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HEGEL ON MARRIAGE: THE IMPORTANCE OF THE WEDDING CEREMONY

By

JOSH BISIG

Under the direction of Sebastian Rand, PhD

ABSTRACT

In the *Philosophy of Right*, Hegel insists that a marriage is only established after a wedding ceremony has taken place but he provides no satisfactory justification for thinking this. In this paper, I attempt to provide some justifications for him. I advocate an interpretation of Hegel that (1) understands the declaration of consent uttered in the wedding ceremony to be a performative act whose force is what transforms a relationship into a marriage and that (2) understands Hegel's general concept of personality to inform his requirement that the agreement to marry be declared publicly.

INDEX WORDS: Hegel, Kant, Marriage, Wedding ceremony, Love, Contract

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JOSH BISIG

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By

JOSH BISIG

Committee Chair: Sebastian Rand

Committee: Eric Wilson

Greg Moore

Electronic Version Approved:

Office of Graduate Studies

College of Arts and Sciences

Georgia State University

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1 INTRODUCTION

In Hegel's discussion of marriage in the *Philosophy of Right*, we find that marriage is the "immediate" institution of his ideal conception of community, insofar as marriage involves the most intimately felt sense of membership that we experience in our social lives (§158, §161). It is surprising, then, that some of the major scholarly texts on Hegel's *Philosophy of Right* pay no attention to his discussion of marriage.¹ Of the scholarly literature that does attend to the discussion of marriage, most tends to focus either on the weight given to gender roles and sexual difference or on the import of Hegel's claim that marriage is not contractual. Almost all who discuss Hegel on marriage neglect or underemphasize the importance of the wedding ceremony. Without addressing the role of the wedding ceremony, these interpreters do not give their readers a robust understanding of Hegel's account of marriage. These interpretations of Hegel on marriage might even lead one to conclude that, according to Hegel, a marriage can take place in the absence of a ceremony. However, in §164, Hegel claims that the wedding ceremony is necessary for constituting a marriage. There can be a marriage "only after this ceremony has *first taken place*" (§164). Hegel offers no straightforward, satisfying explanation regarding why the ceremony is necessary in order for this transformation to occur, and neither do the small number of scholars who consider this topic in any detail. The present thesis seeks to fill in these interpretive gaps regarding Hegel's account of marriage, specifically by investigating the importance of the ceremony.

In this paper, I advocate an interpretation of Hegel that understands the ceremonial declaration of consent to be the performative act whose force is what transforms a relationship into a marriage and that understands Hegel's general concept of personality to inform his requirement that the agreement to marry be declared publicly. This interpretation will rely heavily on a comparison between the utterance of agreement involved in contract, as described by Hegel in §§78-

¹ For example, Taylor (1979), Wood (1990), Neuhauser (2000) do not discuss Hegel on marriage at all.

79, and the declaration of consent involved in the wedding ceremony. Though my interpretation draws an analogy between the utterance of agreement involved in contract and the declaration of consent involved in the wedding ceremony, it nonetheless maintains the non-contractual account of marriage to which Hegel is expressly committed. In the latter sections, I seek to answer why the wedding ceremony is necessary for marriage at all in two main ways: by suggesting that (1) it must be the case that the loving disposition that constitutes a marriage is only evoked through the performative act of declaring one's consent to marry and that (2) Hegel's general concept of personality requires that the declaration of consent be confirmed by an audience. Making these points demands a discussion of Hegel's non-contractual account of marriage, but not before first providing a contrast to and historical backdrop for Hegel's account via Kant.

2 KANT'S CONTRACTUAL VIEW OF MARRIAGE

Hegel explicitly denies that marriage is contractual, and specifically contrasts his own view of marriage with Kant's contractual view. So, before going into Hegel's account of marriage, I want to provide an exposition of Kant's view of marriage. Outlining Kant's view will provide a helpful historical framework for understanding Hegel's own, non-contractual conception of marriage.

2.1 The problem of sex

For Kant, marriage resolves two moral problems inherent to sexual activity (LE 27:64), each of which concerns the debasement of humanity by disposal of the body. Without getting too mired in the complicated foundations of Kant's morality, we can say the following: according to Kant, we debase our humanity if we compromise our ability to set goals of action for ourselves. We compromise our or others' ability to set goals of action when we use ourselves or others as mere means or instruments to some further goal. But when we compromise our or others' ability to set goals of action, we debase humanity. According to Kant, the act of sex involves using our bodies as

mere means to some further goal, namely sexual gratification. Disposing of our bodies for sexual gratification qualifies as compromising our ability to set goals of action, and so qualifies as a debasement of humanity.

The first moral problem with sex is that it involves the debasement of humanity *in our own* person. According to Kant, disposing of one's own person as a mere means is morally wrong, yet this is what we must do in order to have sex. In *The Metaphysics of Morals*, he states that "disposing of oneself as a mere means to some discretionary end is debasing humanity in one's person" (MM 6:423). We are not morally permitted to dispose of our person as a thing because our person, including body parts, does not belong to us in a way that permits disposal (LE 27:601-602). This means it is wrong to commit suicide or to sell ourselves into slavery (MM 6:423, LE 27:602). Likewise, it is wrong for us to dispose our person over to another for their enjoyment, which is precisely what occurs when we have sex.

The second moral problem with sex involves the debasement of humanity *of another*. Humans have a particular impulse directed toward their own enjoyment of another person—a sexual impulse. Kant refers to the sexual impulse as a kind of "love," distinguishing between love from sexual appetite and love from true human affection (LE 27:384). Having sex merely to satisfy the sexual appetite—the baser kind of "love"—involves using someone as an object. We might think that sex in the context of love from true human affection might resolve the problem. However, the presence of true human affection does not change the nature of sex. Sex between individuals who have true human affection for each other is still wrong, because, considered as the act itself, sex involves using the other person as an object. In other words, even when the base sexual appetite and true affection are both present, the act is still occurring from the appetite, not from true affection, according to Kant. And wherever someone becomes the object of another's satisfaction, "all motives of moral relationship fall away" (LE 27:385). The sexual impulse is inherently human-debasing because, when

we act for its sake, our goal is always sexual satisfaction and never includes the other human as human.

