



Hegel on Ethics and Politics

EDITED BY ROBERT B. PIPPIN AND OTFRIED HÖFFE

THE GERMAN PHILOSOPHICAL TRADITION

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Hegel on Ethics and Politics

This collection brings together in translation the finest postwar German-language scholarship on Hegel's social and political philosophy, concentrating on the *Elements of the Philosophy of Right*. Many of the essays appear in English here for the first time; all are translated anew.

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Portions of this book were published previously. Hans Friedrich Fulda's chapter is a shortened version of his monograph, *Das Recht der Philosophie in Hegels Philosophie des Rechts* (Frankfurt am Main, 1963). The following are sources for Chapters 3 to 12. Karl-Otto Apel, "Kant, Hegel und das aktuelle Problem der normativen Grundlagen von Moral und Recht," in *Kant oder Hegel? Über Formen der Begründung in der Philosophie*, ed. Dieter Henrich (Stuttgart, 1983), 597–624; Michael Quante, "Die Persönlichkeit des Willens' als Prinzip des abstrakten Rechts," in *G. W. F. Hegel, Grundlinien der Philosophie des Rechts*, ed. Ludwig Siep (Berlin, 1997), 73–94; Joachim Ritter, "Person und Eigentum: Zu Hegels *Grundlinien der Philosophie des Rechts* §§34 bis 81," in *Materialien zu Hegels Rechtsphilosophie*, vol. 2, ed. Manfred Riedel (Frankfurt am Main, 1974), 152–75; Manfred Baum, "Gemeinwohl und allgemeiner Wille in Hegels Rechtsphilosophie," in *Archiv für Geschichte der Philosophie* 60 (1978): 175–98; Wolfgang Schild, "Die Aktualität des Hegelschen Strafbegriffs," in *Philosophische Elemente der Tradition des politischen Denkens*, ed. Erich Heintel (Wien/München, 1979), 199–233; Siegfried Blasch, "Natürliche Sittlichkeit und bürgerliche Gesellschaft: Hegels Konstruktion der Familie als sittliche Intimität im entsittlichten Leben," in *Materialien zu Hegels Rechtsphilosophie*, vol. 2, ed. Manfred Riedel (Frankfurt am Main, 1974), 312–37; Rolf-Peter Horstmann, "Über die Rolle der bürgerlichen Gesellschaft in Hegels politischer Philosophie," in *Materialien zu Hegels Rechtsphilosophie*, vol. 2, ed. Manfred Riedel (Frankfurt am Main, 1974), 276–311; Dieter Henrich, "Logische Form und reale Totalität: Über die Begriffsform von Hegels eigentlichem Staatsbegriff," in *Hegels Philosophie des Rechts: Die Theorie der Rechtsform und ihre Logik*, eds. Dieter Henrich and Rolf-Peter Horstmann (Stuttgart, 1982), 428–50; Ludwig Siep, "Verfassung, Grundrechte und soziales Wohl in Hegels

Philosophie des Rechts,” in *Praktische Philosophie im Deutschen Idealismus*, by Ludwig Siep (Frankfurt am Main, 1992), 285–306; and Michael Wolff, “Hegels staatstheoretischer Organizismus: Zum Begriff und zur Methode der Hegelschen ‘Staatswissenschaft,’” in *Hegel-Studien* 19 (1984): 147–79.

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Hegel (1991), and co-edited *Skeptizismus und spekulatives Denken in der Philosophie Hegels* (1996).

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Works by Hegel

Note: ET = English translation.

- B* *Briefe von und an Hegel*, ed. J. Hoffmeister, in *Sämtliche Werke: Neue Kritische Ausgabe*, vols. 27–30 (Hamburg, 1952–60); ET: *Hegel: The Letters*, trans. C. Butler and C. Seiler (Bloomington, Ind., 1984).
- BA* *Berliner Antrittsrede*, in *GW XVIII*.
- BS* *Berliner Schriften*, ed. J. Hoffmeister (Hamburg, 1956).
- EPW* *Enzyklopädie der philosophischen Wissenschaften*, in *TW VIII–X*. ET: *The Encyclopedia Logic: Part I of the Encyclopedia of Philosophical Sciences*, trans. T. F. Geraets, W. A. Suchting, and H. S. Harris (Indianapolis, 1991); *Hegel's Philosophy of Mind, Being Part Three of the Encyclopaedia of the Philosophical Sciences* (1830), trans. William Wallace (Oxford, 1971).
- EPWB* *Enzyklopädie der philosophischen Wissenschaften*, ed. K. Rosenkranz (Berlin, 1870).
- EPWG* *Enzyklopädie der philosophischen Wissenschaften in Grundrisse* (Heidelberg, 1817).
- ER* *Über die englische Reformbill*, in *TW XI*, 128; ET: *Hegel: Political Writings*, ed. L. Dickey and H. B. Nisbet, trans. H. B. Nisbet (Cambridge, 1999), pp. 234–70.
- FS* *Frühe Schriften*, in *TW I*; ET: *Early Theological Writings*, trans. T. M. Knox (Chicago, 1948).
- GW* *Gesammelte Werke*, ed. Von der Rheinsisch-Westfälischen Akademie der Wissenschaften (Hamburg, 1968–).
- JR* *Jena Realphilosophie*, ed. J. Hoffmeister (Hamburg, 1931) [and in *GW*]; ET: *Hegel and the Human Spirit* (Hegel's

- Second Philosophy of Spirit), trans. L. Rauch (Detroit, Mich., 1983).
- JS *Jenaer Systemwürfe*, in GW VIII.
- MJDL *Maximen des Journals der deutschen Literatur*, in TW II.
- NRA *Über die wissenschaftliche Behandlungsart des Naturrechts, seine Stelle in der praktischen Philosophie und sein Verhältniss zu den positiven Rechtswissenschaften*, in GW, vol. 4.
- PhG *Phänomenologie des Geistes*, in TW, III; also in SW II; ET: *Phenomenology of Spirit*, trans. A. V. Miller (Oxford, 1977).
- PS *Politische Schriften*, afterword by J. Habermas (Frankfurt, 1966).
- Rph *Grundlinien zur Philosophie des Rechts*, in SW VII; or *Grundlinien der Philosophie des Rechts*, ed. E. Gans, 2nd ed. (Berlin, 1840); ET: *Hegel's Philosophy of Right*, trans. T. M. Knox (Oxford, 1942).
- RphH *Grundlinien der Philosophie des Rechts*, ed. J. Hoffmeister (Hamburg, 1955).
- RphW *Die Philosophie des Rechts: Die Mitschriften Wannemann (Heidelberg 1817/18) und Homeyer (Berlin 1818/19)*, introduction and commentary by Karl-Heinz Ilting (Stuttgart, 1983); ET: *Hegel: Lectures on Natural Right and Political Science*, trans. J. M. Stewart and P. C. Hodgson (Berkeley, 1995).
- SGP *Vorlesungen über die Geschichte der Philosophie*, ed. J. Hoffmeister (Leipzig, 1940).
- SPR *Schriften zur Politik und Rechtsphilosophie in Sämtliche Werke VII* (Leipzig, 1913); ET: *Proceedings of the Estates Assembly in the Kingdom of Wurtemberg, 1815–1816*, in *Hegel's Political Writings*, ed. Z. A. Pelczynski, trans. T. M. Knox (Oxford, 1964).
- SS *System der Sittlichkeit*, in GW V; ET: *System of Ethical Life (1802/3) and First Philosophy of Spirit (1803/4)*, ed. and trans. H. S. Harris and T. M. Knox (Albany, N.Y., 1979).
- SW *Sämtliche Werke: Jubiläumausgabe in zwanzig Bänden*. New ed. by H. Glockner (Stuttgart, 1927–40).

- TW *Werke in zwanzig Bänden: Auf der Grundlage der Werke von 1832–1845. (Theorie-Werkausgabe)*, ed. E. Moldenhauer und K. M. Michael (Frankfurt am Main, 1969–71).
- VD *Die Verfassung Deutschlands*, in TW I; ET: *Hegel: Political Writings*, ed. L. Dickey, trans. H. B. Nisbet (Cambridge, 1999), pp. 6–101.
- VGP *Vorlesungen über die Geschichte der Philosophie*, in TW XVIII; also in SW XVII–XIX; ET: *Hegel's Lectures on the History of Philosophy*, 3 vols., trans. E. S. Haldane and F. H. Simson (New York, 1974).
- VPG *Vorlesungen über die Philosophie der Geschichte*, ed. E. Gans, 2nd ed. (Berlin, 1840); ET: *Hegel: Political Writings*, ed. L. Dickey, trans. H. B. Nisbet (Cambridge, 1999).
- VPR₁ *Vorlesungen über Rechtsphilosophie, 1818–1831*, vol. 1: *Der objektive Geist aus der Heidelberger Enzyklopädie 1817 mit Hegels Vorlesungsnotizen 1818–1819. Naturrecht und Staatswissenschaft nach der Vorlesungsnachschrift von C. G. Homeyer 1818/19. Zeitgenössische Rezensionen der Rechtsphilosophie* (Stuttgart-Bad Cannstatt, 1973).
- VPR₂ *Vorlesungen über Rechtsphilosophie, 1818–1831*, vol. 2: *Die Rechtsphilosophie von 1820 mit Hegels Vorlesungsnotizen 1821–1825* (Stuttgart-Bad Cannstatt, 1973–).
- VPR₃ *Vorlesungen über Rechtsphilosophie, 1818–1831*, vol. 3: *Philosophie des Rechts nach der Vorlesungsnachschrift von H. G. Hotho 1822/23* (Stuttgart-Bad Cannstatt, 1973–).
- VPR₄ *Vorlesungen über Rechtsphilosophie, 1818–1831*, vol. 4: *Philosophie des Rechts nach der Enzyklopädie zweite und dritte Auflage (1827 und 1830). Philosophie des Rechts nach der Vorlesungsnachschrift von D. F. Strauss 1831 mit Hegels Vorlesungsnotizen* (Griesheim Nachschrift) (Stuttgart-Bad Cannstatt, 1973–).
- VPW *Vorlesungen über die Philosophie der Weltgeschichte*, ed. J. Hoffmeister (Hamburg, 1955); ET: *Lectures on the Philosophy of World History*, trans. H. B. Nisbet (Cambridge, 1975).

- VUPR *Vorlesungen über die Philosophie der Religion*, in TW XVI; ET: *Lectures on the Philosophy of Religion*, ed. P. C. Hodgson, trans. R. F. Brown, P. C. Hodgson, and J. M. Stewart (Berkeley, 1984).
- WBN *Über die wissenschaftliche Behandlungsarten des Naturrechts, seine Stelle in der praktischen Philosophie und sein Verhältnis zu den positiven Rechtswissenschaften*, in GW IV (*Jenaer Kritische Schriften* II), eds. H. Buchner and Otto Pöggeler (Hamburg, 1968) [or in TW II]; ET: *On the Scientific Ways of Treating Natural Law, on Its Place in Practical Philosophy and Its Relation to the Positive Sciences of Right*, trans. H. B. Nisbet, in ET: *Hegel: Political Writings*, ed. L. Dickey and H. B. Nisbet, trans. H. B. Nisbet (Cambridge, 1999).
- WDA *Wer denkt abstrakt*, in TW II, 575–581; ET: “Who Thinks Abstractly?” in *Hegel: Reinterpretation, Text, and Commentary* (Garden City, N.Y., 1965), pp. 461–65.
- WL *Wissenschaft der Logik*, ed. G. Lasson (Hamburg, 1966); ET: *Science of Logic*, trans. A. B. Miller (London, 1969; rpt., Amherst, N.Y., 1999).
- WLTW *Wissenschaft der Logik*, in TW V–VI; also in GW 12.

I

Introduction

Robert Pippin

I

Postwar Hegel scholarship in the twentieth century developed along quite different paths in Anglophone commentary on the one hand, and in Continental interpretation on the other. In England and America, the most important questions were often as much about historical fate as about Hegel's philosophy. Understandably, the great, pressing question after the war was the mysterious, baffling German question: Why had it happened? How could a country that is home to so much of such importance in European civilization have been the source of such unprecedented barbarity and insanity? Commentators looked for some dark underside to modern German culture and philosophy, stubbornly resistant to the liberal ideals of the Enlightenment and finally to social and political modernization itself. They thought they found what they were looking for in an irrationalist, anti-individualist nineteenth-century German romanticism, and they identified its chief spokesman as G. W. F. Hegel. To such commentators as Sidney Hook, Karl Popper, E. F. Carr, and many others, Hegel's philosophy epitomized many aspects of this deadly virus:¹ a kind of deification of the state (especially the Prussian state that employed him in Berlin), along with a purportedly traditional "German" willingness to play an assigned social role with blind, completely submissive obedience (Bertrand Russell said that Hegel's notion of freedom was "the freedom to obey the police"), a mistrust of democratic politics or "the open society" in general, a politics that seemed to reject any role for the individual in

favor of the individual's fixed role in an "estate," class, or state, a nationalist self-glorification based on a faith in a providential history that had bequeathed to the Germanic peoples the leading world-historical role, a "might makes right" assumption about how such a history progressed, and therewith a justification of war and power politics. (All these charges of course were extensions and intensifications of criticisms of Hegel widely discussed in many languages since the very first reviews of the *Philosophy of Right*.²) When such claims were thought together with characterizations of Hegel's theoretical philosophy as a monistic theology that purportedly denied the independent existence of individuals (or even of contingency) and that was supposed to demonstrate its claims by appeal to a fantastic "dialectic" that suspended the law of noncontradiction, Hegel's philosophy stood for many convicted not only of a totalitarian rejection of liberalism but of a transformation of historical and philosophical analysis into a mystified terminological mumbo-jumbo.

This situation began to change with the publication of Marcuse's *Reason and Revolution* (especially Marcuse's defense of Hegel against the old charge of collaboration with and support of the reactionary forces in Prussian politics) and then with later books such as Avineri's *Hegel's Theory of the Modern State* and especially Charles Taylor's very important *Hegel*. Hegel's objections to the deracinating and alienating effects of modern liberal society, his insistence on the character of modern civil society as the key to understanding modern political life, along with his equally strong insistence on the separation of civil (and economic) society from the proper concerns of politics (and the state) and his emphasis on the subjective experience and affirmation of modern citizens as ineliminable in any case for the normative legitimacy of political authority, all together with his appeal to the role of reason in modern societies came to look not like an irrationalist antiliberalism but like a broader consideration of and ultimate defense of liberal democratic society itself. This broader treatment made a consideration of the social and historical conditions necessary for a sustainable, free society an aspect of the philosophical understanding of the nature of such a society and its claim to authority. It was also based on a refusal to compartmentalize various questions about the components and structure of such a society, and instead to stress the interdependence of questions about rights claims, welfare, punishment, familial organization, economic life, and state power, all within some "ethical whole." Perhaps the late-twentieth-century erosion of the reach and authority and even independence of the modern state and the political sphere in general, along with the ever more apparent limitations

of a politics oriented wholly from the protection of rights and entitlements or from issues of general welfare, have altered the way Hegel now looks to Anglophone commentators or have placed on the agenda issues that traditional rights-based theories are ill equipped to handle. At any rate, a string of sophisticated, philosophically rich, and largely sympathetic books on Hegel's social and political thought has been appearing in English for some time and the interest shows no signs of abating. There are even some indications that the textbook characterizations that have for so long made Hegel's speculative philosophy look so unappealing have begun to lose their authority, and that a thorough reconsideration of Hegel's holism, his theory of concepts and conceptual change, his practical account of knowledge, and his objections to all forms of dualism is under way.

On the continent in the last fifty years or so, the situation has been quite different. It suffices merely to note the importance of Marxism and "critical theory" (or what has sometimes been called "neo-Hegelian Marxism") for French and German and Italian intellectuals and philosophers in order to point to one major reason for such a different reception. One would also have to take careful account of such things as the influence of Kojève's idiosyncratic Hegelianism on a couple of generations of French intellectuals and writers, the "Hegelian" rediscovery of the problem of (and the threats to) modern subjectivity, as well as the turn from a mainly class to a larger cultural and more holistic framework in Frankfurt school critical theory to do justice to the attention to Hegel. In very general terms, for many, the only modern philosopher who had begun to develop the resources to understand and "theorize" the distinct aspects of the rapidly changing, unprecedented nature of modern society was Hegel. Prepared by attention to Hegel's historical approach, one might then have the resources to be able to understand the development of liberal democratic society into a mass, anonymously administered, all-encompassing, and soul-deadening consumer society. (For many, of course, this preparation required eventually Marx and neo-Marxists.) This is not to say that Hegel did not also assume a somewhat demonized role for thinkers such as Heidegger, Deleuze, Derrida, and Adorno, but he assumed this role as representative of some much larger fate – the philosophy of subjectivity, of totality, of Western metaphysics, the fate of modernity itself – and thereby benefited enough from such sweeping back-handed compliments at least to retain a role as a "Master Thinker."

In the midst of such renewed postwar attention (although not necessarily in any direct response to political and cultural concerns), German

philosophical scholarship on the entire German Idealist tradition developed very rapidly after the war and came to make up the core of German philosophical activity, in the same sense that neo-Kantianism played that role at the end of the nineteenth century. And such scholarship was undertaken with a sense of philosophical urgency, not merely as the kind of scholarly journalism that often results from work in what is called “the history of philosophy.” The idea was not just to state as accurately and fully as possible “what philosopher X really meant,” however bizarre and philosophically hopeless, and then to trace the historical influences that would have led X to say such things. Rather, in some cases, the hope was to understand Kant, or Fichte, or Hegel on some topic of philosophical relevance to which these philosophers could contribute. In some cases this relevance was possible only after considerable “rational reconstruction,” in other cases by appeal to different, unprecedented readings. (This was especially true of theories of self-consciousness, and the conditions that must be met in any successful account of self-consciousness, as in the so-called Heidelberg school of the 1960s and 70s.³) In other cases the goal was to state more carefully (and less polemically, in a way more sensitive to the texts) just what Hegel got wrong or where he went astray, and why it might still be philosophically interesting that he did. And of course in many other cases the primary goal was simply to develop interpretations that did proper justice to the genuinely philosophical complexity and ambitions of Hegel’s project, interpretations not part of the fixed positions available in the “left”- or “right”-wing Hegelianism of conventional readings. In many cases, philosophers working on the Idealist tradition were also familiar with current topics in Anglo-American philosophy and could begin suggesting ways in which Hegel’s work could be brought to bear on such controversies. And of course, in a way typical of European philosophical scholarship in general, there were several attempts to put Hegel in a dialogue with other classic figures and positions in the tradition, to distinguish his position by comparison and contrast with Aristotle, Hobbes, Rousseau, Fichte, and Kant, and to understand his mature position by carefully accounting for the development of his views. Finally, all such efforts were aided by an intensification of scholarly research (especially about the figures and issues “between” Kant and Hegel, and even more especially, in Jena), by the concentration of research materials at the Hegel archives in Bochum, by the publication of a new, exhaustive and carefully re-edited “critical” edition of Hegel’s works, as well as the volumes that we treat as his, but that were compiled from student lecture notes (both series by Felix Meiner Press), and by such

valuable resources as K.-H. Ilting's four-volume set of the notes on the political philosophy lectures,⁴ and Dieter Henrich's edition of and introduction to the notes of the 1819–20 edition of Hegel's *Rechtsphilosophie* lectures.⁵

II

The chapters in this volume partly and roughly follow the structure of Hegel's best known presentation of his ethical and political theory, his *Elements of the Philosophy of Right*. The first section is called "Methodological Issues," and several topics related to Hegel's famous claims in the Preface to that book are discussed by Hans Friedrich Fulda and Karl-Otto Apel.

To be sure, it should also be noted parenthetically that that "methodology" title could also cover a large number of other articles in the collection. Indeed, one distinguishing aspect of much of the German work on Hegel in the last couple of years has been the attempt by scholars to understand the connection between Hegel's substantive claims and the highly unusual form of presentation he adopts, one that he tells us frequently relies on claims worked out and defended only in his most difficult book, his *Science of Logic*.⁶ The most pressing such "logical" problem in his practical philosophy concerns his proof or demonstration procedure (how he gets from A to B in his claims or from, say, a claim about the "incompleteness" of "abstract" rights claims to an argument about the "priority" of ethical life (*Sittlichkeit*), something like the customary, habitual, "lived" experience of norms) as the necessary completion of such rights claims. The striking methodological fact, obvious on the surface of the text but notoriously hard to reconstruct, is the fact that the "logic" of such a Hegelian demonstration appears to be "developmental" in some way, and not deductive. And this is linked to a broader claim: Hegel appears to have thought that the traditional criteria of explanatory success, common to most science and philosophy, were inadequate to account for natural and spiritual phenomena when these were viewed "speculatively" (in their relation to each other, and within some "whole" of which they were parts), and completely inadequate indeed to account for human doings and sufferings, for the "moving," self-transforming, self-directing character of human life, both individually and collectively. He adopted a method that thus attempted to show the internal limitations of overly "abstract" ways of thinking about conceptual and normative

issues, limitations the inadequacy of which could, on their own, suggest the development of more determinate or “concrete” concepts and norms. Such speculative ambitions are most of all at issue in his most important claims about social and political associations, because the most important question one can raise about modern forms of such association – *what sort of unity* is a modern civil society and a modern state (or *what sort of connection to others* does the claim that I am a participant in such a unity entail) and in just what sense am I *both* a member of such a unity *and* still a concrete individual like no other – cannot possibly be answered with what Hegel would regard as a conventional account of whole-parts relations, or classical concept-instance, universal-particular models (an abstractly formulated universal rule that governs all in the association, applied to concrete particulars by an unformalizable “judgment”), or as a kind of additive unity, or as the result of contractual agreements, or on the model of a family, and so on.

Fulda and Apel join these methodological issues at an equally controversial juncture, where Hegel claims to have succeeded so well in these philosophical ambitions that philosophy can now actually be said to be about, to have as its object, contemporary social and political reality, that the development and resolution at issue is manifested in actual forms of modern social life. (That is, he does not claim that philosophy is able to assess to what extent some society or regime “measures up” to a rationally formulated, pure standard. His claim appears to be that there cannot be such purity or independence in philosophical activity itself.) The famous question raised about this issue arises from the conjunction of two of the best known and controversial formulations of this issue that Hegel ever made: that “philosophy is its own time comprehended in thought,” and that “what is actual is rational, and what is rational is actual.” Taken together this would seem to commit Hegel to the view that philosophical “comprehension” of the actual world is a kind of rational legitimation or justification (a way of detecting the rational core of some form of life, or what he also called “the rose in the cross of the present”), and this would all seem to lead toward some sort of link between philosophical possibility and a given social world at some time, a link that most philosophers would find excessively conservative and an abandonment of philosophy’s critical potential. Fulda takes up this problem in an original way by raising the issue from the standpoint of philosophy’s actual social role within a society and by historicizing the issue of actuality. He notes first that since Hegel was manifestly intensely dissatisfied with many aspects of modern

actuality in general (the terror during the French Revolution, most obviously) and his own actual world in particular (enemies such as Fries, romantic nationalists, and legal positivists), he clearly thought he could fashion a version of such an account of actuality that left room for such critique without reintroducing an empty and critically useless abstract ideal. (In the preface to the *Philosophy of Right*, Hegel had said that his philosophy “must distance itself as far as possible from the obligation to construct a state as it ought to be.”⁷) A good deal of how Hegel understood this role cannot be appreciated, though, unless one attends to what, for Hegel, was the distinctiveness of *modern* societies. For modern societies are, in effect, founded not on tradition or religion or mythology (and certainly not for Hegel on a common ethnicity) but on *philosophy*, on philosophical claims to legitimacy. Thus, philosophy plays an active, very different role in such a community, attempting to articulate to itself its own claim to normative authority in essentially philosophical terms. The important point is that it is only when the “actual” has *become* at least implicitly self-consciously “rational” in this sense that philosophy can itself participate as a social institution in such an attempted self-grounding and successfully find and explore the implications of the claim to rational authority *in* the actual. How it does so and whether it is more critical or more reconciliationist will depend on the circumstances, in ways that Fulda describes.

Apel’s chapter takes off from the same point (Hegel’s rejection of reliance on a “mere ought”) but ascends to an even higher altitude. The general question is, What is implied by Hegel’s rejection of Kant’s philosophical formalism in theoretical and practical philosophy, Kant’s attempt to specify formally necessary conditions for *any* experience and action? For one thing, Apel points out, Kant’s approach left in effect what would emerge later in the nineteenth century as a kind of gap, left no “transcendental” room for an account of the conditions of the possibility of the new sociohistorical kinds of knowledge claims that were to emerge later in hermeneutics, Dilthey, and Weber. And in general the Kantian approach could not account for the social and historical dimensions of moral knowledge in everyday life. In a way inspired by Hegel’s own objections to Kantian formalism, Apel proposes a transformation of transcendental philosophy into a “meaning critical” project, one that investigates the possibility of shared understanding of meaning, and so necessarily ties philosophy to the differing conditions of such a possibility in different social and historical settings (yielding what

is sometimes called in discussions of Hegel only a “relative” a priori dimension).

The chapters by Michael Quante, Joachim Ritter, and Manfred Baum all make especially clear why it can be so misleading to treat sections of Hegel’s *Philosophy of Right* (*PhG*) or of the *Encyclopedia* versions of his “Philosophy of Objective Spirit” as if these sections were individual chapters that one could consult about Hegel’s views on individual topics: the legal status of, or the rights claims of, “persons,” or about “property” or “welfare” considerations. Property rights are indeed discussed in the first section of the *PhG*, but they are discussed again, in a much different way, in the last section, and the same is true of law, punishment, contract, need, responsibility, welfare, and so forth. The issue of property rights is a clear example of the Hegelian affirmation of a normative claim, even while charging the claim, when understood “abstractly,” with a self-undermining incompleteness. (As Quante points out, it is important to remember, in the face of Hegel’s criticisms, that rights claims are affirmed and are meant to be preserved in the subsequent stages of his analysis.) We can appreciate the concrete nature of property claims (the extent of such rights, the transferability or inalienable character of some of what one owns (such as labor power), the taxation and regulation claims of the state, and so forth) only within a certain kind of ethical life, and Hegel thinks he has identified the basic elements of ethical life (*Sittlichkeit*) in his discussion of modern *Sittlichkeit*. A good deal of the *PhG* is meant to establish the priority of such a context or whole for the successful understanding and legitimation of any such part or aspect.

And so, as Quante points out, Hegel defends the normative claim that human beings are owed treatment as “persons,” rights-bearing individuals just qua human beings (or “abstractly,” no matter a person’s status, background, talents, and so forth) even while he presents the issues so as to argue that there are numerous questions that this claim to “person” status raises that cannot be answered “abstractly,” but only by consideration of such persons within a legal system, itself understandable only as a component of a larger, whole *Sittlichkeit*. The first norm defended in the book is thus: “*be a person and respect others as persons,*” where that clearly means respecting abstract rights. (It is also important to note, as Quante does, that the status of “person” is one that must be actively claimed in order to exist; one “is” a person only by subscribing to the injunction to “be” one, and by virtue of being in a society where such a claim has actual status.) But the question of just what counts as respecting another as a person is not something that can be left to the vagaries of “judgment.”

Such a concrete status is not bestowed individually as the result of individual acts of judgment but acquires its meaning in a concrete practice, a use. If we want to understand that, we have to look at that use in an ethical community. By comprehending this community and its practices properly, Quante points out, Hegel hopes to have developed a way of avoiding conceiving of the normative status of individuals as “merely one (abstractly) among many,” or as a distinct, fundamentally isolated particular, or as both, shifting back and forth between such perspectives, now qua universal, now qua particular.

Ritter, while pointing to the importance of the Roman notion of the legal status of person and property (and its legacy in the French *code civile*) also points out the very great importance of Hegel’s distinctive account of property at the opening of his entire account of the “realization” of freedom, the central theme of the *PbG*. Property is the gateway to that account of freedom as a kind of self-liberation from nature and from natural dependence and so represents an indispensable humanizing of the natural world. (Ritter’s account of Hegel can be fruitfully compared with a similar argument in Kant: that it would be irrational for a free being to continue to subsist in the natural world, “allowing” a dependence on nature that could be overcome, that it would be irrational to act as if one were not a free being, as if one were not in one’s freedom in principle independent from nature.) Ritter also helpfully notes that, *pace* Hegel’s famous attacks on the atomistic tendencies of modern societies, the temptation to self-interest, egoism, the potential decline of public spiritedness, and so forth – that is, notwithstanding his full awareness of the great dangers of widespread ownership of private property – Hegel still argues that, in effect, one cannot “actually” be free except as a member of some form of private property-owning society.

