabble" and women there appears to be no mechanism in Hegel's political structure through which they can obtain participation in the state. Hegel does not offer a solution so that these groups can attain even limited membership in the political organization of the state.

The distinction between those involved in activities requiring intellectual expertise and those involved in activities requiring the type of practical knowledge associated with labor becomes a hierarchical distinction in social power. The general argument is that those involved in spheres requiring theoretical knowledge are doing work that is more valuable, so that the person holding such knowledge is more valuable and

acquires a position of social eminence. The legitimacy of such a social structure can be questioned along the following lines:

(1) First, there is not equal opportunity to all to obtain theoretical knowledge, as educational institutions are sources of restriction as well as access to such knowledge. It is evident that one of the main features of a social hierarchy arranged on the basis of distinctions in knowledge is that it is itself a means to control and restrict access to knowledge.

(2) Secondly, this argument conceives intellectual expertise on the basis of private property. Such a view of intellectual expertise neglects the social aspects of such knowledge: in particular, the general social resources that go into the development of theoretical knowledge, and the importance of communities of discourse in which such knowledge is nurtured, as well as the need of society for individuals with knowledge that is more universal to fulfill state functions.

The form of the distribution of knowledge that Hegel's conception of the division of labor requires is inconsistent with aspects of Hegel's normative conception of universal features of modernity. Given Hegel's notion that modern society has universal interests, such as the concern that the subjectivity of each individual is respected, it is difficult to see how he can at the same time propose a form of differentiation of knowledge that effectively limits the mental development of entire classes to conditions of servitude based

on the type of knowledge to which they have access. If the intellectual education of specific classes of people is actually insufficient for them to make political decisions, it is difficult to see how far such a system can legitimately represent the collective interests of society. It might be said that the Hegelian notion of universality in society has not achieved an adequate form of differentiation consistent with his conception of the universal freedom inherent to modernity. If there are means only in principle whereby people can participate in social organization, but in actuality there are methods of exclusion, then it is invaluable for instituting democratic procedures to identify the concrete means of exclusion so that they can be eliminated.

B. Specialization of knowledge and political participation.

A social system based on universalistic principles requires universal access to knowledge to the degree that allows political decisions to be made. Furthermore, insofar as the type of comprehension required for political activity is of a more universal nature, the notion of differentiated forms of knowledge becomes problematic in respects—such specialization of knowledge can be associated with tendencies that are in fact anti-social to the degree that specialization can cause alienation from social community.

One of the implications of a restriction in access to intellectual expertise is that it leads to passive citizenship;

that is, citizens are not decision makers although in some
respect they may be involved in political and civic processes.
One difficulty I see in the interesting account of civil society
put forth by Cohen and Arato is that the associations that
constitute civil society are in some manner disconnected from
the political process. They then maintain that civil society
itself must become politicized (in a democratic fashion).[27] They
mention that associations in civil society are based on
democratic principles, but the formation of such organizations
does not seem to involve democratic procedures, since, in fact,
such organizations are often organized hierarchically along the
lines of economic and political systems. Furthermore, since
educational institutions are themselves state institutions in
our culture, it is not clear how Cohen and Arato deal with the
democratization of state educational institutions, especially,
since they argue that the democratizing processes of civil
society should be "self-limiting," that is, they do not
challenge directly the non-democratic structure of state
institutions.

C. The formation of social character following distinctions in
types of knowledge is problematic.

Accepting the distinction between theoretical knowledge
and skilled/unskilled labor as Hegel presents it leads to the
acceptance of corresponding types of character formation and
agency associated with this distinction. In particular,
"corporations" are a means of distributing and controlling

specific forms of knowledge with associated formations of
identity. It is significant that those who are actually in
political control are not restricted to highly specialized forms
of knowledge, but are members of the "universal" estate in that
they understand the requirements of society as a whole. Given
that the practical knowledge of laborers is so specialized
through the division of labor, the political role that such
citizens have in Hegel is highly restricted. Hegel uses the
distinction between "theoretical knowledge" (intellectual
expertise) and the practical knowledge of laborers to justify a
political structure that is not universalistic, so Hegel's claim
that modernity has achieved a universal sort of freedom is
problematic. It is reasonable to argue that in many respects
Hegel uses a contextual approach to justify the limitation of
theoretical knowledge and political power in the working class.
Obviously, this is relevant to our own society as well.

IV. Conclusion: Social possibilities inherent in Hegel's
discussion of the distribution of knowledge.

    This section extracts from the previous discussion the
indications of social possibilities that arise through an
examination of contextuality in Hegel's work. In part the
development of my own conception of a just distribution of
knowledge is based on this critical analysis. In the present
section I indicate some of the positive aspects of Hegel's
thought which contribute to the construction of my own normative
conception of a democratically informed distribution of

knowledge. In particular, the intention is to indicate the specific issues of contextuality that are relevant to a democratic distribution of knowledge. The intent is not yet to further develop these issues in terms of my own normative concerns, as this will be done in the final chapter of the dissertation.

The critical understanding gained from analyzing Hegel's contextualizing approach will be useful for identifying and avoiding similar difficulties when developing my own normative conception of a democratic distribution of knowledge. For instance, it seems that a distinction is necessary between the type of knowledge that is involved in work that is characterized as intellectual expertise versus the type of knowledge involved in manual labor (what Hegel would call practical knowledge). How can the deleterious effects of such a distinction, such as the formation of personalities who are strictly identified or characterized by their class of work, be diminished? If the examination of contextual issues is important for theorizing forms of distribution of knowledge within society, how is it possible to avoid the mistake of considering the established structure of knowledge as in a manner justified simply through its actuality?

A. Recognition of the relation between social conditions of production and knowledge.

First of all, it is fruitful to look at the material basis of society and the division of labor in relation to the

distribution of knowledge because such an approach recognizes that education is not simply a process of developing the understanding but is to a great degree coordinated with the material production of society and the relationships of production. Hegel recognizes the fundamental role that labor has as a formative process of individuals. In some respect Hegel considers labor a liberating activity in situations of servitude: " . . . the bondsman realizes that it is precisely in his work wherein he seemed to have only an alienated existence that he acquires a mind of his own" (*POS* 119).

One fundamental contextual analysis within the *Philosophy of Right* concerns the modern construction of labor. The rational construction of the process of labor in modernity has become simpler and more mechanized. Given that labor is essential to the formation of individuality, it is reasonable to conclude that the type of character formation that occurs in modern societies will correspond to this change in the nature of labor. To be specific, individuals become less able to engage in spheres outside their narrowly defined field of work. This is a problem for a society that has democratic ideals which require the education of individuals to a level that can ensure substantive participation in the political functioning of society. It follows that the nature of material production and the division of labor is a central philosophical issue that must be addressed in devising a theory of a democratic distribution of knowledge.

B. Knowledge and human freedom.

One of the most interesting aspects of Hegel's discussion of the formation of individuality is that it is tied to the historical development of human beings becoming self-conscious of their own freedom:

> The human being, in his *immediate* existence *[Existent]* in himself, is a natural entity, external to his concept; it is only through the *development [Ausbildung]* of his own body and spirit, *essentially by means of his self-consciousness comprehending itself as free,* that he takes possession of himself and becomes his own property as distinct from that of others. Or to put it the other way round, this taking possession of oneself consists also in translating into *actuality* what one is in terms of one's concept. (*POR* §57, 86).

A number of points can be made here as a means to sketch this important Hegelian notion of freedom. First the notion of freedom that Hegel develops is historical. This is a sharp contrast to the formal freedom of the will that Kant presupposes. Second, for Hegel the nature of material existence at the level of civil society is characterized in large measure by its contingency. A higher level of rationality (political) is necessary to mediate the contingency of the civil sphere, due to Hegel's claim that a fundamental aspect of modernity is the universality of human freedom. The nature of human freedom is the normative basis for state welfare in a broad sense. Furthermore, production itself functions in a universal manner in some capacity in the production of society as a whole. Hegel recognizes this universality in the complex interconnectedness

of human activity that modern systems of production require.

Third, as a historically developed potentiality of humanity, it

is reasonable to claim that self-consciousness of freedom is

something that could decline.

The Hegelian notion of freedom as positive requires

further examination. There are many aspects of Hegel's notion of

freedom that go beyond an abstract conception of the will as

formally free. Hegel conceptualizes the system of right in terms

of a positive notion of the freedom of the will:

> The basis [Boden] of right is the realm of spirit in
> general and its precise location and point of
> departure is the will; the will is free, so that
> freedom constitutes its substance and destiny
> [Bestimmung] and the system of right is the realm of
> actualized freedom, the world of spirit produced from
> within itself as a second nature.
> (POR §4, 35)

Given that the construction of the system of right is

based on the nature of the will as free, the difficulty in Hegel

of the apparent subsumption of the will of the individual to

that of the state is diminished insofar as the rational state is

a construction based on the free will (POR §57, 87-88). The

state is an objectification of the free will for Hegel, so there

is a sense in which the state is essentially a construction

involving the will of individuals who have participated in its

construction. Hegel does not exclude human interest from the

realm of right. An aspect of the human condition is the

necessity of fulfilling needs and Hegel recognizes that this is

consistent with human freedom. "There is nothing degrading about

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being alive, and we do not have the alternative of existing in a higher spirituality. It is only by raising what is present and given to a self-creating process that the higher sphere of the good is attained . . . " (*POR* §123, 151; cf. 151-52).

The conception of freedom is positive insofar as it attains an objective manifestation in society. The contrast is with a negative conception of the will which has as its aim only the negation of any positive sort of determination at all (*POR* §5, 38-9): "The laurels of mere willing are dry leaves which have never been green (*POR* §124, 153)." For Hegel certain forms of social determination are the manner in which human subjectivity becomes free (*POR* §7, 42-43; §13, 47). This is related to the process of education as social enculturation in the sense that education is a means of forming social identity.

If the fundamental principle of modernity is the recognition, or self-consciousness, of the inherent freedom of the subject, a requirement of such recognition must be the universal dispersal of the knowledge of subjective freedom. A system of social education is necessary to enculturate individuals to the degree necessary to function as free social beings with an awareness of the universality of this claim to freedom. Hegel characterizes such knowledge as "theoretical" or, according to less loaded terminology, what I have called "intellectual expertise". Theoretical knowledge is the capacity for dealing with universal considerations rather than focusing

in a strategic manner on particular interests. It is clear that broader dispersal of at least certain forms of intellectual expertise is requisite for the normative construction of a participatory democracy.

It is necessary here to indicate the relationship between the Hegelian notion of freedom and law as the embodiment of historically developed practical rationality normatively governing human activity. As a system of normative principles, law is essential to the social enculturation of individuals. Hegel recognizes that law, as the rational production of humanity itself, is not "alien." In this regard, it is possible to see a relationship between the legitimacy of law and the fact that humans are not estranged from the law: in various respects humans have participated in the formation of law (*PQR* §148, 191). A difficulty for Hegel is that the notion of law as the "essence" of human rational activity is often too abstract. Furthermore, there is a tension in Hegel's thought between the "absolute" objectivity of law and its human origins.

C. The development of public spheres of discourse.

The development and functioning of civil society in modernity requires knowledge in citizens that is universalistic. Knowledge of norms which establish the interconnectedness of individuals in society must be distributed throughout society. The manner that Hegel achieves this result is, of course, no longer a historical possibility—a discourse in a public sphere

mediated by the representatives of the Estates. Nevertheless, it is reasonable, I argue, to see in this conception possibilities for the transformation of our own civil society. There is a possibility of developing "spaces" for public discourse about the functioning of institutions within society. One problem in Hegel's analysis is that he disconnects this form of public discourse from political power. Public knowledge according to Hegel occurs within this sphere in a non-restrictive or "universal" way, but it remains only an "edifying discourse" disconnected from possibilities of changing social practices and institutional structures.

Hegel's notion of the division of civil society into estates representing essential forms of the division of labor has been surpassed, but there are elements of his conception of the structure of civil society that are useful. First, Hegel realizes that an individual's interests in society are often best represented in terms of membership within a certain group or organization rather than in terms of particular interests. Conflicts that occur in society are generally indications of the interests of a collective rather than of isolated individuals. Furthermore, in general, effective change, resolution of social conflicts, and access to political power comes about through group activity rather than that of individuals. Hegel also recognizes that it is necessary for some sense of community to develop in society in order for individuals to overcome the deepening sense of alienation that pervades modernity.

Individual identity formed through education is not an
individual achievement but is a function of involvement in
determinate collectivities.

For Hegel the character of individuality is defined
through "determinate particularity" (*POR* §207, 238). It is
necessary that the individual achieve recognition through
involvement in one of the estates of civil society. These
estates provide the individual with a sense of self-recognition;
that is, individual identity arises through belonging to a
particular estate. Furthermore, the estates are the means by
which a person gains recognition from others. The estates serve
as a mediating function between the individual and state
government as well, since the individual's interests are not
represented in their contingent particularity but as the
interests of a particular estate (*POR* §253, 271).

It is possible to critique the notion of mediation through
estates that Hegel is developing, since Hegel argues that this
form of social mediation is sufficient, and universal suffrage
is undesirable (*POR* §311, 350). There is a contradiction in
Hegel in this regard, in that he feels the self-consciousness of
individual freedom is the outstanding achievement of modernity:

> The principle of the modern world at large is freedom
> of subjectivity, according to which all essential
> aspects present in the spiritual totality develop and
> enter into their right. . . . all political
> constitutions are one-sided if they cannot sustain
> within themselves the principle of free subjectivity
> and are unable to conform to fully developed reason
> (*POR* §273, 312).

Yet Hegel apparently restricts this notion of freedom to males. The identity of women in effect is defined by nature and feeling according to Hegel (*POR* §166, 207). Elsewhere Hegel argues forcefully against the view that humanity can be defined by nature and feeling (*POR* 13).

The development of a public sphere of discourse aims at the education of individuals in a political sense. The formation of the individual in terms of education is a process that is not only a matter of an individual's own development but involves the notion of the inter-relatedness of individuals and the formation of their identity through participation in collectives. It is important to note that the manifestation of the will of individuals occurs essentially in relation to others (*POR* §112, 139). In Hegel's development of the notion of subjective will he arrives at a point that establishes a system of social life that requires social relationships to others.

Habermas argues that the notion of a public sphere of discourse has become problematic in modernity. This raises the issue of how it may be possible to create such a public sphere of discourse. The essential requirement of such a sphere in my view is that practical, political knowledge should be connected to actual power to accomplish change. So, for political discourse to be democratic it should be constructed in a manner in which it is connected to political power. One difficulty with Hegel's conception in this regard is that he disconnects the process of public discourse from procedures for initiating

change. The power to change institutional structures and

normative practices resides essentially in a certain class of

people who, Hegel argues, have the intellectual expertise to run

government.

CHAPTER 5

Development of a Normative Conception of Justice as a Democratic Distribution of Knowledge

One of the intentions of this dissertation is to show that understanding Aristotle and Hegel as contextual thinkers can contribute to the development of a political conception of justice as a democratic distribution of knowledge. The purpose of this chapter is to answer the following question: How can a contextual approach to justice contribute to a sense of social justice as a democratic distribution of knowledge and better enable us to understand what such a notion entails concretely? I first will make clear what elements of the preceding discussion of Aristotle and Hegel are useful for the development of my own normative concerns (chapter 5.I.). Next, I will show how a contextual approach contributes to the development of a contemporary sense of justice as a democratic distribution of knowledge (chapter 5.II.).

I. Relevance of Aristotle and Hegel for the Development of a Conception of Justice as a Democratic Distribution of Knowledge.

Aristotle and Hegel argue for specific distributions of knowledge based on contextual analyses which refer to social

conditions such as social conflict and the division of labor. The interest for us of these approaches does not lie in the specific forms of social order that they argue for, especially the distribution of knowledge—since the social conditions of modernity and the historical, social norms structuring human activity and capacities are different. Nevertheless, I argue that the methods of reflecting on norms in relation to social conditions that these philosophers have developed is a useful approach for understanding the relationship between social context and the legitimation of the distribution of knowledge within our society.

A. The critique of abstraction and formalism.

For an account of justice as a democratic distribution of knowledge the preceding critique of Aristotle and Hegel is useful because it analyzes the structure of socially differentiated knowledge in relation to actual historical circumstances. This aspect of Aristotle's thought is evident in his argument that practical rationality differs from pure theoretical thought by taking account of the particularity of human activity, which cannot be entirely subsumed under the constructions of a *priori* normative theories. The procedure through which normative principles are applied to particular cases is not specified in detail by Aristotle, but it is evident that the application of principles is a function of specialized

knowledge in the capacity of a person with practical wisdom
(phronēsis).