2.2 How marriage resolves the problem of sex

There is, for Kant, one condition under which sex is enjoyed morally: marriage. In marriage, a person permits himself to be used for sexual satisfaction because he “dedicates” or “yields” himself as a whole person (LE 27:388). What seems to qualify this condition, what distinguishes it from merely consensual sex, is that in marriage one enjoys not only sex with the other person but the overall happiness and life of the other person. Kant says, “This right to dispose over the other’s whole person relates to the total happiness, and to all circumstances bearing upon that person” (LE 27:388). It is because one gives one’s whole person—the composite of body *and* personality—over to the other that sex is morally justified in marriage. One’s whole person must be disposed over with one’s body because they are, considered morally, inseparable. The only way to have moral sex is to obtain the other person as such—as a human subject—in addition to her body, and one can only rightfully obtain another person in addition to her body by freely submitting his own whole person over to the other. It is only through this mutual submission that sex can be enjoyed morally.

Kant professes that the mutual submission of whole personhood between two people through which sex is rendered morally permissible constitutes an essentially contractual view of marriage. As Kant describes at one point in the *Lectures on Ethics*:

I give the other person...a right over my *whole* person, and this happens only in marriage. *Matrimonium* signifies a contract between two persons, in which they mutually accord equal rights to one another, and submit to the condition that each transfers his whole person entirely to the other, so that each has a complete right to the other’s whole person.
(LE 27:388)

In marriage, one agrees to submit one's whole person, including body, to another's possession with the provision that the other will make an equal submission. The mutual submission of personhood generates in each party a right over the other's person. This right includes the use of the person's body for sexual gratification. The emphasis on mutuality is key here. Marriage avoids the debasement of humanity because, though I dispose myself over as property to another, I regain ownership of myself. When I surrender my whole person in marriage, I simultaneously dispose of and repossess my whole person "for I gain the person to whom I gave myself as property" (LE 27:388). It is only because one repossesses his whole person in marriage that marriage constitutes the sole condition under which one can morally dispose over oneself (MM 6:278).

The mutual disposal and repossession of personhood constitutes a "united will" between the two partners (LE 27:388). The wills of two individuals become united through marriage in a way that is, according to Kant, impossible outside of marriage. The conception of a "united will" here is not immediately clear, but it becomes clearer in the context of Kant's general theory of contract, to which I now turn.

2.3 Marriage as contract

To understand Kant's contractual account of marriage, it will help to outline the mechanics of his conception of contract generally and to describe the process of marriage in Kant's own terms of contract—something he himself neglects to do. For Kant, contract is a particular means of acquiring property involving a transfer of possession from one person to another (MM 6:271). This involves first some negotiation—expressions of *offering* and *assent*—and then what Kant refers to as two conclusory acts—*promise* and *acceptance* (MM 6:272). For example, Pete owns a chip-n-dip and Peggy owns a pellet gun. Pete *offers* Peggy the chip-n-dip in exchange for her pellet gun. She *assents* to this offer. They each declare their intention to perform this exchange—this is the *promise*. They each

accept the other's promise and become bound to perform what is promised: the contract is discharged when Peggy and Pete exchange the chip-n-dip and pellet gun.

There are two instances of acquisition in contract, according to Kant. Acquisition occurs in the first instance during the conclusory acts of contract—the promising and acceptance of the promise. Kant thinks that what is acquired in a contractual agreement is the promise of the other party and that, by acquiring the promise of the other, a right against the other person is generated (MM 6:272, 274). It seems quite odd to claim that one can *acquire* another's promise, but I take the upshot of Kant's claim to be that the acquisition of a promise consists in the conferment of a right, that the acceptor's acquisition of the promisor's promise confers a right upon the acceptor against the promisor. Pete gives Peggy a right against him by promising her the chip-n-dip. The promisor is bound to perform what was promised. This right is a right to take action against the other if he does not deliver on his end of the contract; the acceptor has this right against the promisor insofar as the promisor is obligated to deliver the promised thing to the acceptor (MM 6:274). When the thing is delivered, the acceptor's right *against the promisor* dissolves and the acceptor acquires a right *to the thing* (MM 6:275). Kant notes that until the thing comes into my possession, my right “is only a right against a person, to require of the seller *performance* of his promise to put me in possession of the thing” (MM 6:275).

So how does this play out in a marriage contract? How exactly do the marriage partners come to possess each other under the contractual scheme just outlined? Although Kant classifies marriage as a kind of contract, he does not spell out the process of marriage in terms of his mechanics of contract. Doing so is possible in the following way: what is mutually promised and accepted in a marriage contract is the possession of a whole person—personality and body. In marriage, I promise my wife possession of my whole person and I accept her promise to do the same. The kind of union involved in a marriage is generated *only* by the mutual acquisition of each

other's whole person. This seems to suggest that the exchange occurs, and so that what is promised is performed, immediately upon mutual acceptance. However, "A marriage contract is *consummated* only by *conjugal sexual intercourse*" (MM 6:279). A marriage contract remains a mere "*simulated* contract" until the partners have sex (MM 6:279). On Kant's account, no formal, public ceremony is necessary in order to constitute a marriage. The enjoyment of another person's body is, after all, the aim of the marriage contract, according to Kant; it is the reason the parties enter into the contract at all. That the marriage contract is only discharged when the couple has sex suggests that what is truly promised in a marriage contract are, say, body parts. Indeed, Kant says that marriage is a union between two people with an aim "for lifelong possession of each other's sexual attributes" (MM 6:277).²

As will be shown in the next chapter, Hegel thinks that Kant gets marriage wrong and that his own conception of marriage averts alleged problems with Kant's for several reasons. Unlike Kant, Hegel thinks that the proper goal of marriage involves not making sex morally acceptable, but subordinating the sexual desire—and selfish desires generally—to a higher, ethical goal. In addition, unlike Kant, Hegel does not think that we can ever justifiably dispose over our person, even if the disposal is mutual, and, moreover, does not think of sex in terms of disposal. Finally, whereas Kant believes that the conclusory act of a marriage contract is sexual intercourse, Hegel believes that marriage is concluded at the moment the agreement to marry is declared before the family and community in the wedding ceremony.