In Manfred Baum’s chapter we turn again to the very distinctive characteristics of Hegel’s political and ethical thought, his resistance to formal treatments of normative principles, and his ambition to reconcile positions in political philosophy that he clearly considers both partly right. As Baum points out, he hopes especially for a reconciliation between the ancient political ambition, the achievement of the good life, “welfare” in the broadest sense, and the formal universality of principle and especially procedure insisted on by modern principles of legitimacy. That is, as Baum shows, Hegel accepts the principle that the modern “*Rechtsstaat*” or the rule of equality before the law and rights protection acquires its legitimacy by being understood as the product of “what a rational will would will,” that our allegiance to such a state is in effect, as Hegel says

(echoing Kant), the “free will *willing itself*,” willing the rational will as the principle of authority.⁸ But Hegel hopes to avoid the classic Kantian move at this point in the modern argument, that this freedom can be achieved only by “negating” or rendering irrelevant, disengaging from, the determinate drives, interests, attachments, and so forth that are just contingently “ours” and incline us to act one way or the other, and that cannot be assumed pressing or unavoidable for anyone else. Hegel accepts that this capacity (for reflection on various possible ends to which one might be inclined, and the capacity to determine to act on the basis of some view of what is best, not being compelled by what inclination is strongest) is a necessary condition of freedom, but he denies that it is sufficient, and much of the discussion of Hegel’s alleged “completion” of the Kantian case turns on what such added conditions for actual freedom must be like (without in any way contradicting the “negative” capacity condition). Baum argues that the three forms of rational willing considered in the *PbG* can be considered aspects of a “free will willing itself” when considered not abstractly, merely as such a negative power, but qua concrete subject (who requires property, pursues welfare in a way that recognizes others’ pursuits, who assumes responsibility for his deeds, and, who, as biologically reproducing members of the species, is tied to others in a system of divided labor and national welfare). This argument depends on Hegel’s case in the introduction that the free will is also what he calls a “thinking will” or “intelligence” (not a causal power in the incompatibilist sense). This means that a condition for my being able to recognize a deed as my own is some way of understanding its goodness for me, not just having causally produced it, and much of the interest and controversy of Baum’s reconstruction will depend on the appeal of such a more “intellectualist” account of freedom (apparent in such non-Christian thinkers as Socrates and Spinoza) and understanding how it can be integrated with the remainder of Hegel’s case.

The account by Wolfgang Schild of punishment in Hegel takes up a theme that has produced some of the most pointed and dismissive criticism of Hegel. Many commentators read Hegel as arguing for a kind of “mechanical correction” theory of punishment, as if the criminal’s “negation” of the social order must itself be “negated” in order for things to return to their “positive,” rightful state, a position that not only is bizarre but seems to support a “like for like” or an “eye for an eye” notion of retribution and to claim that the criminal has a right to punishment that it be unjust to deny him, all of which would come as news to most criminals.

But like other commentators, Schild notes that Hegel takes up punishment both under “Abstract Right,” where the main issue is the (abstract) distinction between punishment and revenge, and again in “Ethical Life,” where the discussion is much broader and concerns both the concept of punishment and its purpose. In the latter discussion, Hegel again draws attention to the question of the social and legal conditions for “actual” freedom and treats the problem of punishment in that light (i.e., in light of the question, Is a free life for all “actually” possible if crime goes unpunished?).

In Schild’s account of the heart of the case, Hegel is making no claim for an abstract restitution or “balance” justification of punishment, and certainly not arguing that an evil must be done to the evil-doer. In Schild’s account, the criminal’s act does unavoidably express a commitment to the principle that “persons may thus be treated,” and that it is only a recognition of his status as a free person generally and abstractly to apply the same principle to him, but not in any equally criminal way. And Schild notes the somewhat ironic tone in Hegel’s pronouncements about the issue. (It is the *value* of a victim’s personal integrity and property that would *not* be respected if injuries to it were, in effect, accepted and condoned.⁹) But this leaves a wide area for discussion about the specific application of this principle, and Schild cites many helpful passages that demonstrate that Hegel is perfectly willing to consider issues of diminished responsibility, various degrees of punishment depending on various exculpatory claims, and even that, according to Hegel, attempting to improve the criminal’s moral will represents a “higher way” of rejecting the “evil will” than punishment, where it is possible and consistent with the criminal’s status as a person.

From what we have seen so far, then, it might seem that Hegel’s *PhG* should best be read backward as well as forward, and that that would be a useful lesson. The last five chapters here, on ethical life in general and the state in particular, make clear that the concluding section not only brings Hegel’s case to a kind of culmination but also has been casting a kind of backward shadow over the incomplete attempts he had been exploring earlier, such that those attempts cannot be fully understood without this source of the shadow.

Siegfried Blasche makes an especially strong case for the centrality and priority of Hegel’s analysis of civil society in particular for a proper understanding of abstract right and morality, as well as for the aspects of ethical life that commentators have tended to treat as favored examples of a kind of ethical unity in Hegel, the family and the state. (This is an approach – one oriented from civil society as that for which all else serves

as condition and consequence in Hegel's account of objective spirit – long favored by those influenced by Marx's critique, but it need not itself imply any such commitment. And there are controversies enough about the claim without the issue of Marx arising, as Rolf-Peter Horstmann shows in his chapter.) Blasche argues that the political subject discussed by Hegel – the private property-holding, rights-bearing subject, who seeks his welfare while appealing to conscience and who holds others responsible as individuals for their deeds – is a historically specific sort of subject, a bourgeois. And, in like spirit, his claim is that the family treated by Hegel in the *PhG* is a bourgeois family and hardly “the” family as such. (For one thing, the intimate ethical sphere so important in Hegel's account is only possible if the family and all its members are not themselves economic, productive units, where the demands of economic activity can be separated from the demands of familial life. Unlike the family shaped by the demands of agrarian life, in other words, Hegel's family is not an extended family; there is a great emphasis on preparing children to leave the family, and marriage is not understood as the incorporation of new members into the family, but as the creation of a new family.)

But Blasche also argues that the same situation could be described by saying that the modern family is “reduced” to these emotional, intimate bonds alone, and when so reduced, is much more vulnerable to far more intrusive influences of civil society and its imperatives than Hegel was prepared to admit.¹⁰

Rolf-Peter Horstmann denies that the *PhG* can be properly read as an extended essay on modern civil society, its conditions, and its consequences, and moreover, Horstmann claims, it is not an easy matter to summarize clearly Hegel's basic position on the decisive question, the relation of civil society to the state. There are already important differences in the presentation of objective spirit in the *Encyclopedia* of 1817 (where the differences between civil society and the state are not stressed) and the *PhG* of 1821 (where the difference is emphasized). And there are important developmental, historical, and rhetorical issues involved. Horstmann treats the difference between 1817 and 1821 as stemming from the public reaction to Hegel's essay, written just after he published the *Encyclopedia*, on the Wurtemberg Estates controversy, and to Hegel's desire to separate himself as far as possible from the restorationist tract published around this time by K. L. von Haller, and with which Hegel's strong defense of the monarchy and against the Estates was sometimes identified. Horstmann also tries to place Hegel's *PhG* position in the context of Hegel's long-standing interest in some way of constraining the individualist tendencies

of civil society in favor of a more classical conception of political life, and points out the consequences for Hegel's position when Hegel switched from a model of political development and unity based on an organic and "life" model to one based on the structure of and the conditions for self-consciousness.

After presenting this developmental history, the basic conclusion Horstmann draws with respect to Hegel's claims to "mediate" the desirable goal of a substantial sociopolitical unity with the unavoidable necessities of modern civil society is a skeptical one. In Hegelian language, this means that there remains an unmediated relation between universal norm and particular subject, a situation that still demands an identification with a substantial unity, and so a less than secure status for individuals within Hegel's state.

This issue is addressed in a different way in Dieter Henrich's "Logical Form and Real Totality." As in other discussions here, the problem is to understand the distinct ontological status of the sort of ethical unity, *Sittlichkeit* in general and the state in particular, with which Hegel seems to bring to some sort of resolution to what he had argued were inadequate earlier candidates. Henrich suggests that this problem is the heart of Hegel's speculative system as a whole, that the difficulty of comprehending this unique sort of "belonging together" is what is driving his speculative attempt to understand a form of "unity which permitted and required the dimension of difference."

Hegel's claim, as Henrich presents it, is that this unity (ultimately, our belonging together in the state) cannot be understood in functional or causal terms, that the state cannot be properly understood as the concatenation of individual attempts to pursue their interests or as a function of individuals attempting to solve rationally a collective action problem, and that if we do not understand properly what sort of claim for unity Hegel is making, we will inevitably present a picture that is subject to the standard criticisms. The characters brought on stage in the *PbG* – a rights-bearing person, the moral subject, and the need-satisfying, instrumentally rational empirical, individual agent – will look as if they forfeit any claim to independent status altogether, "vanishing," in effect, into the new ethical substantiality of the state. The alternatives of viewing the state either as the product of the rational will of individuals or as the substantial unity that erases their individual freedom and produces only individual citizens are both rejected; the former because institutions are transformative of individual wills as well as being results of them, and so transform individual subjects that the preinstitutional will can hardly serve as standard,

and the latter because such a radical transformation would eliminate a condition of legitimacy that Hegel regularly argues is necessary in modernity, what he calls the “right of subjectivity” to find satisfaction in its deeds.

Partly, Henrich shows, the case for this distinct unity relies on the relation between universality and particularity worked out in Hegel’s theory of the syllogism; partly it relies on a reinterpretation of an Aristotelian claim about the unity of organic beings, processes of self-differentiating, self-preserving, and reproducing living beings, gradually replacing all their material parts, while remaining substantially one. (This reliance on syllogistic and on organicism is also the topic of Michael Wolff’s concluding paper.)

Ludwig Siep in Chapter II, “Constitution, Fundamental Rights, and Social Welfare in Hegel’s Philosophy of Right,” takes up this “distinct kind of belonging together in ethical life” problem, or the individual-universal issue, with respect to a different problem: the nature of the “constitution” according to Hegel, and the relation between the conditions for the existence of the constitution and the rights guaranteed by it. That is, we face a problem similar to many encountered before. There is no “natural” political whole according to Hegel. On this issue he is clearly a “modern.”¹¹ But if the regime is an artifice of human making, and if it is this artifice with its enforcement powers that specifies what can be rightfully done and what is wrongful, then how do we explain the rightfulness of the instauration itself? We cannot regard the state’s origin as merely the contingent product of individual wills, because the order thus created will be arbitrary, changeable, and so subject to ad hoc cancellations. (The leviathan state is no answer, either, because there is no solution to the successful or secret defection problem.) Rousseau’s problem is thus the serious one. If the state is created by the “will of all,” it remains just a collective use of force by a majority group against another, and has authority only so long as it can maintain its power. But ensuring that the state represents the universal, rational will of subjects, the general will, is not something one can take for granted or merely assume as an ideal. There will in practice be no allegiance to the state if citizens cannot actually recognize *their own* “universal will” in public institutions. This is the “preparation” or “condition” problem that Rousseau solves with his “legislator,” someone responsible for the conditions of rightful instauration occurring, even though there is no way to ensure that the particular measures themselves or some individual’s claim to legislator status is itself rightful.

As Siep points out, Hegel's solution is to replace Rousseau's legislator with the "cunning of history," with a case for the historical establishment of constitutional conditions, and so the constitution itself is understood as much more the expression or coming to self-consciousness of a "Volkgeist," or the spirit of a people. The result of this process is modern civil society, which, as the repository of this historical experience, thus has the function of educating individuals to their real community of interests and genuine political identity. That is all controversial enough. But this also means that the difficulty of any possible rights claims *against* the state is compounded for Hegel. His historical story and his strong objections to abstract or formal principles and claims of entitlement amount to the claim that the only "actual" rights are those that executive power may enforce; executive power is "authorized" to do so only as a result of a long historical process not itself subject to human will (and variously interpretable). Rights claims considered without the concrete conditions of their existence and enforcement are not really rights claims, and this suggests to Siep that Hegel will have problems with modern liberal intuitions about justifiable claims against state power.

A familiar example of such controversies is the notion of a certain level of welfare as a necessary condition for the real existence and authority of certain rights claims. This is something Hegel accepts, but he goes nowhere near as far as Fichte in what he will allow as permissible in order to maintain that welfare (such as state ownership). He remains firmly committed to the necessity of private property as a condition of "actual" freedom as well, all setting the scene, in Siep's account, for familiar tensions. This tension is said to reflect a deeper tension in Hegel, between his insistence that modern political and legal life must be an ongoing "living" practice, a custom, even while also transparent to all, rationally answerable to all. In his attempts to resolve this tension, Siep suggests, Hegel always sided with the priority of such a "living" substantial unity, leaving one unsure about what sort of historically actual, collective unity can be said really to *be* a state, and how a constitutional defense of rights can be made out in his approach. In effect, too much of the "liberal baby" may have been thrown out with the "atomistic, individualist" bathwater.

Michael Wolff's chapter, "Hegel's Organicist Theory of the State: On the Concept and Method of Hegel's 'Science of the State,'" addresses what we have already encountered several times: Hegel's appeal to organic metaphors to try to explain what is so distinct about the unity present in "ethical life." Indeed, to comprehend a living whole in its

self-organizing character is the chief task of speculative philosophy. (Wolff points out that this is essentially, and somewhat ironically, a Kantian idea. Even though Kant denied that organic unity was a possible object of philosophic knowledge, he nevertheless attributed a teleological unity to philosophy itself and its task of determining the true “ends of reason.”)

It was Marx, according to Wolff, who realized that despite appearances, this claim was not a regression but an advance by Hegel; that what Hegel was aiming at had nothing to do with invoking some nonrational model of biological growth or any anti-individualism. Hegel instead was advancing a different way of understanding not only political unity but its “ground,” how we should understand its coming to be and the relation of that coming to be to its rationale. As we have seen before, while Hegel accepts the modern principle that the state should be understood as the product of a self-determining rational will, such a product is not to be understood as the result of a deduction of what such an idealized will would will, but as the product of a growth or development of some kind. In essence, proof is something like “proof of life.” (That said, Wolff will return, at the end of his article, to Marx’s well-known criticism of Hegel and the role of a putative “universal class.”)

The core problem is familiar. Civil society cannot “live,” thrive, and exist as such without the state. Left “on its own,” the potential egoism and self-serving tendencies it promotes cannot be held in check. But the state cannot then be considered an institution in civil society, or all the problems recur. (See the previous sentence.) Most obviously, there is no reason to regard the actual individual administrators as themselves nothing but burghers, self-interested particulars. (Herein the familiar Marxist criticism.) Wolff then presents a clear picture of how Hegel invoked his other great explanatory image (besides the organism), the syllogism, and the relation therein expressed between particular individuality and universality, to make a case for regarding the state as neither a universal requirement standing over against particular interests (as in the difficult requirement to regard oneself as just one among many, to abstract from everything about oneself as a unique individual in order to achieve this point of view) nor as merely the least common denominator (or the “overlapping consensus”) among individuals. Although he then explores many of the details of Hegel’s attempted resolution (and returns to the issue of Kant on unity to emphasize Hegel’s appropriation of some of the most important themes of the *Critique of Judgment*), Wolff is finally not convinced that there can be any such Hegelian “mediation” of the sort of ethical life inherent in modern civil society.

Notes

1. See *Hegel's Political Philosophy*, ed. Walter Kaufmann (New York: Atherton Press, 1970), for a series of exchanges on the issue. The exchange reprinted there between Carritt and Knox occurred already in 1940. Popper's *The Open Society and Its Enemies* appeared in 1950. Hook's blasts at Hegel date from the mid-1960s.
2. The most well-known German accusation of conservatism and accommodationism is Rudolf Haym's *Hegel und seine Zeit* (1857), but he is by no means alone, and the list grows rapidly after the war as many other German commentators jump on the "from Hegel to Hitler" bandwagon. For an excellent and thorough discussion, see parts 1 to 3 of *The Hegel Myths and Legends*, ed. Jon Stewart (Evanston, Ill., 1996), especially Henning Ottmann's compelling chapter "Hegel and Political Trends: A Criticism of the Political Hegel Legends," pp. 53–69, and his remarks on and notes to the German secondary literature.
3. Cf. Ernst Tugendhat's remarks on (and criticisms of) what he calls the "Heidelberg school" in his *Self-Consciousness and Self-Determination*, trans. Paul Stern (Cambridge, Mass., 1989).
4. G. W. F. Hegel, *Vorlesungen über Rechtsphilosophie, 1818–1831* ed. Karl-Heinz Ilting (Stuttgart: Frommann-Holzboog, 1974).
5. G. W. F. Hegel, *Philosophie des Rechts: Die Vorlesung von 1819/20 in einer Nachschrift*, ed. Dieter Henrich (Frankfurt am Main: Suhrkamp, 1983). The Ilting volumes, Henrich's introduction to this edition, and other sources have helped revive the debate about Hegel's alleged accommodationism, for the most part in Hegel's favor.
6. One could also say that, with some exceptions, it has been a characteristic of English-language commentary to ignore such a connection, on the assumption that there is nothing of any contemporary value in Hegel's speculative philosophy.
7. *PbG*, p. 21.
8. It is obvious enough that this principle is fraught with ambiguity and even paradox. In any account of a regime as artifice, as even just in principle instituted, the theoretical relation between the prepolitical and the political (itself supposedly the only "subject" entitled to coerce and punish, the very source of normative authority) will be problematic, and is so in contexts as different as Hobbes's "prisoner's dilemma" problem and Rousseau's "legislator." In German philosophy, the most important locus classicus is Kant's famous claim in the *Groundwork of the Metaphysic of Morals* that "[t]he will is thus not merely subject to the law, but is subject to the law in such a way that it must be regarded also as legislating for itself and only on this account as being subject to the law (of which it can regard itself as the author [Urheber])." AA, 431.
9. This is itself a controversial and challengeable claim, of course. That punishment, as opposed to any number of other conceivable reactions, is the only way to ensure the reconciliation Hegel argues for is far from obvious.

10. A “haven” in a truly “heartless” world will not be a haven for long.
11. Although, of course, in other respects, he differs radically with other moderns, especially Kant. For the latter, the state functions as a formal condition, within which the development of natural capacities can occur rightfully, whereas for Hegel, historical development is not the unintended fulfillment of a natural plan (the development of “unsocial sociability” in order to stimulate perfectability) but is contrary to nature (he sides with Rousseau here) and becomes an *end in itself* (his most “classical” claim). This is discussed in these terms in Wolff, Chapter 12.

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OVERVIEW

2

The Rights of Philosophy

Hans Friedrich Fulda

It was Hegel, more than any other thinker, who first expressly integrated the domain of historical experience and the continuing effects of the past into the substance of philosophical reflection.¹ But his own comprehensive and differentiated interest in such objects of reflection has not so much prevented as even encouraged an unparalleled critical discussion of the appropriate relationship between thought and actuality, specifically in relation to his own philosophy. For what are the rights and obligations of philosophy, as a social and political “institution,” with respect to making its presence felt within the realm of actuality? And how are we to adjudicate the potential conflicts that may arise between the practice of philosophy and that of other institutions? To ask this question is not a matter of simply addressing the problem of practical and philosophical consciousness in the abstract. On the contrary, it draws philosophy explicitly into the sphere of what Hegel describes as the “ethical world.” How does philosophy appear within the totality of this world? And what can properly be expected of philosophy in this context? What is the role of philosophy in shaping our attitudes and intentions in relation to competing judgments and authorities, and what role does philosophy expressly ascribe to itself in this connection? Can the traditional self-sufficiency of speculative cognition, oriented as it is solely toward the truth, survive the exceedingly mistrustful demand that philosophy demonstrate its practical usefulness? Can philosophy preserve the inner character of its orientation to truth and prevent this orientation, in the admittedly questionable and external conditions of social life, from becoming a breeding ground

for dangerous illusions or a bastion of universal dogmas, and thus in both cases hinder any genuine advance toward pragmatic insight and knowledge? And even then, can philosophy assume for itself the right to criticize the external relations of the social domain? Can philosophy enter into a certain opposition to the ruling power of government without either making itself ridiculous or arrogating power to itself in the process? It is with these questions that the following discussion is principally concerned.

It is a widely shared view that Hegel's philosophy, conceived as an end in itself that finds its ultimate realization in contemplation, possesses no essential positive significance for the domain of any action that is oriented toward the improvement of existing social and historical conditions. And insofar as philosophy can also act as a means to something beyond itself, then its sole function is supposed to consist in serving the sphere of ethical and intellectual culture that itself ensures an attitude of loyalty to the existing social world and general contentment with the existing political state. The idea of reconciliation, now elevated to the central concern of philosophy or regarded as somehow already accomplished in the lower domains of art and religion, seems to suggest that the diremption [*Entzweiung*] to be overcome consists solely in the subjective view that consciousness takes of the state of the world, rather than in the state of the world itself. With the final overcoming of such a subjective view [*Meinung*], and its concomitant transformation into an unshakable conviction of the objective presence of reason, the final end and purpose [*Endzweck*] of the world would thus be attained through philosophy itself – but what an end!

This represents more or less the standard judgment on Hegel as the philosophical apologist for his time. In order to examine this judgment properly and provide a response to the questions asked above, we must pay careful attention to both sides of this characteristic series of oppositions: to the right to exercise a radical philosophical critique of “the existing world” (III) *and* to the conservative tasks that it falls to philosophy to address (II, I); to philosophy's right to participate in truth in an autonomous and self-sufficient manner (I), but also to its possible functions in relation to other purposes (II, III); to the usefulness of philosophy for the state (II), but equally to the difficulties that philosophy may procure for the state (III); and finally not only to the specifically positive and effective right of philosophy to exercise these functions (II, III), but also to the limits of its possibility in these respects (IV).

I. Philosophy's Right to Self-Sufficiency

The entire approach of speculative thought, which cannot as such be considered here, interprets philosophy as a form of knowledge not only in which, from the beginning, the thinker is cognitively engaged in general but as one in which we ultimately grasp philosophy itself in its relation to many other things – as a form of knowledge that essentially takes itself as its own end [*Zweck*]. But philosophy does not simply “take” itself as an end in this way. For, like religion, philosophy in Hegel’s own words (*Rph* §270, in *TW* VII, 417; ET: p. 166) is also and “essentially an *end in itself*,” and indeed justifiably claims to be so. And one cannot do justice to this claim to self-sufficiency by simply regarding philosophy as some higher luxury or a species of *allogria*, for whose innocent play or conspicuous presence civil society might provide a space. On the contrary, philosophy is the purification of spirit from its own unfreedom (*EPW* §562 A), the elevation of thought to the level of true universality, and the elimination of any arbitrariness that clings to it (*JS* III, in *SW* VIII, 274; ET: p. 170). The right of philosophy can only be an ethical one, that is, one in which the identity of the universal and the particular will properly prevail. And philosophy also presents itself expressly as a duty precisely for those who perceive its character as a right (*Rph* §155). The content of this right is fundamentally the same as that of the right to practice religion, with which indeed philosophy shares the same end and substantive content (*BA*, in *GW* XVIII, 25). Both rights rest on the fact that the general liberation of the world from the purely instrumental context of the will and the recognition of secular reason that is accomplished through the intrinsically free intelligence itself grounds a right to the (philosophical or religious) existence of this very accomplishment. The latter is not therefore a matter of ethical indifference but rather, by virtue of the unlimited character of its content, represents “fulfilled ethical life” itself (*WBN*, in *TW* II, 530; ET: pp. 179–80).

This ethical life also grounds, for philosophy as for religion, an obligating right to a certain activity that is independent of any other, pre-given, ends and purposes, and also in this sense a right to an autarchic existence. Religion, Hegel writes, is “a duty in its own right” – “an independent realm and form of life which the individual enters into as a sacred realm, not in order thereby to procure something for himself, something that is arbitrarily pleasing to him and simply serves his own purposes, but rather to relinquish his own purposes.” And similarly, for a specific group

of individuals, philosophy also represents “the region in which man must relinquish his arbitrary desires and his particular purposes, in which he no longer seeks himself and what is his but rather honours himself precisely in participating in that which subsists independently in its own right” (*BA*, in *TW XVIII*, 26). On assuming his new official post in Berlin, Hegel justified his philosophical labors by pointing out that formerly, in addition to the ranks of the doctrinal teachers of religion, there was also a certain class of people who dedicated themselves, without propounding any further doctrine, solely to the service of the eternal. This class of people had now more or less disappeared, as Hegel admits, but the world of scientific and learned endeavor, the free and disinterested exercise of the mind, had already partly begun to take its place. And to fulfill and perfect the tasks that the state has to accomplish in the actual world, Hegel also argues that a specific *class* (*ibid.*, 26ff.)² and a specific form of activity is required, one that is dedicated to the active cultivation of scientific and learned knowledge, and of philosophy in particular. And as with religion, here, too, the very nature of the case implies that the state itself fulfills an obligation insofar as it offers all possible encouragement and protection to philosophy and the ends of the latter.³

However, the “total segregation” of a specific class in this sense can be only a partial one. Reason demands, for the sake of its own existence, a broader and more ramifying sphere of actuality (cf. *Rph*, “Vorrede,” in *TW VII*, 22; *ET*: p. 18ff., and §270 Note, in *TW VII*, 421ff.). Hence it would also be a misunderstanding to imagine that the state has therefore *simply* to serve as a means for philosophy understood as an end in itself (*ibid.*). Just as the “total” segregation of a class dedicated expressly to philosophy can be only “partial,” one that is intended to secure – not least within this class – an existence for reason, so, too, philosophy as an end in itself is also preserved through the very contact with the state that makes philosophy into a means, the state whose substantial unity is equally an end in itself (*Rph* §258). Such a relationship between two factors, each of which exists for its own sake but neither of which can avoid connection with the other, gives rise to considerable difficulties. Hegel himself concealed the depth of these difficulties beneath the apparently even surface of his explicit remarks on the relationship between the state and the world of scientific and learned inquiry. But we can expose these problems more directly if we first consider the question: What is the “usefulness” [*Nutzen*] of philosophy with regard to ethical will and the effective exercise of the latter? The usefulness in question emerges if we examine the genetic conditions to which the right of philosophy, unlike religion, is subject, and

which have themselves promoted the relevant right of philosophy in relation to religion and the intellectual and spiritual culture in general.

II. The Usefulness of Philosophy in Relation to the State

The existence of philosophy as a specific and acknowledged form of intellectual activity – in distinction from religion – has a world-historical presupposition of its own that first manifested itself in the Greek *polis*. For it is only with the establishment of political freedom itself, in which the subject knows itself as such in its intrinsic universality, that there emerges the right to *think* in the authentic sense, that is, to elevate something into the form of universality and to stand by the same. But in addition to this fundamental condition, there is required a further formal presupposition that lies within the domain of intellectual and spiritual culture in general. Philosophy first arises only when the actual world has experienced a certain rupture: when ethical life has separated itself out into immediate actuality and reflection on the latter, thus producing a world of ideality posited over against the real world and a sense of discrepancy between what the spirit wills and the world in which it is supposed to find its satisfaction (*VGP*, in *TW* XVIII, 7off., 116; ET: pp. 50, 94; cf. *TW* II, 2off.; ET: pp. 89ff.). For philosophy is a reconciliation, within the world of ideality, of precisely this condition. Philosophy returns the divergent interests and the separated, particular contents of culture to the unified content that embraces the former.

In relation to the state, philosophy thereby exercises an integrative effect similar to that of religion. This is one of the two ways in which philosophy may be said to be useful to the state, though certainly not only to the latter. Religion instills consciousness with the highest respect and reverence for the laws and obligations of social life insofar as it teaches compliance with the latter as commandments of God and thus “represents” their legitimacy as something immutable (*Rph* §270 note, in *TW* VII, 417).⁴ So, too, philosophical insight instills in the individual respect for the rationality prevailing within the state. Indeed, it accomplishes this task more effectively than religion (*Rph* §270 note, in *TW* VII, 418) since philosophy, in distinction to religion, constitutes an adequate knowledge of the ethical (*ibid.*, §147 note) and cannot corrupt ethical principles by appeal to the form of feeling, representation, or faith (*ibid.*, §418).⁵ Philosophy here stands by the worldly realm and demands the presence of the divine, and the acknowledgment of that presence, within this realm. Over

against the false claims of religious conviction with regard to the right, philosophy thus finds itself at one with the state, which must defend the principles of ethical life and “secure the formal right of self-consciousness to its own insight, conviction and thought concerning what is to count as objective truth over against a church claiming unlimited and unconditional *authority* in this respect” (TW VII, 427; ET: p. 173).