Hegel argues against non-contextual, or abstract,
conceptions of justice in his critique of Kantian formalism. The
essential difficulty of formalism in ethics is that it does not
conceive of justice in relation to historical conditions. Under
a formalist view, human freedom is an abstract characteristic of
human subjectivity. In contrast, Hegel's historical analysis
makes clear that human freedom may be more or less manifest (or
concrete) as a function of the rationality which a society has
achieved. It is evident from the foregoing analysis (chapter
2.II.B.) that Hegel believes the application of formal
(subjectivistic) conceptions of freedom are inadequate because
of the high degree of differentiation in modern society.

In this dissertation I have argued that Aristotle and
Hegel are concerned with conflict and the division of labor in
relation to the distribution of knowledge in the formulation of
their normative conceptions of justice. Aristotle and Hegel
believe that the contextual categories of social
conflict/resolution and the division of labor are essential to a
contextual analysis. Aristotle and Hegel develop normative
theory with regard to the distribution of knowledge consistent
with conditions within their own societies. In the following two
sections I recapitulate the exposition of Aristotle and Hegel on
these issues, and I summarize their normative positions.

B. Aristotle: conflict and the distribution of knowledge.

Aristotle conceives of justice as the structure a society achieves through laws and the constitution. A difficulty concerning how the constitution should be constructed and interpreted follows from the conflict between social groups with different social interests (such as wealth, honor, excellence, and freedom). Aristotle argues that the distribution of knowledge is important for resolving this conflict. He argues that under actual conditions a constitutional government best utilizes the rational potential within Greek society for achieving the universal interest of the city-state. Participation of equal citizens is essential to this form of government; each citizen is responsible for contributing their practical wisdom to the governance of the whole.

It is clear that there are universalizing tendencies in Aristotle's thought involving the distribution of knowledge with respect to politics. This is especially evident in the sentence with which Aristotle begins his *Metaphysics*: "πάντες ἄνθρωποι τοῦ εἰδέναι ὀρέγονται φύσει." "All humans by nature desire to know" (*Met.* 1.1.980a 21). Aristotle argues for a constitutional form of government, because it is in such a state that the practical rationality of individuals is best utilized through their participation in the state. Furthermore, such participation is a means through which citizens attain knowledge of the collective action of the state. This opens the state to public scrutiny, which serves

to legitimize the actions of the state. Political participation can be considered a process by means of which the normative principles directing the activity of a social collective attain validity.

Since Aristotle maintains that the very nature of human existence is to desire knowledge and that knowledge is essential to the functioning of the city-state, the only means to exclude groups from the state is to characterize their rational capacities as either not fully human, or not fully developed. On this basis Aristotle argues it is reasonable to exclude women, slaves, children and workers. The social ideology behind this position is apparent. If these groups have deficient capacities, it is due to restrictions placed on them by society (with the possible exception of children).

Although the mechanisms of exclusion are different, it is evident that restrictions in levels of social participation in our own society are associated with the types and degree of knowledge which one has. It can be reasonably argued that many social functions that are political have been taken over by mechanisms of control that are not open to public scrutiny and discourse (Peterson 18-19; 209 ff.). Expert authority is increasingly being used to make decisions that are political and, hence, should be open to public debate. As an example, recently in the city in which I live, there was a question over how to contain a cancer-causing agent that is seeping into the public water supply from a toxic waste site. Litigation over

this matter had been going on for years between the company that owns the site and the city. Rather than reclaiming the land (a more expensive solution), the decision was made to cap the land with clay, in which case the land can never be used by humans again. While there was a public meeting about the action being taken, the decision seems not to have involved input or administration by those concerned from the general public. Unless the use of expert knowledge as a mechanism which assumes political power can be identified and justified, it is reasonable to question the legitimacy of the relationship in our society between the degree of social/political participation which one can actually engage in and the form of knowledge one has acquired.

C. Hegel: the division of labor and the distribution of knowledge.

According to Hegel, the division of labor is potentially a means through which humanity can achieve concrete freedom in modernity. The division of labor reduces individuals to specialized roles within the organic whole of society through the formation of individual *capacities*. While this may seem to be a process of sheer atomization, Hegel emphasizes that people become aware of the necessary cooperative interconnection among individuals within society structured by the division of labor.

Knowledge serves various mediating functions within the modern form of the division of labor. First, individuals come to the realization that the security of their social situation is a

function of the interconnection of everyone within the division of labor. The notion of *recognition* is essential to the formation of social community in this regard. Second, the specialized knowledge associated with the sphere of a person's social and economic activity allows *participation* through Corporations within the political institutions of the state. As with Aristotle, political participation for Hegel is a way that citizens can acquire knowledge of the collective action of the state and political participation is a means through which the validity of state activity is realized. In this respect, knowledge serves a mediating function in which the particularity of an individual's own social position is put in relation to the more universal interests of society.

The importance of Hegel's analysis of the division of labor is readily apparent. In many respects his understanding of the social implications of the division of labor is far more subtle than that developed by his predecessors in their theories of political economy. It is also necessary to recognize the respects in which Hegel's theory is inadequate. Hegel understood that the division of labor is associated with a high degree of differentiation and specialization of knowledge. Under the modern form of the division of labor the rational capacities of individuals are developed within particular areas of specialization of human activity. This applies to spheres requiring intellectual expertise as well as areas of labor involving skilled and unskilled activity. Within Hegel's social

system there is, in fact, only one group of people (civil servants, the "universal class") who have the type of specialized knowledge that allows them to understand the organic totality of the state.

In order to understand the difficulty involved in Hegel's conception of the division of labor, it is necessary to consider his notion of positive freedom. According to Hegel, freedom is a function of the level of rational social development which a state has achieved. This contrasts with subjectivistic conceptions of freedom in which freedom is a function of the will of the subject. The Hegelian notion of freedom is realized within a social context as a result of historical development. Hegel argues that the modern form of the division of labor is consistent with his conception of freedom, given the social structure which he sets forth in the *Philosophy of Right*. The primary difficulty with Hegel's account is the degree of specialization and restriction in knowledge that he must accept as a condition of the modern form of the division of labor. The division of labor restricts the spheres of individual activity to the degree that the notion of "positive" freedom becomes an abstraction.

At times Hegel suggests that the end of individual activity is universal insofar as subjectively willed activity is in accordance with objective will (such as the laws of a state).

> Since the state is objective spirit, it is only
> through being a member of the state that the
> individual [*Individuum*] himself has objectivity,

> truth, and ethical life. *Union* as such is itself the
> true content and end, and the destiny *[Bestimmung]* of
> individuals *[Individuen]* is to lead a universal
> life . . . . Here, in a concrete sense and in terms of
> its content, it consists in the unity of objective
> freedom (i.e. of the universal substantial will) and
> subjective freedom (as the freedom of individual
> *[individuellen]* knowledge and of the will in its
> pursuit of particular ends). And in terms of its
> form, it therefore consists in self-determining
> action in accordance with laws and principles based
> on *thought* and hence *universal.*
> (*POR* 276)

But if knowledge of the rationality manifest in society is

restricted to a small class of intellectuals, it is apparent

that the positive freedom that arises through a union of

"subjective freedom" and "objective freedom" is not a universal

aspect of modernity but is only available to the understanding

of a few individuals:

> . . . but the Greeks were still unacquainted with
> the abstract right of our modern states, that
> isolates the individual, allows of his acting as
> such, and yet, as an invisible spirit, holds all its
> parts together. . . . It is a divided activity in
> which each has only his part, just as in a factory no
> one makes a whole, but only a part, and does not
> possess skill in other departments, because only a
> few are employed in fitting the different parts
> together. It is free nations alone that have the
> consciousness of and activity for the whole; in
> modern times the individual is only free for himself
> as such, and enjoys citizen freedom alone—in the
> sense of that of a *bourgeois* and not of a *citoyen.*
> (*POH*, Vol. II, 209)

Within the highly differentiated and specialized modern

form of the division of labor, individuals do not generally

possess knowledge of the universal interests of the state—

according to Hegel himself. So the type of freedom attained is

not universal but can only be a non-rational acceptance of the

objective order. The implication is that this type of freedom is not positive because the majority of citizens have not attained an understanding that the objective social order may embody rationality in its objective order.

To conclude this section, the central objective has been to recapitulate Hegel's and Aristotle's normative concern with the distribution of knowledge in relation to social conflict and the division of labor within society. Even though it has been shown that the manner in which they think contextually about the mediating function of knowledge is not adequate, I argue that aspects of their approach are useful for developing a conception of justice which requires a democratic distribution of knowledge within our own society.

It may be useful to point out some general aspects of the preceding analysis that will guide the development of my conception of a democratic distribution of knowledge:

(1) A contextual method directly confronts normative principles with a specific social reality in contrast to ideal theories of justice formed in abstraction from social context.

(2) Furthermore, a contextualizing approach to the distribution of knowledge within society provides an analysis of the contemporary historical conditions which make the construction of a democratic distribution of knowledge feasible.

(3) A contextual analysis can show how conceptual obscurity/conflict over notions such as democracy and the role of the division of labor can lead to difficulty for a democratic construction of education.

II. Development of a Contemporary Conception of Justice as a Democratic Distribution of Knowledge.

In the following two sections of this dissertation the general approach of a contextualizing theory of justice is followed, but I turn the discussion to the development of a prescriptive conception of justice requiring a democratic distribution of knowledge. In the first section I discuss contemporary social conditions of conflict and the division of labor as these bear on the development of a conception of a democratic distribution of knowledge. In the next section I show how an understanding of a contextual approach is useful for addressing problems around the issue of the distribution of knowledge in existing educational institutions and how such an approach can identify possibilities for the introduction of more democratic practices when applied critically.

A. The Mediating Function of Knowledge for Conflict and the Division of Labor.

The distribution of social goods, such as political power, economic wealth, and social status, is determined by various factors. It is evident that a major factor in social distribution is the type and degree of knowledge that individuals have. Distribution according to knowledge may seem

reasonable and fair on first inspection. For example, it is often claimed that authority should be distributed according to knowledge, especially authority that has the public sphere as its realm of operation, and one sense of the term *authority* is someone who has expert knowledge about a particular subject matter.

Even granting that it is better that knowledge rather than arbitrary power should be the basis of authority, the differentiation of social authority based on knowledge can serve ideological purposes. Differentiation in knowledge may be used as the basis for the appearance of legitimacy with respect to claims of authority but may in fact support social injustice.

For instance, proponents of dismantling affirmative action often argue that it is unfair to white males as a form of institutionalized inequality that is not based on the degree of knowledge one has achieved through education. This argument is based on the reasonable claim that advancement in educational institutions should be based on merit.[28] In a society largely structured on the competitive system imperatives of the market, it is not difficult to understand the resentment that policies such as affirmative action may engender. On further consideration, though, there are issues that often remain unaddressed by those who propose abolishing affirmative action. In particular, such arguments typically ignore the persistent racial inequalities in our society that are the reason for affirmative action in the first place. Distribution of knowledge

as a form of social wealth is said to be based on equality of opportunity, but may, in fact, be based on more fundamental social inequalities. One difficulty is the persistence of the need for affirmative action; ideally, affirmative action policies would become obsolete in a society that has dismantled institutional racism. A legitimate question is whether such policies are actually effective, and, if they are not effective, how can they be transformed to achieve the desired result of equality of opportunity in education. There may be an over-reliance on affirmative action alone to achieve this goal. In addition, what other solutions should be considered for creating possibilities of more egalitarian education? There is an encouraging tendency presently to increase funding for higher education, so the scarcity associated with the distribution of knowledge may be alleviated to a degree.

These aspects of the distribution of knowledge can be analyzed in a contextual way by looking at the relation between contextual categories (such as conflict and the division of labor) and knowledge within our society. In the following section I first examine conflict within educational institutions to show that a democratic approach to the distribution of knowledge becomes intelligible by confronting the issue of conflict directly.

1. Conflict

Conflict is endemic to educational institutions—from large scale student unrest, to the disheartening passivity of individual students in classrooms as an expression of alienation from even their own education and the development of their own intellectual capacities. There is conflict over *access* to higher education, which is becoming a privilege of wealth rather than a means to a more democratic society. In addition there is conflict over the *nature* of education in schools. Educational institutions increasingly represent private business and technical interests rather than the more universalistic interests of society as a whole. Under these conditions, groups not associated with business/technical interests have little input into the social construction of knowledge. Understanding the nature of these conflicts is essential for formulating normative principles that are consistent with a democratic distribution of knowledge within society giving rise to a more democratic environment for teaching and learning.

a. Restricted *access* to educational institutions is inconsistent with a democratic conception of human political agency.

The view of justice that I adopt is democratic in that it involves as an ideal an equitable distribution of knowledge through democratic procedures. Democratic control over institutionalized forms of knowledge can be thought of in terms of access to knowledge. In a society which is largely structured on the communication of information, access to knowledge is

equated with access to social and political control. A society
that is democratic should provide that political power be
distributed equally throughout society as far as possible. If
access to knowledge is restricted, such restriction translates
into a restriction of social agency to those without access to
education. A problem for a democratic conception of justice
insofar as it relates to the distribution of knowledge is the
issue regarding limitation in access to education within our
society. It is reasonable to suggest that a democratic
distribution of knowledge would alleviate social conflict over
the distribution of social wealth by generating equality of
opportunity.

One possibility for a more equitable and democratic
distribution of knowledge is the use of technology to expand
access to knowledge within society. The expansion of the
Internet and other communication technologies is often put forth
as a means for vastly increasing access to knowledge in terms of
both quality and quantity. The situation put forth as a
possibility by Walter Benjamin in "The Work of Art in the Age of
Mechanical Reproduction" still remains a possibility, but
unfortunately not presently an actuality. Benjamin argued that
with advances in mass production, reproduction of works of art
and literature could become widely available to all. This is an
instance in which it is thought that cultural knowledge can be
distributed along the lines discussed in the introductory
chapter of this dissertation. This view conceives of knowledge

as distributable as if it were simply some object: like a book.

Adorno reasonably argued against this view that what is required

is not simply the dissemination of cultural objects, but the

generation of understanding as well. What seems to require

reproduction is not simply cultural objects, but an entire

system of education. Opportunities for the dissemination of

knowledge are expanded due to technological advances to the

extent that the material of liberal education could be readily

available to all. The Internet is capable of functioning as a

communications system reproducing understanding. For instance,

language courses could be set up in a fairly programmatic

fashion. Nevertheless, a system of education is necessary in

which the use of this resource is encouraged.

It is difficult to ignore the views of those who talk

about the benefits of this new technology with such optimism,

but it is important to note that similar claims were made for

television. The question is whether there is something inherent

in more advanced systems of communication (such as the Internet)

that lead one to suppose that they could fulfill such optimistic

claims to expand access to knowledge and increase the quality of

education. Even granting the tremendous potential in such

advanced technology, it is necessary to be aware of the

difficulties involved. First of all, the control of

communication technology presently is not diffused throughout

our society but is in the hands of those who can be

characterized as privileged in terms of wealth and education.

Secondly, it seems likely that the same mechanisms of administrative control that are now in place will just be applied to new systems of communication rather than being controlled by democratic processes. This means that such systems will serve already constituted formations of power rather than serve the promotion of democratic forms of education.

Restriction of access to knowledge can be viewed as an instance of socially generated scarcity which gives rise to inequality of opportunity and, hence, causes social conflict. It is clear that the distribution of knowledge could be more universal than it presently is. It may be supposed that the introduction on a broad scale of technology such as the Internet and other systems of communication has the potential of making access to knowledge nearly universal. I think it would be wrong to dismiss outright the potentialities in this technology; on the other hand the situation appears similar to the introduction of machine technology into production. The liberating potential of machine technology is evident, but a major factor in achieving greater social freedom is the control of technology. As Marx notes, the introduction of machinery is accompanied by an increased exploitation of labor and the stultification of the labor force rather than its liberation.