3 HEGEL: MARRIAGE IS NO CONTRACT

Hegel thinks Kant's contractual view of marriage is mistaken. This is clear when Hegel says that "marriage is not a contractual relationship as far as its essential basis is concerned" (§163R). He even

² Though I do not intend to address it here, it is notable that Kant's insistence that what is promised in a marriage contract is the whole person of each partner seems to be at odds with his claim that the marriage contract is only discharged when the partners have sex.

expresses downright repulsion at the thought that marriage is a type of contract. In his own discussion on contract, he says, “*Marriage* cannot...be subsumed under the concept of contract; this subsumption – which can only be described as disgraceful – is proposed by Kant” (§75).³ In this chapter, I outline Hegel’s rejection of a contractual view of marriage. This will involve determining what Hegel’s own view of contract is and developing the contrasts Hegel himself draws between contract and marriage. Understanding why Hegel rejects the contractual view of marriage will provide a basis for the following chapter in which I attempt to develop an adequate understanding of how the ceremony functions necessarily in constituting a marriage by comparing it to aspects of contract.

3.1 Hegel on contract

As in Kant’s system, contract in Hegel’s system serves to account for the possibility of acquiring property that is already the property of another person. According to Hegel, contract is a “relationship” between persons that is formed for the sake of exchanging property (§74). This relationship consists in a temporary unity of will which is a “common will” (§75). Though the wills momentarily “relinquish their difference and distinctiveness” as individuals when they form a contract, Hegel emphasizes that these wills are understood to be unified only insofar as they will the same thing. This common will is temporary and mediated between the two property owners (§§73-74).

Much as Kant distinguishes between acquiring a promise and acquiring the promised thing, Hegel distinguishes between a “substantial” exchange he locates at the heart of contract and the actual transfer of objects. For Hegel, the exchange in contract takes place at the moment the agreement is uttered (§79). In Hegel’s terms, the utterance of the agreement is the “stipulation,” and

³ Also, in the Addition to §161, Hegel says that “it is...crude to interpret marriage merely as a civil contract, a notion which is still to be found even in Kant.”

the fulfillment of the agreement is the “performance” (§78). Hegel says that the contract is properly concluded at the moment of stipulation, where the performance is simply the “selfless consequence” of the stipulation (§79R). This point about an exchange taking place at the moment the agreement is uttered is based on a distinction between possession and property (§78). The exchange of property occurs at the moment the terms are stipulated because *property* is an aspect of the will, whereas *possession* is an external aspect of ownership (§§51-55). Hegel recognizes that when we acquire property, it is still our property even when we are not in possession of it. Since property consists in a will’s relation to some object, in how a will identifies with an object, the exchange of property agreed upon in a contract takes place at the moment the agreement occurs, not at the moment of performance.

An example may help illuminate. Pete currently owns a chip-n-dip. The chip-n-dip is his property and he is in possession of it. Peggy currently owns a pellet gun. The pellet gun is her property and she is in possession of it. Peggy and Pete have been talking and it just so happens that Pete is interested in owning Peggy’s pellet gun, and likewise Peggy is interested in owning Pete’s chip-n-dip. They recognize this mutual interest and decide to exchange these things. At the moment they both express their agreement to this exchange, at the moment they “stipulate” the exchange, the chip-n-dip becomes the property of Peggy and the pellet gun becomes the property of Pete, even though the chip-n-dip is still in Pete’s possession and the pellet gun in Peggy’s possession. Again, this is because, for Hegel, *property* is determined by the will, not by where an object happens to be in the physical world. Peggy and Pete are bound by their common will, which was generated through their uttered agreement, to perform the exchange. The performance occurs when Pete delivers the chip-n-dip to Peggy and she the pellet gun to Pete. This physical exchange—the exchange of possession—is merely the rightful consequence of the stipulation.

The point about the exchange of property (distinct from the exchange of possession) taking place at the moment the agreement is stipulated reflects a key aspect of Kant's account of contract—that there is something about the utterance of will that binds those involved to the agreement. In this respect, there is no relevant difference between Hegel's and Kant's view of contract. Indeed, for both, rights against each party are generated at the moment promises are mutually accepted (for Kant) or at the moment the agreement is stipulated (for Hegel). In both, the mutual agreement of each party consists in a common will that dissolves when the things agreed upon are delivered, and this will is a common will in respect to which specific rights are generated. But, as I will show in the next section, for Hegel, marriage involves a union of wills that is essentially different from the kind of common will generated in contract, one that in fact does not generate contractually relevant rights, and this is the primary reason Hegel rejects Kant's account of marriage.

3.2 Hegel on marriage consent

Now that we have a sketch of Hegel's account of contract, let's turn to marriage and consider the difference between the two. First, it will be helpful to determine what is agreed upon in a marriage and how to understand what is exchanged, if anything, according to the agreement. Once this is clear, we will be better able to understand why Hegel thinks marriage is sufficiently different from contract.

Hegel thinks of the marriage consent as a consent to surrender one's personality. In marriage, the partners “consent to *constitute a single person* and to give up their natural and individual personalities within this union” (§162). Later, he says that marriage involves “personality or immediate exclusive *individuality* which enters into and surrenders itself to this relationship” (§167). In §168 he calls the agreement in marriage a consent to “the *free surrender* by both sexes of their personalities.” In marriage, each partner gives up his or her personality in exchange for membership in a new personality. This transformation does not entail that I part with my personality and take on

the other's; the point is not to adopt the other's interests and beliefs at the cost of my own. Instead, we both constitute a new person, such that we both, as the particular persons we are, come to identify ourselves as and to have goals in proportion to this new person.

The consent in marriage also involves the subordination of sexuality. Hegel opens the discussion of marriage claiming that, in marriage, “the *union* of the natural sexes, which was merely *inward* (or had being only *in itself*) and whose existence was for this very reason merely external, is transformed into a *spiritual* union, into self-conscious love” (§161). This obscure statement means that, before marriage, the partners in the relationship lack a loving disposition, a disposition appropriate to the kind of relationship that it suggests. The union only has existence through sex or outward appearance, but needs to have existence in the partners' self-conception if it is to be a marriage. So, a relationship in which sex is unsubordinated is deficient (as “merely inward”), and marriage, which in part involves the subordination of sexual desire, removes this deficiency. Later, he says “the natural drive is reduced to the modality of a moment of nature which is destined to be extinguished in its very satisfaction” (§163). In the section dedicated to the wedding ceremony, Hegel suggests that the consent in question is most importantly a consent to the subordination of sexuality: “The sensuous moment which pertains to natural life is thereby [upon completion of the ceremony] put in its ethical context as an accidental consequence belonging to the external existence of the ethical bond, which may even consist exclusively in mutual love and support” (§164). Finally, in the Remark to §164, we see that “the ethical character of love” is the “higher suppression and subordination of mere natural drive,” the “reduc[tion of] the sensuous moment to a merely conditional one.”