As far as the express political usefulness Hegel ascribed to his thought in the context of academic culture is concerned, he clearly expects this aspect of his practical philosophy to discharge an even sharper polemical function than the kind of religious critique that seemed effectively to have come to an end with an Enlightenment now sufficiently enlightened about itself (*PhG*, in TW III, 424ff.; ET: pp. 349ff.). And here we can recognize the second way in which philosophy may be said to be useful to the state. In the period characterized as that of “the persecution of the demagogues,” Hegel’s polemical position in this respect easily appeared as an express endorsement of the repressive features of the Prussian administration. But in reality the cutting edge of this polemic was as ambivalent as it was problematic. It was justified to the extent that Hegel also realized that philosophy cannot simply recognize the state as the higher repository of knowledge over against religious conviction or the claims of moral conscience. On the contrary, philosophy here regarded itself as the authoritative site for enlightening a state that is unclear concerning its own necessary cultural and political tasks.

Hegel’s attack was essentially aimed at those moralists whose rise he had himself predicted in the *Phenomenology of Spirit*,⁶ as he proudly pointed out after the fall of Napoleon, and that he later condemned as a “rabble of ‘libery-minded’ militants” (B II, 325; ET: p. 474). For him, Fries was the representative figure here. Hegel clearly thought he could descry in Fries all the tendencies of that ideologically distorted public attitude the representatives of which questioned the state grounded on the universality of law that had recently emerged with Napoleon and the French Revolution, and did so pre-eminently by their appeal to the “heart” and “the form of particularity as such” (*Rph* §126). Hegel wanted to reveal the arbitrary and ill-founded intellectual credentials of the academic teachers who championed such tendencies and thus expose them to the same kind of moral censure that they themselves had elevated to the highest authority. But behind all of this Hegel also recognized that the German states – but most especially Prussia, whose rational cause Hegel’s philosophical critique was here intended to support – effectively owed their revival to appeals to the “freedom of the heart and mind” and that the

essential task for the present was that of opening up once again a space for reason expressly as *thought* (BA, in GW XVIII, 12ff.). And indeed the fact that Hegel was hoping to write a book on political pedagogy immediately after and in direct connection with the publication of his *Philosophy of Right* rather suggests a sense of immediate political purpose here (cf. B II, 27).⁷

Hegel's rather embittered tone here certainly contrasts strikingly with that "infinite indifference" that the state, so the *Philosophy of Right* assures us, is entitled to display toward the expressions of mere "subjective opinion" (*Rph* §270 Note, in TW VII, 427). Philosophy could also adopt this posture of indifference if it had not itself fallen into discredit and general contempt precisely through the ceaseless propagation of subjectivism that has come increasingly to afflict the discipline (*ibid.*, p. 17; ET: p. 5). Hegel's desire that the state should protect the science of philosophy against public attacks on it from the protagonists of subjective opinion (cf. BS, p. 750ff.) can therefore be grounded immanently in terms of the *Philosophy of Right* itself (cf. §§137, 140 Note (p. 273ff.); B I, 209). But at the same time this issue equally suggests the problematic character of that "usefulness" that philosophy is able to claim for itself in relation to the state. The problem is clearly revealed by another way in which Hegel criticizes his time, and one that also shows that Hegel's polemic is actually as closely connected with the position of his opponents as its very sharpness would lead one to suspect. For apart from its general contempt for law, it is above all the overemphatic political importance ascribed to sentiment that Hegel directly criticizes in the "Friesian sects." Yet he had been driven to a similar position himself. He stresses, it is true, that appropriate political sentiment is merely the *result* of the institutions that subsist within the state. To regard such sentiment as constituting the first and primary thing would be to confuse it with the realm of opinion (*Rph* §268). In the modern state, political sentiment can be justified only as the substantial form of rational law itself, in addition to which the other – the institutional – form is also required (*ibid.*, §273 Note, ET: p. 438). Both forms are inseparable and neither can properly subsist without the other (*VPR*, in TW XVI, 244ff.; ET: p. 458ff.). One would think, therefore, that any deficiency that arose in this connection would generally affect both rather than simply one of them. But confronted by the July revolution in France, all that Hegel can say is that these events prove that it is only sentiment after all that provides the ultimate anchor even in a state with a formally developed constitution. Sentiment had formerly been neglected and had now simply reasserted itself in contempt of every

institutionalized form. The epoch itself, so Hegel thinks, is suffering from this contradiction and the prevailing ignorance concerning its significance (ibid., p. 246; ET: p. 460ff.; cf. *VPG*, in *TW XII*, 531, ET: p. 192). Ethical sentiment in the state is supposedly rooted in the religious dimension of the former (*EPW* §552 Note, in *TW X*, 355ff.). Hence it has been the greatest error of the age to attempt to treat the inseparable moments of state and religion as if they could be divorced from one another, indeed as if they were simply mutually indifferent (cf. *FS*, in *TW I*, 179ff.; ET: p. 95ff.). On the other hand, Hegel clearly recognizes that the powerful role of religion in consolidating the sentiments is itself being undermined through the general process of subjectivization and privatization of belief. It was this essentially Rousseauian problem of achieving political integration through the agency of the religious consciousness⁸ that had originally led Hegel on from his early critique of religion to the systematic elaboration of philosophy. Indeed, this was such a fundamental theme of his thinking that the fully developed *Philosophy of Right* too, when it came to consider the institutional aspect of the state in its most concrete form, could imagine its institutions being successfully held together only by an appropriate degree of political “sentiment.” If religion could no longer accomplish this, it now fell to philosophy to provide the ultimate support in this respect.

In order to fulfill this task, it was necessary that philosophy, by virtue of its very form, should do everything possible to avoid exposing itself to the dangers of political indoctrination and social ideology. That is why it had to assume the form of “science” [*Wissenschaft*] to ground its own procedures logically and to exercise its critical function on the basis of this methodically secured position. Such critical activity, however, had to be directed pre-eminently toward those distorted expressions of the current intellectual and moral culture that exercised a direct effect on the realm of public opinion. It was not in order to rescue philosophy from the world, as it were,⁹ that Hegel felt himself compelled to secure for this discipline an actual and specific space of its own and to delimit the latter over against the various social and political forces that were agitating for change. He did so, rather, in order to solve a genuine problem of practical philosophy, one that was also essentially a problem of philosophical praxis itself.

But the result of Hegel’s attempted solution in this respect was itself an aporia that corresponds structurally to the aporetic character of the political option that Hegel had already chosen to pursue in general. On the one hand, the monarchical dimension of the state revealed its actual

rationality as the only power capable in principle of mediating between the interests of positive privileges and the demands for genuine freedom (*ER*, in *TW XI*, 128; *ET*: pp. 269–70), but on the other hand this power was currently unable effectively to counter those privileges that appealed to it for support. Thus, it was the task of philosophy in the domain of general culture, precisely as a self-justifying and established science, to relate the maintenance and purification of sentiment indispensable for the ethical totality to genuine insight into the rational and institutional demands of the time. The task of philosophy was through critique to procure a space for both sentiment and insight in the public domain, and it was really only a philosophical science that could help to ensure the rational effect of such a critique. But this was by no means true for insight and sentiment in precisely the same sense. By virtue of its scientific character philosophy was certainly better defended against the influences of ideology and indoctrination than the kind of practical knowledge that operated outside its confines, but the politico-pedagogical aim it expressly assumed also led philosophy itself toward a kind of doctrinaire propagation of sentiment (cf. *Landstände*, in *SW VI*, 362ff.) that was fundamentally another form of the same doctrinaire institutionalism that Hegel had already exposed in the natural law tradition that predated the French Revolution. Instead of unconditionally demanding the realization of institutions based on abstract principles of reason, philosophy now found itself demanding the realization of political sentiment. At the same time, however, the domain of ethical life itself required the exercise of unconstrained critique. For Hegel's philosophy of morality¹⁰ already teaches that everything that arises in the realm of ethical life is itself produced by that moral activity in which subjectivity reveals itself precisely as the power of *judging*, of determining out of itself alone what content is good. And the good that was first only envisaged as something that merely *ought* to be owes its *actuality* [*Wirklichkeit*] to precisely this power (*Rph* §138). Outside the private sphere, itself politically powerless as far as most people were concerned, there was no other space for this power of subjectivity than that same amorphous public opinion the ambivalent political role of which Hegel had been expressly attempting to limit between 1806 and 1820 through his carefully elaborated theory of political institutions (cf. *JS III*, in *SW VIII*, 262ff., 273; *ET*: p. 158ff., 169). Hegel's idea of the state provided no genuine place or specific right to the numerous political intellectuals who learned so much from his philosophy and who were also unable to find a proper place for themselves in the currently existing state.¹¹ They must therefore have felt relatively

justified in rejecting the idea that critique forfeits its legitimation unless it corresponds directly to systematic philosophical insight.¹² Hence it came about that Hegel's methodically elaborated speculation was abandoned in favor of an immediate practical perspective that was never able to formulate an internally coherent idea of what was truly appropriate for the time.

But the politico-pedagogic purpose with which Hegel had burdened philosophy was artfully compensated for with a gain that, even when confronted by a rather skeptical assessment of what philosophy can contribute to political enlightenment, was more real than any possible realization of the philosophy's self-imposed task of consolidating appropriate political sentiment. For what the state can expect from philosophy in the way of useful effects is not *confidence* in its institutions (*Rph* §286). That is something that can arise only from the institutions themselves. For it is only the coherent effect of the latter that procures the required and habitual forms of conduct that one trustingly and "confidently" grows into and adopts. Philosophy, on the other hand, requires us to relinquish everything merely habitual in principle (*BA*, in *GW* XVIII, 30). The only thing we may legitimately expect of philosophy in this respect is consequently a "more or less developed and cultivated form of insight." The latter cannot even provide that probity or *uprightness* of ethical character that Hegel understands¹³ as the "simple conformity of the individual to the duties set by the relationships in which he finds himself placed" (*Rph* §150). According to Hegel's account of ethical life, philosophical cultivation must pre-eminently encourage the development of those traits of character that can sustain themselves under the favorable circumstances required as a form of *virtue*. For the properly *reflective* relationship of the ethical to the individual character, which latter is also determined through nature, belongs to virtue alone. And this relationship is probably the only one that can be produced through the philosophical clarification of the fundamental concepts of the right and the rational. But it is precisely through such formative elucidation, and especially in a world where subjectivity's demand for satisfaction has finally achieved explicit political recognition (*Rph* §124), that philosophy must assist personal character in grasping the right of morality by which everything appearing in ethical life is ultimately produced. At the same time, and on the other hand, this formative development of the *ethical* dimension of character must ensure that the contents adopted by subjectivity are not merely arbitrary ones and a matter of simply abstract demands. They must correspond, rather, to objective necessities if the

abstract foundation of moral self-determination, from which these contents arise, is in turn to develop itself into an *actual* end through the contents in question.¹⁴

III. The Right to Criticize Existing Right

The usefulness of philosophy with respect to the actuality of the ethical will within the state is thus ambivalent. Even in its role as a site of intellectual discipline that is supposed to facilitate the proper development and formation of the individual and insofar as it is itself directed to the *sustaining* of ethical life, philosophy creates certain dispositions that must under appropriate circumstances allow for the emergence of a will oriented to the *reform* of the actual world. As far as the development and formation of political sentiment is concerned, one cannot therefore say that Hegel has simply identified the acknowledged right of philosophy with the production of a willingness to recognize institutions and power relations as rational by virtue of their existence alone. His philosophy does not result in quietism of this kind. It attempts, rather, to secure the conditions in which morality can realize itself appropriately within the domain of ethical life. But this practical effect of philosophy concerns only the formative development of the individual and could prove either to be fundamentally conformist or fundamentally oppositional with respect to the demands of political power. Could philosophy also interrogate the existing determination's right with respect to the possibility or even the necessity of transformation? Only if we can show that Hegel always continued to admit the right of philosophy to exercise critique on the substance of positive right can we perhaps say that he also continued to ascribe to philosophy a motivating effect on action directed toward redefining the limit that distinguishes the purely "positive" from the rational within the world of actuality. In that case Hegel not merely would endorse a "theoretical" perspective, carefully sealed off from "praxis," on a supposedly rational present but would equally avoid in principle that exaggerated expression of subjective convictions that he so strongly opposed. And in cases of conflict between the government and social institutions or the people, it is only when philosophical critique is not irrevocably bound through political principles simply to endorse one or other of the two sides that it can represent anything more than an ideology of the governing or of the governed.

The Critical Function of Philosophical Teaching

What are we to say, then, concerning philosophy's claim to exercise *political* critique? For fairly obvious reasons Hegel was not nearly as clear or explicit about this as he was about the essence of the philosophical critique of philosophy itself. Some initial suggestions about his view of the matter can be discovered above all in the introduction to his early *Essay on the German Constitution* and in the essay, *The Scientific Ways of Treating of Natural Law* (TW I, 457ff.; ET: p. 6; TW II, 518ff.; ET: p. 170ff.). But the question about these texts is precisely whether they can constitute a valid point of reference for his later and supposedly more accommodatist attitude.¹⁵ But one should not forget that a certain critical impulse is already implied in the systematic form of Hegel's philosophical teaching itself. The justification bestowed on the rational content of existing right involves the demand that reason actually prevail¹⁶ and could not arise without such a demand. The demand must certainly be interpreted in light of the insight that actual reason enter the domain of external existence and that the highest opportunity for human action presents itself here in a finite and limited form (*Rph* §21 note). The state intends and ensures that this opportunity should not be insignificant as far as the will is concerned. In the first instance, philosophy accomplishes the same for any human intelligence that would comprehend the actual world: it subjects the ideas of the will that legitimate and formulate claims of right to a universal examination, it determines the limits of these ideas with regard to one another, and it reveals their necessary character in the context of the social whole. In order to achieve this, philosophy has to translate the content of these ideas into the dimension of speculation and thus to counter the inadequate representations [*Vorstellungen*] in which such ideas present themselves. In this respect, the function of philosophy does initially appear to be purely apologetic in character, to justify through "speculative mystification" precisely what strikes the ordinary consciousness of right as unacceptable. And indeed philosophy is called on to contain the tide of critique for its own sake and dampen the exaggerated expression of purely subjective ideas. For it is especially imperative to learn to recognize properly what is right in a world where thought has finally placed itself in the ultimate position to judge what is to count as worthy of recognition (*Rph*, in TW VII, 17 note).

But this careful and cautious treatment of the finite shapes in which reason has actually realized itself is only one side of the matter. Just as speculative thought destroys all purely subjective prepossessions, so, too,

it is also critically directed toward those objective deficiencies that necessitate a change in the current state of legal right. Speculative thought brings a certain world-historical consciousness of the existing condition of legal right into consideration. In this respect the recognition of a rational present also involves the active readiness for change that is implied along with the necessary character of the concept of freedom itself. This consciousness has itself absorbed the double historical experience of the Enlightenment and the French Revolution. And that experience already means that it is no longer possible for philosophy, *on the one hand*, simply to endorse what the “public voice” demands without subjecting the matter in question to critical scrutiny (*TW XI*, 84).¹⁷ Because it is simpler to detect deficiencies than it is to grasp the affirmative moment of truth, one can easily fall into the error of overlooking the intrinsic organism of the state and focusing only on individual aspects of the whole (*Rph* §258 Addition). Yet it is only from this initial affirmative perspective that one can judge the currently raised demands appropriately (*VPG*, in *TW XII*, 52). Thus it falls to the cultural development and formation of thinking, and to philosophy in particular, to grasp what reason properly is (*VPR*, in *TW XVI*, 239; ET: p. 454).

On the other hand, however, it is equally imperative to recognize that “the extreme of rigidly insisting on the positive law that belongs to a vanished condition of life” has itself become a source of current problems (*SW VI*, 395). The natural law tradition that Hegel has transformed into a philosophy of history is therefore as opposed as Enlightenment natural law previously was to the defense of juridical conditions that is based solely on a purely historical explanation (cf. *Rph* §3, *TW VII*, 35ff.; ET: pp. 224–25). It is precisely what has been historically handed down to us by tradition that most requires intellectual examination and critical appropriation. This is true not only for the sciences and learned disciplines in general – something that Hegel emphasized in 1807 (*MJdL*, in *TW II*, 571) – but also for our conscious attitude toward the realm of rights. For, as Hegel said, “the further concrete development of the concept of freedom, of right, and of humanity, as far as human consciousness is concerned, is necessary in and for itself” (*VPR*, in *TW XVI*, 239).¹⁸ In an age when the rights of subjectivity have come to assert themselves politically, the task of drawing the appropriate conclusions from the awareness of this necessity cannot be restricted solely to the powers of government. It is, rather, intrinsically embedded in the concepts that have themselves become a matter of general conviction (*SW VI*, 353). Insofar as philosophy uncovers this intrinsic content and connects the rational substance of public opinion

with the institutional realization of reason, it helps to prevent the ethical consciousness from finding immediate and premature satisfaction in what has already been accomplished. Indeed, through the dissemination of a properly speculative consciousness of history within the domain of public opinion, philosophy is more likely to reinforce dissatisfaction. But the motivation to consider change still remains limited to what is regarded as possible in the light of rational insight. Philosophy, thus, indeed renounces the illusion that it could project the form of a future world from within itself or instruct practical consciousness as to *how* it should seek to realize itself. Insofar as it concedes that it always arrives too late to instruct the world as to how it should be (*Rph*, in *TW VII*, 28; ET: p. 13), philosophy as a site of knowledge thus situates itself back within the objective context of ethical acts and events that cannot be controlled by any activist program and thus “honors” the necessity of this content.¹⁹

Political Critique as Such

It is precisely at this juncture of the present, interpreted in world-historical terms and understood as pregnant with the future, that systematic philosophical *teaching* must transform itself into a form of political *critique*. But critique here rests on a basis of teachable philosophical doctrine and should not be pursued at the cost of abandoning the already acknowledged affirmative moment of truth if such critique is not in turn to degenerate into arbitrariness and caprice. But the moment of critique is already involved in the teachable form of philosophy itself, and in a twofold manner: on the one hand, the function of critique is to examine the content that “the popular voice” is urging and thereby to correct the demands expressed through public opinion when they misunderstand their proper character. Thus, in particular, the concepts of reason, enlightenment, right, constitution, the states, and freedom must now be protected from becoming utterly trivialized as far as ethical consciousness is concerned (*Rph* §272 note). In each case, therefore, a certain concept is defended against the claims of an inappropriate but presumptuous “actuality” (*SW VI*, 489). But just as it is necessary, on the one hand, to *retain our grasp* of the relevant concept over against the fiction of something that appears actual in the context of subjective feeling or possible in that of regressive fantasy, so, too, it is equally necessary, on the other, to *establish* the relevant concept over against the fiction of something that *still* appears actual but that merely “exists,” in Hegel’s technical sense, and thus serves through its semblance of justification only to obscure our understanding of what

is indeed necessary. The highest sanction and the highest necessity of a constitution consists in the fact that the determinate form of spiritual individuality that is intrinsically connected with a certain kind of constitution is only one aspect in the history of the whole and is already determined by the ongoing development of that whole (VPG, in TW XII, 65). In relation to developments still shrouded in the obscurity of the future, there already exists now the possibility, indeed the necessity, of revealing the contradiction between a determinate form that has become a limitation and its own immanent truth. It is not clear why Hegel should have later rejected this approach,²⁰ expressly formulated and applied as it is in the *Essay on the German Constitution* and conceptually grounded in the essay on *Natural Law*.

The Relationship of Philosophy to the Exercise of Political Power

Even if we have shown that philosophy can properly criticize the practical fixation on legal institutions that no longer serve any rational purpose and the public fixation on liberal phrases that encourage the consciousness of freedom to misunderstand its proper character, this has not of itself answered the question of how this critical function relates to the effective exercise of political power and how the former can make itself effective. Does such critical activity proceed in simple conformity with the prevailing political authority? Or does it merely express itself within the neutral domain of the sciences and learned disciplines, where it is permissible to say anything even if this results only in the self-deceptive freedom of a “free-floating intelligentsia”? Or is it capable, despite its nonconformity, of making itself felt in such a way that the political domain cannot avoid being influenced in the process? Here, too, it would initially appear to be a serious problem that philosophy is denied any direct participation in the general struggle to procure a greater arena for the free expression of public opinion.²¹ In the *Philosophy of Right* of 1820 (§316ff.), Hegel cannot simply deny what he had himself claimed in 1806 (*JS* III, in *SW* VIII, 273; ET: p. 169), namely, that all transformations arise from public opinion and that the latter *itself* is simply the *conscious sense of lack* on the part of the *advancing spirit*.²² But Hegel was no more prepared then than he was later to identify the cause and substance of philosophy with that of public opinion. Philosophy is not the avant-garde of public opinion and cannot produce detailed proposals for universal legislation or social reform.²³ Even as a form of critique, philosophy does not possess the authority of some judicial court of appeal when it is a matter of bringing the

emergent partisan expressions of political power back into relationship to the cause of universality. It is only insofar as it repudiates such claims that philosophy, together with the other sciences and disciplines, can acquire the sort of recognition from the state that cannot be accorded to public opinion by virtue of its subjective character. Philosophy is essentially distinguished through its systematic and scientific form from the domain of opinion, but it is not this form alone that is recognized by the state, even when the latter still claims a right of censure with regard to the content of academic teaching. For the realm of academic and learned expression enjoys its own right to security over against the political intervention of the state with respect to its material and *content*, too (*Rph* §319). In the realm of scientific knowledge, there can be no such thing as authority at all (cf. *B I*, 209). If philosophical knowledge of the rational is connected with critique, and if this critique exercises an influence on the realm of general culture and public opinion, we are presented with an alternative. Either philosophy can content itself with simply proclaiming what is already implied in the currently recognized tendencies of social and political life. Or philosophy can acknowledge that there is always a potential conflict between the claims of philosophy and the state. In that case, one would have to ask where the right of ultimate authority properly lies between them, or whether both philosophy and the state are equally justified. The conflict in question would then become an ethical collision that could no longer in principle be decided by appeal to juridical principles of right.

Hegel's political philosophy knows no principle that would secure an intrinsic harmony between philosophical critique and the aims and intentions of government. For the fact that both are animated by the same spirit does not exclude the possibility that conflicts within this spirit may have to be endured and addressed. A certain harmonious correspondence may well factually obtain in specific cases, and especially where public opinion must be defended against itself – although even here the harmony may be a purely apparent one.²⁴ As far as the other possibility of critique is concerned, matters will generally stand the other way around. And in that case, the power of the state will see itself deprived of traditional forms of legitimation. Certain aspects of the state will have to be exposed as arbitrary in character precisely because they no longer correspond to the necessary concepts that have become an element of general conviction. This itself produces a situation of conflict. But it is also clear from the systematic structure of Hegel's thought, and quite apart from these possibilities already implied in the concept of critique itself, that

conflicts must also *necessarily* arise through the rights of philosophy itself. For philosophical science is not intrinsically connected with the particular principle of any particular actual people or community, but rather belongs to the *universal spirit* that finds its actuality within the realm of world history. Philosophy is an *existing determinate form* of this universal spirit: one whose very element is *pure* and *free* thought itself (*Rph* §341; cf. *WBN* in *TW* II, 524ff.; *ET*: p. 175ff.). Within this element the particular political form that currently prevails must be capable of presenting itself precisely as a particular, and thus as an *unsatisfactory*, form. But that already implies that the respective rights of the two authorities here are not located on the same level. Philosophical science possesses the higher right over against any particular state. Unlike religion, philosophy is also the higher sphere that properly “knows” the truth in relation to the fundamental principles of the state, and that is so because it does not take the form of subjective conviction. Thus, the state cannot simply meet philosophical criticism by declaring it to be nothing but “morality” or the product of corrupted sentiment. But in contrast to the domain of world history, philosophy cannot immediately establish the higher right it possesses over against the power of the state.

The Sanctions of Critique

The kind of powerless praxis to which philosophy here finds itself relegated is a consequence of applying two world-historical paradigms. And in both cases we must ask ourselves whether they can still be regarded as valid without further modification in the modern age. The first of them is derived from the position occupied by Plato in the context of world history. It corresponds fairly precisely to what Hegel generally describes as the historical relationship between philosophy and ethical life (*SGP*, 150ff.; cf. *TW* XVIII, 74ff.). In this view, philosophy cannot transcend the substantial content of its own time, but insofar as it does represent the thought of this content, it also stands above time in point of form and thereby itself becomes the birthplace of a subsequent actuality. The application of this interpretation to Plato makes it clear that it is not merely the homogeneous power of a given principle that belongs to the substantial content of the time, but also and precisely the new principle that emerges in this time and corrupts the form of the former principle. It also makes it clear that philosophy demonstrates its participation in the universal spirit insofar as it recognizes both principles. In Hegel’s account, therefore, Plato did not simply shrink from the principle that irrupted into

the totality of Greek ethical life as an unsatisfied yearning. It was precisely *out of* this deep desire for a new principle, once it appeared as a threat of corruption, that Plato sought a remedy against it and asserted the form of expressly *conceptualized* truth as the true answer to the difficulty – and thus precisely the truth of the newly emergent principle! For according to Plato this truth should now prevail in the form of philosophy itself if the original nature of Greek ethical life was effectively to be sustained. Politically speaking, Plato thus came to occupy the position of the reactionary insofar as he expressly strove to maintain a state that was already passing into history – and did so under the condition that ceded dominance to the new principle while attempting to eliminate the corrupting desire on the part of the governed. But the very principle that his idea of the state was attempting to establish proved to be the new turning point or “hinge” on which the radical transformation of actuality would later come to turn (*Rph*, in *TW VII*, 24, 342; *EPW* §552 Note; *TW X*, 361ff.).

The other paradigm is slightly older but touched on a controversial issue that already effectively involved the same principles, namely, the tragic conflict in which Socrates met his fate. Socrates knows that his own conduct possesses a higher form of legitimation than the rhetorical principles of Attic democracy and brings about his downfall precisely through the exercise of his own freedom. He insists on a course of action that the prevailing political power, whose rights he also recognizes, cannot possibly permit because it directly threatens its continued survival. Socrates thus brings a higher principle into immediate effect and thereby suffers a fate through which he subsequently procures effective force to this principle within the actuality of his state.

Both cases are so structured that philosophy here becomes its own fate and the fate of ethical actuality as such without thereby being able to exercise any governing influence on the development of this actuality. In the one case, philosophy withdraws into the seemingly quite “unactual” domain of purely intellectual construction and only in this way participates in the essential transformation of actuality. In the other case, the thinking philosophical subject allows himself to be destroyed and thereby preserves his new principle for the subsequently emergent actuality. The question is whether for Hegel the right and obligation of the philosophy of his present must also face one or the other of these alternative sacrifices. Or is Hegel convinced that the universal character of the modern state possesses such strength and vigor that it can permit the unrestricted play of philosophical thought regardless, that philosophy, for all its “labor of the concept,” effects nothing anyway but simply plays the role of public

fool in its public existence? And even if that were not in fact his view of the matter, can the thought of reason procure recognition for itself in modern times – by appeal to the fact that it has already entered into the spirit of actuality, albeit not in the fully appropriate form it deserves? Can the thought of reason help to produce this form without condemning the thinker of such thought to self-sacrifice?²⁵

In this connection one should remember that the philosophy of the modern age was not simply on its own in engaging with the currently existing ethical world, but was capable of working together with the forces of religion, general culture, and public opinion. A Christian religious attitude had already begun to transform the world with the Reformation through the new principle of free spirit (“The Germanic World,” in *VPG*, 882; ET: p. 202; cf. *TW XII*, 496ff.). The recent achievements of human intelligence had made the sciences into a matter of interest and concern for the state (*ibid.*, 911). It was not long before the power of thought also turned against the actual world in a practical sense, came to examine the existing state of affairs, and eventually ceased to recognize any simply given authority at all (*ibid.*, 915). And when finally, with Rousseau, the free self-determining will was made into the principle of right itself and accepted as such in the general consciousness of the age, it could be said that philosophy had now established its “dominion” (*ibid.*, 924). It had done so without requiring that philosophers assume political power in their own right, without having to base the state on some immediate unity of sentiment that was principally the monopoly of the rulers. It was sufficient that philosophy should articulate what everyone thought without precisely knowing it, and thus allow them to recognize themselves in the actual world around them. Philosophy could therefore make the invincible power of public opinion into its own cause and assume an indirect political role insofar as it succeeded in revolutionizing the general “realm of ideas” (cf. *BI*, 253). The state, based no longer merely on sentiment but rather on a formal interconnected structure of laws, no longer required an immediate identity between the teaching of philosophy and its own purposes. The state can itself acknowledge that reason is ultimately the highest authority and permit philosophy to think universally beyond the current political understanding of the general good, as long as philosophy continues to recognize what we have called its conserving and conservative tasks as well. Now that philosophy itself has become a public institution, it would seem to fulfill a justified demand of subjectivity rather than representing a source of corruption for the ethical world. In this way, philosophy has both avoided the fate of Socrates and helped to effect the utopian element

of the Platonic state. When the effects of philosophy met with powerful resistance from the illegitimately existing order of things, those effects themselves assumed a power of their own. The people claimed this power for themselves once the government was no longer capable of undertaking the necessary reforms, and philosophy in this case, all appearances to the contrary, became a fateful judgment on the continued existence of the old order.