> "If", dreamed Aristotle, the greatest thinker of
> antiquity, "if every tool, when summoned, or even by
> intelligent anticipation, could do the work that
> befits it, just as the creations of Daedalus moved of
> themselves . . . then there would be no need either
> of apprentices for the master craftsmen, or of slaves
> for the lords." . . . Oh those heathens! They

understood nothing of political economy and
Christianity, as the learned Bastiat discovered, and
before him the still wiser MacCullock. They did not,
for example, comprehend that machinery is the surest
means of lengthening the working day.
(*Capital*, Vol. 1, 532-533)

A number of considerations arise at this point. It is
clear that increased productive capacity could generate new
forms of social activity by decreasing the number of hours
needed to work to reproduce the necessities of life. Instead, as
Hegel noted, there is an ever increasing differentiation of the
system of needs, so that most production is not oriented toward
essential products but towards "luxury" (*POR* §195, 231). The
enculturation of human capacities is a secondary concern under
this form of social organization and production. Furthermore,
unless there is a conscious attempt to develop the positive
aspects of technology oriented toward education and liberation,
it is likely that the positive potential of such technology will
go unrealized. With respect to the importance of communication
technology presently, it is evident that it remains under the
control of a fairly small percentage of those with the
intellectual expertise and material resources to utilize this
technology. In other respects the sphere of this communications
technology is being "colonized" by the market as a system with
tremendous potential to take over the function of advertising.
It is reasonable to conclude that technologies such as the
Internet are serving the ends of entrenched hierarchies of power

based on intellectual expertise. The democratic potential of

such communication technology remains to be realized.

b. The normative determination of educational *content* in a
democratic society.

A democratic conception of the distribution of knowledge

in institutions can be considered in terms of the different

forms that acquisition of knowledge can take. In an interesting

article, Gerald Graff examines the internal conflicts that arise

within educational institutions over the issue of allowing a

more pluralistic education. This conflict is presently mediated

by a proliferation of new departments rather than open debate

about points of conflict:

> In the absence of discussion, this state of uneasy
> peaceful coexistence is achieved by academic
> administration, which becomes an art of
> crisis-management designed not to exploit
> intellectual turf wars for their educational
> potential but to neutralize them by keeping the
> clashing factions as separate as possible.
> (Graff 441).

This is an important point, in that it indicates that conflict

over the issue of the quality of education is generally not

mediated through a democratic process of discussion but becomes

a focus of administrative control. In particular, specific

features of the conflict over types of education are not

addressed, such as how certain forms of education serve

particular interest groups (the business community, public

health, political interests, etc.), and how limited public

resources are distributed among various groups with diverse educational needs and goals.

An aspect of this state of affairs in academia is that pluralistic discourse between conflicting views on the nature of education is not controlled by those groups who have a vested interest in this issue and could potentially enter into this discourse, but by administrative measures oriented toward isolating those who are trying to attain some critical understanding. So, the point is that it is not only necessary to bring groups with conflicting points of view together (a pedagogical point), but, also to attempt to change administrative control to more democratic procedures so that the issue of conflict and possibilities for its resolution can be discussed by those who are actually involved in education.

The university system is now geared to a capitalist system of material production which extensively determines the character of education within the system. In chess a generally successful strategy is to capture as much space as possible. The side that can accomplish this strategy most effectively can control the board. In the university system the production of knowledge that is geared toward business and technology dominates the board through having captured a major portion of the "space" within the system of education. A false sense of security arises for those in the liberal arts from the belief that the positions they occupy are so powerless as not to be worth capturing. It is evident, though, that the character of

liberal education is increasingly determined in a non-democratic
fashion by system imperatives rather than by those working
within the sphere of the liberal arts.[29]

2. The division of labor

At this point I turn to a consideration of how the
division of labor relates to the construction of a democratic
distribution of justice. Hegel recognizes the necessity of the
social differentiation that is a condition of modern society.
If, at the same time, an aspect of modernity for Hegel is the
universality of human subjective freedom, Hegel must understand
this conception of universality in a manner that takes account
of social differentiation. Hegel requires that social
integration be consistent with modern forms of differentiation
while maintaining human freedom as an inherent feature of human
existence. One means through which this relationship between
universality and differentiation is mediated is through the
division of labor. For Hegel the division of labor represents
social elements of differentiation and universality (as seen
above in chapter four), but from our perspective it would be
difficult to consider the type of universality achieved as
desirable. Hegel requires a form of universality that integrates
the individual in a social structure in which the individual is
conscious of an affinity with society. In modernity, though, it
is clear that the division of labor tends to the atomization and
alienation of individuals through specialization in knowledge.

The division of labor then becomes a problematic philosophical issue for the construction of normative principles regarding the distribution of knowledge. In the following section I examine critically the role that the division of labor plays with respect to knowledge.

a. The division of labor and individual identity formation.

Education is not just the transmission of accumulated technical knowledge, but an important aspect of education is the development of individuality suitable to a specific social and economic position. One function of the division of labor is to delineate the types of knowledge that individuals acquire in order to fulfill particular roles in social production. The development of capacities through education is essential for a democratic society as well, which requires citizens who are capable of political participation.

There is a relation here to the issue of the division of labor within the sphere of knowledge. There is a correspondence between the formation of personal identity and the division of labor. The philosophical conception of the division of labor is related to the differentiation of knowledge associated with the development of individual identity. Due to the extreme degree of specialization that is presently a feature of the division of labor, a certain narrowness is instilled in individuals so that questions of practical social and political significance seem

outside the field of specialization—becoming solely a matter for political "experts."

b. Structural differentiation of knowledge on the capitalistic model of the division of labor.

A democratic commitment of our society is an ideal that the distribution of knowledge occurs on the basis of a fundamental norm of equality. The idea is that education should be distributed equally as far as possible, and then further differentiation in terms of who is allowed access to more intellectually specialized education occurs on the basis of merit. It is doubtful how far a commitment to equality is in fact a factor in the distribution of knowledge within our culture. A contextual approach to understanding the justification for differentiation of knowledge within our society requires that the relationship between the economic sphere and the distribution of knowledge is clarified in respects.

Although the illusion of meritocracy and democratic equality in education persists, there is a strong tendency toward the control of education based on patterns of control in the economic sphere; business becomes the paradigm for running educational institutions. But the basis of control in the economic sphere is clearly not democratic. A contextual critique of education reveals the illegitimacy of the arrangement of education on the pattern of economic practices and suggests that an alternative to the present trend is democratically controlled

institutions of education. One issue that a democratic approach to education raises is the legitimacy of the connection between the division of labor in the market and the formation of individuality through specialization of knowledge oriented toward fulfilling market imperatives.

Part of the difficulty is that education is perceived in our culture as an individual accomplishment and in some sense is considered a form of private property rather than an achievement of social production. Since education is thought of as a form of personal property, democratic procedures are thought not to apply in this realm and educational institutions become merely "a business."

(1) Generating scarcity within education as a means of restricting access to knowledge.

The type of differentiation in knowledge that occurs within educational institutions gives rise to an associated division of wealth and social power. Those with *professional* knowledge (intellectual expertise) earn a great deal more over the length of their employment than laborers. It is apparent, then, that differentiation in knowledge structures not only educational institutions, but the economic sphere is structured to a large degree according to the types of knowledge characterized as intellectual expertise and the knowledge involved in skilled and manual labor.

Differentiation in terms of specialization within and among spheres of knowledge is fundamental to the division of

labor. The control of the distribution of knowledge is a way of mediating the division of labor within our society. One aspect of the mediating function of the distribution of knowledge is the restriction of access to education and the corresponding generation of institutional structures of power relations. In effect, education and educational institutions are means for creating scarcity of the social resource of knowledge.

According to this view it is possible to question the validity of claims that educational institutions are oriented toward the promotion of people based on merit. Furthermore, it becomes reasonable to argue that, insofar as scarcity within the area of education is socially generated, questions about the nature of scarcity within educational institutions and the distribution of knowledge may be addressed democratically rather than being viewed as in some way a natural or an inevitable phenomenon of the market.

It may be useful to summarize the important points to be derived from the foregoing discussion of the division of labor as it relates to the distribution of knowledge.

(1) Specialized forms of knowledge correspond to specialization within the division labor. The formation of individuals' capacities corresponds to specializations of knowledge. Capacities are often formed in such a restricted fashion that the legitimacy of basing specialization in knowledge on the division of labor can be brought into

questioned, given a normative concern with positive
individual freedom as self-determination.

(2) Even though there is a democratic ideal of equality of
opportunity for the acquisition of knowledge, the capitalist
market structured on the basis of the division of labor
directs the distribution of knowledge in a way that is not
concerned with generating equality through democratic means.

(3) As an aspect of the division of labor, there is a
distinction in knowledge between those with intellectual
expertise and those involved in skilled/unskilled labor.
Corresponding to this distinction in knowledge there is
differentiation in social power and resources. Generating
scarcity of intellectual expertise can be considered a social
mechanism through which access to knowledge is restricted.
The generation of scarcity as a mechanism of social control
can be brought into question from the perspective of
democratic control over the distribution of knowledge.

B. Possibilities for the development of a democratic
distribution of knowledge through a contextualizing approach to
justice.

The contextual approach of Aristotle and Hegel is useful
for a philosophical construction of justice that is democratic
insofar as it involves elements that I consider fundamental to
democracy: participation and dialogue.[30] There are democratic
tendencies in Aristotle and Hegel as far as they emphasize these
aspects of democracy, but their philosophical constructions are

not democratic. On the other hand, it is reasonable to argue that social conditions are now such that a democratic distribution of knowledge can be theorized in a manner that is consistent with its realization according to actually existing social possibilities. Such an approach to a theory concerning the distribution of knowledge is necessarily contextual.

In the following sections I first discuss why it is necessary to construct a normative ideal of a democratic distribution of knowledge. The main problem that gives rise to this need is that knowledge within educational institutions is a socially generated and socially supported public resource, but the administration of these institutions is not democratic. It is reasonable to raise the question concerning the legitimacy of forms of control over educational institutions. The remainder of the chapter is devoted to arguments justifying a democratic control over the distribution of knowledge within educational institutions.

1. The problematic nature of the control of the distribution of knowledge within educational institutions.

If one considers the various forms that distribution of social resources can take, it is evident that there are various possibilities. As Aristotle notes (*Pol.* 2.1.1261b 20 ff.), such a distribution could be to everyone severally: for instance such as the residents of Alaska each receiving $900 in 1994 as a tax refund for the exploitation of their state's resources. Alternatively, everyone could own something in common, such as

our national parks being a common property of all United States citizens. How does this analysis relate to the question of knowledge as a distributive normative concern? In our society knowledge is often distributed to individuals severally as an individual property. On the other hand, education is a function of collectives. For example, within universities the collaboration of scientists within a field is a collective endeavor, and even competition itself is grounded in a sense on a more fundamental social collective. Furthermore, educational activity often has as a goal the advancement of public welfare and human interests rather than individual interests. A democratic reconstruction of knowledge conceives of knowledge not as a private commodity but as a public resource.

One criticism that Aristotle makes of the view that goods should be considered common is that whatever is held most in common is valued least. But this argument is certainly not universal—in some cases just the opposite is true. People consider the environment (and, in particular, natural resources such as parks, rivers, lakes, air and water quality) to be common property that is of immeasurable value. If private property is considered a certain kind of social right, then it is the case that there are other rights that are valuable just because they are common: freedom of speech and assembly, and equality of opportunity for instance.

Since knowledge generated by the educational system is a social product, in a democratic society there should be

democratic control over the use and production of knowledge. It
can be argued that in modernity within the social education
system there is an illegitimate application of procedures that
are driven by the capitalist system of production based on
private or restricted ownership. A contextual approach may be
helpful in giving definition to the problems associated with the
distribution of knowledge in our society and point to possible
solutions. In the following section I argue that a
contextualizing democratic approach to the distribution of
knowledge offers solutions to some of the normative concerns
raised in this chapter.

**2. Toward a democratic reconstruction of the distribution of
knowledge.**

It is necessary to reiterate that in constructing a
democratic conception of a just distribution of knowledge,
contextual conditions do not in themselves legitimate a
particular structure of the differentiation of knowledge within
our society. Rather a contextualizing democratic construction of
the differentiation of knowledge within modernity requires that
democratic ideals reflect an understanding of relevant social
conditions.

One difficulty with respect to our own society is to
determine in what respects it is truly undergoing transition. If
social conditions do not currently hold much promise for
democratic change, a contextualizing approach should acknowledge
this fact. It does not seem reasonable presently to postulate

for our society a theory of justice on the possibility of broad, revolutionary social change. For some philosophers fundamental social change seems to be the underlying motivation for their entire philosophy. If such revolutionary change is historically unlikely, then the merit of their approach can be questioned. At a more local level, though, within most institutions possibilities exist for progressive transformations towards more democratic means of administrative control. It remains an open question whether the transformation of educational institutions to more democratic, egalitarian means of control would have any effect on a broader social scale. It would be cynical to deny that this is a possibility, at any rate. One function of a democratic state is to realize institutions which make democratic activity possible. It is reasonable, then, to consider the possibilities for progressive transformations towards more democratic educational institutions.

a. Arguments for the distribution of knowledge through democratic procedures.

The nature of democratic control over educational institutions is not a straightforward issue but requires further examination. What is essential is that a contextual theory of justice with respect to education present realizable contributions to a democratic distribution of knowledge given the present state of social and economic conditions. Support for this thesis is gained from the following arguments:

(1) Argument related to issues of stability/conflict.

A distribution of knowledge that is democratic can be realized to the extent that the resources available in universities are no longer a privilege but are readily accessible to everyone. It is reasonable to argue that the distribution of knowledge on a democratic basis can be a means of achieving greater social stability. Participation in the social order is facilitated through education—in this sense education serves a mediating function between individual activity and social agency. Those who sense that they are participants in a social system are committed to the preservation of its social institutions. Conversely, exclusion from democratic involvement in education generates conspicuous conflict over the system of education. Broad dispersion of democratic control over educational institutions involves a sense of commitment to the preservation of educational institutions. It is reasonable to argue that democratic control over educational institutions will be effective as a means of preserving institutional stability.

It is also reasonable to argue that stability within the educational system is attained through democratic procedures insofar as such procedures are the most legitimate means for resolving internal conflicts that do arise. Democratic procedures in this sense can serve not only a function of the administrative ordering of educational institutions, but are generally recognized as legitimate means for mediating disputes

between groups that may have divergent claims on the resources of educational institutions. Also, the institution of such procedures tends to dissolve the extreme hierarchical organization of universities, so that conflicts which arise over the imposition of administrative control are diminished or eliminated.

The mediating function of a democratic construction of educational institutions is beneficial for social stability in that the state gains legitimacy insofar as education is generally looked on as an investment in the development of human resources that is properly a function of a democratic state. In this respect social justice is manifest to individuals through access to educational institutions; such participation serves in turn to legitimize democratic political systems. In the present situation students in educational institutions are perceived more often as objects of administration than subjects capable of being involved in a discourse directed towards the acquisition of knowledge and the development of personality.

It is important to note, however, that social stability in itself is not the essence of justice, because it is evident that stability is possible in systems that are far from just. In this case stability is not an end in itself. It is more reasonable to argue that stability is one element that indicates that a democratic conception of justice has been realized within institutions of education.

(2) Arguments related to the ability of a democratic approach to respond with flexibility to social circumstances.

A contextual approach is characterized in part by its ability to take account of historical conditions that constrain the application of a more equitable distribution of knowledge through democratic procedures. Through a contextualizing approach to justice it is possible to address the question whether there are conditions in which certain inequalities in the social distribution of knowledge may be justified. For instance, affirmative action can be seen as an inequality in distribution that aims to offset inequalities that have been generated by racism in society. Given the foregoing discussion, it is reasonable to argue that such inequalities can be addressed through a democratic approach that is participatory and involves discourse oriented toward the public resolution of problems of distribution. It should be noted that one aspect of this public discourse is the generation of a sense of the interests of the community as a whole, rather than the promotion of individual interests. The public sphere of discourse is oriented toward achieving a legitimate course of action through the public validation of normative principles directing human activity—such a view of democracy differs from a conception of democracy as simply voting on an issue. This is an indication of the flexibility inherent in such an approach.

One of the intentions of the discussion in chapter two is to explicate Aristotle's understanding of flexibility in the

application of normative principles. My intention was to show
that flexibility in the application of laws that structure human
activity is an important facet of a contextualizing approach to
justice. It is possible, however, to argue that Aristotle does
not adequately theorize the conditions and limitations to
flexibility in the application and formation of norms. He states
that the law-maker will determine the degree of flexibility in
law. If such a principle were applied to the present structure
of educational institutions, this would amount to arguing that
administrators should determine the degree of flexibility
allowed in the application of rules structuring institutional
activity. A democratic approach to the distribution of knowledge
argues that those persons who are involved in educational
processes should themselves determine to what extent flexibility
is required. With respect to the present discussion, this is to
argue that such a determination ought properly to be achieved
through democratic procedures. Those persons to whom the law
applies are the very people who construct the law, and are
capable of changing it. In other words a contextualizing
approach argues that normative principles should be able to take
account of the inherently variable subject matter to which they
apply. A democratic approach to the distribution of knowledge is
able to adequately realize this condition because those
individuals to whom the rule applies determine the degree of
flexibility in application that is appropriate. As an example,
in this view it would be consistent to argue that both students

and teachers should be more closely involved in the administration of their own programs rather than outside administrators because they are familiar with the conditions required to attain knowledge within that field.