These passages suggest that the marriage consent consists in the free choice to make the sexual drive inferior to the considerations of the ethical bond through the surrender of personalities, and that this subordination of sexuality only becomes real, in some sense, after the declaration has

been uttered in the ceremony. Hegel further describes the ethical determination of marriage as a “pledging” which “thereby reduces the sensuous moment to a merely conditional one – conditioned, that is, by the true and ethical character of the relationship, and by the recognition of the marriage bond as an ethical one” (§164). In other words, the consent in the marriage ceremony is a consent to make the end of the relationship an ethical one instead of one based on sexual satisfaction. But this does not mean that the whole point of marriage is to subordinate the sexual drive to some ethical purpose. The way in which sexual desire is subordinated is important. Connecting this to the aforementioned production of a “single person,” the partners vow to invest a principal interest in the well-being of this new person, instead of in sexual satisfaction *per se*. Once married, the lovers' approach to their relationship is not, or is no longer, defined by a preoccupation with sexual gratification. This does not mean that sex should not be sought nor had in marriage, but that sex is enjoyed merely in the context of an ethical relationship and is not the ultimate goal of this newly constituted person.

In sum, then, the marriage consent is a consent by the partners to surrender their personalities in order to constitute a new person. In this process, a transformation occurs whereby sexual gratification is subordinated to a higher end—the higher end(s) of this new, marital person.

3.3 Why marriage is not contractual

A marriage is not a contract, according to Hegel. One straightforward line of reasoning he gives for thinking marriage is not a contract is that a contract is an agreement to exchange “individual external thing[s]” and “only things of this kind are subject to alienation” (§75). But marriage, as we have seen, is an agreement between two people to surrender their *personalities*. Though they own their personalities as property, the partners cannot rightfully alienate their personalities because a personality is not an individual external thing. Hegel claims that “I may abandon as ownerless anything belonging to me or make it over to the will of someone else as his

possession – but only in so far as the thing is *external in nature*. . . . [My] own distinct personality and the universal essence of my self-consciousness are therefore *inalienable*” (§§65-66). Furthermore, to dispose over one’s physical or mental attributes for more than a designated period of time would be to enter into slavery (§67, §67A). Thus, the partners cannot become spouses by alienating themselves over to the other and marriage cannot be correctly categorized as a kind of contract. The surrender of personalities involved in marriage, then, cannot be the kind of trade-exchange it appears to be under Kant’s view of marriage.

There is another, more significant difference between marriage and contract: marriage results in a transformation of one’s self-identification whereas contract does not. Hegel explains that “marriage is not a contractual relationship as far as its essential basis is concerned. For the precise nature of marriage is to begin from the point of view of contract – i.e. that of individual personality as a self-sufficient unit – in order to supersede it” (§163R). Understanding “point of view” as self-identification or self-consciousness, the very transformation involved in marriage—from two persons to one person—requires overcoming the individualistic self-identification from which we enter and leave contract; however, entering a contract does not involve any such overcoming. Hegel is sure to note that, when two persons enter into a contract, “each of them is and remains a will distinctive for itself and *not identical* with the other” (§73). A marriage, however, is founded on “the disposition [appropriate to the family] . . . to have self-consciousness of one’s individuality *within this unity* . . . so that one is present in it not as an independent person but as a member” (§158). Thus, marriage is not a contract because the common will generated in marriage is predicated on an overcoming of the individualistic self-identification from which we enter and leave contracts.

This new sense of membership is achieved in marriage, but not in contract, by the introduction of a loving disposition, or rightfully ethical love (§161A). In marriage, the partners’ personalities become unified through their dispositions of mutual love and care. Hegel says that the

“*ethical* aspect of marriage consists in the consciousness of this union as a substantial end, and hence in love, trust, and sharing of the whole of individual existence,” and then goes on to refer to this type of consciousness as a “disposition,” as “the ethical spirit” (§163, §163R). The surrender of personalities that constitutes a marriage describes the felt change of disposition, from a disposition preoccupied by “the particular need of the *single individual*” and “selfishness” into “care and acquisition for a *communal purpose*” (§170). For the sake of contract, however, one’s affective disposition toward the other party does not matter. The parties enter a contract as primarily self-interested individuals and remain primarily self-interested irrespective of how they feel in relation to each other. For Hegel, this means that though the stipulation of a contract binds each to perform the exchange, generating a common will between them, this common will is only “common” insofar as it is a reflection of the self-interest of each party.

In sum, marriage is different from contract in at least two significant ways for Hegel. First, marriage does not require the kind of trade-exchange characteristic of contractual relationships, namely the exchange of alienable things. Second, marriage results in a transformation from the contractual, self-interested disposition to a loving, communal disposition.

3.4 What about the ceremony?

It is important not to forget that many of the events I’ve just discussed—the subordination of sexual desire, the surrender of personality, and the transformation of disposition or “spirit”—take place in the wedding ceremony, according to Hegel. That marriage differs from contract precisely because it involves a transformation in disposition that overcomes the deficiency of a self-sufficient life is an interpretation on which the scholarly literature is almost unanimous.⁴ However, though the dominant interpretation is unobjectionable as far as it goes, it is not sufficiently explanatory.

⁴ In addition to Williams and Hardimon, whose interpretations on this point I outline next, see Landes (1981) pp. 9-10, Steinberger (1986) pp. 585-87, Westphal (1992) pp. 38-41, Halper (2001) p. 830, Peperzak (2001) pp. 411-12, Knowles (2002) p. 247, Brooks (2007) pp.65-66, and Ciavatta (2009) p. 102.