But it should be noted that Hegel does not hold the people responsible for the misfortunes arising from this situation (*BS*, *ibid.*, 782). Nor does he condemn the partisans of revolution for attempting to realize abstract right rather than simply leaving an appropriate form of realization to the course of history.²⁶ Ethical judgment should not even take fundamental offense over the phenomenon of tyranny and the terror, without which the state as a whole could not have been preserved during the Revolution, for even these – at least in the most difficult phase of the revolutionary upheaval – were “*necessary and just*” (*JS* III, in *SW* VIII, 258, ET: pp. 155–56; cf. *BS*, *ibid.*, 698). If the revolutionaries nevertheless did bring guilt and blame on themselves, it was not because of a hubristic attempt to make freedom of property and legal equality of the individual the immediate object of practical action, but rather because the actors themselves were fatefully entangled in the inadequate philosophical ideas that had first encouraged the revolution. Stubbornly endorsed in their abstract form, these ideas shattered the framework of civil law and now extended their power over national and international law (*WBN*, in *TW* II, 517ff.; ET: p. 169ff.) so that the formal freedom of the individual – elevated into the principle of the state – suddenly transformed itself into a terroristic inquisition of the citizens’ sentiments and thus prevented any firm and reliable social organization from properly establishing itself (“The Germanic World,” p. 925; *Rph* §§230, 233ff.). Since these ideas were polemically directed against everything within the existing order, they also encouraged *eo ipso* the rejection of any and every content – which a purely abstractly conceived reason was incapable of expressing in the form of universality – as a matter of irrational “positivity.” They therefore did not permit the continued existence of certain arrangements the rational content of which they should have recognized and respected.

It may be quite true that Hegel simply prejudged the bankruptcy of a “liberalism which is always defeated at the hands of what is concrete” (“The Germanic World,” p. 925), along with the possibility of remedying its abstractness. But his conclusions concerning the praxis of philosophy certainly never implied that philosophy should abandon the power it had

acquired through its engagement with religion, the sciences, or the realm of public opinion. He never expected philosophy to seek refuge in the sphere of private reflection, to leave the state of the world to itself simply for the sake of a quiet and undisturbed life, to console itself for its own painful isolation by merely celebrating the revolution or fabricating the idea of an unchangeable and rational unfolding of history. Hegel's considered judgment of the situation is rather that the fundamental principles of reason must assume concrete form if "true freedom" is to take up "its proper place" in the world (*ibid.*). And for Hegel, too, the real opportunity and task of philosophy lies in contributing precisely to this end. Even where no revolution has taken place, the fact that the practice of philosophy has "acquired a much closer relationship to actuality" and "thereby come to an *open* breach" with the existing world (*Rph*, in *TW* VII, 24; ET: p. 9) must be regarded as a boon for "science" that properly answers to the necessity of the case. Once the apparent peace that formerly obtained between philosophy, the special sciences, education and culture, individual insight and religion, natural law and politics in general had disintegrated (*EPW*, in *TW* VIII, 15; ET: p. 5), philosophy finally found its way back to that serious concern with actuality that it had forfeited since the skeptical dogma that the ultimate truth cannot be known had reduced all thoughts to the status of merely personal convictions and thus abandoned them to general contempt (*Rph*, in *TW* VII, 23; ET: p. 8). Compelled by force of circumstances to seek unity within itself, philosophy also served, within its own domain, to reconcile spirit with itself by bringing the concept of reason into harmonious relation with the truth of religion that the revolution had rejected.

In relation to the contemporary age, where the spirit of morality still claimed to occupy the highest ground, Hegel polemically emphasized the necessity of exposing the superficial and ruinous character of the other competing philosophical positions. From a speculative perspective, the "infinite desire of the age" to give systematic form to the truth and elevate the latter to universal status (*Rph* §211 Addition) must find its own specific philosophical as well as juridical satisfaction. And this in turn lays the ground for a new critique of positivity that will avoid the fateful consequences of the former evolutionary critique of positive law. In showing that the hope for an absolutely perfect form of legislation is intrinsically empty and offering an insight into the ethical necessity of momentous political events that can unite the participating and affected parties, philosophy thus seems to deserve its own place alongside (*BA*, in *GW* XVIII, 12) the political institutions of the actual world. As the ruling

power in the realm of ideas,²⁷ philosophy can claim recognition from both the government and the forces of general opinion. In cases of conflict between the latter, philosophy can even now bring its own insight to bear against the exercise of mere political power insofar as it no longer misunderstands itself as a shape of morality and desists from demanding a kind of activity that the state would inevitably perceive as a threat to its own existence. As a scientific discipline, however, philosophy is not in any position to offer specific guidance for particular courses of action. But despite the reticence of philosophy in this respect, it is precisely the understanding of its conservative tasks that can acquire indirect significance for the motivating impulses and aims of morality, and can help to ensure that what should indeed happen will happen through cultivated insight and judgment (cf. “The Germanic World,” p. 933). If this should in fact give rise to acts that are in opposition to the existing political power, the inner philosophical motivation involved cannot be regulated by the state. Responsibility here belongs to an autonomous, and indeed highest, form of practical reason that for Hegel was represented by the “bearers of the world spirit.”²⁸

The critical task of philosophy, in comparison, must restrict itself to the elimination of juridical claims that have become illegitimate, the correction of misconceived demands, and the clarification of aims and purposes that are being pursued in a largely unconscious or instinctive fashion. Where there is a contradiction between natural law and the state, as well as between general convictions and the political authorities, something that, far from denying, Hegel recognizes as a feature of the present, then philosophical science, which is the self-reconciliation of spirit, finds itself “in contradiction with that contradiction and its concealment” (*EPW*, in *TW VIII*, 15). As a form of criticism, therefore, philosophy is directed against both sides here, against the arbitrary exercise and whims of political power (cf. *SGP*, 201, 37off.) and against the short-sighted vision of public opinion. Finding itself in contradiction with the contradiction of both sides, philosophy has to encourage them precisely to reflect on one another and their predicament. In this way, philosophical thought can indeed contribute something of its own to the transformation of the ethical domain, and do so without becoming a threat to the existing political constitution, fleeing into an illusory world of purely intellectual construction, or demanding the self-sacrifice of the thinker. The only question here is whether this practical approach – intended as it is to avoid catastrophic collision – is indeed the only possibility that still remains open to philosophy.

IV. The Limits of Philosophical Critique

Philosophy can never guarantee the success of its mediating contribution. In a given crisis the government may refuse to pursue the wiser course that consists essentially in recognizing what the spirit actually no longer wills (*JS* III, in *GW* VIII, 273; ET: p. 169). On the other hand, it is equally possible that ignorance, violence, and “evil passions” (cf. *B* III, 33) may spread without philosophy being able to prevent it. But the pain that befalls the philosopher who is thus thrown back on himself, the pacifying recognition that philosophy is after all only a concern of the few (*ibid.*), is only one reaction to his powerlessness over against a darkening public domain. One could describe it as resignation, if we can reasonably hope to realize philosophical insight in the general consciousness in a better fashion than Hegel managed to do. But in this connection, one should not forget the ethical role, even without any guarantee of successful mediation, that philosophy can possess in a different situation of crisis. If Hegel, during his active life in Prussia, felt that no such situation offered itself, we should not conclude from this that he had now come to deny philosophy any such role in principle. For indeed, at the very end of his life, he once again emphatically expressed precisely this right:

It is in just such times, when political existence is transformed, that philosophy finds its place; and then it is not merely thinking as such that transpires, but thought then moves in the vanguard and reshapes the world of actuality. For when a shape of spirit no longer gives satisfaction, then philosophy lends a sharper eye that can see into the unsatisfactory state of things. By presenting itself in this way philosophy, through its own specific insight, actually increases and promotes the process of dissolution. And yet one cannot reproach philosophy for this. For the dissolution is necessary; a specific form of spirit is only negated because there is some fundamental defect within it. On the other hand, philosophy provides a means of satisfaction, a consolation within this actuality, within this unhappiness of the world. . . . (*SGP*, *ibid.*, p. 360)²⁹

In the situation outlined here, when “political existence is transformed,” Hegel is still describing the contemporary historical relationship between philosophy and the state in a way that had already found exemplary general manifestation in the thought of Socrates and Plato. But through its own perspective on world history and the systematic elaboration of the latter, philosophy can now *justify* a right that Socrates and Plato

had only claimed. And perhaps, in situations of crisis where the claim to this right is expressly at issue, philosophy can avoid the alternative fates that overtook Socrates and Plato. In any case, Hegel is far from excluding the rational necessity of future changes to the political constitution or even revolutions, or from hindering philosophy, now that it has assumed the form of “science,” in the task of preparing for such eventualities. On the contrary, Hegel effectively connected two thoughts that are indeed indissolubly related to one another: first, that it is also an ethical necessity to work with nonviolent means toward remedying existing political deficiencies that cannot ultimately be eliminated without violence; and second, that people require, in the face of this unhappy situation, a certain reassurance that can properly be provided not by consolatory images of a better future but only by the required comprehension of the actual present. These twin thoughts of Hegel’s imply neither the resignation of the will nor the glorification of violence.

We have already pointed out above how philosophy, through the proper appreciation of its conservative tasks, also contributes to a readiness to embrace required reform. But we must emphasize here that philosophy could never participate in the destruction of the existing substance of political life unless it were conscious of thereby assisting the reestablishment of that substance. The practice of philosophy could not represent the very consolation within unhappiness to which it contributes unless it strove to return the idea of freedom – the absolute end of reason – and the subjective dimension of its knowing and willing as the means of realizing such freedom back to that objective unity that is the state itself. Even as a means that impedes the purpose of a particular state, philosophy still remains a means for improving the purpose of the state and assisting in its realization. Where the state itself is no longer capable of regeneration, philosophy must use the existing space it has been given to exercise its critical function, must risk the collision with the state, and must, in the extreme case, content itself with lonely insight into the character of what transpires in the world. Philosophy would not be in any position to accomplish any of these things if it were not indeed an end in itself, if it possessed nothing but a purely practical function to discharge.

But this return to the idea of autarchic philosophizing, revealed here in the dialectic of its own powerlessness, is not actually as pragmatically grounded as it might at first sight appear. Philosophy, which as critique assists the forces of dissolution, could not also provide reassurance unless it elevated the immediate affective participation in the effects it helps to

produce. Philosophy could not be a form of critique unless this elevation, instead of simply leading us into an empty beyond, illuminated the proper context of the current process of dissolution, a work of illumination that is also essential for the sake of knowledge itself. And it is this knowledge that justifies the critique, however difficult to bear the consequences of critique may be. And quite apart from its actual consequences, critique would not live up to what it should be unless it is combined with the knowledge that the matter at issue possesses a necessary character of its own, one that must be accepted instead of repressing the question of whether critique is legitimate. If critique were merely to understand itself in a partisan fashion, it would necessarily regard the object of critique as occupying exactly the same level as itself and, in attempting to distinguish the better from the worse, would simply have to place its trust in the ways of fortune. But as long as philosophy appeals to reason, it cannot but demand the pursuit of the latter for its own sake, a task that must also be accomplished independently of any purposes external and extraneous to the systematic speculative insight of philosophy itself – though they be the highest practical ends and purposes of critique. The conception of philosophical critique that is guided by the idea of human freedom thus leads immanently to the categorically demanded right for a speculative philosophy that is not simply bound to the criterion of practical usefulness or the idea of the good.

After everything that has been said, it is clear that the context in which Hegel attempts to ground all of the ramifying rights of philosophy is that of philosophy's own doubled relation to itself. It conceives itself as a task of comprehending and comprehensive thinking that ultimately – in an essentially *affirmative* relation to its own work – constitutes an autonomous end in itself, but also as a task that – in relation to proper purpose of politics – possesses *functional* significance that involves a potential readiness for the *negation* of its own worldly existence. It might prove an extremely difficult task to define this doubled self-relation on the part of philosophy in a methodologically precise and satisfactory fashion, to demonstrate the consistency and even general coherence of the elements of this conception. But after due consideration of the experience that has befallen philosophy in the twentieth century, it seems more important than ever to address precisely this problem. And what is more, it seems to me quite possible to pursue this task independently of whether we feel that Hegel's attempt to present the philosophy of history as the "authentic theodicy" (cf. "The Germanic World," p. 938; *TW XII*, 540)³⁰ proved convincing or not.

Notes

1. This essay is a considerably shortened version of the author's work, *Das Recht der Philosophie in Hegels Philosophie des Rechts* (Frankfurt am Main, 1968).
2. Hegel is probably thinking specifically of the salaried positions open to members of the Academies. The precise manner in which Hegel received the call to Berlin may have led him to hope for just such a position in the Royal Prussian Academy of Sciences (cf. *Briefe von und an Hegel*, ed. J. Hoffmeister, vol. 2. (Hamburg 1953), p. 179). He was disappointed in the event, however. On the question of what kind of philosophy in Hegel's eyes is actually worthy of such encouragement, cf. *Rph*, "Vorrede" (TW VII, 21; ET: p. 7). The state involves the need for deeper culture and insight than the polemical popular philosophy of the time is capable of providing.
3. For the estate of professional scholars and academics, cf. *Jenaer Systemwürfe* III, in GW VIII, 421.
4. But this is only one side of the relationship between religion and the world in general. One should not forget the other side, in which religion represents the externalized form of the entire sphere of ethical actuality and reproduces it for itself as a perfect whole (cf. *Jenaer Systemwürfe* III, in GW VIII, 281).
5. Confronted with such debased principles as these, philosophy must do more than simply interpret them with a view to correcting "representational thinking" in general and grasping their rational content in proper conceptual form. Rather, it must criticize them directly in the way in which Hegel had earlier criticized the "positivity" of traditional Christianity.
6. With his reference to the way in which "absolute freedom" passes over into another country in the form of the moral spirit, cf. TW III, 441; ET: p. 365ff.
7. For the systematic context of Hegel's political pedagogy in this respect, cf. *System der Sittlichkeit*, in GW V, 360; ET: p. 268.
8. Cf. *Du Contrat Social*, vol. 4, ch. 8.
9. For a different view, cf. J. Habermas, "Hegels Kritik der französischen Revolution," in *Theorie und Praxis* (Neuwied/Berlin, 1971), p. 89.
10. For a correction of the standard judgments concerning the relationship between morality and ethical life in Hegel, cf. J. Ritter, "Moralität und Sittlichkeit: Zu Hegels Auseinandersetzung mit der kantischen Ethik," in his *Kritik und Metaphysik* (Berlin, 1966). And by the same author: "Politik und Ethik in der praktischen Philosophie des Aristoteles," in *Philosophisches Jahrbuch*, 74 (Munich, 1967), p. 238f.
11. Hegel himself saw the only alternative as the choice between a purely private life, the satisfactions of which are deceptive and ultimately inadequate, and an acknowledged "office" that alone could provide an opportunity for a satisfactory relationship with the political life of the state. Cf. *Briefe* I: 167.
12. Among the "Young Hegelians," it was only Marx who clearly retained this insight.
13. This is also supposed to represent the specifically ethical character of behavior within the domain of civil society and something with which the political order

- must not interfere. Cf. *Vorlesungen über die Philosophie der Religion*, TW XVI, 240; EPW §552, TW X, 359.
14. Cf. the demand for “a higher moral standpoint” in *Rph* §121 Addition, TW VII, 229.
 15. Cf. J. Habermas, *ibid.*, p. 96ff.
 16. Cf. Hegel’s handwritten comments on *Rph* §3, which expressly describe this demand as what is essentially *correct* about the ideal of a *purely* rational state of law. TW VII, 42.
 17. For it has not been unusual “in more recent times” to see how “its demands revealed themselves to be quite impracticable or indeed disastrous if put into practice, with the result that the general voice soon turned just as vigorously against what it had so vigorously seemed to desire and welcome but a little time before.” This is one of the reasons for the exemplary significance of the ancient thinkers as far as the philosophical doctrine of the state is concerned. For “those who had experienced many things in the democracies to which they had belonged since their early youth, and who had exercised their own profound reflections on the matter, entertained quite different ideas about the voice of the people than those which are more a priori familiar in our own day.”
 18. Lectures probably delivered in 1831.
 19. Hegel was already expressing this thought in the earlier period when he was allegedly more open to the possibilities of reform. Cf. *Briefe* I: 60; *Die Verfassung Deutschlands*, TW I, 462ff.
 20. According to Habermas (*ibid.*, p. 98), Hegel’s critique of the “atheism of the ethical world” (*Rph*, 16; ET: p. 4) supposedly shows that the older Hegel has repudiated the standpoint he had earlier defended in the essay on *The Constitution of Germany*. It seems to me, on the contrary, that Hegel’s later remarks not only do not contradict this standpoint but actually draw directly and logically on it, as well as on the experiences of the post-Napoleonic period in general. Hegel’s critique is directed not against the assumption of an intrinsically fragmented ethical world – for that would have to be characterized as a “polytheism” – but rather against the idea that the intellectual and spiritual world in general is simply given over to the play of arbitrariness and contingency, that truth is not to be found within it and is not therefore worth even seeking there. Hegel’s reflections in *The Constitution of Germany*, on the other hand, would make sense to those who can see more than arbitrary contingency in what is happening around them and refuse to take vain refuge in the idea that they could have done everything better themselves (TW I, 463; cf. VII, 17ff.). Hegel’s reflections could never contribute to the overcoming of a limited and unsatisfactory existence by something better, if the emerging truth were not actually at work within the totality of life. And if the truth had never been sought for, no one could have “worked to bring nature forth toward the Idea,” as he puts it there (TW I, 457). It may be that the older Hegel no longer exercised the rights he ascribed to his own philosophy as fully as he might. He may have felt that his official position as a teacher (and thus a civil servant) rather obligated him to a certain reticence in this respect.

Hegel's awareness of the system of censorship (*B II*, 219) that caused him to delay the publication of the *Philosophy of Right* might also have held him back from saying certain things. His remarks in personal correspondence suggest that his political reticence was less an expression of contentment with existing conditions than of personal caution, the desire for a calm environment, and the hope of using a favorable political climate for the further dissemination of his philosophy. Finally, it may be the case that the final phase of Hegel's life was indeed marked by the kind of dislike, and even fear, of revolutionary tendencies that is so suggestively sketched in Franz Rosenzweig's biographical account. With regard to the fundamental question concerning Hegel's view of philosophy's right to criticize the political authorities, however, all these perspectives are more or less irrelevant.

21. Cf. J. Habermas, *Strukturwandel der Öffentlichkeit* (Neuwied/Berlin, 1962), §§13, 14.
22. Hegel actually overestimated rather than underestimated the significance of public opinion for the cause of intellectual and spiritual progress. But since he saw no possibility of effectively institutionalizing the existence of such a common will, he could do little but generally polemicize against its current manifestations while acknowledging its substantive content.
23. But neither should it act as a rear guard and provide now obsolete arrangements with apparently good justifications for their continued existence.
24. The fact that Hegel regarded this form of critique as that which was most urgently required in the reform period brought about by Napoleon has given rise to the impression that he simply wished to subordinate philosophy to the prevailing interests of political power.
25. Since the political authorities must naturally strive to maintain the principles that sustain the existing state, one can only imagine this situation arising during a revolution, or when such insight actually motivated the reform of a political system.
26. For a contrary opinion, cf. J. Habermas, *ibid.*, p. 93ff.
27. And that means not only speculative or theoretical ideas, but also practical ones.
28. Hegel could almost as easily have ascribed this role to the anonymous subjects in the collective decisions accomplished in the political process, as he did to the outstanding world-historical individuals.
29. A lecture from the winter semester of 1829/30.
30. The precise meaning of *this* theodicy is a subject in its own right. I have attempted to elucidate the concept of *world* history presupposed here in the essay "Geschichte, Weltgeist und Weltgeschichte bei Hegel," in *Annalen der Internationalen Gesellschaft für dialektische Philosophie: Societas Hegeliana II* (1986), pp. 458–506.

3

Kant, Hegel, and the Contemporary Question Concerning the Normative Foundations of Morality and Right

Karl-Otto Apel

I. The Question at Issue

The challenging question that I want to address in the following is: “Kant or Hegel?” Of course, one might well respond in the spirit of contestation and ask: “Must it be a choice between Kant and Hegel? Do we not rather require a third option today?”

In a rather pedantic sense I must lay claim to this third possibility in terms of what I have myself projected as the “transformation of transcendental philosophy” – in relation to the problem of grounding norms. Yet I believe that the alternative posed in the question “Kant or Hegel?” is a useful way of opening up the kind of critical-reconstructive discussion that is indispensable for any contemporary attempt to articulate the normative foundations of ethics. And this will naturally be particularly true for the attempt to transform the tradition of *transcendental philosophy*, an attempt that must after all still remain centrally indebted to Kant.

For the sake of a preliminary historical orientation, I should like first to suggest the principal respects in which the Kant-Hegel debate also remains crucially relevant. At the same time, I should like to use this as an opportunity to outline the principal theses that will be explicated in part in the course of the following reflection:

First thesis: Any relevant contemporary transformation of transcendental philosophy must address all the essential aspects of Hegel’s critique of Kant *precisely in terms of the attempted transformation itself*. (And this holds in particular for Hegel’s critique of the metaphysical

dualism implied by the structure of Kant's theoretical and practical philosophy.)

Second thesis: The considerations that motivated the constantly repeated return from Hegel to Kant were nonetheless justified in themselves. (Here I am thinking particularly of all the returns to Kant's ethics that need to be understood as a reaction against the attempts of Hegel and Marx to reduce the "ought" in favor of a supposedly dialectical necessity at work within the historical process – a reaction that runs from Neo-Kantianism through to Karl Popper and Leszek Kolakowski.)

Third thesis: The attempts to revive Hegelian thought in the context of a *hermeneutics* of history are finally also justified. (Although any hermeneutic reduction of the normative dimension to the authority of a contingent tradition represents a premature and inadequate response to the problems of articulating ethical foundations. The contemporary tendencies in this direction themselves force us precisely to reconsider Kant in the new context of something like a *transcendental* hermeneutics.)

In what follows I should like to try and explicate these theses at least to the extent required by the question concerning the grounding of norms. First, I offer some considerations on Hegel's critique of Kant and its possible significance for a transformation of transcendental philosophy.

II. Hegel's Critique of Kant and the Problem of a Meaning-Critical Transformation of Transcendental Philosophy

Hegel's critique of Kant's deliberate separation between the domain of human conceptuality and the intrinsic being of "things in themselves"¹ would appear – so it seems to me – in the light of modern *critical reflections on language or meaning* as profoundly justified. For we can form no meaningful concept of a realm of being in itself that is *in principle* inaccessible to knowledge and thus to the domain of concepts – any more than we can understand concepts that would not rely *in principle* on a knowledge of being. And this is so even if there are indeed concepts of unicorns and winged horses and even if it remains unclear in individual cases whether the concept of "dollar" refers to actual or possible dollars. The "abstract" concept as conceived in formal logic must not merely be applicable to Kant's objects of knowledge in general, but must itself be grounded in what Hegel calls "the existing concept" if even the abstract thematization of concepts in formal logic is to make any sense.

This of course does not imply the necessity or even the possibility, in Hegel's sense, of a *speculative logic* of "the existing concept" that would definitively articulate in a priori fashion the truth of "being in and for itself" in accordance with the said concept as its criterion. Rather, what it does imply is the necessity of a *meaning-critical transformation of the transcendental critique of knowledge*. And this could be accomplished in terms of the following presupposition: the very assumption of the possibility of conceptual truth, indeed, even the counterfactual anticipation of the same, belongs to the necessary conditions of the possibility of knowledge. For being in itself (that of the absolute) cannot meaningfully be conceived by us as simply independent of any possible as well as factual cognition. For precisely if our concepts, as Kant says, can be related only to *possible experience*, they must to that extent and in principle be related to the *manifestation of being* itself. It is quite true that Kant's epistemological distinction then reappears as that between what is *infinitely knowable* in principle and what *can factually be known by us* in the given case.² To this extent, the domain of human concepts, although it cannot be separated in principle from being in itself, does indeed remain dependent on the inexhaustible dimension of empirical experience with respect to the content of knowledge. And it is precisely this dependency that prevents, in my view, the possibility of establishing a definitely completed system of "transcendental philosophy" in Kant's sense.³ The point and purpose of the transcendental approach should no longer consist in constructing a complete system of all principles and synthetic a priori judgments in relation to the formal conditions of a purely phenomenal world. It should consist, rather, in articulating *necessary* conditions of the possibility for any conceivable experience of empirical reality insofar as this presents itself as *intersubjectively valid* for everyone. The possibility of a priori synthetic judgments thus results not from a distinction between an unknowable thing in itself and its merely phenomenal appearance for us, but rather from the capacity of such judgments, on methodological grounds, for providing necessary *normative* conditions of the possibility for *intersubjectively valid* knowledge a priori. This holds true both of the conditions for the *constitution of the meaning of knowledge* (e.g., the type of question being asked), something directly connected with our practical engagement with the world or our "cognitive interest," and of the corresponding conditions for testing and examining the *validity* of knowledge.

It follows immediately from this that the transcendental difference between empirical experience and a priori insight must remain uneliminable

even if, as we must assume, the a priori nature of the latter is always revisable in the light of the inexhaustible character of experience. Indeed, we must even assume that this revisability of the a priori contributes to the progressive articulation of the nonrevisable conditions of possibility of all conceivable and intersubjectively valid knowledge.

To this extent, Hegel's *presupposition of the possibility of truth* (as well as the counterfactual anticipation of "essential knowledge"⁴ and the "knowledge of knowledge") itself belongs among the indispensable insights of a transcendental philosophy transformed into a critical theory of meaning.

This is all I wish to say here concerning the most fundamental aspect of Hegel's critique of Kant considered from a methodological perspective. This *meaning-critical* exploration of Hegel's critique of the Kantian system thus leads, in my view, not to a renewal of speculative metaphysics, but rather to the elimination of the untenable dualistic metaphysics that Kant was still forced to rely on in his attempt to ground his (epistemological) critical version of transcendental philosophy.⁵

But what consequences are to be drawn from the suggested meaning-critical appropriation of Hegel's critique of Kant if we now consider the domain of ethics? Is it also possible here to show – and show even more precisely – how recourse to Hegel's thought can lead us further toward the appropriate transformation of transcendental philosophy?

III. The Ethical Implications of Hegel's Critique of Kant: Comprehension of the Actual Ethical World and the Aporias of Future-Oriented Action

In a certain sense, the *meaning-critical* repudiation of metaphysical dualism between the concept, or true knowledge, and the unknowable thing in itself has already placed in question the Kantian dualism between *theoretical* and *practical* reason, or between the "is" and the "ought," between the "inner" and the "outer." For if obligatory moral demands are to have any meaning for human beings, then it cannot be assumed that they are in principle unrealizable, or that they are never in fact realized, that therefore everything that in fact exists could be regarded as simply neutral from the moral perspective. Or expressed more precisely: it must be possible to clarify the linguistic sense of "good" and "evil," and thus the sense involved in responding to an obligatory moral demand, by recourse to certain examples. For the meaning of "good" and "evil" here

must be knowable. If this is indeed the case, we cannot claim that human beings quite possibly never act *morally*, but only in *external accordance with duty*. We cannot even claim that it is impossible *in principle* to know whether someone is acting morally, but merely that in the particular case it is not possible to determine this with total certainty.

These two claims, both of them untenable on a meaning-critical analysis, can unambiguously be identified as typical presuppositions of Kant's ethical thought.

In relation to the first presupposition, Kant says, for example, in his late essay *On Perpetual Peace*: "The problem of organizing a state, however hard it may seem, can be solved even for a race of devils, if only they are intelligent. The problem is: 'Given a multitude of rational beings requiring universal laws for their preservation, but each of whom is secretly inclined to exempt himself from them, to establish a constitution in such a way that, although their private intentions conflict, they check each other, with the result that their public conduct is the same as if they had no such intentions.'"⁶

There are two common interpretations of this passage that in my opinion effectively tend to reduce its full significance and must therefore be rejected in the context of our present question. The first argues that the distinction between "morality" and "legality" is quite sufficient to elucidate the meaning of the passage: on the level of legal right [*Recht*], so it is claimed, one cannot and should not demand that individuals act "from duty," that is, in Kant's sense, act according to the maxims of the will as required by the Categorical Imperative. One must rather content oneself with the performance of actions that are "externally in agreement" with duty. There is certainly nothing to object to in this. But it by no means follows from this that one can conceive a functioning legal-constitutional state in which people generally act "in agreement with duty" but at the same time – like "the possible race of devils" – never act "from duty" or at least from a moral disposition but only and always from egoistic motives – for example, from a fear of punishment or a concern for good reputation.