(3) Argument that knowledge is shared social wealth and does not fit the model of other commodities in a market economy.

Aristotle defines distributive justice primarily as the distribution of political power. Similarly, Hegel presents a view of society defined through a complex distribution of power within the social system. Consistent with this conception of distributive justice, the following claims can be put forth in defense of an interpretation of justice as a democratic distribution of knowledge:

(1) In democratic educational institutions knowledge is constructed in a universalistic fashion as *shared* social wealth.

(2) In the economic sphere knowledge is viewed as intellectual property and is treated as a commodity under private ownership and control.

(3) In modernity social power is largely based on differentiation in the distribution of knowledge distinguishing intellectual expertise from the types of knowledge involved in skilled and unskilled labor. This distinction is tied to the capitalist market economy requiring rigid specialization of function.

(4) There are tendencies in educational institutions toward the reconstruction of the democratic view of knowledge in public institutions to a model of knowledge based primarily on the forms of administration that obtain in the capitalist economic sphere. A main aspect of this is the appropriation of knowledge acquired through public, socially-supported activity and institutions to the interests of the market.

(5) Without public supervision, private interests should not be allowed to exploit public wealth for private gain.

(6) It follows that democratic procedures should be set up to ensure that the social interest in the distribution of knowledge does not become solely a function of economic interests, but is oriented toward public interests rather than private profit.

(7) This entails that social justice requires democratic procedures for the distribution of knowledge. The distinction in knowledge between intellectual expertise and the forms of knowledge based on unskilled and skilled labor is not a matter which should be determined solely by economic systems of control, but through democratic procedures.

If the distribution of knowledge is to become more democratic, this means that knowledge as a socially generated resource should be distributed equally as far as possible. This means that the distribution of knowledge should not be driven by market imperatives. This requires a critique of the division of

labor that exists in educational institutions according to the presently existing structural differentiation of knowledge.

b. Democratic principles drawn on the basis of these arguments.

The arguments I have dealt with in the preceding sections show how a democratic approach to the distribution of knowledge is capable of dealing with particular aspects of conflict and the division of labor within educational institutions. In this sense, I have considered possibilities through which a democratic approach can be contextual. It is reasonable to maintain from the foregoing discussion that the following principles are necessary for a democratic distribution of knowledge:

(1) There exists in democratic societies an ideal of equality in terms of access to knowledge which engenders social and political capacities.

(2) One aim of a democratic government is to increase the diffusion of knowledge throughout society. This is necessary to achieve positive, or concrete, equality among those who are participating in a democratic polity.

(3) A major benefit of such a distribution of knowledge is that it serves the preservation of democratic forms of government through legitimization of political processes. In effect, this is a means whereby the distribution of knowledge serves to mediate conflict within our society.

(4) The development of a democratic culture requires equality of political control based on equality in the distribution of knowledge oriented toward practical, political capacities.

One of the primary means through which universality as legitimate social integration can be furthered (though actual conditions will presumably always limit its achievement) is through democratic forms of education. In this regard, the regulation of the distribution of education through democratic procedures plays a similar role in my thought that the division of labor does in Hegel's thought. In particular, such a view acknowledges the necessity of differentiation in modernity but requires that such differentiation should not be achieved at the loss of self-determination. Further, such differentiation should inherently be a means through which positive forms of human freedom—involving the enculturation of individuals—is attained.

CHAPTER 6

Conclusion

In conclusion to this dissertation, I briefly review what has been accomplished, and indicate areas that are relevant to the discussion but cannot be developed fully within the limits of this dissertation. I briefly point out the relevance of a contextualizing approach to the issue of privatization in education. In addition, I note that a democratic distribution of knowledge should concern access by people in other nations to knowledge within our society. As an example, certain African nations have connected to the Internet to improve the quality of their educational systems. Concerns arise though whether this may be a means of furthering market-oriented means of control over education within these countries. Finally, I indicate areas in which further research is possible along the lines of this dissertation. In particular, I suggest that the democratic procedures developed by Jürgen Habermas are valuable for the resolution of certain practical, procedural difficulties that a contextual approach defines for a democratic distribution of knowledge. It also becomes reasonable to inquire in what

respects initially abstract approaches to justice (such as put
forth by Rawls) can be contextualized.

I. Review of the Dissertation.

One thesis of this dissertation has been that Aristotle
and Hegel are contextual thinkers whose understanding of social
conditions is essential for the development of their normative
social theories. I have argued that Aristotle constructs his
social theory on the basis of an understanding that knowledge
mediates social conflict among political groups so that there is
a legitimate basis for the distribution of power within society.
One feature of Aristotle's social thought relates the
distribution of power in society to the distribution of
knowledge—in particular there is an important distinction
between those who have intellectual expertise (such as knowledge
of how to run the state) and those who have knowledge involved
in skilled/unskilled labor. I have also argued that Hegel
conceives of the division of labor as forming the rational
capacities of individuals based on a similar distinction between
those with intellectual expertise and those involved in
occupations requiring "practical" knowledge. The basis of
authority in the state according to this distinction lies in
knowledge of a universal nature; the class of civil servants
have universal knowledge necessary to run the state, whereas
other citizens' knowledge consists of recognizing the
rationality in the state through public spheres of discourse.

There are difficulties in Aristotle's and Hegel's contextualizing approaches for the development of normative principles. In particular, there are indications within their political theories that a universal distribution of knowledge is socially beneficial for the mediation of conflict and the division of labor within society. Nevertheless, both Aristotle and Hegel develop political theories that maintain a contradiction between the universal features of human rational capacities and a normative theory which tends to support restrictions within the sphere of knowledge.

On the one hand, Aristotle argues that a person with practical wisdom (the law-giver) should determine how law should change in its application to particular instances. This is necessary due to inadequacy in the universal formulation of law in application to particular circumstances which are inherently variable. On the other hand, Aristotle claims that those to whom the law applies have the knowledge to say whether a law is suitable—just as a shoemaker is not properly the one to say that a shoe fits, but the person who uses the shoe. In addition, Aristotle argues that when a greater number of people participate in politics, the political judgment that they can bring to bear is greater than when just a few people are making political decisions. These aspects of Aristotle's thought lead to the conclusion that a general distribution of knowledge is a benefit to the state and necessary for the development of humans' inherent rational capacities. Still, Aristotle restricts

political agency based on knowledge to a very limited class, and this can only be accomplished through an ideological characterization of certain groups of people as non-rational.

I argue that the difficulty with Hegel's social theory is that his construction of the distribution of knowledge based on the division of labor is inconsistent with his positive conception of universal human freedom. Accepting the notion that universal human freedom is a characteristic of modern society that is a result of the historical development of humanity, it is inconsistent to accept the legitimacy of a distinction between those with intellectual expertise and those with knowledge oriented toward skilled and unskilled labor when this distinction in fact greatly restricts the development of the intellectual capacities of masses of individuals. The point is that a contextualizing approach by itself is open to abuse through the acceptance of unexamined presuppositions.

My second thesis is that understanding the advantages as well as the difficulties of Hegel's and Aristotle's contextual methods is useful for the development of a normative conception of a democratic distribution of knowledge. My intention has been to achieve greater clarity about the formation of democratic normative theory within the parameters of contemporary social conditions. I have argued that democratic control over the distribution of knowledge is a legitimate mechanism for mediating conflict within educational institutions over access to knowledge and over the quality of education. Conversely, I

have also argued that non-democratic means of control,

essentially based on the paradigm of administrative control

within the economy, are oriented toward particular, market

mechanisms based on the division of labor rather than the

universalistic interests of society. In particular, one of the

functions of education within a democracy is the formation of

individuals with the intellectual capacity to form political

judgments necessary for positive political participation. Such a

conception of education contrasts with the extreme form of

specialized education that presently exists within educational

institutions.

It is reasonable to argue that a contextual approach to

justice is necessary to specify the contemporary social

conditions that make a democratic distribution of knowledge a

realizable possibility. At the same time, a contextual approach

allows the identification of social conditions, institutions,

and practices that usurp democratic tendencies toward the

democratic distribution of knowledge.

II. Some Remaining Considerations of the Relevance of a Contextualizing Approach to the Distribution of Knowledge.

A. Examination of conflict of interests over the privatization of education.

Insofar as I argue for the social distribution of

knowledge through democratic procedures, it may be useful to

contrast such an approach with arguments for non-democratic

means of distributing knowledge. Presently there is a tendency

to invoke non-democratic means for distributing knowledge within our society due to inadequacies in the education system—especially at the level of primary and secondary education. One of the prevalent alternatives to the situation in education as it presently exists is the privatization of educational institutions.

Those who promote the privatization of education use a number of arguments that have an initial plausibility. First, given the inefficiency of state-run schools, they argue that the privatization of school districts will allow the market to provide a more cost-effective, efficient service to the community. Second, due to the expertise of a business whose function is oriented toward providing educational services, the quality of education is said to improve through switching to for-profit schools. A major aspect of increased quality is said to be the choice in the school that a student can attend—increased competition engendered by school choice, it is argued, will lead to better quality. Lastly, education will not be politicized due to the fact that the ends of market driven educational institutions would not be geared toward engagement of political issues.[31]

It is typically argued by conservatives that control by the federal government over education is inefficient, overly regulatory and not cost-efficient. One of the main arguments for privatization is that it will give control back to parents over their children's education. It is clear, though, that the

movement towards privatization in education has numerous political dimensions: is it appropriate to use "vouchers" for students to attend religious schools, as Governor Thompson of Wisconsin recommends? What sort of parental control is going to be exercised over privatized schools other than "voting with their dollars"? Are alternatives such as democratic control over schools by parents and students being neglected by such arguments and, if so, why? It is reasonable to argue that the issue of control over education is political, and that it is illegitimate to abandon control over democratic institutions to mechanisms of control and regulation that are run by private, profit-oriented imperatives. If the issue is that educational institutions are under political control, but in a non-democratic fashion, the solution may be to consider how such institutions can become more democratic.

Against the conservative position on the privatization of education it is possible to argue that privatization serves a political agenda, but such a policy is undemocratic due to dissimulation concerning the political dimensions involved in this issue. Those who argue for the privatization of education base its legitimacy on the good of the community in some fashion, but it is often the case that other interests are primary: either a desire to use public money for religious education, or the intention to have the government subsidize a highly privileged private education.

Aristotle has a standard for the legitimacy of political power: that it be oriented toward the good of the community. How does this relate to the question of justice as a distribution of knowledge? Clearly any political distribution of knowledge which puts control into the hands of those who do not have the good of the community as a concern is at least questionable. But Aristotle notes that what people take to be the good of the political community in a democracy varies. This seems to be a question which cannot be established once and for all, so a method of discourse ethics connected to practical activity such as Habermas presents has something to offer here.

B. The distribution of knowledge across cultural boundaries.

The discussion of this dissertation concerns the distribution of knowledge within the United States, but the issue can, and should be considered on a broader basis. In this section I want to indicate certain relevant issues that relate to control over the distribution of knowledge across cultural boundaries.

One concern is that there is tension between a universal dissemination of knowledge and the preservation of distinct cultural characteristics. A concern within France presently is the degree to which their culture is being swamped by the culture of the United States. This concerns the distribution of knowledge because the transmission of a country's particular culture is a function of the educational institutions of that

country, as well as the unique sort of knowledge that is expressed in a particular culture's language and customs.

Modern communication technology is capable of reaching a global audience, but the forms of knowledge that this technology transmits is often driven by market imperatives. A recent Associated Press article states that ten African Universities have been connected to Internet sites in the United states and Europe. The article argues that one benefit of such a program is to improve the quality of education that African Universities can offer, but it is clear that by "quality" is meant the market imperatives of capitalist economies. "The [world] bank, which is contributing $1.2 million, says most African universities have become increasingly irrelevant in a rapidly changing world, graduating a disproportionate number of students in the humanities rather than the sciences and engineering."[32] According to this article the control of knowledge is evidently not an issue of public, democratic control but is tied to the needs of capitalist production. I am not arguing that education in the sciences and technology is a not a benefit to these African countries. My concern is that an opposition is being proposed between the humanities and science/technology in which the humanities are "irrelevant in a rapidly changing world." It could be argued that humanities are increasingly more relevant in a rapidly changing world in order to understand the system imperatives that are driving the control over education and in order to formulate the position that control over education is

potentially a matter which can be addressed within a democratic

politics.

III. Possibilities for Further Research in Contextualizing Approaches to Justice.

A. Relevance of a contextual approach to constructivist approaches to the theory of justice.

The intention of this dissertation has been to consider

justice with respect to the distribution of knowledge in a

manner that is attentive to the actual social conditions of

conflict and the division of labor. It is possible to contrast

this account with constructivist theories of justice which

logically develop the social implications of principles that

describe the initial conditions necessary for justice. The

account presented in this dissertation allows a critical

examination of other contemporary ways of looking at justice in

this regard. In this section I do not claim to rigourously work

out this comparison, but it is important to note the relevance

to other theories of justice as a point of interest for further

research.

Both Aristotle and Hegel develop concrete theories with an

explicit relation to the actual social and political context in

which they live in contrast to the often abstract formulations

of their predecessors. It is evident that important contemporary

philosophers adopt an abstract approach to·the issue of social

justice as well, so Aristotle's and Hegel's critiques of

abstract approaches to social justice continue to be relevant.

A primary aim of this dissertation has been to demonstrate that contextual categories such as social conflict and the division of labor are useful for analyzing primary questions within our own actual social situation in regard to the notion of justice in the distribution of knowledge within present institutions.

A point of contrast with constructivist theories of justice is the claim that such approaches are universally applicable—at least as an ideal that serves as a standard of reference by means of which a social situation can be judged. A contextual approach to justice does not make claims to universality due to the intention to form normative principles in reference to particular conditions of social context. If a theory of justice is developed that is universally applicable or in some manner "eternal", then it remains that for such a theory to have practical implications it must be related to present social context.[33] As Hegel said in his introduction to the *History of Philosophy*, "Philosophy is what is most antagonistic to abstraction, and it leads back to the concrete" (*HOP* Vol. I, 25). A contextual approach to justice addresses the issue of applicability directly. The primary intention of a contextual approach is to examine social conditions in order to develop norms pertaining to the present construction of the distribution and production of knowledge within society.

I raise the issue of applicability with regard to theories of justice which are abstract in order to formulate certain

concerns. While I have an intuitive sense that abstract theories describe conditions of justice, it is not always distinctly evident what sort of social institutions are consistent with such theories. Furthermore, such theories generally are not concerned with the practical question of how we achieve more just institutions given present circumstances. How is an approach to a more just society measured given an ideal theory of social justice as a standard? Is it always possible to adjudicate between competing claims that one social system approaches an ideal of justice better than another?

It is possible to relate the normative conception of justice that I present within this dissertation to notions of justice within the liberal tradition of philosophy. Hegel offers a critique of the Kantian abstract conception of norms through his analysis of Kant's practical philosophy. Hegel's critique is useful in orienting the discussion of this dissertation to contemporary normative theories that are influenced by Kant's practical theory—especially the theory of justice that Rawls puts forth. As an example, Rawls claims: "The primary subject of the principles of social justice is the basic structure of society, the arrangement of major social institutions into one scheme of cooperation" (TOJ 54). Rawls, however, does not specify in detail what such an arrangement of "basic institutions" might be, or how his conception helps in a practical way in the transformation of present institutions which do not meet his ideal of justice. My point is not to deny

the merit of much of what Rawls says (in particular the importance of his emphasis on individual liberties is apparent), but to suggest that the practical dimensions of a Rawlsian approach would be clearer if it were more frequently put into relation to the present social context.