Specifically, this dominant interpretation completely fails to address the fact that Hegel takes the wedding ceremony to be a necessary component of marriage. It therefore overlooks one of the main components of Hegel's own conception of marriage. What these scholars are less clear on, or neglect to address, is the role the wedding ceremony plays in that transformation. For example, Robert R. Williams (1997) discusses Hegel's account of marriage extensively. I share Williams' interpretation of the difference between contract and marriage. Williams explains that the dispositions of contracting parties makes no difference for the fulfillment of the contract whereas disposition is essential to those getting married. In this sense, the loving disposition that, in part, constitutes a marriage lifts the wedded out of the deficient, abstract independence experienced in contract. However, Williams talks only briefly about the "consent" involved in marriage, and not nearly robustly enough to convey a satisfying understanding of the wedding ceremony. For example, Williams ignores the importance of the spoken agreement in both contract and marriage. Even given Williams' interpretation of Hegel's account, we might still wonder why we cannot be lifted out of the abstract independence simply by being in a loving relationship, without participating in any ceremony. Why is the ceremony necessary and not just love? Similarly, Michael Hardimon (1994) claims that the key aspect of marriage, for Hegel, is the free consent to unify personalities. Hardimon's discussion, however, focuses more on providing a clear understanding of the nature of the unification than on the way in which the consent achieves the unification. Hardimon does acknowledge that the nature of the union itself, as a free surrender of personalities, is difficult to grasp, and his exposition is helpful. But, an understanding of how Hegel thinks the union comes to be through the wedding ceremony might illuminate his conception of what it is.

From such interpretations—those like Hardimon's and Williams'—one might mistakenly conclude that the wedding ceremony is superfluous to Hegel's account of marriage. However, Hegel suggests that the ceremony is crucial for the establishment of a marriage (§164). Regarding the belief

that love is sufficient to constitute a marriage, Hegel says, “Although such an opinion claims to impart the highest conception of freedom, inwardness, and perfection of love, it in fact denies the ethical character of love...” (§164R). In the Addition to the same section, he attributes this opinion to seducers, especially to the likes of Schlegel. In the next chapter, I propose a two-part interpretation that accounts for Hegel’s insistence that the wedding ceremony is necessary in order to constitute a marriage.

4 THE IMPORTANCE OF THE WEDDING CEREMONY

In this chapter, I propose an interpretation that understands the ceremony to be necessary to the constitution of a marriage insofar as (1) the declaration of consent is not merely expressive of the consent but the performative act that introduces the loving disposition in the partners and (2) the new marital person requires the recognition of the community in order to be counted as a person at all. It is not that we attain the disposition appropriate to marriage prior to the ceremony and then something crucial is added by the ceremony. Rather, the attainment of the loving disposition is sufficient, but it cannot be attained without the ceremony. In this section, I first explain the force of the declaration of consent in terms of performative speech acts. This interpretation depends heavily upon a comparison between the solemn declaration of consent spoken during the wedding ceremony and the stipulation of a contract as described by Hegel. I then explain why the declaration of consent must be uttered ceremoniously before an audience.

4.1 The declaration of consent

Hegel’s distinction between marriage and contract seems to suggest that marriage is constituted when both members of the relationship achieve a loving disposition, but he is explicit in §164 that he believes that the relationship is not a marriage until the wedding ceremony is

completed. So how is it that the loving disposition is only introduced in the wedding ceremony? Answering this will at least get us closer to understanding the importance of the ceremony.

One way to try to explain the introduction of loving disposition is to reject Hegel's insistence on the necessity of the wedding ceremony. David Ciavatta takes this route. Ciavatta's interpretation of Hegel on this point seems to ignore or disregard the importance of the ceremony's declaration of consent. Rather, it is the felt familiarity and shared life that is important. Ciavatta says, "The actual, shared life we have come to live is itself the expression of our commitment to each other—a durable, living actualization of spirit that says more than any contractual commitment could" (pp. 104-05). According to Ciavatta's interpretation of Hegel, the loving disposition is actualized not by ceremoniously consenting to marry, but by living a life in which one loves, trusts, and shares an existence with someone. What Ciavatta says may provide a more attractive presentation of marriage to modern readers, but it disregards, without justification, Hegel's comments on the importance of the wedding ceremony.

Though Hegel repudiates the contractual conception of marriage, his emphasis on the solemn declaration of consent uttered in the ceremony can be illuminated by his description of the stipulation uttered in a contract. Hegel himself tells us that there is an analogy between the stipulation of a contract and the solemn declaration of consent by referring us to §79, but he does not do the work of spelling out the analogy. What he does say is that,

Just as the stipulation of a contract in itself contains the genuine transfer of property (see §79), so also do the solemn declaration of consent to the ethical bond of marriage and its recognition and confirmation by the family and community constitute the formal *conclusion* and *actuality* of marriage. . . . It is accordingly only after this ceremony has *first taken place*, as the completion of the *substantial* [aspect of marriage] by means of the sign – i.e. by means of

language as the most spiritual existence of the spiritual (see §78) – that this bond has been ethically constituted. (§164)

Hegel goes on to say that only after the ceremony do the sexual act and the desire for it become subordinate to the *substantial* concerns of the marital unit (§164). But, he ultimately neglects to explain *how* an expression through language achieves these things. In the following discussion, I hope to provide a way to understand the solemn declaration as having the power to introduce the requisite loving disposition by looking back to the sections on contract. This, I believe, can be done without characterizing Hegel’s account of marriage as a contractual one.

In contract, the stipulation is, in one sense, simply the expression of what is agreed upon—a linguistic formalization of what is willed. Stipulating the agreement makes the resolve to exchange property known to both parties; it is the utterance that confirms the will to exchange property. The stipulation, in part, informs the other party of “the decision which the will finally reaches” (§78R). The contract becomes objective only when the content of what is willed by both parties (that I exchange items with you) is expressed. Language is key here as the means of stipulation. First of all, an agreement which has been reached must be given existence “in accordance with the distinctive manner in which *representational thoughts have their existence in signs,*” and language is “the most appropriate medium of intellectual representation” (§78). That is, if an agreement is to be given intersubjectively available existence, it must be given in a mode appropriate to the kind of thing it is, namely a kind of intellectual representation. If the agreement, as a mere thought, is never represented, it cannot be known and there can be no prospect of exchange. Likewise, the consent to marry must be given a recognizable existence, and the most efficient way to do this is by speaking it.

This idea that the declaration of consent matters because it gives the decision to marry an objective existence is discussed in some of the scholarly literature. For example, dedicating only a few lines to the declaration of the wedding ceremony, Peter J. Steinberger notes that the function of

the declaration is to make the decision to marry actual instead of merely implicit (Steinberger, 1986: p. 588). Similarly, yet more extensively, Dean Moyer accounts for the importance of the declaration of consent in these terms. Moyer emphasizes that neither the subjective component (the loving disposition) nor objective component (the declaration of consent) described by Hegel can be absent in order to constitute a marriage. To declare an unfeeling bond in a wedding ceremony would not constitute a marriage, nor would a fully spiritual and loving relationship constitute a marriage without declaring the felt bond in a wedding ceremony. Neither component on its own constitutes a marriage (Moyer, 2011: p. 178). The declaration of consent in the ceremony is necessary as an *externalization* on Moyer's interpretation. One may be certain that one is in love—one may feel the bond—but in order to qualify as ethically right, the bond must meet a condition of objectivity. The felt bond of love must be exposed, and language is the only medium through which a person can expose his feelings (pp. 176-77).