If it were possible in this sense to conceive the possibility of "legality" without any presupposition of "morality," we should also have to conceive that the legal obligations of a functioning constitutional state, as defined by positive law, could in principle be accepted and discharged without any claim to moral legitimation at all, since they are only ever discharged from egoistic motives anyway. Both these claims seem to me to be untenable.

Now it is extremely interesting to note that it is only the latter claim that Kant would find unsatisfactory. For Kant indeed believes that the legal-constitutional state certainly requires a moral legitimation. And this legitimation rests on the regulative idea of a social contract understood as the reciprocal limitation of arbitrary individual will, an idea that derives ultimately from the Categorical Imperative itself.⁷ And here, despite the external similarity in the conception of a social contract, there lies an essential difference between Kant and Hobbes. For in the thought of Hobbes, the *ground of right* for the reciprocal limitation of wills in the social contract consists solely in the carefully calculated self-interest of the human “wolves” in the state of nature.

But as far as the question concerning the *empirical explanation* of the emergence and continued functioning of the legal-constitutional state is concerned, there is clearly no essential difference between the positions of Kant and Hobbes. For in his response to this question, Kant believes he must content himself with purely naturalistic assumptions – just as if there were no identity whatsoever between the human beings who are addressed by Kantian ethics and human beings who are regarded in terms of empirical anthropology. Kant says explicitly that the “task of an organized state” must be capable of being met simply under the presupposition of what he calls the “mechanism of nature.”⁸ The concept that is assumed in this context, namely, that of “rational beings all of whom demand universal laws for their own preservation,” corresponds to the Hobbesian concept of instrumental rationality, rather than to the concept Kant himself assumes in the context of ethics, namely, that of rational beings who, as autonomous legislators of the moral law, constitute the “realm of ends.”

In general, then, Kant is distinguished from Hobbes therefore only by his emphatic *dualism* with respect to the ethical legitimation of the legal-constitutional state, on the one hand, and with respect to his empirical explanation of the emergence and continued functioning of the latter. But how can this dualism itself be justified?

The answer that is usually given to this question corresponds to the second line of interpretation that effectively weakens Kant’s significance in this connection. Thus, it is said that Kant simply shares with Hobbes an essentially pessimistic understanding of human beings. And this answer is possibly supplemented with the claim that the pessimistic conception of Kant and Hobbes is indeed a very realistic one.

Now it may well be true that this pessimistic conception of human beings is realistic, and that in this sense both Kant and Hobbes may also

be described as “realists” in the everyday sense. But such a “pessimist realism” has *logically* nothing whatever to do with Kant’s *systematic* assumption that is at issue here. For this assumption is precisely neither pessimistic nor realistic insofar as it regards the emergence or continued functioning of a legal-constitutional state as possible even under the presupposition that the citizens conclude all their contracts in principle with criminal intent. It is pessimistic in a realist sense, however, to assume that the moral motivations of individuals are never sufficient to secure acceptable human coexistence unless they are encouraged and esteemed by the legal-constitutional state, and the effective parasitical motives also involved here are discouraged.

Any satisfactory interpretation of the Kant passage we have quoted – and of many other similar passages – would in my opinion have to give due consideration to the *dualistic metaphysics* that determined the form of Kant’s theoretical and practical philosophy, in spite of Kant’s antimetaphysical intentions in the *Critique of Pure Reason*. And in the present context I am referring both to the dualism between the “world of appearances” and the “unknowable things in themselves” and, in particular, to the dualism that is foundational for Kant’s ethics, that between the “empirical” and the “intelligible” ego, which makes the human being, according to Kant, into a “citizen of two worlds.”

Now it was probably the dualism in the practical sphere that provided the ultimate rationale for Kant’s theoretical dualism. For in Kant’s eyes, the distinction between things in themselves and the world of appearances was indeed a necessary condition for resolving the problem of freedom as presented in the third antinomy of the “transcendental dialectic.” Since Kant – like most of his contemporaries who were strongly influenced by Newtonian physics – was firmly convinced that nature as knowable to science was characterized by universal causal determinism, he could only conceive the freedom of the will as presupposed by the obligatory demands of the moral law as a possible faculty of the intelligible ego, but not as a knowable reality of motivation in the empirical realm.

The very construction of Kant’s systematic philosophy gave rise therefore to the aforementioned assumption, namely, that in the world of experience, and thus in the fields of anthropology or history, nothing resembling moral phenomena as such – whether in a positive or in a negative sense – can possibly be *known* at all. And it is this that also gives rise to the conclusion that it is *possible* that the behavior of human beings is never positively motivated by morality. But these two assumptions, as we suggested at the beginning, cannot be reconciled with the

very *meaning* of obligatory moral demands insofar as the latter – as in Kant’s ethics – are addressed to human beings as identical citizens of the two worlds.

To that extent it is hardly surprising that in his “shorter writings,” where he attempts to conceptualize the relation between reason and actual history, Kant does not always proceed in strict accordance with his own systematic dualistic approach. For here – like every other philosopher – he could rarely avoid being cleverer than his system. Nevertheless, one can certainly say that he does proceed entirely consistently when, for example, he attempts to treat all empirically accessible historical acts as causally determined natural events.⁹ (In my view, it should be clear that Kant thereby excludes from the knowable domain of our experience precisely that “social-historical actuality” which in the nineteenth century became the very object of the *human sciences of hermeneutic understanding* (Wilhelm Dilthey) or of *interpretive sociology* (Max Weber).) This includes, therefore, the world of human actions that cannot as such be grasped through observation of relevant behavioral *movements*, but can be identified and differentiated indirectly only through the *understanding of intentions*.¹⁰ The constitution of such objects as far as knowledge is concerned would require, in Kant’s terminology, the employment of the category of *teleology* in a “constitutive” rather than merely “regulative” function.

In my view, we can properly recognize and critically assess the full implications of Kant’s dualistic metaphysics only if we attempt to compare, by way of illuminating contrast, three perspectives suggested by a transcendental philosophy transformed in the light of contemporary theory of science.

1. The first alternative perspective would consist in a meaning-critical transformation of the metaphysical dualism underlying Kant’s theory of freedom in the direction of a *complementarity thesis*: the idea of the causal necessity of a sequence of events or changing states can be made intelligible only on the presupposition that the human being, an experimental physicist, for example, can freely intervene in the external world and produce a given event that would not have come about without the performing of the relevant act of intervention. Without this *transcendental-pragmatic presupposition* of the concept of interventive action, the very concept of causal *necessity* would dissolve entirely – just as it did for David Hume, who was indeed the first to adopt the standpoint of *purely theoretical observation* here. But without the concept of causal necessity behind every deliberate attempt to change some state or condition

within experience, the concept of interventive action as a condition of the possibility for the appearance of anticipated events could not in turn be meaningfully thought, either. This already implies that the concept of *causal necessity* of natural events and the concept of *freedom of action* do not stand in contradiction with one another, as Kant along with the determinists assumed, but rather reciprocally presuppose one another.¹¹

2. Second, as far as the problem of freedom is concerned, this obviates the original ground for distinguishing between unknowable things in themselves – Kant’s “causality of freedom” – and mere phenomenal appearances. (Indeed, this piece of metaphysical dualism proves incompatible with our understanding of both causal necessity and freedom of action. For experimental physics, it is necessary in practice to assume that a certain event E – all other things being equal – would not have arisen if the interventive act A had not been performed or that it would not arise if A were not to be performed. In the context of a Kantian two-worlds dualism, on the other hand, we *cannot* in principle assume any such *relationship* between a supposedly freely undertaken act and an event within the empirical world precisely because all causal chains must be represented as infinitely determined in the objectifiable domain of empirical experience.) Under the further meaning-critical presupposition that the concept of the real can be independent of the factual though not of the possible knowledge of reality, the original Kantian distinction between unknowable *things in themselves* and knowable *appearances* is now replaced by the distinction between what is (infinitely) *knowable* and what can actually be *known* at any given point.

3. Third and finally, the transformation of the metaphysical dualism underlying Kant’s theory of freedom produces a solution to the problem of *Kantian naturalism* in the theory of science. In accordance with our complementarity thesis, it is neither necessary nor appropriate to conceptualize the world of our experience exclusively in terms of the categories and models of experimental natural science. Rather, we must also be able to think of ethically motivated actions, in the further context of all those phenomena that Dilthey called “social-historical actuality,” as capable of being known and experienced as such. In the context of experimental natural science, it is true, we must conceive them as experienceable in a purely reflexive sense, in a complementary relation to the *objectifiable* domain of experience. Yet in the context of interpersonal *communication*, we must also be able to grasp them objectively as quasiobjectified phenomena expressing mental intention, and indeed in such a way as to *recognize*

ourselves so to speak through the act of understanding the ethically motivated actions of others. And even in the actual *products* of human engagement with nature through labor we recognize not merely the realm of objectified nature in Kant's sense, but also our own self-externalization as an objective expression of freedom.

It is here that the positive aspect of Hegel's own systematic approach, understood as an overcoming of Kantian dualism, can be appreciated best. For Hegel is the first one to have succeeded, with his concept of "objective spirit," in disclosing and characterizing the unique phenomenon of *the realm between nature and (inner) morality*, the realm that could subsequently be thematized as the appropriate object of the *human sciences* or of *interpretive sociology*.

But in the light of Hegel's discovery of "objective spirit," which could almost be said to constitute the central element of his "objective idealism," the Kantian distinction between "morality" and "legality" immediately reveals itself as unsatisfactory. For in terms of the Kantian dualism of "inner" and "outer," the very distinction implies that the sphere of "morality" at least cannot properly be recognized as *a publicly manifest phenomenon* at all, but instead at best "legality," that is, a form of action that is merely in external agreement with duty. (Even this epistemological interpretation of the Kantian distinction still produces certain difficulties, for indeed behavior that is externally in agreement with right is not, strictly speaking, *knowable* on the basis of the categories of natural science – although it really ought to be, according to the Kantian theory. To this extent Kant's philosophy of law – along with his political philosophy and philosophy of history – is itself already hardly compatible with the systematic project of the *Critique of Pure Reason* – unless, that is, one interprets the implicit theoretical claims of those writings as ones that, precisely as claims to *knowledge*, would first require translation into the language of natural science, into that of behaviorism, for example. To this extent, we can say that the *reductionist approach of scientism* actually begins with the *Critique of Pure Reason* itself.)

The superiority of Hegel's systematic philosophy with respect to the *cognitive grasp of moral phenomena* reveals itself in the first instance in his distinction between the three realms of "right," "morality," and "ethical life" (*Sittlichkeit*).¹² Whereas in the case of the first two realms he could build on Kant's work, the conceptualization of the third here allowed him effectively to grasp and characterize the kinds of phenomena that Kant himself had excluded, namely, those involving a substantively concrete and experienced form of realized morality in the

broadest sense. Hegel thus furnishes us with a dialectical introduction to the phenomena encountered in three realms of experience, which together express the lived *ethos* of a human community in the spirit of Aristotle's ethics.¹³

1. On the level of a still quasinatural form of immediacy – that involving the feelings and sentiments of love and trust – ethical life appears as the substantial unity of the family. And here Hegel's account of the integration of sensuous and spiritual factors in the institution of "marriage" and of the ethical "sentiment" at work in the education of the children – especially on the mother's part – demonstrates the cognitive-phenomenological superiority of his general approach.

2. On the level of needs and interests pertaining to independent individuals and their mutual obligations in relation to economic and formal-legal considerations, the quasinatural unity of ethical substance is dissolved in the context of the self-conscious freedom of individuals and their mutual recognition via the institution of property. According to Hegel, this constitutes the sphere of "civil society" and the "state of needs as conceived by the understanding" in accordance with Kant's perspective. And here Hegel is able to thematize the bourgeois-liberal conception of society and the state that is based on the particular freedom of the individual, on possessive individualism, and on exchange and contract, a conception that first permitted him to dissociate from *this* particular realization of the ethical Idea.

3. On the third and highest level, finally, Hegel claims to identify the mediation and integration of the subjective freedom and an ethical substance that is no longer simply natural but has been sublated, that is, negated and preserved, in self-conscious form. According to Hegel, this is the sphere of the "state" in which the ethical Idea properly manifests itself as such.

It seems to me that in this *threefold* dialectical articulation of the realm of substantial ethical life – of *ethos* in the Aristotelian sense – Hegel has also expressed an essential insight that points beyond the characteristic Kantian conception of "the state of needs as conceived by the understanding" in an ethically relevant respect as far as the distinction between "civil society" and the "state" is concerned. And my reason for making this claim is the following.

The concept of a sphere of "civil society" governed by economical and formal-legal considerations, in which to a certain extent the strategic-rational behavior of individuals is both liberated and simultaneously curbed by social rules, actually lacks a dimension of ethical life that can

already be shown to be quite indispensable on the level of the moral development of the individual.¹⁴ I am referring here to the possibility of moral *identification* on the part of the individual with a larger community in terms of a sense of *solidarity*.

Nonetheless, it is still also possible from this perspective to raise a formal and substantive (and to some extent substantial) objection to Hegel's claim to have articulated the *definitive mediation between the infinite freedom and universality of the rights of individuals and the substantial unity of ethical life embodied in the state*. And the further development of this objection here will lead us, in the context of grounding moral and legal norms, back once again to Kant.

III. The Failure of the Speculative-Theoretical Sublation of Practical Reason in the Concept of Ethical Actuality and the Post-Hegelian Problem of the Mediation between Theory and Praxis

As Hegel himself recognizes and indeed emphasizes, it is the *universal* character of human rights as conceived in the Stoic tradition of natural law and the *infinite freedom* of individuals in immediate relation to God as conceived by the Christian religion that must be "sublated" within the ethical life of the modern state.¹⁵ Both of these perspectives are achievements of an ethical consciousness that became a possibility only with the dissolution of the substantial ethical life of the ancient Greek *polis*. But how can this dimension of *infinite freedom* and *universality* in relation to the ethical claims of the individual possibly be sublated through identification with the essentially *contingent* and *limited* system of self-preservation that is represented by the state?

It should be noted that what is at issue here is not – or at least not in the first instance – the notorious misunderstanding of Hegel's supposed identification with the Prussian state of his own time. What is essentially at issue here is the very *idea* of the state as such. Now the latter, according to Hegel, must be grasped as a "concrete universal" identified in terms of a historical actuality and ultimately of a *concrete state* that the individual is fated as it were to acknowledge as binding in each case. The challenge here therefore lies in political systems. For Hegel leaves us in no doubt here: the self-transcendence of the individual's egoistic interests is expressed through solidarity with substantial ethical life, and this solidarity finds an express opportunity to display itself precisely in

war – in war between independent states. And war here represents a conflict between right and right – that possesses no final court of judgment over and beyond the process of world history itself (*Rph* §§321ff. and 330–40).

Is it conceivable that the universalistic ethics of the natural law tradition, which had formerly grounded the law of nations and later Kant's associated suggestions for the possible establishment of "everlasting peace" through a "federation of nations,"¹⁶ could be "sublated" in such a form of state? And we can ask a similar question with respect to the Christian model of the Kingdom of God or the state of God that Kant himself had still attempted to renew in his concept of the "Kingdom of Ends" and the "Invisible Church."¹⁷

Hegel answered the first question by rejecting Kant's idea of an international federation as utopian (cf. *Rph* §324 and Addition) and thus declared international law to be a domain of the mere *ought* (cf. *Rph* §333) – in the sense of the state's obligation to observe treaties. And this answer must obviously be understood in terms of Hegel's critique of the "abstract ought," that is to say, in terms of the superiority in principle of the "rational actuality" that belongs to the historical contestation between states as against the "ought" demanded by international law. Actually, from his day to ours Hegel does have the *facts* on his side in this respect – and also in the general sense that the human sense of solidarity and identity with a community seems most easily maintained when such a community – whether that of a state, a church, or a political party – can define and distinguish itself as a *concrete system of self-preservation asserting itself against another hostile system*.

But even acknowledging this, it should not be overlooked that, at least since the modern Enlightenment – but in fact already implicitly since the emergence of the great world religions – people have tended to identify themselves fully with a particular political system of self-preservation in the name of an essentially universalistic ethico-religious form of legitimation. This itself, of course, has led to the age of religious wars, and finally to the age of ideologically motivated "global civil war," as it has been called.¹⁸ Some have deplored this development, to some extent from a right-Hegelian perspective, and criticized it as a result of a *moralizing Enlightenment tendency* that has failed to understand the *primacy of "raison d'etat,"* which was itself a characteristic insight of the absolutist age.¹⁹ But it seems to me that even the deplorable fanaticism of the ideologically motivated wars is ultimately the inevitable reflection of the fact that people on a *postconventional level of ethical consciousness*²⁰

can no longer identify themselves, to the point of total self-sacrifice, with a particular contingent social system of self-preservation unless some further universalistic ethical motivation is provided.

This latter consideration even could be regarded as Hegelian in character, if one reflects that Hegel's own philosophy points beyond the *Philosophy of Right* in a twofold sense: first in relation to a philosophy of "world history" framed in terms of the "progress of the consciousness of freedom," and second in relation to a philosophy of "absolute spirit" that finds expression in the realms of art, religion, and philosophy. One could say that it is only in these two mutually connected dimensions that Hegel grounds the certainty that, considered in the large, "the rational is the actual" and "the actual is the rational" (as he puts it in the Preface to the *Philosophy of Right*²¹). And to this extent the universal principles of freedom and reason must find successful realization in the domain of contingent political systems.

But this speculative claim, implicit in Hegel's systematic conception, as a kind of counterfactual anticipation of the *total mediation* of the *is* and the *ought* (the Idea "in and for itself," finally restored and reconciled to itself out of all externalization and alienation) cannot of course properly be *redeemed* by Hegel's attempt to "comprehend actuality." For such an attempt, in its concrete form, is always an act of hermeneutic understanding *ex post facto* undertaken from the standpoint of the historical present, as Hegel above all recognizes.²² To that extent, Hegel's concrete comprehension of actuality leaves the future without consideration.

At this point, therefore, we must ask the question, What possible orientation for action can Hegel's "comprehension" of the "actuality" of "substantial ethical life" provide for anyone who is called on to decide in a situation out of the ordinary way of things and thus asks, What ought I to do? And by such a situation I understand one in which the institutional norms and customs of substantial ethical life do not already furnish the appropriate ethical orientation, in which it is rather a question, in the face of conflicting systems of values, of laying down some pathway into the future, whether for oneself or one's own community (in an ethics of political responsibility, for example).

Hegel's famous declaration that philosophy, like the owl of Minerva, always arrives on the scene too late if it would instruct the world how it *ought* to be (cf. *Rph*, "Preface," 27ff.; ET: pp. 12–13), can hardly be satisfactory for someone who is seriously seeking some orientation for action in the world. Indeed, it would inevitably appear simply as a misunderstanding of the *question* itself. For anyone who seeks orientation

about what properly ought to be done cannot simultaneously adopt the purely theoretical standpoint of understanding the actual world – not even in the sense of the speculative anticipation of the absolute standpoint of the total mediation of “is” and “ought.” The best one can do here is to mediate the concrete (hermeneutic) “ex post factum” understanding of the situation with an ethical principle of reason. In this way, one’s understanding of what is rational in previous history already acquires a normative orientation, and the normative principle of reason is also furnished with concrete content through hermeneutic reconstruction of the historical situation.

And here, I think, we can see how the achievements of Hegel’s objective idealism, concentrated as they are on the cognitive-theoretical understanding of ethical life in the realm of objective spirit, also reveal the fundamental aporia that lies behind them. Indeed, this is most strikingly displayed precisely if, following Hegel’s express indication,²³ we do *not* conflate the “actuality” of substantial ethical life with the contingent “presence” of defective conditions, but rather attempt to comprehend that life as rational from the absolute standpoint of completed world history. The aporia of Hegel’s philosophy, which we have here attempted to understand in ethical terms, lies precisely in its *theoretical-speculative ex post facto standpoint*, that is, the standpoint of “concrete comprehension” as speculatively extrapolated by Hegel. This standpoint, in contrast to our finitely situated hermeneutic understanding of the world, no longer *seems* to have the future lying beyond itself, and thereby also *seemingly* eliminates the problem of mediating our understanding with a purely formal normative principle. From this perspective *the question of the ought in relation to the future* can no longer be understood at all. It can no longer be conceptualized as one that is in principle distinct from all *reflective understanding of the world in terms of history*. The aporia of Hegel’s thought thus lies in the attempt, unrealizable in principle, to “sublate” the *distinctive approach of practical philosophy* into a kind of *theoretical philosophy modeled on a philosophy of history*.

The Young Hegelians, and Kierkegaard and the young Marx in particular, recognized this aporia of Hegel’s philosophy very clearly. And all subsequent philosophy has since found itself confronted with the still unresolved philosophical problem concerning the *mediation of theory and praxis*.²⁴ And indeed it is possible to interpret *existentialism*, *Marxism*, and even *American pragmatism* as a series of *post-Hegelian philosophical attempts to ground the mediation of theory and praxis in relation to the future*.²⁵ But none of these three approaches to philosophy – I present this claim

without further argument here – has succeeded in articulating a satisfactory ethics. The reason for this may lie in the fact that none of them has been able to resolve this problem of mediation by developing a universally binding normative principle that is capable of both directing a theoretical reconstruction of the historical situation and giving concrete form to itself in the process.

In the case of Marxism, the eventual sublation of the thematics of practical reason into a kind of theoretical historical objectivism has led to another variation of the Hegelian aporia, though it is directly related to the future: the precarious attempt to solve the ethical question of the “ought” through prognostic insight into the necessary course of world history.²⁶

In the case of existentialism, we encounter a rigid opposition, already articulated by Kierkegaard, between the subjective “authenticity” of conscience in the ethicoreligious act of decision and any possible “scientific” claims to objectivity or universality on the part of philosophy. This approach has inflicted a *reductio ad absurdum* on the idea of the ethical autonomy of the individual – as in the emphatic irrationalism of personal existential decision as “choice of self” in the work of the early Sartre.²⁷ Heidegger’s supposedly immanent overcoming of existentialism finally has not redressed this “forgetting of logos” but simply subordinated the universally binding claims of reason, along with the modern subject’s claims to autonomy, to the “fate of being” and the workings of time.

In the case of pragmatism, finally, the Continental version of this approach (in Nietzsche, Sorel, and Pareto) has introduced an emphatically anti-Enlightenment turn, that is, an attempt to instrumentalize all validity claims on the part of reason (and the concepts of meaning, truth, truthfulness, ethical rightness) in the service of a semi-biological drive to self-preservation on the part of life and its functional systems. The American version, on the other hand – after its magnificent and as yet barely exploited beginnings in the work of C. S. Peirce – has progressively relinquished its original transcendental-normative dimension (critique of meaning, theory of truth, and consensus ethics) and accommodated itself more and more to a kind of subjective existentialism (as in W. James) or ultimately a form of naturalistic scientism (as in behaviorism, for example).

Thus it finally transpired in the twentieth century that pragmatism (the praxis-oriented counterpart to positivist scientism), together with existentialism, could come to constitute that “complementarity system” of standard Western ideology²⁸ in which morality, along with religion, is declared to be a purely private matter, and the public domain of life – also including

the domain of positive law – is abandoned to reason conceived in terms of an instrumental, value-free, and ultimately strategic character. The final phase of this process would seem to be emerging with the convergence between American pragmatism and the post-Wittgensteinian “paradigm relativism” of incommensurable forms of life, together with Heidegger’s later philosophy of the history of being and its fated sendings.²⁹

In the light of the post-Hegelian situation of the nineteenth and twentieth centuries as sketched here, it seems to me quite understandable that the question of the *ought* – the question concerning normatively binding orientation for action, as well as that concerning the normatively binding legitimation of social institutions and “positive” legal norms – has repeatedly led back to reconsideration of Kant. This also transpired with the explicit turn away from Hegel’s attempt to *comprehend an already established concrete ethical life* toward the question concerning a *formal-abstract normative principle* that could combine a universal claim to validity with a flexible and responsible application to the plurality of conceivable situations. This of course already suggests that these returns to Kant are themselves determined by the post-Hegelian situation insofar as they are all now forced to address the problem of *mediation* between the formal-abstract principle of moral obligation and the comprehending of reason embodied in the actual historical world. This problem of the concrete comprehension of historical actuality was already demanding in the late nineteenth century a renewed engagement with the Kantian principle of ethics. For in the intervening period the “Historical School” (Ranke, Droysen, Savigny, and Grimm),³⁰ together with the regrounding of “hermeneutics” (in Schleiermacher and Boeckh)³¹ had finally detached the concrete understanding of historical actuality from Hegel’s speculative attempt to comprehend history as a total mediation of the is and the ought. Simplifying matters somewhat, we can say that ever since then, the original Hegelian problem of “comprehending” world-historical actuality has been transformed into the primarily empirical problem of a hermeneutic *ex post facto* understanding of the culturally transmitted and its quasiobjective “expression” in historical documents and the like.

A Hegelianism that was already reduced through hermeneutic appropriation could therefore fall victim all the more helplessly to the aporias of emerging historical relativism. (This process is already clearly evident when Dilthey demotes philosophy from the sphere of “absolute spirit” to the domain of “objective spirit” so that it no longer grasps itself in terms of an absolute claim to truth, but rather adapts itself to the value-free claim to *objectivity* as mounted by the empirical human sciences.) The

full implications of this confusion for the problems of ethics and the ultimately ethical legitimation of social institutions, including the practical sphere of law, has I believe become clear in the twentieth century: the humanistically educated class in Germany found themselves intellectually paralyzed as far as any explicit consciousness of norms was concerned and were therefore all too prepared to embrace a *new mythos* (and one that man emphatically needed in order to survive, as Nietzsche, Sorel, and Pareto had all already made very clear) or institutions of order and discipline that were deemed incapable of further legitimation (as in the work of Arnold Gehlen).

In my opinion, one cannot say that the radicalization of hermeneutics undertaken by Heidegger and his pupils – initially in an existential-ontological sense and subsequently in terms of the history of being – has succeeded in extricating hermeneutic thought from the aporias of relativist historicism. On the contrary, these aporias tended all the more to recede from view when Heidegger spoke of a “meaning” or “event of truth” that “in advance of us” already determines the meaning of the “logos” – that is of the validity claims of human speech that are redeemed through rational argument. In opposition to this approach of a radicalized hermeneutics of the history of being, it seems to me that our current ethical predicament after the aforesaid *hermeneutic reduction* of Hegelianism rather demands a prior *mediation* between the ex post facto understanding of history and a universally binding ethical principle in the Kantian sense.

IV. The Necessity and Possibility of Regrounding Ethics on the Basis of a Transformed Transcendental Philosophy

The effective result of this critical reconstruction of the post-Hegelian problematic seems to lie therefore in the explicit *necessity* of regrounding transcendental philosophy itself – and in this context the particular necessity of regrounding ethics and the ethical legitimation of legal right. Any such regrounding must certainly include, as we suggested at the beginning, by virtue of the approach itself, the overcoming of the dualistic metaphysics that underlies Kant’s own grounding of transcendental philosophy. And in this connection we can build on Hegel’s discovery of the historical dimension of ethical actuality or more precisely on a *hermeneutic reduction* of Hegel’s attempt to comprehend this actuality that remains conscious of the necessity for *normative orientation for future praxis* and thus of the necessity for a critical reconstruction of history. To this extent,

we must also directly address the problem that decisively emerged after the failed Hegelian attempt to sublimate practical reason, that of *the mediation of theory and praxis*.

In the context of the present discussion I can only suggest in a few words the way in which I believe such a regrounding of transcendental philosophy – and in particular of ethical philosophy – is *possible* in terms of the field of problem already sketched above. As far as the use of certain terminological formulations is concerned, I must refer here to existing attempts to develop the approach that has been proposed here.³²

In the first place, I think it is necessary to pursue the grounding project of Kant's transcendental philosophy more deeply in terms of a *meaning-critical* analysis and thus liberate the project from the dualistic metaphysics still presupposed by Kant himself. This seems a possible undertaking if, methodologically speaking and prior to any specific claim to contested (fallible) theoretical knowledge, in an act of "strict reflection,"³³ we consider the necessary conditions of argumentation, of the controlled exercise of thought itself. What this means is the following: we do not as yet propose any particular theory, but rather reflect on the validity claims that – immediately identifiable within discourse itself – are already presupposed in our understanding of the meaning of argumentation and cannot be contested by either party to the argument without incurring a *pragmatic self-contradiction*.