A contextualizing approach to the democratic distribution knowledge does take account of contemporary discourse surrounding the development of normative principles. In this regard, a contextualizing approach can incorporate elements of a public discourse surrounding the formation of normative principles. Nevertheless, to meet the conditions of a *democratic* distribution of knowledge it is necessary that the discussion be open to voices beyond intellectuals involved in often esoteric debate over the formation of normative principles. I believe that Habermas' theory of a discourse ethics is useful for constructing a public discourse about how the distribution of knowledge can become more democratic under present social conditions. The main element of Habermas' discourse that is relevant in this regard is the requirement that normative principles are valid when the people to whom they apply are involved in the construction of these principles. Clearly, such an approach is worth consideration as a procedure that is capable of forming democratic principles with regard to prevalent conditions of social context.

Appendices

A Critique of an Account of Natural Justice in the Work of Aristotle

Certain philosophers and social theorists develop a notion of justice based on principles of natural law. The attempt to reduce normative concerns to natural law is a form of ethical foundationalism that puts questions of justice beyond human dialogue and agency. I argue that neither Hegel nor Aristotle attempt to reduce the social construction of justice to a coherent theory of natural law. Given that Hegel and Aristotle both construct their conceptions of justice in terms of political participation based on rationality oriented toward the universal interests of society, the attempt to regard justice as based on natural law is inadequate.

There are tendencies, though, in Aristotle to base structural differentiation in knowledge on natural ability. If Aristotle's theory of justice is essentially based on natural law, then a contextual approach would be a misinterpretation. In this appendix I examine the issue of reducing Aristotle's theory of justice to natural law. I argue that, even though aspects of Aristotle's social theory are based on natural law, Aristotle's

theory of justice as a whole is irreducible to such a foundation.

I. Difficulties in a Naturalistic Account of Aristotelian Justice.

A. Introduction.

Many political philosophers feel that fundamental aspects of the theory of natural law can be traced back to the social philosophy of Plato and Aristotle. I have two reasons for wanting to examine the attempt to understand Aristotle's conception of justice and political philosophy in terms of natural law. First, certain analytic philosophers argue that Aristotle's political philosophy, and in particular his conception of justice, has a foundation in nature—so there is a sort of natural justice which is primary. For example, Fred Miller in *Aristotle on Natural Law and Justice* claims that Aristotle's position is that the organization of the state through its constitution is ultimately based on natural justice. "The principle of natural justice provides the theoretical foundation for the best constitution and its legal structure, and also a rationale for the rule of law" (Miller 306). This is an attempt to portray Aristotelian political philosophy as a naturalistic theory which, if true, would be contrary to Aristotle's theory of politics as a form of rational, practical human activity. On a naturalistic account of justice, political organization is not formed on the basis of human agency and

rationality. To understand the present social relevance of Aristotle's political philosophy, it is necessary to examine the adequacy of this view of Aristotle's thought concerning justice. Secondly, many modern philosophers frequently support socially conservative positions against egalitarian forms of justice through arguments based on various types of naturalism. If naturalism as a determinant of social conditions is undermined, support for such politically reactionary arguments is diminished.

Bringing into question the adequacy of such naturalistic views of Aristotle's conception of justice allows the development of an alternative view that conceives of justice essentially as a political function rather than a result of laws which have their ultimate basis in nature. First, I want to give a general, commonly accepted description of natural law, and present the aspects of Aristotle's philosophy which appear to support such a position. Then Miller's position on natural justice is examined with the intention of showing that such an account is in respects problematic and more importantly does not demonstrate an account of natural justice as an explicitly acknowledged element of Aristotle's political thought.

B. General elements of natural law and its relation to justice.

Although there is disagreement in the particulars of what constitutes natural law, there is a general understanding that natural law has the following characteristics: 1) necessity; 2)

immutability, in other words, regularity; 3) universality and 4) the ordering of life through a generative force which is not under the conscious control of human beings. As Gisela Striker makes plain, natural law does not remain at the level of some instinctual human agency, but is ultimately encoded in terms of a social morality. "The term 'natural law' refers, it would seem, to the rules of morality conceived of as a kind of legal system, but one that has not been enacted by any human legislator" (Striker 79).

In some respect, all of the foregoing elements of natural law can be found in Aristotle, and it may be worthwhile to take note of their occurrence to see the manner in which nature can be considered an element in Aristotle's social theory. Furthermore, this may provide some insight into how and why some philosophers have come to regard natural justice as a correlative to natural law.

> πάντες δὴ πράττουσι πάντα τὰ μὲν οὐ δι' αὐτοὺς τὰ δὲ δι' αὐτούς. τῶν μὲν οὖν μὴ δι' αὐτοὺς τὰ μὲν διὰ τύχην πράττουσι τὰ δ' ἐξ ἀνάγκης, τῶν δ' ἐξ ἀνάγκης τὰ μὲν βίᾳ τὰ δὲ φύσει.

> Now every action of every person either is or is not due to that person himself. Of those not due to himself some are due to chance, the others to necessity; of these latter, again, some are due to compulsion, the others to nature.
> (*Rhet.* 1.10.1368b 33-37, tr. Roberts)

In this passage a certain sub-set of human actions can be considered governed by nature insofar as they are necessary and not due to the agent's own will. Insofar as the actions concerned are not due to the practical activity of the agents

involved but are governed by nature, this aspect of human

activity is problematic for a conception of law that has its

basis in the social construction of human norms. For instance,

if it is the case that humans actually are social by nature, it

still is not clear that this would necessitate any particular

sort of normative code that could be instituted in law. One

could say that social laws occur on a different level than that

of nature—that of rational human action. Even beyond the obvious

variability in social institutions of norms in various

societies, Aristotle feels there is a degree to which nature

itself is variable—the example Aristotle provides concerns a

person naturally right-handed learning to become left-handed.

This passage is perceived as particularly troublesome by Miller

in his discussion of natural law and justice.

Another aspect of nature as it applies to law for

Aristotle is its regularity.

> φύσει δέ, ὅσων ἤ τ᾽ αἰτία ἐν αὐτοῖς καὶ τεταγμένη· ἤ
> γὰρ ἀεὶ ἤ ὡς ἐπὶ τὸ πολὺ ὡσαύτως ἀποβαίνει.
>
> Things which are the result of nature are all those
> of which the cause is in themselves and regular; for
> they turn out always, or generally, in the same way
> (*Rhet.* 1.10.1369a 34-1369b2, tr. Freese).

The discussion of the universality of natural law is the most

important element involved in this discussion. If one accepts

that there is a law of nature that applies to the social realm,

then it follows that there will be aspects of social

organization that are inevitable, hence, universally valid and

requiring no justification.

λέγω δὲ νόμον τὸν μὲν ἴδιον τὸν δὲ κοινόν. ἴδιον μὲν
τὸν ἑκάστοις ὡρισμένον πρὸς αὑτούς, καὶ τοῦτον τὸν
μὲν ἄγραφον τὸν δὲ γεγραμμένον, κοινὸν δὲ τὸν κατὰ
φύσιν. ἔστι γάρ, ὃ μαντεύονταί τι πάντες, φύσει κοινὸν
δίκαιον καὶ ἄδικον, κἂν μηδεμία κοινωνία πρὸς
ἀλλήλους ᾖ μηδὲ συνθήκη, οἷον καὶ ἡ Σοφοκλέους
Ἀντιγόνη φαίνεται λέγουσα, ὅτι δίκαιον ἀπειρημένον
θάψαι τὸν Πολυνείκη, ὡς φύσει ὂν τοῦτο δίκαιον·
οὐ γάρ τι νῦν γε κἀχθές, ἀλλ᾽ ἀεί ποτε
ζῇ τοῦτο, κοὐδεὶς οἶδεν ἐξ ὅτου φάνη.

Now there are two kinds of laws, particular and
general. By particular laws I mean those established
by each people in reference to themselves, which
again are divided into written and unwritten; by
general laws I mean those based upon nature. In fact,
there is a general idea of just and unjust in
accordance with nature, as all men in a manner
divine, even if there is neither communication nor
agreement between them. This is what Antigone in
Sophocles evidently means, when she declares that it
is just, though forbidden, to bury Polynices, as
being naturally just:
   For neither to-day nor yesterday, but from all
eternity, these statutes live and no man knoweth
whence they came.
(Rhet. 1.13.1373b 3-13, tr. Freese)

The law associated with nature Freese translates as "general

law" (νόμον κοινόν); Roberts translates this as "universal law".

To translate this as "universal" is problematic, since Aristotle

says that natural law may in respects hold only for the most

part. In nature Aristotle saw diversity, whereas commentators

committed to some conception of natural law in Aristotle argue

for a conception of natural law that is immutable. The

conception of natural law as immutable follows the model of

physical natural law and then applies this model to the social

realm. A large part of Miller's argument is oriented toward

minimizing Aristotle's notion that there is the possibility of

change in what is considered an aspect of nature (a right-handed

person able to use the left-hand with facility such as a violinist might). This example can even be seen as only a rough metaphor for what occurs in the social realm, since with respect to human activity, as Aristotle never tires of reiterating, the material is not defined in terms of necessity, but only what happens "for the most part". On the other hand, Aristotle says (Loeb, 115) that "nature belongs to the idea of 'always' (ἔστι δ' ἡ μὲν φύσις τοῦ ἀεί . . . " (Rhet. 1.11.1370a 8, tr. Freese). But here the discussion is dealing with physical states of the body, so the conception of nature that applies is materialistic rather than social.

C. Outline of Miller's position on natural justice.

It is possible to give a rough general outline of Miller's technical and detailed discussion of natural law and justice in Aristotle which will make evident his general aim and will enable a critique of his project. Miller's project can be roughly summarized along the following lines:

(1) Miller first identifies the inconsistencies in Aristotle's account of natural law.

(2) Miller argues that such inconsistencies on natural law in Aristotle's practical works can be accounted for through an examination of positions that Aristotle developed elsewhere—particularly his biological works.

(3) Lastly, Miller draws some further political conclusions base on this revised version of Aristotle's account of natural law and justice.

Miller notes that most commentators on Aristotle's theory of justice have reached the conclusion that there is no consistent, uniform theory of justice ultimately based on natural law. For instance, in *Origins of the Concept of Natural Law*, Gisela Striker argues persuasively that there is not an attempt by Plato or Aristotle to work out a conception of natural justice based on natural law:

> I conclude that Plato does indeed hold that there is an objective, "natural" standard of justice; but he decidedly does not believe that this standard is given by anything that could be called natural law. The same is true, I believe, of Aristotle, who accepted, with very slight modifications, Plato's view of the inherent weakness of general rules (cp. *Pol.* 3.15.1286a 7-16).
> (Striker 86)

Striker maintains (86) that according to Aristotle natural justice arises through the order of a human community which has arisen through the natural tendency of humans toward sociality. Such a natural tendency is plastic in that it does not specify any direct connection between natural law and a pre-determined conception of justice. The particular form that justice may take within society is something not given by natural law but to be worked out through a rational, dialectical process. Striker's claim that the first thoroughly worked out theory of natural law can be found in Stoic doctrine is reasonable given the clarity

with which the stoic doctrine of natural law is expressed in

works such as Cicero's *De Re Publica*:

> Est quidem vera lex recta ratio naturae congruens,
> diffusa in omnis, constans, sempiterna . . . nec erit
> alia lex Romae, alia Athenis, alia nunc, alia
> posthac, sed et omnes gentes et omni tempore una lex
> et sempiterna et immutabilis continebit . . .

> There is, certainly, a true law agreeing with the
> right reason of nature; it is of universal
> application, unchanging and everlasting . . . And
> there will not be different laws at Rome and at
> Athens, or different laws now and in the future, but
> one eternal and unchangeable law will be valid for
> all nations and all times . . .
> (Cicero, *De Re Publica* translation by C.W. Keyes with
> some revision on my part, Loeb Edition, 210-211).

Stoic influence on the doctrine of natural law is evident in

this passage through the emphasis on a type of natural law that

is in conformity with reason that pervades nature itself. The

hypostatization of practical reason within nature can be

questioned along the lines that Feuerbach critiques religion—it

is the projection of an ideal into nature as a realm beyond the

practical activity of humans as a means to legitimate the

authority of natural law while undercutting in advance any

attempted critique of the doctrine. Other elements of a stoic

conception of natural law are apparent: universality,

eternality, and the impossibility of abrogating or redefining

the law through human practical activity. Equally evident is the

lack of any definition concerning what form this law might

achieve. Given Aristotle's critique of empty, formal

abstractions, the content of natural law would have to attain a

high degree of definition. The question, then, is whether

Aristotle himself has even attempted to further elucidate this concept.

Miller identifies a number of difficulties in Aristotle's account that it is necessary to resolve if a coherent doctrine of natural law is to be maintained. First Miller has to resolve the difficulty of the conflicting views concerning the permanence of natural law given in the *Rhetoric* and the *Nicomachean Ethics*:

> . . . in the *Rhetoric* he [Aristotle] does link natural law to natural justice, which he discusses in *Magna Moralia* I.33-and *Nicomachean Ethics* V.7. However, the latter discussions seem to conflict with the *Rhetoric*, for they agree with each other that natural justice is in some sense compatible with change, but this seems to contradict the claim of the *Rhetoric* that natural law is immutable.
> (Miller 278-279)

For Miller to maintain the view that Aristotle had a consistent conception of natural law as it is generally accepted, it is necessary that he provide justification for the view that the passages on natural justice in Aristotle's *Rhetoric* are the primary source of Aristotle's views on natural justice (Miller 285). This requires that Miller account for the passages in which Aristotle states the view that nature shows variability in how underlying tendencies may be realized. This appears to be the crux of Miller's entire paper.

Two difficulties appear to be developing for Miller in his attempt to maintain the conception of natural law as given in the *Rhetoric*. The main function of natural law seems to be its immutability. Such a foundationalist account of social law will

clearly serve the purpose of countering relativistic normative
claims that are put forth by conventionalists. In passages in
both the *Magna Moralia* and *Nicomachean Ethics* what is natural in
both a physical and social sense is mutable (Miller 285). Miller
feels that what is particularly difficult is the passage in the
Nicomachean Ethics in which Aristotle maintains that even though
the right-hand is by nature stronger, the left-hand can be
trained to be stronger (*EN* 5.7.1134b 33-35).[34] Second, it is
necessary for Miller to represent the *Rhetoric* as a thoroughly
considered philosophical presentation of a coherent conception
of natural law rather than a manual of sorts examining the
rhetorical methods of successful persuasion such as would be
useful within the Athenian court system.

Although the use of the biological analogy of right-
handedness may be considered rather incidental, Miller feels it
is of central importance for illustrating the naturalistic
foundation of Aristotle's conception of justice:

> . . . I think that the example of right-handedness
> provides us with a valuable clue, in that it suggests
> a biological perspective on natural justice.
> Aristotle finds it necessary to adopt this biological
> perspective because he has repudiated the
> metaphysical foundations of Plato's theory of natural
> law and justice.
> (Miller 288)

In other words, the "biological perspective" of Aristotle's
natural law theory is fundamental, and the *aporiae* of natural
law and justice can be elucidated through solving the puzzle
that this analogy presents: that of a natural law that is

seemingly not universal. Miller's claim requires a great deal of support considering it is primarily based on a rather limited analogy given by Aristotle—as if the Pharaohs tried to have the pyramids constructed with the pinnacle supporting the base. On the other hand, Miller maintains with some justification that part of this puzzle can be explained through Aristotle's use of teleological justification in his empirical works. According to Miller, even though a person naturally right-handed can be trained to be left-hand, by nature the right is still superior due to the fact that the final end of the organism reaching its full potential is best attained through the use of the right hand (Miller 292).

Translating this biological analogy into the discourse of practical reason the conclusion that follows is that even though natural law can be bent to the conventions that arise within society, still natural law is the true standard for achieving the proper end of the social animal—namely the happiness of humans within society. In fact under this view society becomes nothing more a medium through which the natural ends of humans are fulfilled according to a teleological view of human beings that is borrowed from Aristotle's empirical biological works (Miller 295). Miller ultimately concludes that Aristotle's account of justice is only as adequate as his teleology:

> This account, as I have interpreted it, stands or
> falls with his teleological view of human nature and
> the polis, which has of course been the object of
> many criticisms. But given this teleological view,

his account of natural law and justice is coherent
and plausible.
(Miller 306)

In support of this, Miller argues that Aristotle's position is
that law is necessary for forming the natural moral character of
individuals so that they can reach their full human potential
(Miller 295). This does not support Miller's discussion of
natural law, though, because it is not evident that law itself
is natural according to Aristotle, even if one accepts the claim
that humans have a natural potential to realize an enduring
state of moral conscience through the cultivation of character
by means of law. In this view, justice and law in themselves are
not natural, but there is a "natural potential" to receive them.