Though Moyer does emphasize the necessity of the ceremony in which one gives expression to the felt bond, his interpretation, and Steinberger's even more so, on this point calls for more explanation. Both explanations suggest that the partners might have already achieved the requisite loving disposition and are merely reporting or attesting it. But if the partners have already achieved loving dispositions, the ceremony becomes a formality. Furthermore, Moyer explains that the expression of the felt bond is necessary, but even given his interpretation, we might still wonder why the consent must be declared publicly. On Moyer's or Steinberger's view, two partners might constitute a marriage by expressing their love for each other in privacy, yet this possibility goes against Hegel's insistence on the public aspect.

I think an interpretive problem remains, one that no scholar on this topic adequately addresses. This expressivist explanation of the necessity that the consent to constitute a new person be given an objective existence does not seem to explain how the declaration effects a loving

disposition in the partners. I believe that a more satisfactory explanation is one according to which the declaration of consent is not a mere expression or representation of loving disposition but is itself the act by which loving disposition comes to actually exist in those who agree to marry.

This performative interpretation is suggested in Hegel's discussion of the stipulation in contract, as well. In the form of a performative act, language goes beyond representation to *embodiment*. In Hegel's own words, "[t]he utterance of a stipulation is not just an utterance in general; on the contrary, it embodies the common will which has come into being..." (§79R). The stipulation is more than an assertion, because it embodies the free choice of each party. In this sense, the agreement becomes knowable, but becomes knowable in a special way. In fact, according to Hegel, once the stipulation is uttered, both parties become alienated from the things to be exchanged and the contract is complete (§79). As we have seen, the actual exchanging of things, which has not yet occurred, is merely the necessary consequence of the expressed agreement (§79R). In Hegel's own words,

The stipulation contains the aspect of will, and hence the substantial element of right in a contract. In contrast to this, the possession which remains in force so long as the contract is unfulfilled is in itself merely the external aspect, which has its determination in the will alone. Through the stipulation, I have relinquished an item of property and my arbitrary will over it, and it has *already become the property of the other party*. In terms of right, I am thus immediately bound by the stipulation to perform what has been agreed. (§79)

Because the exchange of property in fact occurs at stipulation, I have no right to change my mind and keep what I intended to exchange—the thing to be exchanged is no longer mine. As the special kind of expression it is—a performative act—the stipulation supersedes “the arbitrariness of *disposition* and its liability to change” (§79R). In other words, one binds oneself to the agreement through the stipulation. Just as the mutual stipulation introduces the substantial element of the

contractual agreement—i.e. results in the alienation of the property from each party—the mutual declaration of consent introduces the substantial element of the agreement to marry—i.e. results in a loving disposition, the subordination of sexual desire, and a new person. Likewise, just as the stipulation binds the parties to the contract, the declaration of consent binds each partner to the agreement to marry.

In addition to this binding, norm-generating element of the declaration of consent, the marriage union must be considered permanent. It cannot rely solely on love, which is after all a feeling. Simply expressing one's care or love is inappropriate for the kind of relationship a marriage is: one in which we enter and exist freely. Love as a mere feeling is too "capricious" and "transient" (§161A). The feeling must take a rational form. It becomes rightfully ethical love when it is rationalized as a decision and expressed as an agreement, as the free consent of each partner. When the decision to marry is expressed as an embodiment of will, the relationship takes on the form described by the agreement and it is now up to the partners to maintain the agreement indefinitely. This indissolubility feature is a key aspect to a marriage, according to Hegel. We find in the Addition to §163 that "marriage should be regarded as indissoluble *in itself*." If the partners' love is never rationalized, the relationship continues to depend on the arbitrariness of pure feeling, which leaves the relationship quite susceptible to dissolution. Moreover, a relationship founded purely on feeling simply cannot be considered ethical. As Hegel notes, "love, as a feeling, is open in all respects to contingency, and this is a shape which the ethical may not assume. Marriage should therefore be defined more precisely as rightfully ethical love, so that the transient, capricious, and purely subjective aspects of love are excluded from it" (§161A). Though feeling is clearly crucial for a successful marriage, according to Hegel, the arbitrariness of pure feeling must be overcome, just as is required in contract. If the partners' feelings are never rationalized appropriately, there can be no

marriage. In short, the declaration of consent is important as a rationalization of the partners' feelings for each other.

I think this performative interpretation of the role of the declaration of consent is the best way of explaining its importance for constituting a marriage. This interpretation fits well with Hegel's other comments in §164. In explaining what would have to be accepted were the declaration of consent considered unnecessary, Hegel says,

If the *conclusion of marriage* as such—i.e. the ceremony whereby the essence of this bond is expressed and *confirmed* as an ethical quality exalted above the *contingency* of feeling and *particular inclination*—is seen as an *external formality* and a so-called purely *civil precept*, nothing remains of this act except perhaps the purpose of edification and of attesting the civil relationship. (§164R)

Note that if one understands the ceremony as a mere formality, the only purposes the ceremony holds are “attesting the civil relationship” and “edification.” This means that there is more to the wedding ceremony than its formal aspects, like attestation and edification. It is clear from this that Hegel thinks that the function of the ceremony goes beyond merely reporting on some pre-established decision or feeling. Indeed, this suggests that a merely expressivist understanding of the importance of the ceremony is mistaken. Rather, the essential purpose of the ceremony is the norm-generating, performative act of the declaration of consent.