(It is immediately obvious that presuppositions of this kind cannot be grounded in a formal-logical sense without *logical circularity*, that is, cannot be *demonstrated*. It is also equally clear that the existence of such presuppositions cannot be revealed *empirically* independently of the act of strict transcendental reflection.³⁴ But these two demands raised by traditional attempts at philosophical "grounding" are here effectively dissolved in the light of meaning-critical reflection. For all *logical demonstration* and all *empirical redemption* of validity claims – and also, in view of the Popperian position, all meaningful *critique* of demonstrations and empirical validity claims – already presupposes a sufficiently clear understanding of the implicit validity claims of the acts of argumentation. In other words, methodologically, in advance of any presentation of affirmative, negative, or skeptical arguments, both partners of the argument must already be able to understand what it means to assert something, to place something under discussion, to question something, to doubt something, and so forth. And in a problematic case, when the suspicion arises that, in place of "strict reflection" on the conditions of argumentation, certain "strong theories" about the "ego," "thought," "speech acts,"

“argumentative discourse” itself, and so on are being assumed, one must return methodologically to those validity claims that cannot be contested without pragmatic self-contradiction precisely by the radically critical or skeptical discussion partner involved as long as he or she continues to argue at all.)

Together with this first methodological step – which may well be re-examined repeatedly if necessary – of “strict reflection” on the necessarily accepted conditions of argumentation, one would certainly proceed to develop a theory of transformed transcendental philosophy as suggested in order to grasp the conditions of argument as completely and consistently as possible. But *this* theory does not function here as a *presupposition* of the aforementioned “strict reflection,” one that could be turned into an axiom, but is itself grounded on the procedure and results of that reflection.³⁵ It is precisely this reflexive self-grounding that distinguishes the projected *transcendental-philosophical* theory from all *empirical* or *meta-physical* theories, theories that make no appeal to the strict reflection on the act of argumentation, but as it were objectify the latter as a mundane phenomenon from some extramundane perspective of their own.

Nevertheless, a transformed transcendental philosophy developed along these lines will also try to conceptualize its own reflexive grounding procedure and thus its difference from the classical transcendental philosophy of Kant by recourse to the “linguistic” turn of much contemporary philosophy. It will attempt, for example, to clarify its *strict reflection* on the act of argumentation and its implicit validity claims by drawing on the theory of speech acts – or, more precisely, of the *double performative-propositional structure* of all speech acts, and of the corresponding possible explicit linguistic sentences and their necessary *presuppositions*.³⁶ (If we consider the *performative-propositional* statement schema “I hereby assert that p,” we can thus clarify the extent to which the truth claim of speech can be simultaneously proposed and reflected as a validity claim by the speaker without incurring semantic antinomies – which do indeed affect the self-reference of *propositional sentences*. It then becomes immediately clear that the apparently redundant statement predicate “is true” – as, for example, in the statement “(That) it is raining, is true” – owes its possibility and its “meta-linguistic” sense to the fact that human beings can and – if there is to be responsible communication at all – must make *truth claims* that are capable of being problematized in the context of argumentative discourse.)

In line with these suggestions, one could say that a transformed transcendental philosophy will thus assume the status of a *transcendental*

semiotics that includes a *transcendental linguistic pragmatics* as the basis of speech act theory and a *transcendental hermeneutics* as the basis of human sciences based on “understanding.” In relation to our problem concerning the grounding of ethical norms, I would claim that the decisive difference between the classical transcendental philosophy of Kant and a transcendental approach transformed in terms of semiotics or linguistic pragmatics is the following.

We can radicalize and provide a more suitable formulation for the grounding problematic of philosophy in general if we inquire in the first instance into the conditions of the *intersubjective validity of argumentative discourse*, rather than into the *conditions in consciousness of objectively valid knowledge*. For argumentative discourse is simply *uneliminable* for anyone who wishes to discuss any question whatsoever by arguments. And since it is only those who argue that can propose theories about all others, and not vice versa, argumentative discourse can also be assumed, from the perspective of those involved in argument, as the ultimately irreducible court of appeal for anyone who validly *thinks* or *knows* anything at all, and thus for all humans considered as rational beings.

The question concerning the conditions of intersubjective validity of argumentative speech is thus *methodologically prior* to any attempted transcendental deduction of the cognitive functions that would presuppose the “transcendental synthesis of apperception” as the irreducible given and highest reference point. For the latter, as a prelinguistic and precommunicative postulate of the theory of knowledge, is not yet sufficient to ground the linguistically conditioned intersubjective validity of knowledge as well. Indeed, the principle of apperception itself still requires, like all assumptions in the theory of knowledge, further grounding in terms of the redemption of the validity claims involved in argumentative discourse.

Corresponding to this methodically more radical approach of a linguistic-pragmatic transformation of transcendental philosophy, the conditions of possibility of the intersubjective validity of speech must be grasped unambiguously as normative conditions – for example, as *universal-pragmatic rules* for redeeming validity claims of discourse.³⁷ Kant’s transcendental logical conditions of knowledge, on the other hand – despite Kant’s insistence that it is only the *quaestio iuris* of the justification of valid claims to knowledge that is at issue here – could also be grasped as metaphysical or anthropological conditions. (It is quite plausible therefore that certain contemporary empirically oriented researchers – such as K. Lorenz and Noam Chomsky, and in a modified form Jean Piaget – have attempted to appropriate Kant’s “highest principle of

synthetic knowledge” (that the conditions of the possibility of experience are at the same time the conditions of the possibility of the objects of experience) as a basic heuristic hypothesis for an evolutionary theory of knowledge or language, that is, in the sense of an innate programming of the psychological or psycho-physical “apparatus” of knowing. With this approach, of course, they can no longer answer the question concerning the conditions of validity of their own claims to knowledge. This shows that we are confronted here – as also in the case of Popper’s theory concerning the spontaneous generation of knowledge – with a Kantianism without “transcendental philosophy.”)

Since the validity conditions of argumentation are *normative* conditions, it is clear that the self-reflexive approach of the transcendental pragmatics of language – in contrast to the transcendental reflection of consciousness – leads directly to the *unity of theoretical and practical reason*. The distinction between this and the self-reflection traditionally accomplished by consciousness (from Descartes and Locke through Kant to Husserl) lies above all in the radical overcoming of *methodological solipsism*, that is, the assumption that a *single* conscious subject (whether this is understood empirically as in Locke or transcendently as the identical “consciousness in general” presupposed in every empirical knowing subject) is capable of entertaining valid thought or knowledge without in principle having to share linguistically embodied meanings with others. In distinction from Kant’s epistemological reflection on the irreducible necessity for a *unity between self-consciousness and consciousness of objects*, that is, on the transcendental unity of the *subject-object relation*, transcendental-pragmatic reflection leads us directly to the transcendental unity of the *subject-cosubject relation* in all linguistic communication.

I believe that this provides us with the indispensable presupposition for a transcendental-philosophical *grounding of ethical norms*. This is a presupposition that Kant himself – who, unlike Fichte, never introduced “other selves” in a transcendental-philosophical fashion – was forced to justify as it were by sleight of hand in declaring the moral law as a self-evidently given “fact of reason.”³⁸ As a reflection on the *normative conditions of the possibility of communication* as the conditions of the possibility of valid argumentation, transcendental reflection can now show why the “fact of reason” is not indeed an empirical or anthropological fact but a fundamental principle of ethics that must be universally acknowledged. Transcendental-pragmatic reflection must thus concede with Hegel that *self-consciousness is mediated through the recognition of the recognition of*

*others*³⁹ (in the sense of a subjective and objective genitive!) and directly recognize this as the normative condition of the possibility of thought. The given “fact of reason,” which served Kant as an ethical foundation incapable of further justification, can now be deciphered as the *fundamental norm of generalized reciprocity for all validity claims*, a norm that is necessarily already acknowledged by anyone who undertakes to argue. In relation to the problem of grounding or legitimating *concrete* norms, this represents the always already acknowledged *meta-norm governing the consensual articulation of specific norms with respect to identifying and mediating the interests of all affected parties under the discursive conditions of an ideal communication community*.⁴⁰

We could thus claim that it is already possible at this level for a transformed transcendental philosophy to overcome that dualism between the autonomy of personal conscience and the actuality of society to which Hegel expressly objected. Even the speculative anticipation of the actuality of reason that is already implied in the absolute standpoint of Hegel’s philosophy can and must be confirmed by this new form of transcendental philosophy as a *counterfactual* anticipation of the discursive conditions of an ideal community of communication. Yet we shall naturally always remain aware of the undiminished risks and the uncertainties attending the actual realization of reason in the present or the future.

Of course, this transcendental-philosophical overcoming of metaphysical dualism is still far from equivalent to that concrete substantiality of ethical life that was envisaged by Hegel. And in fact the grounding of such a formal-abstract principle for an ethics of universal reciprocity is very far from merely justifying the ethical practices and institutional norms we find confronting us in the present. But the consensual procedure of articulating norms that is demanded by our fundamental norm can serve as a regulative idea mediating between the transcendental level and the level of concrete institutional norms rooted in the substantial ethical life of objective spirit, a level that Hegel himself showed a tendency to absolutize.

Thus it is now possible, for example, to reclaim the question concerning the justification of private property or its potential limitation as a problem for the discursive and consensual articulation of norms in relation to the affected parties or those who represent them. In communication ethics this intermediating role of the discursive articulation of consensus in a two-level procedure for grounding norms replaces the kind of theoretical deduction of norms from a single principle that still governs Kant’s derivation of duties from the Categorical Imperative. This allows one to

ground the validity of institutional norms that can never, as Hegel consistently argues, be properly derived from the Categorical Imperative or the criterion of the noncontradiction of universal laws.⁴¹ The unplanned and spontaneous growth of institutional norms can actually be sublated by their free recognition, just as Hegel himself “demands.”

Of course, the fundamental norm (the meta-norm) we have suggested for an ethics of consensus formation merely possesses the character of a “regulative idea” to which – according to Kant – “nothing empirical can completely correspond”; that is, it can never in principle be identified with the concrete comprehension of substantial ethical life as attempted by Hegel. For we shall never live in a world in which the complete mediation of *is* and *ought*, that is, in Hegel’s sense, the complete self-mediation of the Idea, is identical with existing actuality. Nonetheless, the transcendental-pragmatic grounding of ethics we have sketched here is capable of advancing beyond Kant’s ethic of the “abstract ought” and establishing a productive relation to Hegel’s thought in two respects.

On the one hand, one must concede that the fundamental norm of consensus ethics can function as the *normative condition of the possibility of argumentation* (and thereby of all serious thought!) only insofar as we *counterfactually anticipate* the ideal conditions for the formation of consensus and thus the actuality of an ideal community of communication. In contrast to the transcendental-logical conditions of the possibility of knowledge in the Kantian sense, the normative conditions of argumentational discourse clearly demonstrate that Man must necessarily be “ahead of himself,” as it were, must necessarily transcend himself if he is to be human at all. This seems to me to reveal the genuinely transcendental and thus uneliminable heart of the utopian moment in the best sense.⁴² And perhaps we are closer to Hegel here than might initially appear to be the case. For the harsh antiutopianism that is characteristic of Hegel (at least the older Hegel) is actually based on the fact that he did not wish simply to proclaim the counterfactual moment of his own utopian anticipation of “rational actuality” – something he often concedes with reference to the existing defects of “contingent reality” in regard to the Idea – or to transform this moment into the content of a “philosophy of the future,” as the Young Hegelians attempted to do.⁴³ The transcendental-pragmatic grounding of ethics reveals that the *counterfactual* anticipation of “rational actuality” is necessary and inevitable, and that the progressive transcendence of existing “contradiction” is thus *given over* to man as an intrinsic task. This amounts, I suggest, to a mediation between Kant and Hegel in regard to the future.

On the other hand, our approach also implies a further mediation between the perspectives of Kant and Hegel specifically in relation to the past or, rather, in relation to the history that continues to shape and influence the present. Here the fundamental norm governing the consensual articulation of specific norms points up the necessity for a *hermeneutic* understanding of the earlier history of currently existing traditions and institutions – of what we described above as the “hermeneutic reduction” of Hegel’s project of “comprehending” the concrete domain of historical actuality. It is only in this way that we can acquire a *substantively* determined point of departure for the practical discourses directed toward the grounding and justification of norms. But at this juncture the particular problem of mediating between the positions of Kant and Hegel lies in the inevitable tension between a future-oriented norm, which is to provide a criterion for the *critical* reconstruction of the past, and the quasi-Hegelian ambition of hermeneutics, which attempts to do justice to the rationality within historical actuality through the “application of hermeneutic understanding.”⁴⁴ However this problem is to be solved in detail, there can be no question of contemplating any relativist reduction of the normative dimension to the binding authority of specific traditions. The only possible path lies in pursuing a critical mediation between transcendental ethics and historical hermeneutics. Such a mediation can finally transcend the old opposition between formalistic Kantianism and speculative-historicist Hegelianism.

Notes

1. Cf. in particular Hegel’s *Phänomenologie des Geistes*, ed. J. Hoffmeister (Hamburg, 1952), 63ff.; ET: p. 46ff.; Hegel’s *Wissenschaft der Logik*, ed. G. Lasson (Hamburg, 1966), vol. 2, p. 496; ET: p. 835; Hegel’s *Vorlesungen über die Geschichte der Philosophie*, vol. 3, Glockner edition, vol. 19, p. 555ff.; ET: III, p. 427; *EPW* (1830), §10.
2. Here I am pursuing the meaning-critical transformation of Kant’s philosophy pioneered by C. S. Peirce. Cf. my book *Der Denkweg von Charles S. Peirce: Eine Einführung in den amerikanischen Pragmatismus* (Frankfurt, 1975), esp. p. 41ff.; ET: *Charles S. Peirce: From Pragmatism to Pragmaticism* (Amherst, Mass., 1981, rpt. Atlantic High Courts, N.J., 1995). Also the article “Von Kant zu Peirce: Die semiotische Transformation der transzendentalen Logik,” in K.-O. Apel, *Transformation der Philosophie* (Frankfurt, 1973), vol. 2, p. 157–77; ET: *Towards a Transformation of Philosophy*, trans. Glyn Adey and David Frisby (London, 1980), pp. 77–92.
3. To this extent I believe one can accept W. O. Quine’s “principle of holism” that itself ultimately derives from John Dewey’s empiricist-naturalistic

- transformation of Hegel's thought. Of course, the formulation of the principle itself reveals that "holism" is *not* able to eliminate the "transcendental difference" between empirical experience and philosophical principles.
4. In his sophisticated critique of nominalism, Peirce had already demonstrated the necessity for a meaning-critical rehabilitation of the "realist" position concerning the status of universals: it is quite impossible for us to challenge the possible *reality* of these concepts without denying the validity claim implicit in the linguistic concepts we actually employ. Of course, this does not mean that we must assume the actual *existence* of these concepts in a hypostasised Platonic fashion. Nor does it mean that we can assume the possibility of *definitive essential definitions* that would remain unchanged in the course of further theoretical progress. Peirce recognizes that our rule-governed behavioral dispositions (or "habits"), formed on the basis of our understanding of universal concepts in propositions such as "this object is heavy," are at once undeniably real *and* revisable (through a further process of rationalization). It is this consideration above all that convinced Peirce that a properly understood "realist" theory of universals is quite compatible with the principle of fallibilism. On reading Hegel's *Logic*, it is astonishing to see how frequently he comes very close to Peirce's meaning-critical perspective. Thus Hegel's "existing concept" is, in the last analysis, nothing other than that realization of the conceptual universal "in habits of action" that Peirce is compelled to assume (for Hegel's "concept" certainly does not imply the *existence* of Platonic ideas that Peirce likewise rejects). It is true, however, that Hegel fails to consider the fact that the actual progress of empirical science makes an *essential* contribution to our knowledge of essential structures in general.
 5. In my view, the underlying dualistic metaphysics of the *Critique of Pure Reason* comprises everything that Kant says or very strongly suggests about the relation between cognition and things in themselves (e.g., "affection through the senses") when he adopts a *theoretical, objectifying, and essentially external attitude* – as opposed to what he says on the basis of reflection on knowledge (and also should say on his own critique of knowledge and its claim to validity). The task is thus to grasp the fundamental "critical" approach as a recognition that cognition – and transcendental reflection on cognition – has nothing to do with existing but unknowable things in themselves, but concerns only what is meaningfully knowable in the context of our actual practical engagement with the world. For more on this question, cf. K.-O. Apel, *Die "Erklären:Verstehen" Kontroverse in transzendentalpragmatischer Sicht* (Frankfurt, 1979), esp. pp. 97ff. and 319ff.; ET: *Understanding and Explanation: A Transcendental-Pragmatic Perspective* (Cambridge, Mass., 1984).
 6. Cf. Kant, *AkademieTextausgabe*, vol. 8, p. 366; ET: *Kant Selections*, ed. and trans. L. W. Beck (London, 1988), "Perpetual Peace: A Philosophical Sketch," p. 443.
 7. Cf. O. Höffe, *Ethik und Politik* (Frankfurt, 1979), pp. 195–226; cf. also O. Höffe, "Recht und Moral: Ein kantischer Problemaufriss," *Neue Hefte für Philosophie* 17 (1979): 1–36.
 8. Kant, *ibid.*, 336; ET: p. 443.

9. Cf. Kant's "Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht," Akademie-Textausgabe, vol. 8, p. 15; ET: *Kant Selections*, "Idea for a Universal History from the Cosmopolitan Point of View," pp. 415–25.
10. On this, cf. G. E. M. Anscombe, *Intention* (Oxford, 1957) and G. H. Von Wright, *Erklären und Verstehen* (Frankfurt, 1974); ET: *Explanation and Understanding* (Ithaca, N.Y., 1997).
11. On this, cf. G. H. Von Wright, op. cit., chap. 2; also his book *Causality and Determinism* (New York/London, 1974) and K.-O. Apel, *Die Erklären: Verstehen Kontroverse*, p. 97ff.
12. I refer in what follows to Hegel, *Grundlinien der Philosophie des Rechts* (1821; Frankfurt, 1970) (*Theorie-Werkausgabe*), abbreviated as *Rph*.
13. While Hegel certainly re-emphasizes the lived "ethos" as the subject matter of ethics in the Aristotelian sense, he no longer separates – as in all preindustrial social ethics – the sphere of labor in the production of goods and commodities from the sphere of ethical and political action. On the contrary, Hegel is the first to grasp this dimension as an objectification of freedom and thus as the basis for possessions, education, culture, and the legal recognition of freedom in the institution of private property. Cf. M. Riedel, *Studien zu Hegels Rechtsphilosophie* (Frankfurt, 1970).
14. Cf. in particular R. Döbert, J. Habermas, and G. Nunner-Winkler, eds., *Entwicklung des Ichs* (Köln, 1977).
15. Cf. *Rph*. §260 and the Addition: "The principle of modern states has enormous strength and depth because it allows the principle of subjectivity to attain fulfillment in the *self-sufficient extreme* of personal particularity, while at the same time *bringing it back to substantial unity* and so preserving this unity in the principle of subjectivity itself[. . .] The essence of the modern state is that the universal should be linked with the complete freedom of particularity and the well-being of individuals, and hence that the interest of the family and of civil society must become focused on the state; but the universality of the end cannot make further progress without the personal knowledge and volition of the particular individuals" (cf. also §261, with Addition, and §262, with Addition).
16. Cf. Kant, *Zum ewigen Frieden*, Akad. Textausg., vol. 6, pp. 343–86, esp. 357, 360, and 367.
17. Cf. Kant, *Die Religion innerhalb der blossen Vernunft*, Akad. Textausg., vol. 6, esp. the "Third Part: The Victory of the Good Principle over the Evil Principle and the Founding of a Kingdom of God on Earth." Kant here formulates precisely the opposite view to Hegel's identification of the state with the "actuality of ethical life" in the following sentence: "Further, since the duties of virtue concern the entire human race, the concept of an ethical community always refers to the ideal of a totality of human beings, and in this it distinguishes itself from the concept of a political community" (ibid., p. 96; ET: *Religion within the Boundaries of Mere Reason*, trans. and ed. Allen Wood and George di Giovanni (Cambridge, 1998), p. 107).
18. Cf. H. Kesting, *Geschichtsphilosophie und Weltbürgerkrieg* (Heidelberg, 1959).

19. Cf. H. Kesting, op. cit., as well as R. Koselleck, *Kritik und Krise* (Freiburg/Munich, 1959).
20. J. Habermas has also taken up the “developmental logic” of moral consciousness originally developed by Piaget and Kohlberg. Cf. Habermas, *Zur Rekonstruktion des historischen Materialismus* (Frankfurt, 1976), pp. 63–91, and my own attempt to apply these categories to the reconstruction of cultural and intellectual history in K.-O. Apel et al., *Funkkolleg Praktische Philosophie/Ethik, Dialog*, vol. 1, pp. 49–162 (Frankfurt am Main, 1984), and *Studententext*, vol. 1, pp. 13–156 (Heinheim/Bosel, 1980).
21. *Rph*, 24; ET: p. 20. Cf. Hegel’s further remarks on this in the third edition (1830) on the *Encyclopaedia of the Philosophical Sciences*, §6 (footnote).
22. It is in this context that we find the celebrated claim – that modern historicists are so delighted to cite – that philosophy is (merely!) “its own time grasped in thought” and that it is therefore foolish to “imagine that any philosophy can transcend its present world” (*Rph*, “Preface,” 26; ET: p. 21). The historicists naturally overlook the fact that this claim, strictly interpreted, contradicts not only a philosophy that explicitly raises normative claims, but also Hegel’s own speculative-theoretical claim to establish a coherent system (the claim articulated in the remark cited above concerning the *essence* of philosophy).
23. Cf. *Rph*, “Preface,” 27f.; ET: p. 23.
24. On the “revolutionary break in nineteenth-century thought after Hegel’s death,” cf. K. Löwith, *Von Hegel zu Nietzsche* (Stuttgart, 1950), ET: *From Hegel to Nietzsche*, trans. D. E. Green (London, 1964). See also D. Böhler, *Metakritik der Marxschen Ideologiekritik* (Frankfurt, 1981).
25. Cf. the general conception presented in my “Introduction to American Pragmatism,” in *Der Denkweg von Charles S. Peirce*, p. 11ff. and also 345f.
26. Cf. Karl Popper’s critique of “moral futurism” in *The Poverty of Historicism* and in *The Open Society and Its Enemies*, vol. 2, ch. 12.
27. In his essay “Existentialism Is a Humanism,” Sartre certainly related his approach to Kant’s principle of universalizability insofar as he identifies the individual’s “choice of self” with the “choice of humanity.”
28. On this, cf. K.-O. Apel, *Transformation der Philosophie*, vol. 2, p. 359f.; ET: p. 255ff.; and my contribution to the *Reader zum Funkkolleg Praktische Philosophie/Ethik*, eds. K.-O. Apel et al. (Frankfurt, 1980), pp. 267–91.
29. Cf. R. Rorty, *Essays on Heidegger and Others* (Cambridge, 1991).
30. Cf. J. Rothacker, *Einleitung in die Geisteswissenschaften* (Tübingen, 1930).
31. Cf. J. Wach, *Das Verstehen: Grundzüge einer Geschichte der hermeneutischen Theorie im 19. Jahrhundert*, 3 vols. (Tübingen, 1926–33). Cf. also H.-G. Gadamer, *Wahrheit und Methode* (Tübingen, 1960), p. 162ff.
32. Cf. K.-O. Apel, “Das A Priori der Kommunikationsgemeinschaft,” in *Transformation der Philosophie*, vol. 2, pp. 258–436; ET: pp. 225–300. Also K.-O. Apel, *Anseinandersetzungen: In Erprobung des Transzendentalpragmatischen Ansatzes* (Frankfurt am Main, 1998), *Diskurs und Verantwortung*

- (Frankfurt am Main, 1988), and *The Response of Discourse Ethics* (Keeters, Belgium, 2001).
33. The most important contemporary position that denies the possibility of “ultimate grounding” is based on the argument that both transcendental and empirical groundings are always undertaken in the context of a *theory* that itself cannot be ultimately grounded. Such “theoreticism,” as Feyerabend has indirectly shown, eliminates every normative criterion for understanding the concept of “theory” itself and for any independent examination of theories. But one can also argue directly against the thesis that the *reflexive understanding of meaning and therefore of the validity claims involved in all acts of argumentation* already presupposes a theory (a theory of speech acts, for example). Cf. W. Kuhlmann, “Reflexive Letztbegründung,” *Zeitschrift für philosophische Forschung* 35 (1981): 3–26.
 34. As argued by B. Stroud in his influential essay “Transcendental Arguments,” *Journal of Philosophy* 65 (1968): 241–56.
 35. This constitutes a provisional response to C. F. Gethmann and R. Hegselmann, “Das Problem der Begründung zwischen Dezisionismus und Fundamentalismus,” *Zeitschrift für allgemeine Wissenschaftstheorie* 8 (1977): 342ff.
 36. On the “twofold structure” of speech acts or explicit propositions, cf. J. Habermas, “Vorbereitende Bemerkungen zu einer Theorie der kommunikativen Kompetenz,” in *Theorie der Gesellschaft oder Sozialtechnologie?*, ed. J. Habermas and N. Luhmann (Frankfurt, 1971), pp. 101–41, and K.-O. Apel, “Zwei paradigmatische Antworten auf die Frage nach der Logos-Auszeichnung der menschlichen Sprache,” in *Kulturwissenschaften*, ed. H. Lützel (Bonn, 1980), pp. 13–68.
 37. Cf. the contributions of J. Habermas, and K.-O. Apel in *Sprachpragmatik und Philosophie*, ed. K.-O. Apel (Frankfurt, 1976).
 38. Cf. K.-H. Ilting, “Der naturalistische Fehlschluss bei Kant,” in *Rehabilitierung der praktischen Philosophie*, ed. M. Riedel, vol. 1 (Freiburg, 1972), pp. 113–32.
 39. Cf. Hegel, *Phenomenology of Spirit*, ch. IV A: “Independence and Dependence of Self-Consciousness: Lordship and Bondage”; ET: Miller, p. 19ff.
 40. For this and the following remarks, cf. also *Funkkolleg Praktische Philosophie*, loc. cit., vol. 2, pp. 606–35.
 41. Cf. in particular Hegel’s essay *Über die wissenschaftliche Behandlungsarten des Naturrechts*, cited here from the abbreviated version in *Materialien zu Kants “Kritik der praktischen Vernunft,”* ed. R. Bittner and K. Cramer (Frankfurt, 1975), p. 327ff.
 42. Cf. K.-O. Apel, “Ist die Ethik der idealien Kommunikationsgemeinschaft Utopie?,” in *Utopieforschung*, ed. W. Vosskamp (Stuttgart, 1982), vol. 1, pp. 325–55 (ET: in S. Benhabib and F. Dellmayr, eds., *The Communicative Ethics Controversy* (Cambridge, Mass., 1990), 23–59).
 43. Cf. note 28 above.
 44. Cf. O. Marquard, “Hegel und das Sollen,” in his book *Schwierigkeiten mit der Geschichtsphilosophie* (Frankfurt, 1973), pp. 37–51.

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II
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ABSOLUTE RIGHT

4

“The Personality of the Will” as the Principle of Abstract Right: An Analysis of §§34–40 of Hegel’s *Philosophy of Right* in Terms of the Logical Structure of the Concept

Michael Quante

This chapter is principally concerned with elucidating the categorial determinations of “personality” and “person” in Hegel’s thought.¹ Both concepts assume a central role in the *Philosophy of Right* insofar as Hegel explicitly defines personality as the moment of self-conscious freedom belonging to the will itself: “The personality of the will” (§39) thus presents itself as the necessary condition for “every kind of right” (§40). Rights can be ascribed “only to a person.”² Hegel distinguishes between the concept of right in the narrower sense (“abstract right”) and the broader concept of moral or ethical rights and demands. He interprets the moment of personality as the sufficient condition for ascribing rights to an individual in the sense of abstract right (the right to acquire property, the right to enter into contract, or the right to appropriate punishment in the case of illegal and criminal acts). In addition, Hegel also claims to have provided an explicit analysis of self-consciousness as the consciousness of freedom in terms of a *logical*³ determination of the moment of personality. Standing expressly within the tradition of Kant and Fichte, Hegel thus attempts to explicate philosophically the *single* foundation of all justified rights and demands by reference to the concept of personality.