Further, the notion that Aristotle's teleology supports a
naturalistic conception of justice requires clarification in one
important respect: Aristotle holds that the end (*telos*) of a
thing is achieved through a realization of its full potential.
If this full realization of human potentiality is only possible
in the state, as Aristotle clearly maintains, then the notion of
justice can only be understood in terms of the state—just as it
is reasonable to argue that the *notion* of what a human is can
only be fully realized within a social context. The whole is "by
nature" prior to the part hence the state is prior to the
individual in the sense that the fully developed individual
would not be realized outside of the state. The role of nature
within the state then becomes a secondary issue, and not

directly related to a conception of justice that is essentially social.[35]

There are certain political consequences that follow from a naturalistic view of justice. The interpretation given to Aristotle which conceives of natural justice as somehow diffused through the state in the more concrete form of political justice Miller finds "promising" (Miller 287). Miller does state that nature is fundamental to the further development of the notion of justice within the structure of the state: "The conception of nature underlies Aristotle's account of the correctness and justice of constitutions" (Miller 300). Nevertheless, Miller's discussion of the types of justice within the state, and in particular the discussion of distributive justice as the allotment of power within a state refers only tangentially to natural law. In the preceding discussion there does appear to be the basis for a critique of the interpretation that Miller offers of Aristotle's conception of natural law and justice within his practical works.

D. Critique of Miller's account of natural justice

My position is that Miller's account is not adequate to deal with the ambiguities in Aristotle's account of natural justice, and so his position that Aristotle's conception of justice is essentially naturalistic is open to question. Ultimately this allows that there are elements of Aristotle's conception of justice that open up concrete possibilities of

conceiving of justice in less rigid terms than fundamentalist

theories of justice based on natural law.

1. Difficulties in the interpretation of natural justice in Aristotle's *Rhetoric*.

It is evident that the characteristics of natural law are

not so much at issue for Aristotle in the passages of the

Rhetoric which are relevant to a Miller's discussion as the more

immediate question of how best to argue a case.

> πρῶτον μὲν οὖν περὶ νόμων εἴπωμεν, πῶς χρηστέον καὶ
> προτρέποντα καὶ ἀποτρέποντα καὶ κατηγοροῦντα καὶ
> ἀπολογούμενον. φανερὸν γὰρ ὅτι, ἐὰν μὲν ἐναντίος ᾖ ὁ
> γεγραμμένος τῷ πράγματι, τῷ κοινῷ νόμῳ χρηστέον καὶ
> τοῖς ἐπιεικέσιν ὡς δικαιοτέροις . . . . καὶ ὅτι τὸ μὲν
> ἐπιεικὲς ἀεὶ μένει καὶ οὐδέποτε μεταβάλλει, οὐδ' ὁ
> κοινός (κατὰ φύσιν γάρ ἐστιν), οἱ δὲ γεγραμμένοι
> πολλάκις . . .

> Let us first then speak of the laws, and state what
> use should be made of them when exhorting or
> dissuading, accusing or defending. For it is evident
> that, if the written law is counter to our case, we
> must have recourse to the general law and equity, as
> more in accordance with justice . . . that equity is
> ever constant and never changes, even as the general
> law, which is based on nature, whereas the written
> laws often vary . . .
> (*Rhet.* 1.15.1375a 25-33, tr. Freese)

If the written law is against the matter we have in hand to

argue (ἐὰν μὲν ἐναντίος ᾖ ὁ γεγραμμένος τῷ πράγματι), then one

strategy is to argue that there are natural, immutable laws

common to all that transcend the written laws. Another strategy

(flattery) is to argue that a "better man" would prefer

unwritten, immutable laws to those that are written down. This

passage continues in the same vein with Aristotle practically

giving a list of arguments or persuasive techniques that will be

suitable just in case what we are arguing for happens to be against the written law. If on the other hand the written law is advantageous to our position, Aristotle presents another list that can be used in support of the written law:

> If however the written law supports our case, we must urge that the oath 'to give my verdict according to my honest opinion' is not meant to make the judges give a verdict that is contrary to the law, but to save them from the guilt of perjury if they misunderstand what the law really means . . . . Or that not to use the laws is as bad as to have no laws at all . . . etc.
> (*Rhet.* 1.15.1375b 16-20, tr. Roberts).

Clearly, in these passages the conception of natural law that Aristotle puts forth is subservient to the legalistic purpose at hand. Aristotle's use of natural law is here context-dependent so it is highly questionable whether a coherent, over-arching conception of natural law can be derived from these passages. There is additional external evidence which makes it difficult to accept these passages of the *Rhetoric* as philosophical statements. For instance in the discussion of equity (ἐπιεικές) given above Aristotle says that "equity is ever constant and never changes," but in the *Nicomachean Ethics* Aristotle repeatedly argues for flexibility in the determination of what is equitable. The fact then that in the *Rhetoric* Aristotle presents rhetorical methods of argumentation that are two-sided makes it problematic to adopt one side of his argumentation as his considered philosophical view on an issue. Furthermore, there is often conflict between passages in the *Rhetoric* and

other works which are more expository in a philosophical nature such as the *Politics* and the *Nicomachean Ethics*.

2. Lack of clarity in explicating the relationship between natural justice and political justice.

Miller states: "Natural justice is viewed as in some way "permeating" political justice. When the *Nicomachean Ethics* states that "constitutions are not [the same], though everywhere only one is the best according to nature" (1135a4-5), it is implied that constitutions can be evaluated and compared as better or worse on the basis of the extent to which they possess naturally just features" (Miller 288). This entire passage is problematic. Miller argues that we should not neglect the discussion of justice presented in the problematic work the *Magna Moralia*. But Miller ignores Aristotle when he states: "But what we are in search of is political justice. Now the politically just is the legal, not the natural" (*MM*, 1.33.1195a6-8, tr. Stock).

Furthermore, the account of the relationship between natural justice and political justice that Miller presents varies from one moment to the next. Miller first claims that "Natural justice is viewed as in some way "permeating" political justice" (Miller 288). Further on Miller claims that natural justice and political justice are distinct:

> There is considerable agreement among Aristotle's different discussions of natural law and justice. They all recognize a distinction between, on the one

hand, common (natural) law or natural justice which
has an objective basis and applies to all persons
and, on the other hand, particular law or political
justice which depends upon local agreement and
consequently differs for different localities.
Moreover, natural law or justice serves as a standard
by which the laws of different localities may be
compared and evaluated.
(Miller 305)

Immediately following this Miller states again that political

justice has a "natural component": "Since the lawgiver must

cooperate with nature in order to create the polis with its

constitution and laws, political justice has both a natural and

a legal (conventional) component" (Miller 305). The exact

relationship between natural justice and political justice

remains unclear. What is the concrete relation between "natural"

universal laws and individual constitutions which often vary? If

constitutions, which are the basis of distributive justice, vary

then how can it be said they are based on universal, immutable

natural law? How do individual constitutions as the

representation of the ordering of a community through justice

arise from natural law? Miller claims that, " . . . if one were

to examine the constitution, laws, and customs of a polis which

possessed political justice, one would find that certain

features could be deemed to be naturally just . . . " (Miller

288). This statement is not illuminating because it is not clear

what elements of the constitution and laws are natural, nor is

it evident why they are natural, and the relationship between

the natural and its embodiment in any particular law is left
unexplained.

Miller's discussion of natural law in Aristotle's
practical works becomes convoluted and based on rather distorted
presumptions. Miller arrives at the peculiar notion that the
solution to a quite particular difficulty in Aristotle's
political thought is to be found ultimately in his biological
works. The majority of the commentators on Aristotle regard the
notion of natural law as undeveloped in the Aristotelian corpus.
As stated earlier Miller takes Aristotle's references to nature
as central to his political conception of justice: "The
conception of nature underlies Aristotle's account of the
correctness and justice of constitutions" (Miller 300). Miller
is arguing along the following lines: (1) if justice is
essentially natural, (2) and justice is the organization of the
constitution, (3) then the organization of the state is
essentially natural. The main uses of the notion of nature in
relation to society for Aristotle are not central to his
discussion on justice: in the *Rhetoric* arguments based on
natural justice serve the legal case at hand, in the *Politics*
the conception of nature is used in a genetic sense to explain
the evolution of social structures rather than their essence
and, additionally, appeals to nature are used ideologically to
support the established social hierarchy.

II. Functions of Naturalism in Aristotle's Practical Works.

Even agreeing that there is in some sense a conception of natural influence to human organization in Aristotle, it is still necessary to ask what this means. There is a conception of nature that is characteristic of Aristotle's empirical work, but the particular question arises what function naturalistic accounts of rational human institutions serves in Aristotle's practical works.

A. Newman's conception of nature as a genetic function in Aristotle's practical works.

Newman, in his erudite four volume commentary on the *Politics* of Aristotle, first provides an account of the role that nature serves in Aristotle's practical works, and thereafter draws conclusions that are relevant to the Aristotelian notion of justice. This approach is more satisfactory than those accounts which have the intention from the beginning of qualifying the Aristotelian conception of justice as natural, and then attempt to work out the inconsistencies of this account. The primary reason Newman's discussion is superior is that it provides a better sense of the structural evolution and integrity of the practical concepts that Aristotle is using and developing.

As Newman notes, the primary function that nature plays for Aristotle (and for ancient people in general) is genetic (see, for example, *Met.*, 5.4.1014b 16-10). Within the *Politics* this means that the origin of the state is natural (i.e.,

through the family), that the formation and development of the
state is constrained by natural material needs, and, finally,
that there is an end or *telos* to the state which is consistent
with its natural origin.

> In the Politics, however, Aristotle not only
> contrasts law with compact (*Pol.* 3. 9. 1280b 10), but
> seems everywhere to imply that the State neither came
> into being by way of compact nor is dependent on
> compact for its authority. It began in the blind
> impulses which first formed the household and
> broadened there into wider aims which nothing but the
> State could satisfy. It glided imperceptibly into
> existence, as men became successively aware of the
> various needs bound up with their nature.
> (Newman, Vol. I, 27).

The origin of a natural thing is essential to the ensuing
genesis; however, it is clear from experience that there is
flexibility in the type of formation that is possible on this
natural basis for Aristotle.

Related to the genetic connotation of "nature" for
Aristotle is the notion of *phusis* as the *essence* of a thing.
"μεταφορᾷ δ᾽ ἤδη καὶ ὅλως πᾶσα οὐσία φύσις λέγεται διὰ ταύτην,
ὅτι καὶ ἡ φύσις οὐσία τίς ἐστιν." "Indeed from this sense of
'nature,' by an extension of meaning, every essence in general is
called 'nature,' because the nature of anything is a kind of
essence" (*Met.* 5.4.1015a 12-14, tr. Ross). What is important
about this passage is that it indicates that it is not uncommon
for a Greek philosopher to refer to the "natural" attributes of
something and actually be talking about its essence. So when
Aristotle talks about "natural" justice, he is referring in part

to the essential characteristics or definition of justice rather than what we would call "nature" *per se*. My point is that a strict translation of the Greek text may give rise to some misunderstanding in this context.

Newman conceives of norms as social developments that serve practical functions and that have arisen along with the evolution of human society. Even though Aristotle recognizes that society evolves in part according to constraints imposed by natural needs, in his ethical and political work he recognizes that normative concerns arise on the social rather than the natural level. "But though the State resembles the household and the village in this particular [a common life, τò συζᾖν], it develops virtues unknown or imperfectly known to them. Justice, in the true sense, first appears in the State" (Newman, Vol. I, 38). The commonly accepted notion of natural law and justice as an *immutable*, objective force that imposes certain (undefined) normative constraints on the practical reason of humans is foreign to Aristotle (sc. *Nicomachean Ethics*, 5.7.1134b 18 *ff*.). It is instructive to compare this view of justice with that of Miller: "In this context humans have the innate capacity to perceive and express justice and injustice because this is necessary in order for them to attain their natural ends. For humans must engage in cooperative forms of social and political organization in order to fulfill their nature and these forms of cooperation require a conception of justice" (Miller 294). This

passage gives the impression that for Aristotle what is primary

is nature, whereas in fact Aristotle clearly argues that the

State is "prior" to the individual (*Pol.* 1.2.1253a 19), and the

realization of our potentiality is not as natural but as social

beings.

B. Recognition that naturalism in Aristotle's practical works
serves certain ideological functions.

In Book I of the *Politics* the discussion of the natural

foundation of slavery is put forth to defend an ideological

position. The discussion of nature in these passages does not

seem to be essential to the structure of Aristotle's political

thought, but is an attempt to justify a political position

supporting a particular class structure. Even recognizing the

ideological tendency of such passages, I believe it would be

dangerous to then bracket these expressions as irrelevant to

Aristotle's considered philosophical position.

In some respect slavery is not a social institution with a

natural basis for Aristotle but is recognized in terms of its

overt economic functions. A question arises that Aristotle does

not ask but that follows with obvious importance for his

political philosophy: If there is no economic function served by

the social institution of slavery, would it then be reasonable

to maintain that slavery is a natural function within society?

These passages give the impression of a philosopher whose

rationality is leading him to form conclusions that he is,

perhaps for psychological or social reasons, incapable of

accepting. This is relevant because if there is no economic advantage for slavery, then it is reasonable to presume, as Aristotle does, that there would be no need for slavery. So these considerations conceive of slavery as a social rather that a "natural" problem for Aristotle. The attempt to reduce this problem to an objective fact of nature is inherently problematic. Further discussion of this concern, though, must presently be left aside.

III. Conclusion: Relevance of this Discussion.

It may be useful to summarize the position garnered from the foregoing discussion and to reiterate why I feel this discussion is important in general and to this dissertation in particular. My conclusion is that Aristotle's reasoned account of justice as presented in the *Nicomachean Ethics* and the *Politics* is not in essence based on the commonly accepted notion of natural law. Aristotle does not present a consciously worked out, coherent or connected discussion of natural law and justice that explicitly serves as the foundation for his social theory. Those philosophers who feel they can discern a coherent notion of natural justice in Aristotle's work arrive at their position through a patchwork process that often conveniently overlooks the context of the discussion that Aristotle is engaged in. Second, certain of the passages in which Aristotle does make reference to a natural order which exists in society are profoundly problematic. They are ideological insofar as they

provide an appearance of justification for a social order that is unjustifiable. It is at least possible to suppose that Aristotle realized that there could be no reasoned argument for the institution of inequality in these particular instances, and so recourse is taken to naturalism. Furthermore, to over-emphasize the role of nature in Aristotle's discussion of justice diminishes the relevance of Aristotle's account of justice in relation to political questions concerning the distribution of power and knowledge within society.

Discussions of natural justice persist both in philosophical discussions and in contemporary social debate. Furthermore, the discussion and critique of natural law and justice raises relevant issues for other areas of philosophy. For instance, naturalistic conceptions of justice are presented as somehow objective according to a specific view of human nature. A feminist could easily argue that such a view of human nature is ideological because it appears to present a conception of nature which is universal, and yet naturalistic accounts of justice are often used to legitimate differences in the distribution of power and wealth within society. It is clear in Aristotle's case that when he incorporates naturalism into his discussion of practical rationality the function is often ideological—whether he is conscious of this fact or not.

Even though my presentation of Miller's position has been contentious, it is necessary to realize the truth of what

Aristotle says concerning the philosophical dialogue with those whom we disagree: they deserve our gratitude for providing a starting point for the discussion.

Difficulties Involved in a Contextual Approach to Justice as Equity and Flexibility in Normative Principles

After drawing arguments for the flexibility in application and formation of normative principles from Aristotle's ethics (Chapter 2.I.) a number of interesting implications and objections follow which require a response from an Aristotelian viewpoint. What determines the degree of flexibility to which a rule is subject? Doesn't such flexibility lead to caprice or individualistic relativism in the choice of principles for moral conduct? Does a universalistic ethics based on an abstract conception of the good avoid such difficulties in a way that is suitable for practical activity? Is there a problem insofar as Aristotle considers some rules inflexible; for instance, killing a parent would be reprehensible under any condition? These considerations require a critical examination of limiting factors to flexibility in the application of principles, in particular the role that character plays, and the function for Aristotle of the person possessing *phronēsis* (φρόνησις, *prudence, thoughtfulness,* (here) *correct practical judgment)* as the source of practical rationality on which judgments are based.

I. Why Aristotelian Ethics Instead of Universalistic Claims in Morality?

In this section I want to address some of the difficulties that have arisen for Aristotelian ethics within the context of a discussion on strictly universal application of ethical principles.