It may be tempting to think of the marital declaration of consent as a promise. According to the standard performative interpretation of a promise, what I do when I promise is enter into an obligation to do something in the future. In this sense, the promise is not merely a report on some inner mental act of mine, but is rather itself the act through which I become obligated. Now consider the traditional depiction of a wedding ceremony. Usually there are various promises or promise-like utterances made. The partners thereby obligate themselves to behave in certain ways in

the future (to love, to comfort, to honor, to have and to hold, etc.). But the declaration of consent that occurs in the wedding ceremony is not a promise, as Hegel thinks of promise. According to Hegel, a promise is an expression of one's intention to do something in the future, but a promise "remains a subjective determination of the will" (§79R). If the agreement declared in the wedding ceremony were a promise, as Hegel conceives of promise, the wedding ceremony would involve the expression of an intention to behave a certain way for the rest of the lovers' lives. But what is agreed to in the ceremony must, according to Hegel, be actualized at the moment it is uttered. The agreement in a marriage is expressed as the free choice to be unified, just as the expression of the agreement in a contract "is itself already the existence of [the] will's decision" (§79R). A wedding ceremony may include various promises, but none of these count as the substantial utterance of the event. The consent declared in the ceremony consists in an affirmation of a new person through the introduction of a loving disposition which occurs at that very moment.

In sum, Hegel's emphasis on the expression of the agreement as the substantial moment of contract is important for understanding the function of the declaration of consent in the wedding ceremony. First, the consent to marry is only acknowledged and assured when expressed, or "attested." This expression of the decision to marry makes the decision known, but, as we saw, this can only be a formal aspect of the wedding ceremony. Second, just as in the stipulation of a contract, the declaration of consent in the wedding ceremony is the type of utterance—one whereby the determination of the will is objectified, whereby merely abstract freedom becomes actualized, in Hegel's terms—through which I become bound to my partner. In addition, the relationship can only "stand out as indissoluble" if the partners rationalize their love by expressing their decision to subordinate the sexual desire for the sake of a shared existence marked by love and trust.

So far, the ethically legitimating force of the declaration of consent is explained without incorporating the publicity of the consent. So, why is the stipulation in the absence of an audience

sufficient for contract, but the consent involved in marriage seems to require an audience in order to be ethically transformative? So far, publicity seems to be unnecessary. In the next section, I attempt to make sense of the importance of the public aspect of the ceremony by appealing to Hegel's notion of person.

4.2 The publicity

Thus far we have seen that the feature that both marriage and contract share is the expression of agreement, and it is the comparison of the stipulation in contract with the declaration of consent in the wedding ceremony which helps explain the necessity that the partners utter their consent to marry. Like the expression of the agreement of a contract through language—the stipulation—the expression of consent of the marital partners embodies the free choice of both, and this utterance has force insofar as it gives the feeling of love an objective, normatively binding existence. However, even granting this interpretation, we might yet wonder why the declaration of consent need be pronounced ceremoniously to an audience, namely to the family and community (§164). If the performative act of the declaration of consent introduces the loving spirit, why the need for an audience? Hegel says very little about this aspect of the ceremony. In this section, I propose a few possible interpretive solutions, favoring one in particular—one that applies Hegel's notion of person to the creation of the new marital person.

One possibility is to suggest that the public aspect is not in fact essential to the constitution of a marriage. Perhaps Hegel's depiction of the ceremony in §164 is in part an attempt to vindicate the tradition of the wedding ceremony by vigorous handwaving, and so we should not read much into it. However, my goal is to tease out some reasonable ground on which Hegel's claim, that a marriage is only constituted after the ceremony, can stand. An interpretation that makes Hegel out to be vindicating popular convention should only be entertained once other possibilities have been exhausted.

Another possibility is that the publicizing of the declaration is necessary to the constitution of a marriage insofar as it instills a sense of momentousness to the occasion. Hegel does suggest that marriage, even though in fact dissoluble, must be perceived in principle as indissoluble (§163A, §176A). The publicity of the declaration is thus necessary, we might conclude, because it facilitates the perception that the marriage is indissoluble. Once it is announced in front of the family and community, it will have always been announced. It may, in the end, be disavowed or betrayed, but never unheard, and this fact makes the momentousness created by the audience so important. In short, what is at stake by deciding to marry becomes more apparent and intensified in the presence of witnesses, especially one's family and community. This explanation is not totally implausible since Hegel does suggest, at least in the Addition to §163, that state legislation should make divorce as difficult as possible in order to uphold the principled indissolubility of marriage and thus the "right of ethics against caprice." Of course, this seems to lessen the role of love as the basis of the felt bond between the spouses. In other words, it seems unlikely that Hegel would mean that the function of the public aspect of the ceremony is to provide a basis for the endurance of the union: this is precisely the role that the loving disposition plays in Hegel's account of marriage. Moreover, as I discussed in the previous section, the declaration of consent implies the permanence of the new marital person because it is the rationalization of the partners' feelings for each other, not because it is declared in front of an audience. Thus, the question regarding the importance of the publicity of the declaration of consent remains.

Another possibility is one that incorporates Hegel's insistence that the institutions of ethical life exist in such a way that they remind the members of a community that those institutions are rational and endorsable. In the ceremony, everyone watching gains insight into or is reminded about how marriage, as an institution, is rational. The marriage itself is a sign—a model in miniature of civil society. The ceremony forces the couple and witnesses to be cognizant of the social operation

present in their lives. The wedding ceremony is how we come to understand the role that marriage-membership plays in ethical life. Through the declaration of consent, the partners' affirm their union with one another, and, performed as a spectacle, marriage as an institution of ethical life is witnessed and understood as rational and so as something that all present can endorse.

It is not so implausible to think that marriage, a fundamental aspect of Hegel's conception of Ethical Life, requires this kind of confirmation from its participants. Hegel himself acknowledges that to enter into marriage, to surrender one's personality for the sake of a new marital person, does seem to require an agreement to a self-limitation (§162). To consider marriage to be a self-limitation may make it undesirable to many people. But to think of marriage as some detrimental self-limitation would be to misunderstand the nature of marriage and to overlook the "liberation" it entails "as an attainment of substantial self-consciousness" (§162). The ceremony demonstrates that the institution is good because it adequately reflects ethical spirit and necessary because the decision to sacrifice one's individuality, in the way peculiar to love, is a matter of freedom and so of right. Thus, it seems at least appropriate that the act of marriage be one that demonstrates marriage to be a rationally endorsable institution. But demonstrating marriage to be rationally endorsable likely counts as the "edification" aspect of the ceremony, which Hegel lists as one of the merely formal aspects. Even if this is a function of the ceremony, it cannot count as part of the explanation for why the ceremony is necessary in order to constitute a marriage.