The following remarks will interpret the logical determinations of the principle of personality and the analysis of self-conscious freedom that that principle implies. The philosophical aspects of right in the narrower sense, as treated in §§34–40, will receive only brief mention because these introductory paragraphs merely contain the “fundamental determinations” (§40 Marginalia) of abstract right. The general “fruitfulness”

(*ibid.*) of any philosophical analysis of personality can reveal itself, as Hegel himself says, only in “what is to follow” (*ibid.*), namely, in the further development and exposition of the *Philosophy of Right* itself. Section I of this chapter analyzes the double role played by the concepts of “personality” and “person” in the *Philosophy of Right* as both universal and subsidiary principles. The second section presents an analysis of §§34–40 of the *Philosophy of Right*.

I.1. The Twofold Role of the Concepts of Personality and Person

As we have said, the conceptual determinations of personality and person play a twofold role in the *Philosophy of Right*. In the first place, they can be said to represent the universal principle of Hegel’s entire philosophy of right in the sense that “personality” is the necessary condition of all legitimate rights and demands. The conceptual development of the argument in the *Philosophy of Right* can thus be understood precisely as the unfolding of the concept of personality, beginning with the concept of the person that characterizes abstract right and culminating in the role of the monarch in the context of ethical life (§279). The “force” that drives this development is the teleological analysis of the various forms of will that constitutes the organizing principle for Hegel’s *Philosophy of Right* as a whole. This teleological analysis depends for its part on the results of Hegel’s speculative logic that must itself be regarded as the ultimate source of justification for the progressive conceptual and systematic explication of the various forms of right and the legitimate demands associated with them. But in addition and apart from this essentially system-immanent form of “grounding,” we must also examine the general plausibility of Hegel’s analysis and exposition of the relevant material as a fundamental means of “confirmation.”

(i) The personality of the will represents the universal principle of the *Philosophy of Right* in the sense that it cannot be relinquished at any of the subsequent and more developed stages of the exposition. On the one hand, as the moment of “universality” (§35), the concept of personality remains an indispensable component at every level of the will that is free in and for itself; on the other hand, this moment of universality itself becomes increasingly “concrete” as the teleological exposition of the will unfolds. Thus, the determinations of the personality themselves undergo a process of increasing conceptual differentiation and enrichment.

Whereas universality is understood at the level of abstract right as the self-consciousness of freedom or as the "intrinsically singular will of a subject" (§34), this consciousness of freedom is further developed at the level of morality. Here it becomes a universality expressly reflected into itself, one in which a subject knows itself as a unity of universally regulated willing (the demands of morality) and the concrete singular will (cf. Quante 1993, pp. 51–55). And finally, at the level of ethical life, it becomes the concrete universality in which the particular expressions of the will are grasped and recognized as realizations of this self-determining universal (cf. §142).

(ii) In the second place, the concepts of personality and person also play a role as subsidiary principles (cf. Siep 1992, p. 100). In this sense, they represent sufficient principles for the complete exposition of one particular sphere of the *Philosophy of Right*, namely, that of abstract right. Hegel claims, by means of these conceptual determinations, to have identified the structuring principle and legitimating basis for the various forms and contents of abstract right. This much is already abundantly clear from the fact that §§34–40 constitute the introduction to the first part of the *Philosophy of Right* as a whole.⁴ These introductory sections, where the final paragraph of each already contains the systematic conceptual outline and articulation of the immediately following part, essentially fulfill two tasks: first, the subsidiary principles logically sufficient for the relevant part of the *Philosophy of Right* are here introduced terminologically in their own right, and second, they are explicated in terms of the conceptual structure that the will has assumed at this particular stage of the overall development. As far as abstract right is concerned, the relevant principles are the conceptual determinations of personality and person that are here interpreted as logical moments of the will that is free in and for itself at a particular stage of development (cf. §34). In distinction from its role as a universal principle, personality as a subsidiary principle therefore remains bound up with a specific constellation of the moments of the will (of universality, particularity, and singularity) and stands opposed to other subsidiary principles (such as the "subject" in the domain of morality, for example).

In distinction from a universal principle, a subsidiary principle is logically sufficient for the conceptual explication of its own appropriate sphere. In addition, we must recognize that the universal principle of personality itself – as the logically necessary condition for all forms of right – must itself be "sublated" within the other subsidiary principles. These other forms of development play no role within the context of abstract

right, though it should be pointed out here that the self-consciousness of freedom is the moment that is preserved and retained throughout the progressive development of the *Philosophy of Right*, but also at the same time substantively enriched, and thus rendered more “concrete” in Hegel’s sense, in the shapes of morality and ethical life. In the following, however, we simply analyze personality and person according to the structural logic of the concept that articulates them as belonging to the free will “as it exists in its abstract concept” (§34).

I.2. Analysis of §§34–40

I.2.1. The Structure of the Introduction to Abstract Right

As an introduction to the first part of the *Philosophy of Right*, §§34–40 have a threefold function. First, they indicate the logical structure of abstract right as one stage “in the development of the idea of the will that is free in and for itself” (§33). Thus, §34 defines the logical status and position of the first part in the context of the *Philosophy of Right* as a whole. The various moments of this particular developmental stage are then explicated, the subsidiary principle that underlies the treatment of abstract right is indicated, and its most important aspects from the juridical point of view are mentioned. Second, in §§35–40 Hegel attempts, through an explication of the moments of universality, particularity, and singularity, to provide both a systematic logical articulation and a substantive exposition of abstract right in terms of the concepts of personality and person. Third, he provides an outline of the overall logical development within the sphere of abstract right and of the various “forms” (§32) that are implied within that sphere. Hegel accomplishes this in §40.

The structure of the conceptual development of §§35–39 directly reflects Hegel’s claim to provide a systematic logical articulation and a fundamental substantive definition of abstract right on the basis of the subsidiary principle of personality, and the way in which he approaches the logical determination of abstract right in terms of the three moments of the concept. We are thus presented, as we would expect, with three sections, each of which provides a logical and substantive determination of abstract right in turn. After he has identified the three moments in relation to the particular stage of the development of the will (§34), Hegel points out in his marginal comments that in “what follows” (§34 Marginalia) we shall essentially be concerned with the further explication of “these

moments." He therefore proceeds to discuss the moments of universality (in §35 and Note), particularity (in §37), and singularity (in §39). Hegel's individual enumeration of the relevant stages here expressly points up the overall structure of the argument (although this properly begins only with §36). The extra sections, §36 and §38, serve to provide a substantive articulation of abstract right that can also, according to Hegel, be derived from the logical structure of the will as personality.

This identification of the general structure of §§34–40 will prove particularly helpful for the following analysis. For one of the principle interpretative problems of Hegel's text lies in the fact that he pursues the logical determination of the subject matter on two different levels. Thus, the logical determinations of personality and person are interpreted as the universal moment of the will (§35) that, in accordance with its very conceptual structure, also involves the moments of particularity and singularity (§34). But the explication of these two moments themselves is then pursued from the "perspective" of the universal moment of the personality or the person. Hegel derives the relationship between the three moments from the determinacy of the will "in its abstract concept" (*ibid.*). The three moments are therefore "still empty of specific determination and intrinsically without internal opposition" (§34 Marginalia). At this level the relationship to the moments of particularity and singularity has not yet been integrated into the moment of universality. This integration, which will be accomplished in the parts of the text concerned with morality and ethical life, presents the development of personality as the universal principle of the *Philosophy of Right* as a whole, but this does not appear as such at the level of abstract right. That is why Hegel can say that although the "totality" (§37 Marginalia) of the determinations of universality, particularity, and singularity is certainly "present" in the sphere of abstract right, it has "not yet been taken up" as such into the moments themselves (*ibid.*). Considered from the perspective of the personality, the moments of singularity and particularity are still only externally supplied, even though they effectively belong to the overall structure of the will. As a subsidiary principle, therefore, this determination of the will remains confined to the form of "abstract personality" (§37).

Thus, while Hegel presents all three determinations as moments of the will, he also emphasizes that no relationship to the other two determinations can be established "immanently" simply on the basis of personality as universality itself. By virtue of its direct connection with the will, the universality of personality is certainly "mediated" with the two other determinations (§37 Marginalia), but the mediation in question still

remains “abstract” precisely because of the lack of internal relation. The latter results, according to Hegel, from the particular stage of the will’s development that here, at the beginning of its teleological exposition, is still grasped solely “according to its abstract concept” (§34). “This abstractness is the determinacy of the present standpoint” (§34 Marginalia), and it is from this determinacy that Hegel derives, as will become clear in the following, the substantive features of abstract right itself.

In order to grasp the sense of this “derivation,” we must understand the comprehensive meaning of the concept of “subjectivity” that underlies Hegel’s remarks. He generally interprets subjectivity as the individualization and actualization of a universal in the form of a singular individual. In the *Science of Logic*, Hegel describes this moment of the pure concept in relation to the “I” of transcendental apperception precisely as “personality,” a substantive determination that Hegel also employs in the context of the *Philosophy of Right*. Thus he writes at the beginning of the third part of the logic, the “logic of the concept”: “But the *ego* is *first* pure self-relating singularity, and this not in an immediate fashion, but rather precisely insofar as it abstracts from all content and determinacy and returns to the freedom of unlimited equality with itself. It is therefore *universality*; it is a unity that is united with itself only through that *negative* act of relating that appears as an act of abstracting, and it thereby maintains all determinacy dissolved within itself. *Second* the *ego* is, as self-relating negativity, just as immediately *singularity*, or *absolute determinedness*, which stands over against everything other than itself and excludes the latter from itself; it is thus *individual personality*” (WLTW II, 253; ET: p. 583).

The argument of the *Science of Logic* itself, according to Hegel, demonstrates that the “pure concept” itself possesses the structure of self-consciousness and that “the absolute” is thus characterized in terms of personality. These claims can be fruitfully applied to the analysis of the concepts of personality and person in the context of the *Philosophy of Right*. The first determination of the ego, that which is characterized as universality, possesses the distinctive structure of positing itself as unity with itself precisely through abstraction (or self-distantiation) from something other (from all other determinacies). The freedom of unrestricted equality with itself (pure self-consciousness) that is implied in this structure thus remains abstract, and the negated determinations are all contained as “dissolved” within this freedom. The second moment of the ego is not, as one might initially expect, equivalent to the determination of singularity. On the contrary, Hegel frequently employs the term “singularity” [*Einzelheit*], which also occurs in §§34–40 of the *Philosophy of Right*, to

characterize a spatially individuated singular thing that, as a concrete individual entity, "sets itself over against another" and thereby "excludes" it. Hegel combines the two logical moments of the ego, abstract self-consciousness (universality) and singularity as "absolute determinacy," in the determination of "individual personality." In the context of abstract right, on the other hand, Hegel distinguishes these two moments in terms of personality and person, respectively. He thereby attempts to derive a speculative argument for the necessity of a spatio-temporal, that is, corporeal individualization of the *person*, precisely from the *abstractness* of the conceptual moment of pure universality (*personality*) at the level of abstract right. To be an individual and to possess personality constitute the two moments of the determination of universality, which is for its part a moment of the concept. The concept itself is also characterized, as we pointed out above, by the conceptual moments of particularity and singularity. On the abstract and immediate level, however, the latter moments are still external to the ego as the universality of the concept, and thus also to personality. In the *Philosophy of Right* it is the will that is free in and for itself that possesses the structure of the concept as such, and is characterized by the three determinations of universality, particularity, and singularity. In the *Philosophy of Right*, the personality of the will, as we shall see in what follows, merely designates the conceptual moment of universality, although it also implicitly contains the two other logical moments that Hegel had already distinguished in the *Science of Logic*.

I.2.2. The Logical Structure of Hegel's Introduction to Abstract Right

I.2.2.1. The Developmental Level of the Will in Abstract Right

"The will that is free in and for itself, in accordance with its abstract concept, is in the determinacy of immediacy" (§34). Hegel thus commences his treatment of abstract right here by unfolding the logical structure of the will itself that is generally presupposed throughout the *Philosophy of Right* as will free in and for itself. In that text the will is free in and for itself as self-conscious purposive agency [*Zwecktätigkeit*]. In accordance with this determination, the will undergoes a second development with respect to the modalities of the "in itself" (abstract right), the "for itself" (morality), and the "in and for itself" (ethical life). Hegel's remark that the will that is free in and for itself considered here in accordance with its abstract concept signifies that this will, at the beginning, is free in and

for itself only *in itself* or potentially, that the determinacy of freedom in and for itself still belongs to it in an essentially immediate form. According to Hegel, two specific consequences flow from the fact that the will is considered here only “in accordance with its abstract concept” and thus exhibits the “determinacy of immediacy.”

(i) The three moments of universality, particularity, and singularity are not yet internally mediated with one another, but are still related only abstractly to one another on the basis of the conceptual nature of the will in general. The moment of universality, which Hegel does not explicitly mention here, is interpreted as the determination of an “actual will that relates negatively and purely abstractly to reality” (*ibid.*). Precisely as such universality, and existing as the “intrinsically singular will of a subject” (*ibid.*), the will relates “negatively” to the reality of existing things and determinations. The latter are here understood as external to the free subject, rather than as determinations that have been developed internally from the subject itself, and cannot therefore properly belong to the substantive content of the self-conscious freedom of the willing individual. On the one hand, this self-conscious freedom is an “actuality” in the sense that there must be a unity within the singular self-conscious will that connects the ego as the ground of self-consciousness and the immediate existence of a self-conscious willing (cf. *WLTW II*, 200ff.; ET: p. 541ff.). On the other hand, this self-conscious and thus essentially self-relating universality remains “abstract” in its self-relation precisely because it “negatively” extrudes the moment of particularity from this self-relation, and thus determines itself as the “exclusive singularity” (§34) of a singular subject, as a singularity that must “externally” assume the “further content of particular aims and purposes” (*ibid.*) that are implied in any individual act of willing. According to Hegel, this “external” relationship reveals itself in the fact that subjective motivations such as “needs” (§34, marginalia) and certain “conditions” of the external world (*ibid.*) must be taken up as content into the attitude of any individual will that knows itself as free in its willing in this abstract sense. This self-consciousness of freedom, as it “manifests” itself in the abstract freedom of the ego as actuality (*WLTW II*, 201; ET: pp. 541–42), implies an “external and immediately encountered world” (§34, note) that the willing subject finds “before it” and to which the subject’s own corporeal nature also belongs. This “finding” of a world external to self-consciousness is not interpreted by Hegel as some causal process of production. Rather, Hegel is attempting to show that the self-consciousness of the abstract universality of the will, involved as it is in the consciousness of the ego, necessarily implies a content that

can be found only outside self-consciousness. For this self-consciousness of freedom "still has no content of its own that would be determined on the basis of itself" (§34, marginalia). The consciousness of freedom that belongs to abstract universality thus presupposes the existence of an external and immediately encountered world.

(ii) The second consequence that Hegel derives from this determinacy of the universality of the will, namely, its immediate and purely abstract self-consciousness, is that this will exists in the form of a concrete willing of a human individual, thus not only as an expressly individuated self-consciousness, but also as a spatio-temporally individuated being (§43). According to Hegel's speculative logic, the *immediacy* of the self-relation involved in the ego's consciousness of freedom also grounds the fact that this expression of willing exists as the determinate willing of an individual. This individual enjoys the status of personality, as the following analysis will show, on the basis of its universality as the self-consciousness of freedom. At the same time, it is also a concrete individual, a person, on the basis of the abstractness and the immediacy of this universality of self-conscious freedom.

As far as our further analysis is concerned, it should be noted that the moment of the universality of the will designates for Hegel the self-consciousness that is (1) a necessary and sufficient condition of freedom, and (2) is a thinking and willing form of self-relation. At the same time, we must remember that universality is only *one* moment in the total structure of the will. On the level of abstract right, this moment assumes the role of a "subsidiary principle" by virtue of the immediacy of the will precisely in its abstract isolation from the other logical moments. Thus it should already be quite clear that the freedom manifested in the domain of abstract right cannot exhaust the whole sphere of the free will that wills itself.

I.2.2.2. *The Individual Moments of the Free Will and Their Significance for Legal and Political Philosophy*

I.2.2.2.1. Universality as Such and Its Significance for Legal and Political Philosophy (§35f.). In accordance with the order of his speculative logic, Hegel begins by specifying more closely the "universality of this will that is free in and for itself" (§35). The fact that Hegel here characterizes the will that is free in and for itself in the determinacy of immediacy (cf. §34) as "free for itself" (§35) does not mean that the fundamental logical determination of the will has been subjected to modification in any way. With this expression, Hegel intends, rather, to emphasize that

self-conscious freedom belongs to this will and that the following discussion will also be centrally concerned with a closer analysis of this consciousness of freedom. According to Hegel, the self-consciousness of freedom here, identified with the will's moment of the universality, is "the formal, self-conscious and otherwise contentless and simple relationship to itself in its singularity" (ibid.). The individual that possesses a will in this form "is to that extent a person" (ibid.).⁵

The determination of person that Hegel introduces at this point designates a specific status of an individual, one that expressly belongs to the individual insofar as the latter is capable of self-consciousness. At the same time, Hegel's term intends to capture the fact that the expression "person" is not merely employed as a sortal concept (that of being a person), but also serves to designate the individual as such in his or her spatio-temporal singularity. We say not merely that an individual belongs to the class or set of persons in general (the sortal use of the concept), but also that this person (referring to an individual) possesses other specific and determinate properties (e.g., "This person is not in this room at the moment"). An individual enjoys the status of being a person "insofar" (§35) as that individual possesses self-consciousness, which can be defined according to Hegel as the formal and contentless simple relation to self. These determinations are fulfilled in the direct self-reference of the ego that is necessarily implied for Hegel in any utterance such as: "I will that x be the case." This self-relation implied in the self-referring character of the ego is "simple" in the sense that it does not have to be realized with reference to any particular given state of affairs: the self-reference of the ego requires no specific designations in order to accomplish this self-reference (cf. Jäger 1994; Rohs 1994). This particular form of self-referentiality, which is the fundamental form of all freedom, according to Hegel, is also defined as "the pure thinking of itself" (§5) and as "the element [. . .] of the pure reflection of the ego into itself." This self-consciousness is "formal" since it abstracts from every substantive determination and is therefore "contentless." This process in which the ego distances itself from the "x" that it willed transforms the ego that is conscious of its freedom into the "completely abstract ego in which all concrete limitation and validity is negated and rendered invalid" (§35, note). It is by virtue of this capacity for distantiation, which presupposes the possibility of pure self-relation, that an individual belongs to the class of persons in general. Hegel calls this "personality" and distinguishes two aspects to the concept: "It is inherent in personality that, as this person, I am completely determined in all respects (in my inner arbitrary will, drive, and desire, as well as in

relation to my immediate external existence, and that I am finite, yet totally pure self-reference, and thus know myself in my finitude as infinite, universal, and free" (§35). This double character of self-consciousness thus harbors the aforementioned possibility of distancing and abstraction from all concrete determinacies and characteristics that belong to me as *this* spatio-temporally individuated self. At the same time, Hegel defines this self-consciousness as a knowledge of one's own identity and immediate being as a specific individual in the context of "immediate external existence" (*ibid.*). In my pure self-relation I do not relate to myself as a particular corporeal being, and this is why all natural characteristics and determinations likewise belong to the external world from the perspective of the ego (cf. Nagel 1983 for a similar contemporary analysis).

In designating this self-consciousness as "personality," Hegel places himself in an intellectual tradition that runs from Locke through Kant to Fichte (cf. Siep 1992, pp. 81–115). But unlike Locke, Hegel is not primarily interested in the necessary conditions for the identity of persons over time, and in contrast to Kant, he does not accept the separation of the formal aspect of self-consciousness (the "I think" of transcendental apperception) from the concept of the person as a category of practical philosophy (cf. Quante 1995 for a discussion of these issues in the context of contemporary debates). On the contrary, Hegel believes that one can derive the substantive content for a proper philosophy of right precisely from "the self-consciousness of oneself as a completely abstract ego" (§35).

This characteristic feature of the individual, that of being a personality, first implies, according to Hegel, "the capacity for rights in general" (§36), and, second, "constitutes the concept and the still abstract foundation of abstract and thus formal right" (*ibid.*). The first substantive interpretation of the determination of personality (cf. Section I.2.2.2.2 below) is indicated in Hegel's thesis that the self-consciousness of freedom is a necessary and sufficient condition for the concrete contents of willing to represent a rightful and legitimate claim. In this connection, Hegel understands "right" in general as the sphere of the realization of freedom in the sense that I can rightfully claim that my willing be respected by others. In order for this to happen, the participants concerned first must be able in principle also to distance themselves from their own concrete willing. Otherwise there could be no legitimate solution in cases of conflict through an accepted and rational relinquishment of a particular claim. Second, the content of willing must assume an intelligible, rational, and thus universal form if it is ever to become the object of intersubjective

agreement. And third, as the further development of abstract right will show, the rightful character of this willing extends indefinitely as long as the willed content does not collide with the status of personality and the rightful claims of other individuals. In Hegel's view, therefore, the universality of the will provides the necessary initial condition for the existence of right in general as the "external existence of freedom." He regards this universality as "the absolute justification, upon which everything else depends" (§35, marginalia). The "demand of right" (§36) as a constitutive condition is consequently this: "Be a person and respect all others as persons" (ibid.). This is also a *demand* of right because the teleology of the will itself requires it to procure for itself its own sphere of freedom, its own existence in the outer world. And this can occur only through the actual existence of institutionalized right. In addition to this, the logic of the concept of the person implies that one is a person oneself only if and as long as one is able to respect the rational claims of other subjects. And this necessarily implies, according to Hegel, that one recognizes them as persons likewise. The thesis, originally of Fichtean origin, that personality generally implies the capacity to recognize others as persons still remains compelling in the context of legal and political philosophy, insofar as it is impossible to formulate the raising of a rightful claim consistently without implicitly assuming other persons as the addressees of such a claim.⁶

I.2.2.2.2. Particularity as Such and Its Significance for Legal and Political Philosophy (§§37f.). The determination of the logical moment of particularity reveals the aforementioned double perspective that Hegel adopts in this part of the *Philosophy of Right*: "Particularity is indeed a moment of the will in its total consciousness (§34), but it is not yet contained as such in the abstract personality. It is thus certainly present, as desire, need, drives, contingent preferences, and so on, that are independent of the personality, of the determination of freedom" (§37). This reference to the consciousness of the will should be understood to mean that the particular realizations of the will represent objects for the ego (the universal moment of the will) that also simultaneously belong to the structure of the will as such. Consciousness is precisely such a content as distinguished from the ego insofar as it is "accompanied" by self-consciousness. If the self-consciously willing and personal will withdraws into its consciousness of freedom, then all the specific contents "distinct" from the self, externally adopted and merely factually discovered before it, all particular "existing" determinations of the will, now come to stand over against this "abstract personality" (ibid.). I find myself to be someone who wishes

to eat something in particular, who has a particular professional ambition, and so on.

This abstractness, with which the immediacy of the will that is free in and for itself is burdened, is the reason why right can remain purely formal and devoid of content. Because the self-consciousness of the abstract personality certainly provides the foundation for right in general, although the individuals cannot be distinguished from one another on account of the lack of substantive content, the legitimation of the will in terms of "formal" right (§37) extends neither to the "particular interest" (*ibid.*) nor to the "particular determining ground" (*ibid.*) of the substantively determined will in any given case. Since all specific contents are excluded from the subsidiary principle of personality, the right-founding character of this principle cannot extend to these contents, either. Thus, the purely formal determinacy of self-consciousness bestows a formal character on right, instead. Introducing the second substantive interpretation of the principle of personality, Hegel concludes from the pure formal relation to self that it is merely legality and the possibility of the peaceable co-existence of such wills with the personality of other individuals that can possibly form the content of abstract right.

Hegel develops this substantive interpretation of the formal and empty character of abstract personality as the principle of abstract right in the following section (§38) by expressly contrasting the latter with the substantively richer and "more concrete" principles of morality and ethical life. The determinate willing of a free will expresses itself in actions that are themselves "concrete" events in Hegel's sense (§38) and thus characterized by an abundance of determinations, all of which lie outside the realm of the principle of personality. The "moral and ethical relationships" (*ibid.*) within which our actions always transpire constitute the proper context for these more developed determinations of the free will. The "abstract" right derived from the principle of personality relates to these determinations, to this "further content" of concrete actions and of moral and ethical attitudes, merely in terms of "possibility" (*ibid.*). (For more on the concept of action here, cf. Quante 1993.) This *ontological* category in Hegel signifies that abstract right is incapable of generating any content out of itself, but can only provide limiting and restricting criteria for the rightfulness of particular actions and determining grounds of the will. Abstract right of itself does not allow us to determine that an individual should will anything specific: "the determination of right therefore only implies permissibility or legitimacy" (§38). Whereas in the context of ethical life, certain "insights and intentions" (§37) may properly

be required of the willing self, the “necessity” (§38) involved in abstract right restricts itself “to the negative principle of not violating personality and anything that issues from it” (*ibid.*). Hegel derives this substantive restriction from the “abstraction” (*ibid.*) that is peculiar to the principle of personality on the level of the will that is free in and for itself determined in accordance with its immediacy. Abstract right thus contains “only legal prohibitions, and the positive form of legal prohibitions has such prohibition as its basis as far as its final content is concerned” (*ibid.*). An abstract right that contains a positive assertion in its external form (e.g., “the property of a person must be respected”) depends in the final analysis on a prohibition (here that against mistreating the very personhood of others).

In his marginal remarks, Hegel elucidates why abstract right merely allows us to develop prohibitions, on the one hand, and permissions or entitlements, on the other. The specific determinacy from which self-conscious freedom (abstract universality) is capable of distancing itself is itself an “external matter” from the perspective of the ego (§38 Marginalia). The right to acquire property in general does not force me to attempt to acquire anything in particular, but merely permits this attempt. That is why Hegel says that the permission to pursue this determinate act of will cannot be “identical” with the claim to right in general. For the singular free will, any and every concrete content remains a mere possibility, to which the free will possesses an “entitlement” as long as it is consistent with the acknowledged personality of other free wills. The free will that thinks and wills itself as such can have only its “capacity for right” in general as its appropriate object (cf. §36).

In this passage, Hegel recognizes an asymmetry between the internal relation of will (the universal moment of self-consciousness over against particular contents), on the one hand, and the perspective of another independent free will, on the other. Whereas the self as ego always in principle can withdraw itself from any given thing, from any substantive determination of its free will, my rightful legal claim to something in particular is “no mere possibility” (§38, marginalia) from the perspective of another free will: “As far as the other is concerned I myself am there in the thing in question” (*ibid.*). This asymmetry, which any theory that derives rights from the self-consciousness of freedom must explicitly acknowledge, also has a further consequence. For it follows from the essence of the will, as something that necessarily strives to procure external existence to its freedom in the form of legal right, that this will must express and manifest itself as such: this “positive action is itself the production of an objectivity

and a content" (ibid.). I cannot simply will in general, but must wish *something* in particular. And I cannot simply give myself a determinate content in my own self-consciousness, but must also translate this content into an objective and intersubjectively accessible form. Hegel derives this internal "ontological compulsion" on the part of the will to give itself an external existence and therefore "reality" from the teleological constitution of the will as articulated within the context of his system. In accordance with this constitution the will strives to procure an "existence of freedom" for itself. The private character of the ego's capacity for self-distantiation with respect to any concrete content of the will produces a disparity between this potential distantiation of the singular will and its real presence embodied in a thing from the perspective of another will. And this allows Hegel to provide a plausible argument, quite independent of its place within the context of his own system, to show that the free will must create for itself an intersubjective sphere for the realization of freedom.