One matter of concern is the extent to which flexibility is allowed. Why did Aristotle feel flexibility is necessary in moral systems to begin with? In part, this can be seen as a response to Plato, for whom the good was an ideal that is eternal and *immutable*. Aristotle has a clearer conception of the variability of human principles and practice. This variability imposes difficulties on the formulation of an ethical system, but Aristotle had the insight to see that ethics can not be made abstract in the same manner as geometry in its formulation of principles based on pure figures (Stewart 27). Problems arise in attempting to force universal, immutable principles on a variable subject matter—especially within the realm of ethics. The Aristotelian approach seems better in that it starts from experience (the person with φρόνησις seems to be a repository of practical experience) and constructs practical principles on this basis. Categorical moral imperatives appear, in contrast, to be of limited applicability in a schema of knowledge in which the subject matter plays such an important determining role in the formation of principles which aim at directing human action.

One argument against the view that knowledge of an ideal good is useful for directing individual practical activity in a morally justified manner is that such a view is inconsistent with the actual practice of human beings. Nevertheless, one could argue that, although a conception of the absolute good is inconsistent with actual practice, it is possible such a conception of the good is useful as a guide. Aristotle argues that for this to be the case, there would have to actually be a conception of an ideal good that is not empty, and it would have to be demonstrated how such a good *could* direct (or Plato would say "participate") in the various species of good. The initial plausibility of such an abstract theory seems quickly to fade when put to the test.

One benefit of Aristotle's approach is that it allows for flexibility in the application of legal justice in that it is capable of taking into account the intentions of agents rather than only the outcome of their actions. The application of law here is not strict, but is determined according to what is suitable to the occasion and the people involved. Aristotle's ethical system is a vast improvement over Procrustean moral systems in which the rule is the sole determinant of the matter under consideration. In such absolutist systems there is no flexibility of rule—human practice must simply conform to the rule. Arguing for flexibility in application of laws is by far the more humane approach.

II. Aristotelian Ethics and Moral Relativity.

The question arises whether it is reasonable to claim that Aristotelian ethics is merely a *situational ethics*. The difficulty is that if this is the case, then there is little basis for formulating principles that can be justified outside the limited situation in which they apply.

Aristotle's contextual approach is an open method of inquiry which leads to results that are applicable to and evaluated within the realm of social activity. By an "open" inquiry I mean the following:

(1) Aristotle feels it is first necessary to define a problem within a sphere which is practical (involving human activity) rather than theoretical in nature, and

(2) there is an application of the knowledge learned to new situations which are not pre-determined in their outcome.

Aristotle often begins with a critical examination of common prevailing opinions, as well as the more reflective thought of his philosophical predecessors, to see in what respects these views are correct and in what respects inadequate. In this regard Aristotle is not a relativist—it is possible to judge among the various positions of discourse in matters that concern social justice. Knowledge of the ethical dialogue between Plato and Aristotle, for instance, is extremely valuable, even essential, to an understanding of their respective positions.

Part of the reason the question of normative relativity
comes up within Aristotelian ethics is due to the problematic
nature of what is commonly taken to be the "good life"
(εὐδαιμονία). Aristotle starts the discussion with an
examination of commonly received opinions concerning happiness—
clearly such opinions vary greatly in nature. Following
Aristotle's approach provides an interesting contrast to the
skeptics who take such a state of affairs as an indication that
morals are radically relative. For Aristotle this *aporia* serves
as a beginning of the discussion.

If there is something that is an end in its own sake and
never a means to something else, this indicates an ultimate
source of ethical action. If everyone admits that it is
happiness, the pursuit of happiness may be taken as a moral
principle in itself.[36] Nevertheless, it is clear that while
everyone agrees that happiness is desirable for its own sake and
may be the source of moral action, what the conception of
happiness actually is varies to such a degree that it is
necessary to proceed by analyzing what people take happiness to
be. Three types of orientation in life (cf. Stewart, 45) are
generally considered to constitute happiness, (1) external
happiness (material goods, honor and fame), (2) corporeal
(pleasure in general), (3) intellectual. There are problems in
translation insofar as εὐδαιμονία is not only a state, but an
activity, as such it is inherently diverse. "ἡ εὐδαιμονία ἐν
πράξει ἐστί, καὶ τὸ τέλος πρᾶξις τις ἐστίν, οὐ ποιότης." "All

human happiness or misery takes the form of action; the end for which we live is a certain kind of activity, not a quality" (*Poet.* 6.1450a 18, tr. Bywater).

The difficulty is that there seems to be no agreement with respect to what constitutes a good life, similarly with regard to the actions that are inherent to such a life. Aristotle states (*NE* 1.4.1095a 16) that almost everyone agrees that the highest end is happiness, the account of the life that people relate as happy, though, is variable. In this case it is not so much that there is relativity with respect to what is judged as the mark of a good life, the standard of a good life is in any case happiness, but the life that can *properly* be construed as good requires clarification and justification. Such difficulties are perhaps the reason utilitarians seek refuge in the basis of pleasure and pain as the sole foundation of the good on which human action is judged.

With respect to happiness, Aristotle shows that according to common conceptions there is no universal agreement on what constitutes happiness. The variability seems to be a matter of conviction concerning what yields happiness rather than a difference in the definition of happiness *per se*. For Aristotle it is appropriate to say that everyone agrees on what happiness is, but only disagrees on the means to attain it—for some it is wealth, for some honor, for others the life of contemplation.

One of the characteristic features of early ethical systems is the belief that there must be one ultimate good—an

absolutist ethics. When it becomes apparent that there are, in
actuality, a multiplicity of goods and different ethical modes
of action for different situations, it is supposed that moral
conduct is radically relative (with the implicit assumption
that, therefore, ethics is meaningless).

III. The Knowledgeable Judge Determines What is Properly Good, But Who Determines Who the Knowledgeable Judge is?

While Aristotle recognizes the need for a flexible
approach to the formation of laws, his political solution to
handle this is far from adequate. The view that flexibility in
the application of normative principles should be conducted as
the original law-giver would if he were present and appraised of
all the circumstances appears *ad hoc*.

Aristotle maintains that the person of practical wisdom
(φρόνησις) is considered the proper judge in deliberations
about moral/political matters. It is necessary to discuss the
factors which define the person of practical wisdom and thereby
the limits to flexibility in rational principles which such a
person would set as guidelines.

Merely having a *disposition* towards ethical activity is
not sufficient for Aristotle to say that a prudent life has
achieved its proper realization.

> But no doubt it makes a great difference whether we
> conceive the Supreme Good to depend on possessing
> virtue or displaying it—on disposition, or on the
> manifestation of a disposition in action. [. . .]
> And just as at the Olympic games the wreaths of
> victory are not bestowed upon the handsomest and
> strongest persons present, but on men who enter for

the competitions—since it is among these that the
winners are found,—so it is those who act rightly who
carry off the prizes and good things of life.
(*NE* 1.8.1098b 32-1099a 5, tr. Rackham).

Aristotle's account is not directed to the functioning of
moral agents in an abstract sense, but to the realization of
human capability in activity. It is reasonable to maintain that
within the Aristotelian account humans are better able to
realize their potentiality than an ethical system based on
abstract conceptions insofar as absolute imperatives are
inadequate for the formation of human agency within a social
context that is so variable. Furthermore how such ideal moral
imperatives relate to and condition actual human activity is
often not defined.

Aristotle argues that we act morally due to our character
which is formed through habitual action guided by principle (*NE*
3.5.1114b 26-30). Aristotle denies that " . . . one must be born
with an eye, as it were, by which to judge rightly and choose
what is truly good" (*NE* 3.5.1114 b 6-7 tr. Ross). This denies
any innate moral intuitionism within Aristotelian ethics, at
least it isn't clear how intuition could function in this
capacity. The manner in which Aristotle talks about "practical
intuition" (*NE* 6.11.1143a 36-1143b 6) essentially involves
discerning particular, variable facts on which practical
judgments are based. While Aristotle does speak metaphorically
of an "eye" which discerns correctly in this book, such a
faculty is a function of experience, rather than being an innate

faculty. ". . . for experience has given them [the elder men of practical wisdom] an eye for things, and so they see correctly (*NE* 6.11.1143b 13-14, tr. Rackham)." If "seeing" what is right is a matter of nature (innate) then moral responsibility cannot be assigned because, as an involuntary act, it is something for which one is not responsible within Aristotle's ethics.

A problem arises at this point: who determines ultimately what sort of habits should be instilled in the first place? This question concerns political education. Plato's *Apology* is interesting in this regard, as an example of the common Athenian notion that the laws themselves serve an educating function:

ἴθι δή νυν εἰπὲ τούτοις, τίς αὐτοὺς βελτίους ποιεῖ;
δῆλον γὰρ ὅτι οἶσθα, μέλον γέ σοι. τὸν μὲν γὰρ
διαφθείροντα ἐξευρών, ὡς φής, ἐμέ, εἰσάγεις τουτοισὶ
καὶ κατηγορεῖς· τὸν δὲ δὴ βελτίους ποιοῦντα ἴθι εἰπὲ
καὶ μήνυσον αὐτοῖς τίς ἐστιν. ὁρᾷς, ὦ Μέλητε, ὅτι
σιγᾷς καὶ οὐκ ἔχεις εἰπεῖν; καίτοι οὐκ αἰσχρόν σοι
δοκεῖ εἶναι καὶ ἱκανὸν τεκμήριον οὗ δὴ ἐγὼ λέγω, ὅτι
σοι οὐδὲν μεμέληκεν; ἀλλ᾽ εἰπέ, ὠγαθέ, τίς αὐτοὺς
ἀμείνους ποιεῖ;

οἱ νόμοι.

Socrates: Tell the judges, then, who is their improver; for you must know, as you have taken the pains to discover their corrupter, and are citing and accusing me before them. Speak, then, and tell the judges who their improver is. Observe, Meletus, that you are silent, and have nothing to say. But is not this rather disgraceful, and a very considerable proof of what I was saying, that you have no interest

in the matter? Speak up, friend, and tell us who their improver is.

Meletus: The laws.

(*Apology* 24D, tr. Jowett)

It, appears necessary to at least open the question of the

relation between the person of practical wisdom and politics.

IV. The Political Role of the Knowledgeable Judge.

The ultimate teacher of morality is the person of

practical wisdom. It is necessary to question how the

practically wise person acquires this knowledge. For Aristotle

this is through practical, political experience: inquiry among

philosophers, knowledge of commonly accepted principles,

historical analysis, and analysis of the laws of other cultures.

This inquiry is an activity and this activity is essentially

political in nature. The person most suited to judge what is

appropriate (ὁ κριτής) is the person knowledgeable about the

appropriate human conduct for a state, for Aristotle this is the

citizen educated in the *polis*, φύσει πολιτικὸν ὁ ἄνθρωπος (*NE*

1.7.1097b 12):

> And politics appears to be of this nature; for it is
> this that ordains which of the sciences should be
> studied in a state, and which each class of citizens
> should learn and up to what point they should learn
> them; and we see even the most highly esteemed of
> capacities to fall under this, e.g. strategy,
> economics, rhetoric; now, since politics uses the
> rest of the sciences, and since, again, it legislates
> as to what we are to do and what we are to abstain
> from, the end of this science must include those of
> the others, so that this end must be the good for
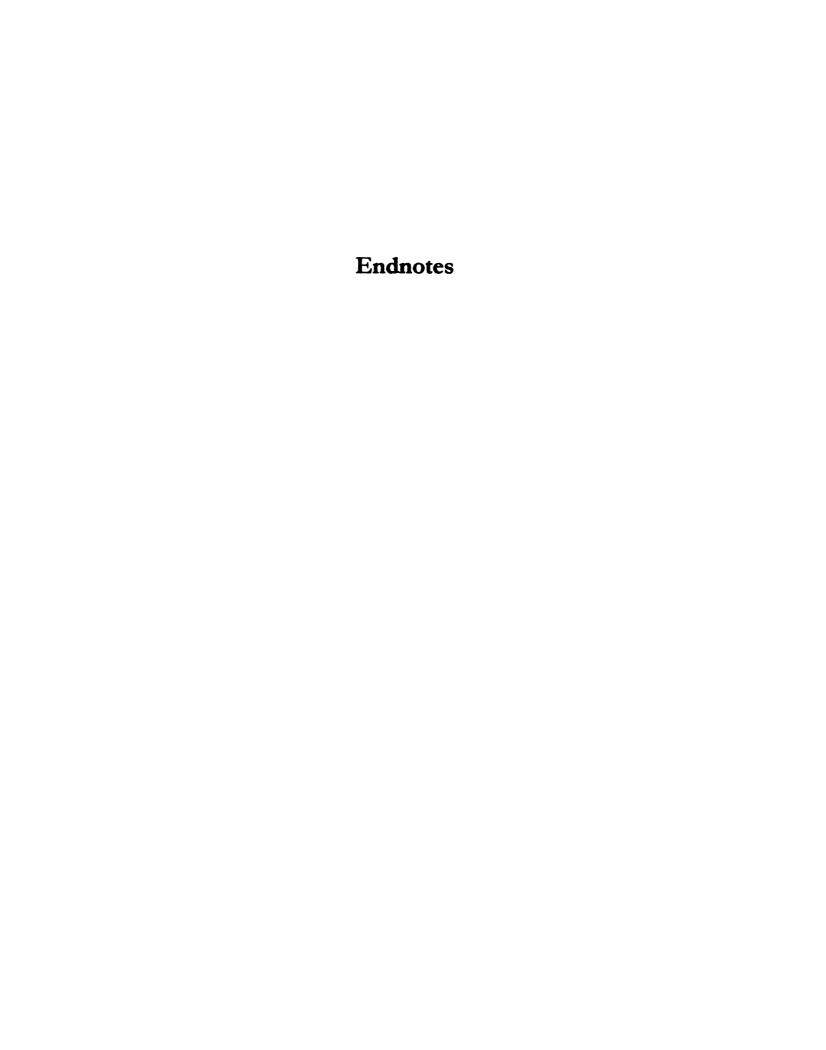> man.
> (*NE* 1.2.1094a 27-1094b 7, tr. Ross)

The political activity of citizens with practical wisdom

determines ultimately to what principles moral conduct conforms.

These principles in turn form the character of the citizens.
There is more merit in Meletus' response to Socrates than is
generally acknowledged insofar as he realized the importance of
the laws to the formation of character. "And this will be found
to agree with what we said at the outset; for we stated the end
of political science to be the best end, and political science
spends most of its pains on making the citizens to be of a
certain character, viz. good and capable of noble acts" (*NE*
1.9.1099b 27-32, tr. Ross).

Aristotle states that the variable nature of the subject
matter of ethical inquiry is such as to give the impression of
being a matter of convention. While Aristotle ultimately denies
that it is purely a matter of convention, he explicitly states
that the formation and application of law is not absolute, but
requires flexibility. It is clear with respect to Aristotle's
discussion on happiness that he does not accept the view of
Protagoras that, "πάντων χρημάτων μέτρον ἐστὶν ἄνθρωπος, τῶν
μέν ὄντων ὡς ἔστιν, τῶν δὲ ὐκ ὄντων ὡς ὐκ ἔστιν." "Man is the
measure of all things, of the things that are that they are, of
the things that are not that they are not."[37] The role of the
person with practical wisdom is *social* and not just the activity
of a moral individual—especially considering that the formative
process through which individuals of practical wisdom arise is a
political function of the state. It is in this sense that
Aristotle states one positive aspect of law is that it is

"reason unaffect by desire": "διόπερ ἄνευ ὀρέξεως νοῦς ὁ νόμος

ἐστίν"(*Pol*. 1287a 31-32, tr. Jowett).

Endnotes

Endnotes

[1] Quoted from Fred Dallmayr, *G. W. F. Hegel: Modernity and Politics,* (Newbury Park: Sage Publications, 1993), p. 95. As Dallmayr notes, this formulation of the famous phrase given in *The Philosophy of Right* is less problematic in that there is not a simple equation of the real with rationality.

[2] The Greek word δικαιοσύνη, generally translated as *justice,* is much more general than the English word *justice* in its application and meaning. δικαιοσύνη, *justice, righteousness,* < δίκαιος. *observant of custom or rule,* esp. *social rule* (Liddell-Scott). In *Utilitarianism* J. S. Mill has an extremely interesting discussion on the etymology of the term *justice* in regard to the issue of equivocation in its meaning.