Only if we take Hegel's insistence on the single person created by the union quite seriously can we understand the publicity of their agreement to marry as necessary for constituting a marriage. Indeed, the new marital person should be understood technically; the description of the union as a new marital person is not merely a manner of speaking or a handy explanatory device. Moreover, it would be a mistake to conflate "person" with "human." Rather, Hegel employs the word "person"

in a purely legalistic sense. Hardimon emphasizes this point, that it would be a mistake to understand the new marital person figuratively. Rather,

Hegel thinks that marriage involves a transformation not only of one's public status but also of one's private self-conception. In his view, marriage is not, strictly speaking, a partnership – a union in which the separateness of the parties is preserved – but, instead, a deeper and more thoroughgoing union in which the separateness of the parties is overcome. We might take exception to this view, but it is crucial to recognize that it *is* the view that Hegel holds. (1994: p. 180)

This new identity consists in an altered perspective or disposition, namely one wherein I take myself to be *of* another, to be a part or member. I agree with Hardimon that Hegel takes the spouses' self-identification as this new marital entity to be deep and thoroughgoing, so much so, I want to suggest, that the recognition of a third party is required in order for the new marital entity to be considered a person in the fullest sense.

That the separateness of the partners is overcome in marriage is not only crucial for understanding the nature of the “new marital person”; as I now want to show, it is also crucial for understanding Hegel's claim that the agreement to marry be declared before and recognized by an audience. The two partners surrender their personalities in order to form a new person. But, according to Hegel, part of being a person in the fullest sense involves recognition by others, so these two individuals, as a new marital person, would require recognition by an outside party—namely their community.

Hegel thinks that part of being a person in a fully ethical sense—i.e. a subject with rights—means relating to and being recognized by others. In §35, we find that a subject is a person insofar as it considers itself to be free, insofar as it has “a *simple* reference to itself in its individuality.” But in order to generate rights, this self-conception must occur in the context of others, specifically, one

must be recognized as a person by others. We can extrapolate this fact from the beginning sections of Abstract Right and from the beginning sections of Civil Society. In §36, Hegel says that “Personality contains in general the capacity for right” and in §40 he outlines the most immediate ways in which rights exist: individualistically and interpersonally. To be a fully ethical, right-bearing person, a subject (1) will have the relevant conception of himself as free, “the freedom *of an individual* person who relates only to himself,” but, in doing so, he (2) “relates himself to another person” (§40). Thus, recognition by others is required in order to be a person, in Hegel’s terms. The connection between personhood, right, and recognition is probably most decipherable in Hegel’s commandment of right: “Personality contains in general the capacity for right and constitutes the concept and the (itself abstract) basis of abstract and hence *formal* right. The commandment of right is therefore: *be a person and respect others as persons*” (§36). It is implicit in the commandment of right that personhood requires some mutual recognition. As Williams notes, the individualist and interpersonal aspects mentioned above are jointly necessary to the existence of rights. “Rights can be exercised and asserted only by individuals,” says Williams, “but they are not fully actual until recognized and respected by others” (1997: p. 140). We also find the recognition requirement for personhood later in *Philosophy of Right*. Hegel says that a “particular person [a person with particular desires, drives, etc.] stands essentially in relation to other similar particulars, and their relation is such that each asserts itself and gains satisfaction through the others” (§182). This means, in part, that relation to others is essential to the concept of personhood. In short, the concept of personhood includes the existence of rights, and the existence of rights presumes and requires mutual recognition.⁵

If being a person requires the recognition of others, and if marriage marks the creation of a new person, it does not seem unreasonable for Hegel to assert that the wedding ceremony is

⁵ For more on the topic of recognition as a requirement for personhood in *Philosophy of Right*, see Williams (1997) pp. 135-40, Landes (1981) p. 9, Ciavatta (2009) pp. 94-97, esp. 95.

necessary for the constitution of a marriage. The declaration of the agreement to surrender one's personality for this new marital person itself has the power to activate the loving disposition required to constitute a marriage, but this new marital person is not technically a person until it is recognized by its community. The two partners are taking on rights that affect both how they are entitled, obligated and relate to each other and how others must now relate to them as a new marital person—with its new, more substantial ends—that is different from how others would relate to them if they were not married. Before, others related to the partners as the particular persons they were—persons with certain self-interested ends. Now, they are members of a personality with new ends, and in order to be a fully ethical person, their union requires the recognition afforded in the wedding ceremony.

5 CONCLUSION

Hegel's view of marriage is essentially non-contractual. According to Hegel's view, whereas in contract things are exchanged in order to make use of them, no exchange proper takes place in marriage. A contract is for the sake of a transference of things. A marriage is for the sake of a new mode of self-identification. A contractual account of marriage would mean a marriage which was not based on love, but on the use and ownership of one's partner, as Kant's account is. Such a relationship would not facilitate the overcoming of the purely self-interested standpoint of contract, an overcoming that is central to Hegel's vision of Ethical Life. In contract, a common will is forged from two self-sufficient wills, yet those wills remain self-sufficient. In marriage, on the other hand, a union is formed from two self-sufficient wills through which their self-sufficiency is overcome.

Though a loving disposition is what constitutes a marriage, for Hegel, an account of marriage that does not include the wedding ceremony is a deficient one, for it is in the ceremony that this loving disposition is introduced. It isn't enough to form a loving disposition over the course

of a relationship; so says Hegel, a loving disposition is only activated once the wedding ceremony is concluded. Just as the stipulation of a contract is normatively binding as an embodiment of will, we should understand the force of the marital declaration of consent as a normatively binding embodiment of will—it has performative force. My consent to surrender my personality for the sake of this new person, this performative act, is not a mere expression of my will, but is an embodiment of my will. Furthermore, upon being uttered, the content of the consent actualizes. When I consent to create this new person, I attain the disposition necessary for this relationship to endure—a disposition of love, trust, and shared existence. The union formed in marriage endures because it is built upon a rationalized feeling of unity, not of self-interest.

The publicity involved in the ceremony is also necessary for the constitution of a marriage according to Hegel. We saw that one reason the public aspect of the ceremony is important is that it satisfies Hegel's requirement that an institution be manifestly rational and endorsable. The ceremony of marriage is an unambiguous symbol of ethical life. But this edification is a formality of the ceremony; it does not account for Hegel's insistence on the necessity of the public aspect of the ceremony. I advanced an interpretation according to which the public aspect of the ceremony is necessary because marriage consists in the creation of a new person. Hegel takes the creation of the new marital person quite seriously. But, according to Hegel, personhood requires recognition by other persons. Thus, in order to be a person, the couple's union needs to be recognized.

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