[3] Even though in Greek thought of this time it would not make sense to completely distinguish justice as an individual ethics and justice as a political "virtue", it is clear that the main contrast between Plato and Aristotle is that Plato emphasizes justice in the subjective, moral sense as a "way of life" similar in respects to a Christian conception of "righteousness" as a moral way of life which is instilled in citizens of a state through a process of "education"—much like wool that is prepared to permanently receive a purple dye (*Rep.* 429B-430B).

[4] This view can be compared to one aspect of Marxist thought in which social, material conditions of production determine the prevalent ideology of a society:

> The phantoms formed in the human brain are also, necessarily, sublimates of their material life-process, which is empirically verifiable and bound to material premises. Morality, religion, metaphysics, all the rest of ideology and their corresponding forms of consciousness, thus no longer retain the semblance of independence. They have no history, or development; but men developing their material production and their material intercourse, alter, along with this their real existence, their thinking and the products of their thinking. Life is not determined by consciousness, but consciousness by life.
> (Marx, *The German Ideology,* 154-55)

[5] One possible source of absolute moral imperatives is natural right. I argue at various points in this dissertation that

neither Aristotle nor Hegel base their theories of justice on natural right.

[6] *Common Rights and Expectations: Primary International Treaties Protecting The Rights Of All People*, United Nations Texts, Gerald and Maas Editions, Ottawa (Canada). http://www.hiddencharms.com/gm/texts.htm. (Accessed on 4/30/97).

[7] It is important to note that Plato contrasts the specialized knowledge of the aim and order of the whole state (σοφία, *wisdom*) with more particular knowledge such as a smith might have (τέχνη, *art, skill; a trade, handicraft*). Such restricted knowledge belongs to the few guardians who govern the state.

> "Then," said I, "is there any science in the city just founded by us residing in any of its citizens which does not take counsel about some particular thing in the city but about the city as a whole and the betterment of its relations with itself and other states?" "Why, there is." "What is it," said I, "and in whom is it found?" "It is the science of guardianship or government and it is to be found in those rulers to whom we just now gave the name of guardians in the full sense of the word." . . . . "And would not these rulers be the smallest of all the groups of those who possess special knowledge and receive distinctive appellations?" "By far." "Then it is by virtue of its smallest class and minutest part of itself, and the wisdom that resides therein, in the part which takes the lead and rules, that a city established on principles of nature would be wise as a whole"
> (*Rep.* 4.6.428D-428E, tr. Shorey)

[8] Cf. Hegel's comment on Fries' Philosophy:

> The chief tendency of this superficial philosophy is to base science not on the development of thought and the concept, but on immediate perception and contingent imagination; and likewise, to reduce the complex inner articulation of the ethical, i.e. the state, the architectonics of its rationality—which, through determinate distinctions between the various spheres of public life and the rights [*Berechtigungen*] they are based on, and through the strict proportions in which every pillar, arch, and buttress is held together, produces the strength of the whole from the harmony of its parts—to reduce

> this refined *[gebildeten]* structure to a mush of
> 'heart, friendship, and enthusiasm'.
> (*POR* 15-16)

[9] Paul Cloché, "Aristote et les Institutions de Sparte", in
Schriften zu den Politika des Aristoteles, (Hildesheim: Georg
Olms Publishing, 1973), p. 340.

[10] As the dissertation proceeds it will become evident that
Aristotle does considers respects in which justice is useful for
structuring a society of constitutional rule among equals. I
will argue that features of Aristotle's thought in this regard
are useful for developing a conception of justice as a
democratic distribution of knowledge.

[11] I do not want to get into the particulars of translation in
this passage but in the phrase: καὶ ὅτι τὸ μὲν ἐπιεικὲς ἀεὶ
μένει καὶ οὐδέποτε μεταβάλλει, οὐδ' ὁ κοινός (κατὰ φύσιν γάρ
ἐστιν), it may be better to translate οὐδ' ὁ κοινός as
"*and neither does* the general law [ever change]"
rather than Freese's translation "*even as* the general
law", which tends to equate equity with general law.
At any rate, the parallelism in this passage between
equity and the general law concerns *immutability*
rather than *nature:* τὸ μὲν ἐπιεικὲς . . . <u>οὐδέποτε</u>
μεταβάλλει, <u>οὐδ'</u> [μεταβάλλει] ὁ κοινός. The phrase κατὰ φύσιν
γάρ ἐστιν appears to be an afterthought added to ὁ
κοινός [νομός] "the general [law]".

[12] From W. K. C. Guthrie, *History of Greek Philosophy: Aristotle
an Encounter,* Vol. 6, (Cambridge: Cambridge University Press,
1981).

[13] Quoted from Allen Wood's introduction to *Elements of the
Philosophy of Right,* (Cambridge: Cambridge University Press,
1991).

[14] Cf. Rawls, "Political Constructivism", in *Political
Liberalism,* (New York: Columbia University Press, 1993), pp.
102-103.

[15] Cf. Kant, *Science of Right:* "Freedom is independence of the
compulsory will of another; and in so far as it can coexist with
the freedom of all according to a universal law, it is the one
sole original, inborn right belonging to every man in virtue of
his humanity" (REF).

[16] Translations of *Du Contrat Social* are mine.

[17] Cf. Article VI of Déclaration des Droits de L'Homme et du Citoyen: "La loi est l'expression de la volonté générale. Tous les citoyens ont droit de concourir personnellement, ou par leurs représentants, à sa formation. Elle doit être la même pour tous, soit qu'elle protège, soit qu'elle punisse."

[18] Examples of corrective justice are common in the Old Testament and can be distinguished from the type of retributive justice demanded in the phrase "an eye for an eye":

> Exodus 21:33 And if a man shall open a pit, or if a man shall dig a pit, and not cover it, and an ox or an ass fall therein;
> Exodus 21:34 The owner of the pit shall make [it] good, [and] give money unto the owner of them; and the dead [beast] shall be his.

Aristotle distinguishes these two types of justice at *NE* 5.5.1132b 22 ff.

[19] Plato's construction of an ideal social order with the intention of determining whether justice is the proper attitude for the individual to take in life is from an Aristotelian perspective an inquiry that from the beginning has been framed in a problematic fashion. For Plato there is an ideal Good which conditions the order of a state. If this notion of the Good is inherently problematic (as Aristotle came to believe) then it is difficult to justify a social construction on this basis.

[20] Richard Robinson, from the introduction to *Aristotle's Politics, Books III and IV,* (Oxford: Clarendon Press, 1995), xv.

[21] I've included Rackham's translation, which, in my opinion, does not adequately capture the sense that justice is primary for structuring the state, rather than being only an "element of the state". This illustrates the difficulty in approaching these texts through translation.

[22] Aristotle often repeats the common notion that justice is "the good of the other," for instance note the passage:

> αὕτη μὲν οὖν ἡ δικαιοσύνη ἀρετὴ μέν ἐστι τελεία, ἀλλ᾽ οὐχ ἁπλῶς ἀλλὰ πρὸς ἕτερον. καὶ διὰ τοῦτο πολλάκις κρατίστη τῶν ἀρετῶν εἶναι δοκεῖ ἡ δικαιοσύνη, καὶ οὔθ᾽ ἕσπερος οὔθ᾽ ἑῷος οὕτω θαυμαστός . . .

> Justice then in this sense is perfect Virtue, though with a qualification, namely that it is displayed towards others. This is why Justice is often thought

to be the chief of the virtues, and more sublime 'or
than the evening or the morning star' . . .
(*NE* 5.1.1129b 26-29, tr. Rackham)

One might more reasonably translate πρὸς ἕτερον as "in relation
to others" as Ross does rather than "displayed towards others".
The immediate precursor to this idea of justice as the good of
others is in Plato, but it is generally distorted by the poets
or to serve the arguments of sophists such as Thrasymachus. Cf.
Plato's *Republic,* ἡ δὲ δικαιοσύνη ἀλλότριον μὲν ἀγαθόν, οἰκεία
δὲ ζημία . . . " "Justice is another's good but one's own
loss . . . " (*Rep.* 3.5.392B, tr. Grube).

[23] For Aristotle, and ancient Greek philosophers in general, the
use of emotion in political rhetoric has great potential for
abuse.

[24] "The polis teaches man."

[25] Interestingly, Jowett translates "βίαιον γάρ" as "being an
interference with nature" which is far too mild, βίαιος means:
forcible, violent, compulsory.

[26] "There (especially in Scotland), it has emerged that the most
direct means of dealing with poverty, and particularly with the
renunciation of shame and honour as the subjective bases of
society and with the laziness and extravagance which give rise
to a rabble, is to leave the poor to their fate and direct them
to beg from the public" (*POR* §245, 267).

[27] Cf. Cohen and Arato, *Civil Society and Political Theory,*
(Cambridge: The MIT Press, 1992):

> We take seriously the normative principles defended
> by radical democrats, but we locate the genesis of
> democratic legitimacy and the chances for direct
> participation not in some idealized, dedifferentiated
> polity but within a highly differentiated model of
> civil society itself (19).

> Our framework, however, allows in principle for a
> third approach, one that does not seek to correct the
> economic or state penetration of society by shifting
> back and forth between these two steering mechanisms.
> Instead, the task is to guarantee the autonomy of the
> modern state and economy while simultaneously
> protecting civil society from destructive penetration
> and functionalization by the imperatives of these two
> spheres (25).

> The rigid conceptual division of civil and political
> society is difficult to maintain in the specific form
> in which it is used in the French discussion. . . .
> Politically, however, the distinction makes good
> sense because it implies a reorientation of
> democratic politics away from the state to *society*
> without promoting the overpoliticization of society
> (38).

[28] As an example of this argument, consider the following
statement from conservative state Representative David Jaye:

> "It's racist, sexist, unfair and unacceptable to give
> positions to less qualified minorities and steal them
> from more qualified non-minorities," Jaye said. "Why
> should a rich Black kid from Bloomfield Hills whose
> parents are doctors get preference over a poor white
> kid who grew up with a welfare mom in Mount Clemens?"
> (State Rep. David Jaye, quoted from *The State News*,
> 14 May 1997)

I think that in addressing the contentious issue of affirmative
action, it is better to avoid extreme rhetoric that inflames
emotions.

[29] Cf. Michael Walzer's notion that education requires protection
from outside forces which tend to subsume control of educational
institutions to system imperatives:

> Schools can never be entirely free; but if they are
> to be free at all, there must be constraints in other
> distributive spheres, constraints roughly of the sort
> I have already described, on what money can buy, for
> example, and on the extent and importance of office.

Michael Walzer, *Spheres of Justice,* (Basic Books: 1983), p. 213,
cf. p. 204.

[30] Cohen and Arato feel that participation is not required for
democratic practice. The notion of the development of a social
sphere separate from the state (economic or civil) that is based
on democratic principles appears rather desperate.
Transformation of political institutions to allow democratic
equality in access to knowledge appears to be a goal that is not
entirely in vain.

[31] In order to illustrate these arguments the following
quotations are taken from an article on the internet endorsing
privatization:

> The marketplace comes to terms with how to meet
> customer demands. . . . Failure to retain and
> satisfy customers leads to losses. Success in
> retaining and satisfying customers generates profits.
> The incentive system gives central importance to the
> customer.

> Competition among schools would keep tuition levels
> under control and force them to satisfy the wishes of
> students and parents. Schools that successfully
> satisfied their consumers would make money, and those
> that did not would lose money. No longer would
> educational decisions be largely a function of
> political considerations.

James R. Rinehart and Jackson F. Lee, "Can the Marketplace Save
Our Schools?", http://townhall.com/townhall/spotlights/9-11-
95/market.html, (Accessed 10 February 1997).

[32] Abebe Andualem, *The Lansing State Journal,* "Cyberspace Project
Offers Lifeline to African Universities", 6 April 1997.

[33] I have in mind here a comparison to John Rawls who states that
the original position allows such an application:

> Thus to see our place in society from the perspective
> of this position is to see it *sub specie
> aeternitatis:* it is to regard the human situation
> not only from all social but also from all temporal
> points of view. . . . it is a certain form of thought
> and feeling that rational persons can adopt within
> the world. And having done so, they can, whatever
> their generation, bring together into one scheme all
> individual perspectives and arrive together at
> regulative principles that can be affirmed by
> everyone as he lives by them, each from his own
> standpoint.

John Rawls, *A Theory of Justice* (Cambridge: Harvard University
Press, 1971), p. 587.

[34] It may give insight into the extent of Miller's difficulty to
quote this passage in context:

> Now some think that all justice is of this sort,
> because that which is by nature is unchangeable and
> has everywhere the same force (as fire burns both
> here and in Persia), while they see change in the
> things recognized as just. This, however, is not true
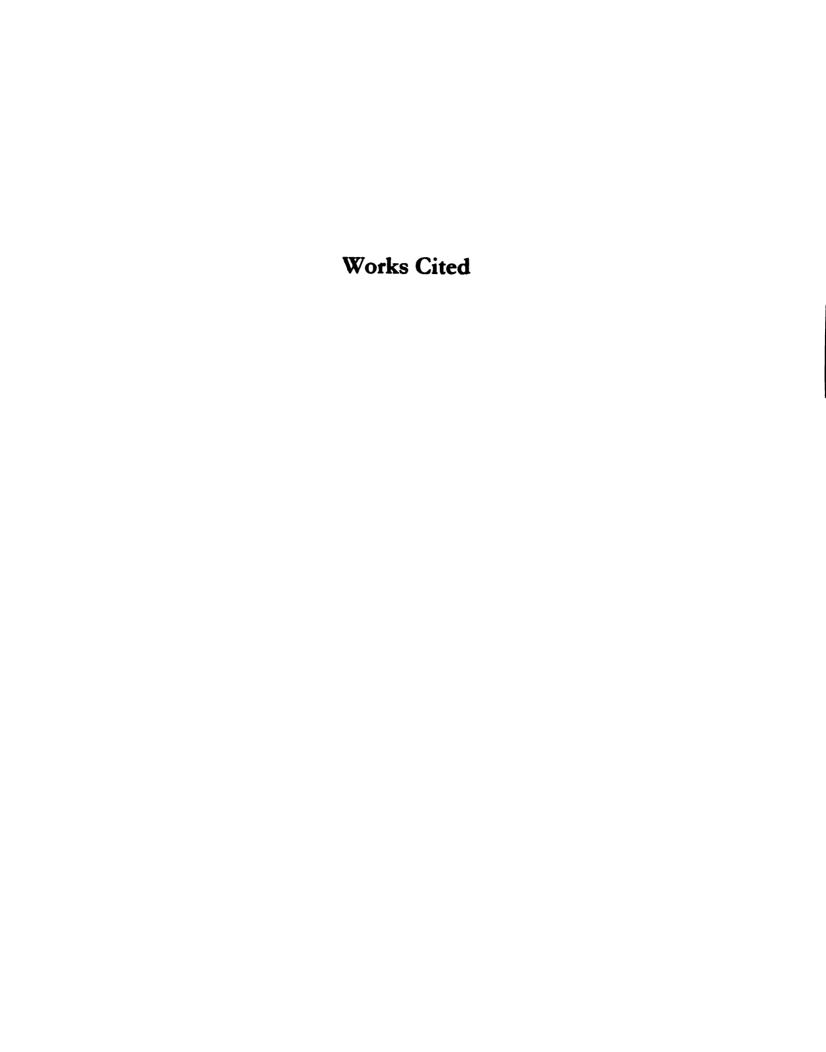> in this unqualified way, but is true in a sense; or

> rather, with the gods it is perhaps not true at all,
> while with us there is something that is just even by
> nature, *yet all of it is changeable*; but still some
> is by nature, some not by nature. It is evident which
> sort of thing, among things capable of being
> otherwise, is by nature, and which is not but is
> legal and conventional, *assuming that both are
> equally changeable*. And in all other things the same
> distinction will apply; by nature the right hand is
> stronger, yet it is possible that *all men* should come
> to be ambidextrous.
> (my emphasis, *EN,* 5.7.1134b 24-1135b 1).

[35] As Ronald Beiner notes in *Political Judgment*, it is just this lack of any direction from natural law that makes an inquiry into the concrete details of practical political rationality necessary for both Aristotle and for contemporary political theorists. "It is because we do not have available to us an infallible natural law that merely wants means of implementing that a painstaking process of judgment or *phronesis* in the Aristotelian sense, the careful weighing of given particulars, is required of us" (Beiner 24).

[36] Cf. the Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness".

[37] Protagoras, quoted from Kirk, Raven and Schofield, *The Presocratic Philosophers*, 2nd Edition, (Cambridge: Cambridge University Press, 1957/1983), 411.

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