I.2.2.2.3. Singularity as Such and Its Significance for Legal and Political Philosophy (§39). The unity of universality and particularity, as developed at the level of the will that is free in and for itself in accordance with its "abstract concept" (§34), itself reveals the logical moments of this immediacy and abstractness. That is why Hegel also characterizes the moment of singularity attaching to this will as "exclusive" in character (ibid.). Hegel understands this exclusiveness in a twofold fashion: on the one hand, it denotes the inner conviction of the subject that he or she is capable of distinguishing him- or herself from an external and immediately encountered world, while on the other hand it grounds the fact that this will exists as a person, that is, as a specific and spatio-temporally determined individual. In his exposition of the third moment of the will (§39), Hegel returns explicitly to this point: "The immediate singularity of the person who resolves or decides relates to a pregiven nature" (§39). The terminological ambivalence we have noted above also impedes understanding at this juncture, since the "immediate singularity of the person" as mentioned here is not precisely equivalent to the properly speculative determination of singularity. Nonetheless, the moment of singularity is implicitly present in a twofold sense (and necessarily so, according to Hegel, given the conceptual character of the will itself). On the one hand, from the perspective of the "total consciousness of the will" (§37), the constellation embracing "singularity of the person" over against "pregiven nature" presents singularity as a whole in its immediate form or in accordance with its abstract concept. On the other hand,

from the perspective of the moment of personality (universality), the determination of the “person” as the one “who resolves or decides” (§39) equally implies the structure of singularity.⁷ The act of decision, as the freely chosen determination on the part of an individual, implies the unity of universality qua freedom and particularity qua particular content in a certain, albeit still deficient, form. The deficiency of this unity reveals itself under two aspects. On the level of the will, the deficiency lies in the opposition between its form, as an identity that includes subject and object within itself (qua self-conscious) concept, and its substantive determinacy in relation to a “pregiven nature” (ibid.) that simply confronts the will in an immediate manner. On the level of personality, the deficiency manifests itself in the fact that the contents must be taken over externally rather than generated out of self-consciousness itself. Consequently, the will has yet to acquire an adequate realization, internal or external, of its own conceptual nature. The deficiency of the will here reveals itself in the fact that the “personality of the will as subjective thus finds itself over against [. . .] a pre-given nature” (ibid.). But this relationship is still inadequate to the concept of the will, which requires a structural correspondence between form and content: “the limitation of remaining purely subjective contradicts and denies” (ibid.) the nature of the will that is free for itself. Drawing on the results of the second section of his *Science of Logic*, the logic of reflection, Hegel derives the determination of the will as essentially active precisely from this inadequacy (cf. *WL* II, 74ff.). The decision of the free will leads to the realization of some determinate content. The will thus sublates the limitation of mere subjectivity and attempts to “give itself reality” (§39 Marginalia). But, according to Hegel, the free will thereby attempts to “posit” (ibid.) this independently given nature as its own, to make this nature into its own property. Hegel derives the deliberate appropriation of “independently given nature” (§39) as possession and property from his analysis of will in terms of the logic of the concept, from the twofold deficiency of the will considered according to its abstract concept and from the persisting asymmetry between the perspective of self-consciousness, on the one hand, and that of other free wills, on the other. Since in this analysis external nature is also a “moment of the whole consciousness of the will” (§37), it can offer no resistance to the teleological character of this self-realization: the free will is “master over everything in nature” (§39 Marginalia), which latter itself “has being through the will only as an existence belonging to the sphere of freedom” (ibid.). Nature insofar as it is external to the will “possesses no soul in its own right, is not an end in itself – and this is even true of

animate nature" (ibid.). What Hegel understands by "will" in this connection is not the singular will of a singular individual, but rather the universal structure of will that is instantiated in every free being. It is the personality and the free will of another person that thus defines the limit of the freedom of the person in the sphere of abstract right. This follows from Hegel's premise that self-consciousness is the necessary and sufficient condition for "rights of any kind" (§40 Note). This whole approach, based on the self-consciousness of freedom, further implies that "my body, and my life" (ibid.) also belong to this independently given external nature. In Hegel's eyes, this itself merely represents a further sign of the dominion of spirit over nature and manifests the higher status of the former accordingly.

1.2.2.3. The Conceptual Exposition of Abstract Personality in the Sphere of Abstract Right

With the argument articulated in §§35–39, Hegel has already effectively provided the substantive determination of the personality of will in its immediacy. He now proceeds to develop the conceptual structure of the first part of the *Philosophy of Right* on the basis of the immanent development of this subsidiary principle.

The first form in which the will gives a determinate existence to itself is that of regarding something or other as a "thing" in the legal sense [*Sache*] (§40 Note). The institution of property is the actual existence of freedom for this "abstract will" (§40). This relationship, in which a free will regards a thing as its "own" property, presents an actual domain for its freedom and one that is realized by a "singular person that relates exclusively to him- or herself as such" (ibid.). An object of immediately encountered nature comes to assume its "rational" form precisely insofar as it is regarded as "my" property. I do not simply will the object for the sake of its particular properties, but rather lay claim to it precisely as a manifestation of my own will. This is evident from the fact that property involves a claim of right that is binding on other free wills as far as their own right of appropriation is concerned. In accordance with Hegel's *Science of Logic*, this level is categorized in terms of "being" and "immediacy" with the result that the determinations of "universality" and "particularity" here collapse into one another without further distinction.

The second level on which the principle of personality produces an actual existence for its freedom presupposes intersubjectivity.

“The person” – a principle “distinguishing itself from itself” through instantiation in a plurality of persons who are themselves distinct from one another in determinate ways – “relates itself to another person” (ibid.). On the level of abstract right, “both parties possess existence for one another only as owners of property” (ibid.). According to Hegel, “contract” is the institution in which this intro-reflection of the principle of personality (namely, the presence of several distinct persons) finds a determinate domain of existence for its freedom. Through contracts persons can “alienate” a thing in a legally permissible fashion so that the thing in question does not cease to be “property” at any point during the transaction. The thing here merely changes its owner without falling out of the realm of right altogether to become simply “abandoned” (or, literally, “masterless” in the technical legal sense). On this level, corresponding to the domain of reflection in the *Science of Logic*, the abstractness and empty formality of personality produces a shared community of will (for both persons will the maintenance of the institution of property) and the “maintenance of their right” (ibid.). In accordance with the logic of reflection, the determinations of universality and particularity are distinguished from one another as two moments (the particular content of the will in the case of contract and the legal form of the latter as the universal moment) and thus are isolated and held apart from one another. The legal character of contract here extends merely to the formal moment of its technical legality.

The third level, finally, explicitly reveals the internally contradictory nature of the will that was immobilized, as it were, in the level of the logic of reflection. With the legal institutionalization of “wrong” and “crime,” the distinction between the universal legal form of the will and its contingent particular content is accentuated and intensified, passing through opposition (in wrong) to contradiction (in crime). The moments of universality and particularity belonging to the free will are thus mediated in terms of singular individuality. But this individuality, by virtue of the abstractness of the will on the preceding level of development, results merely in the sublation of the immediacy of the personality of will into the mediated character of subjective will as categorized by the logic of reflection (cf. Quante 1993, p. 51ff.).

On the basis of this systematic development of the logic of the concept, Hegel claims to have rationally presented us with all the “forms” (§32) of abstract right in a “series of unfolding concepts” (ibid.) derived from the “immanent progression” (§31) of the concept of the will itself. The substantive plausibility of this philosophical presentation can be

determined only through examination of the relevant sections in relation to the phenomena thematized in the latter. The systematic justification for this developmental presentation in terms of the logic of the concept is, as always in Hegel's system, "here presupposed on the basis of the *Logic*" (§31).

Hegel's critique of the distinctions that were generally applied by Kant in the sphere of legal and political philosophy, as expressed in the note to §40, focuses on the lack of internal system in Kant's division of rights. Kant does attempt to impose an external order on the mass of disorganized material before us (§40, note), but he is unable to present this material in a truly "rational" form through any subsidiary principle of organization. Apart from this methodological criticism, Hegel's principal substantive objection is that the distinction between the right of persons and the rights of things is essentially a superficial one: "The lop-sidedness and conceptual poverty" of this distinction is evident in Hegel's eyes from the fact that the right of persons and the rights of things must both be derived from and developed out of the principle of personality itself. And this is precisely what Hegel claims to have accomplished in the introduction to abstract right that we have analyzed above.

Notes

1. I have avoided the constant use of quotation marks for the conceptual determinations (person, personality, etc.) that are analyzed in this essay for two reasons. On the one hand, Hegel's speculative logic does not permit the strict separation between object-language and meta-language, and the use of quotation marks would thus already represent an interpretive decision; and on the other hand, it would seriously reduce the readability of the text itself.
2. All emphasis in the quotations is my own. Emphases in the original text have not been reproduced.
3. Here and elsewhere the term "logical" is always used in Hegel's speculative sense (cf. Düsing 1984).
4. Cf. Siep 1989, p. 97ff. Such an introduction is provided for all three parts of the *Philosophy of Right* (i.e., §§105–14 for morality, §§142–57 for ethical life).
5. It is necessary at this point to clarify a certain ambiguity. As in the passage we have analyzed from the *Science of Logic*, Hegel is not here using the terms "subject" and "singularity" in a strict terminological sense. "Subject" here signifies not the subsidiary principle of the sphere of morality, but rather the spatio-temporal "individual" as such (§35 Marginalia). Correspondingly, "singularity" here signifies not the emphatic category of singularity according to the logic of the concept but simply the individuation that marks an "independent singularity" in general (ibid.). Hegel attempts to avoid such ambiguity

by italicizing the terms when they are being used in the specific terminological sense in his *Logic* (although this practice is not always strictly observed in the main text or the marginalia).

6. For a similar problem in the context of the concept of action, cf. Quante 1993, pp. 111–24. Quite apart from considerations of legal and political philosophy in the narrower sense, it seems quite plausible to assume that one's self-understanding as person and the capacity for self-conscious willing can be developed only within the context of a social form of life in which individuals can ascribe intentional attitudes to one another (cf. Quante 1995; Siep 1979, p. 294ff.).
7. For an interpretation of this phenomenon that makes no appeal to Hegel's speculative determination of concepts, see Siep 1982 (esp. p. 261ff.).

5

Person and Property in Hegel's *Philosophy of Right* (§§34–81)

Joachim Ritter

I

Hegel treats the question of property in the first part of the *Philosophy of Right*, entitled “abstract right.”¹ The “right” that forms the general context for this discussion of property is in the first instance Roman civil law insofar as the latter, defined expressly in terms of the *utilitas singulorum*, is concerned directly with the free individual, a “person,” that is, an individual capable of bearing rights, in contrast with the unfree individual. The capacity for bearing rights here signifies that the free individual is a “person” insofar as he or she possesses the right to dispose over “things” [*Sachen*] and thereby stands as such in a legal relationship of right with regard to other free individuals. This constitutes the point of departure for Hegel’s analysis: the singular individual is to be regarded as a person insofar as he or she possesses the right to place his or her will in any thing whatsoever and thereby, precisely as the “owner” of “possessions qua property,” relates to other free individuals as persons (§§40 and 44). Hence the *Philosophy of Right* excludes everything that belongs to the subjectivity of any particular personality from the concept of “person” as such. This subjectivity, together with everything “connected with particularity,” is a matter of “indifference” (§37 Addition) in relation to the individual as person in the legal sense. Hegel is equally rigorous in restricting the theory of property to the relationship between persons on the basis of things as defined in civil law. He expressly rejects the inclusion here of any questions concerning property that are not defined in

terms of right in this sense, such as “the demand sometimes made for equality in the distribution of land or even of other available resources” or the claim that “all human beings should have a livelihood to meet their needs.” Even the question of “what and how much I possess is therefore purely contingent as far as right is concerned” and “belongs to another sphere” (§49).²

Why does Hegel refuse here to consider the social problems associated with property, problems that were otherwise clearly emerging in the philosophical and political thought of his own time, and to describe them as “purely contingent as far as right is concerned”? And why does he content himself with simply adopting as his point of departure the traditional categories of the juridical theory of property in terms of “taking possession,” “use of things,” “alienation of property,” and “contract,” along with all the relevant definitions and conceptual distinctions associated with them?

II

The task of the *Philosophy of Right*, precisely as a “philosophical science of right,” is to comprehend freedom as the “Idea of right” (§1) and provide the speculative exposition of “the stages in the development of the Idea of the will that is free in and for itself” (§33). In Hegel’s view the possibility of thinking freedom as the “Idea of right” belongs intrinsically to the philosophical tradition that first began in Greece. This thought was transmitted right down to the threshold of Hegel’s immediate present through the continuing influence of the traditional “philosophy of the schools.” This philosophy derived its concept of “natural law” [*Naturrecht*] directly from the nature of man (as in Christian Wolff) and distinguished it on this basis from every “positive” right or law, that is, one that is “posited” through a “command” (*issiu*). But this tradition properly became part of the “thought of the world” only once freedom, instead of being conceived merely in terms of a pure reason separated from the domain of actuality and of positive right, was itself historically transformed into the “substance and determining character” (§4) or, as Hegel also says, into the “concept” of the positive system of right (§1). It was this that first brought into the world a system of right and law that must be regarded in accordance with its very principle and concept as a “realm of actualized freedom” (§4).³ And as he always does, Hegel here excludes all “postulation,” “projection,” and “subjective opinion” from the domain

of philosophy proper. The latter comprehends the actual “thought of the world” and, as a speculative theory of right, simply “looks on,” refusing to “bring in reason from the outside” and proceeding rather from an actual present that “is for itself rational” (§31). This posture of “looking on” thus materially presupposes that freedom has indeed already been transformed historically into the concept of positive right: the Idea of right “must in order to be truly apprehended be recognizable in its concept and in the concept’s existence” (§1 Addition). Philosophy can appear as the “thought of the world” only in a time when “actuality has concluded its process of development” (as Hegel says in the “Preface” to the *Philosophy of Right*).

III

It is in this context that Hegel’s reference to Roman law must be understood. In Hegel’s speculative theory of freedom, Roman law not merely is regarded as a historical thing of the past but is expressly taken up as a “mighty legacy” that has already provided a foundation for the first legal codes explicitly based on rational right: the “Prussian Law of the Land,”⁴ the “Universal Civil Law Code for the German Territories in Austria,” and above all the “Code civil des Français.” In the *Philosophy of Right*, Hegel expressly supports the cause of the jurist Anton Friedrich Thibaut, and indeed with a passion that is rare in his writings. Thibaut had demanded a “universal code of law” in order to promote the growing integration of the nation, to counter any restoration of the “muddled confusion of the former chaos” and thus provide a foundation for “a civil condition appropriate to the needs of the people,” and to “procure for the realm the benefits of a universal civil constitution for all time.”⁵ Hegel’s philosophical interpretation of Roman civil law as an “elevation to the level of the universal” thus springs from the very same “infinite impulse of the age” (§211 Addition) that has also led to the demand for the juridical codification of civil law: “To deny a civilized nation, or the legal profession within it, the ability to draw up a legal code would be among the greatest insults one could offer to either” (§211). This is also why Hegel so sharply criticizes Gustav Hugo’s *History of Roman Law*.⁶ According to Hegel, Hugo simply attempts to demonstrate the “rationality” of historical Roman law on “historical grounds” and in terms of “genetic explanation.” In this way Hugo can content himself with finding a “good explanation,” derived from the “original existing circumstances,”

for “repulsive” laws and “heartless and insensitive” regulations (such as the right to put a creditor to death, the institution of slavery, and the status of women and children as legal property of the *paterfamilias*) even when they “cannot remotely satisfy the slightest demands of reason” (§3). Hegel himself, in contrast, is concerned to take up the consideration of Roman civil law in a relevant and productive manner insofar as it has become the actual basis for legal systems and legislation in the present. He thus addresses the question concerning the appropriate foundation of legal right in an age characterized by political revolution and the emergence of civil society as a distinct socioeconomic form of life. It is precisely through this process of historical upheaval that the concepts of Roman law have been transformed and imbued with the intellectual substance that belongs to the contemporary world. Whereas in original Roman law the concept of “person” still designated a particular class of human beings, and where the “rights of the particular person” included the “right to own slaves” and to maintain “family relations that are quite devoid of right” (§40), in modern civil society the legal right of the “person” and thus the right-bearing capacity of man in general, that is, of all human beings, is expressly posited as such, and freedom is elevated into the very principle and concept of right itself. Hegel’s exposition of civil law, the law that intrinsically belongs to civil society, is based on this claim: “It is part of educated culture, of thinking as the consciousness of the individual in the form of universality, that the I is apprehended as a universal person in which all are equal. A human being counts as such because he is a human being, not because he is a Jew, Catholic, Protestant, Italian, and so on” (§209). Freedom as the freedom of all thus now becomes the concept of right itself. This freedom has come to “count” as such and has acquired “objective actuality.” The world-historical process of freedom that began with the Greeks approaches its consummation with the emergence of civil society and the system of legal right associated with it. The Idea of right that exists merely implicitly or “in itself” within the thought of rational right or natural law has now worked its way into political actuality proper to become the concept and principle of all positive right. In this way, every historically produced positive right has lost its right to exist insofar as it contradicts the principle of freedom and human right as such. Hegel thus regards any attempt to play off the “good old system of traditional rights” [*das gute alte Recht*] against the “Idea” that has now become the very “concept of right” merely as an impotent expression of the spirit of restoration. This “extreme of stubbornly maintaining the right of a vanished state of things” is simply “a negative response to what began

twenty-five years ago in a neighboring realm, to what found resonance in every [free] spirit, namely, the idea that nothing should be acknowledged as valid in a political constitution that cannot be acknowledged in accordance with the rights of reason.”⁷

IV

Insofar as it takes Roman law as the basis of civil law and interprets it as the ground of freedom, the *Philosophy of Right* can be read as a philosophical doctrine of the realization of freedom in the actual existence of all individuals as free human beings. That is why Hegel is compelled both to take up the traditional theory of natural and rational law and simultaneously to go beyond it and address the rational character that is immanent within the historical transformations of his own present. The “relationship to actuality” that tradition defined in terms of the separation of rational law and positive law has now become a source of “misunderstanding.” The problem is thus to “release” philosophy from this misunderstanding and remind ourselves instead that “philosophy, insofar as it is the grounding of the rational, is precisely thereby the comprehension of what is present and actual” (as Hegel says in the “Preface” to the *Philosophy of Right*). This materially defines the task of the *Philosophy of Right* in relation to the upheavals of the contemporary age. The work forgoes any attempt to provide an immediate deduction of the principles of law or right from ideas. Once freedom has itself become the concept of right, the task is to grasp the former no longer simply in its state of potentiality, but rather in its actualization. The freedom that the natural law tradition could conceive as belonging only implicitly or “in itself” to the nature of man has now emerged historically from its state of “possibility” and entered into actual existence. Taking the “will that is free” as its point of departure, the *Philosophy of Right* undertakes to comprehend the “system of right” as the “realm of actualized freedom” (§4). It thus serves to lay bare and define the foundation on which the freedom that is posited in and through civil society is ultimately grounded. Everything that the *Philosophy of Right* analyzes successively in the “stages of the development of the Idea” – namely, civil law, morality, marriage, family, society, and the state as administration and as government – thus already belongs to the theory of freedom and its actualization. Whereas the discussion of natural law has up to the present proved fundamentally incapable of escaping from an abstract concept of human nature that is limited to his

“intrinsic being” or his immediate natural existence, Hegel grasps the actualization of freedom in the context of the ethical and spiritual world as a whole and as it has developed in history. He thus comprehends the contemporary principles of freedom and right produced in and through political revolution not in terms of a merely postulated “ought” but concretely as a “world-historical condition” that is now the substance of all legal and political order.⁸

V

And it is within this context that Hegel’s theory of property must be situated. In marked contrast to all those contemporary attempts to legitimate property in terms of its original genesis or – as with the traditional philosophy of the schools – to derive it deductively from the concept of human nature, the *Philosophy of Right*, as “the comprehension of the present,” starts from the relationship posited with civil law itself and according to which free individuals are connected with one another as persons in and through things qua property.⁹ But this is also where the principle difficulty of such an approach lies. The freedom that is based on property, which Hegel locates at the beginning of his progressive analysis, and which results in the actualization of freedom, still finds all the substantial relations of human existence outside itself. That is why Hegel defines civil law as the realm of “abstract right.” The “external sphere of freedom” associated with property (§41) is merely “something formal” (§37) insofar as it is the very “opposite of what is substantial” (§42). But this does not mean that one must leave the domain of property and civil right and pass over to the spheres of morality, the family, civil society, and the state in order to reach the essential. And to do so would be precisely to ignore the decisive thesis of the *Philosophy of Right*, namely, that all the substantial ethical and spiritual dimensions of freedom also come into existence along with the domain of property that belongs to civil law and its rights. For Hegel understands the external abstract sphere of property expressly posited in and through civil law as the condition of possibility for the actualization of freedom in the whole range of its political, religious, and ethical substance. Human freedom, which belongs to the process of European world history, is brought to actual existence in the abstract freedom of property: “The freedom that we possess is that of what we call the person, that is, the subject that is free, and indeed explicitly free for itself, and that gives itself actual existence in things” insofar

as the free will must initially “give itself an actual existence if it is not to remain abstract” (§33 Addition). Hegel was the very first thinker in Germany to grasp that the emerging civil society, with its “accumulation of wealth” and the “dependency and distress of a class bound to labor,” would establish itself, precisely through the property relations associated with it, by transforming all previous historical relations. And yet he can still maintain that Christian freedom properly comes into actual existence along with the property rights enshrined in civil law: “It must be nearly one and a half millennia since the freedom of personality began to flourish under Christianity and became a universal principle for part – if only a small part – of the human race. But it is only since yesterday, so to speak, that the freedom of property has been recognized here and there as a principle – an example from world history of the length of time that the spirit requires in order to progress in self-consciousness, and a caution against the impatience of mere opinion” (§62, part 2). Thus it is that Hegel grasps the freedom that civil law locates in the institution of property as the actual being [*Dasein*] or existence of freedom in all the stages of its actualization. Hegel’s own conception of this dependence of the historical and metaphysical substance of freedom on abstract property as independently embodied in civil law was later either repudiated as meaningless speculation or no longer properly understood, and thus eventually fell into complete oblivion.

If we look for the justification of this dependence, we see that it results from the fact that Hegel simply attempts to comprehend what is actual and refuses to take anything away or add anything further to the abstract character that belongs to the freedom of right. Precisely by acknowledging and interpreting this abstractness, seeking out its original ground, he is able to conceptualize what it is that necessarily binds the freedom of the person to things qua property and what the truth of this relationship is.

VI

The abstractness of freedom in civil law rests on the fact that the free individual – that is, not the particular “personality” or the human being in the full range of his or her humanity – is the “person” that gives him- or herself “an external sphere for its freedom” (§41) and thus finds his or her “first reality in an external thing” (§41 Addition). In the legal sense, a “thing” [*Sache*] is any bodily object (*res corporalis*) that is

capable of standing in a context of right. The thing, and thus property, are consequently defined as something that is “different from free spirit,” as “something unfree, impersonal, and without rights” (§42). Whereas in original historical Roman law the status of “person” was still limited to a particular group of people, and other human beings could thus be regarded as unfree things, modern civil law allows only natural objects and whatever can be regarded as “external” and “impersonal” to be properly treated as “things.” But that does not imply that one can simply identify “things” with natural objects. The latter become “things” in this sense only if they are capable of becoming a matter of legal transaction and thus standing at the disposal of human beings. Everything in the realm of nature that does not in principle stand at human disposal, such as the sun and the stars, remains a nonthing in the legal sense. Hegel takes this as his point of departure for determining the intrinsic dynamics solidified in the concept of “thing” as so given and defined. Any piece of property that man can appropriate and own as a thing essentially presupposes the action and active intervention of human beings in which a natural object is robbed of its independence and brought under the disposal of man. Behind the apparent objective solidity that property assumes qua thing, Hegel perceives the dynamics, the often long historical process of the active intervention through which the natural object is transformed into a “thing” and thereby taken into possession as a thing by man. Consequently, the “act of taking possession,” through which I bring something natural into the sphere of my “external power” (§§45 and 56), intrinsically belongs to the thing qua property. Hegel takes this idea up, together with all the other traditional distinctions involved in the concept of property (the formation, designation, use of things, and so on), because they express the truth that the “real dimension and actuality” of all things qua property is grounded in what man makes of them and does to them through the process of appropriation, transformation, and utilization (cf. §59). Thus, when a thing is simply regarded as a natural object, we ignore the fact that the nature that has become a “thing” possesses no intrinsic subsistence or independence of its own. Nature thus finds its fulfillment in and through the process of human intervention. Insofar as man places his will in the natural thing, the latter acquires an end or purpose that it “does not possess in itself” (§44). This is why Hegel describes the process of “forming” the object as the “way of taking possession that is most appropriate to the Idea” (§56). This process “subjectively” presupposes the development of every action through which man seizes changes, and thus transforms the objects of nature into “things,” first in a purely immediate

physical fashion, and then by extending the range of the hand – “this mighty organ that no animal possesses” (§55 Addition) – through the further application of “mechanical forces, weapons, and instruments.” But in this process “the objective domain” is hereby simultaneously united with the “subjective domain”: what we perform through “the tilling of the soil, the cultivation of plants, and the domestication, feeding and conservation of animals,” through “the measures we employ in order to utilize raw materials or natural forces,” does not remain something simply “external” to nature itself. Our action is itself “assimilated” and thus becomes a “purposive end” through which the nature now formed into “things” is intrinsically distinguished from that same nature that remains untouched by all such formation, beyond the hand of man and human disposal in general (§56).

Thus, for Hegel, no philosophy based on a nature conceived as standing independently over against man, and thus as immediately presented to his contemplation and reflection, can possibly comprehend “formed” nature and the human relationship we have toward it. Such a philosophy remains blind to its own historical presuppositions and fails to perceive that nature itself can become an object only when it becomes a “thing” and man simultaneously becomes its “subject”: “That so-called philosophy that ascribes reality – in the sense of self-sufficiency and genuine being for and within itself – to immediate individual things, to the non-personal realm, [. . .] is immediately refuted by the attitude of the free will toward these things. If so-called external things have a semblance of self-sufficiency for consciousness, for sensible intuition and representational thought, the free will, in contrast, is the [. . .] truth of such actuality” (§44). This truth is precisely that historical relationship that is overlooked and ignored by the kind of philosophy that simply assumes a static relationship between subject and object, that historical relationship in which nature ceases to be an “immediately pregiven world” and is formed by the hand of man into a “thing” that merely possesses “the semblance of independence.” As the object of man, nature is now a world in which he can be present without being limited simply to “this time” and “this space” (§56). And in his handwritten marginalia to these lectures, Hegel notes: “Man the Lord over everything in nature, only through him actual existence as freedom [. . .] only man as free” (*RphH*, 327). And Hegel proceeds to interpret the symbolic mark or designation that has belonged to property from the very beginning in much the same sense: it is the “sign on the thing” as bestowed by man that reveals the essential truth. What has been so marked and designated no longer counts as what it is. Man

announces his “dominion over things” precisely through his capacity to “bestow a sign and acquire something by virtue of this sign” (§§58 and 58 Addition). Hence for Hegel it is no longer possible to attempt to derive the idea of freedom from an original human “state of nature” or a static and ahistorical concept of nature itself. The truth of abstract civil right and its freedom, limited as it is to the relationship between persons and things, is grounded in this: man, who is free only “implicitly,” “in potentiality” or “according to his concept” as a being of nature, can “actually” become free only insofar as he liberates himself from the unfreedom of the state of nature and succeeds in making nature into a “thing” precisely by breaking its power over him. The “standpoint of the free will with which right and the science of right begins” already transcends in principle that “untrue standpoint” that regards man as “a natural being or as the concept that exists merely in itself” (§57).¹⁰ Freedom of the person and the reifying treatment of nature [*Versachlichung der Natur*] thus belong unconditionally together. For Hegel, there is absolutely no possibility of meaningfully discussing the reality or otherwise of human freedom in terms of arguments or counterarguments based on the alleged “nature” of man: freedom exists historically and in actuality only once man has abandoned the state of nature, only once man is himself no longer a natural being in relation to a nature that effectively exercises its own power over him. “The alleged justification of slavery (with all its more specific explanations in terms of physical force, capture in time of war, the saving and preservation of life, sustenance, education, acts of benevolence, the slave’s own acquiescence, and so on) [...] and all historical views on the right of slavery and lordship, depend on regarding the human being simply as a natural being whose existence [...] is not in accordance with its concept” (§57). And the same holds for all attempts to derive a justification of rule and dominion from some law of nature concerning natural superiority, strength, or power. That is why Hegel attacked the “incredible crudity” of Karl Ludwig von Haller’s book *The Restoration of Political Science*, which undertook to vindicate the “rule of the mightier” in a system that is supposed to correspond to the “order of nature” as the “eternal order of God.” For Hegel, this is merely to oppose the principle of right with an order of nature in which the “the vulture tears the innocent lamb to pieces” and “the mightier are quite right to plunder the credulous who need their protection because they are weak,” and thus to pass off “absurdity” as the very “Word of God” (§258). Where freedom is actualized as the person’s right to things, then all forms of “dominion” that are grounded in the natural condition of man or the order of nature have

already become an offense against “right.” The justified dominion of the state based on the freedom of right presupposes that man can no longer be regarded simply as a natural being (§57). That is why the relationship in which persons procure an actual existence for themselves in terms of “things” is the beginning of freedom. But for Hegel, this also implies a further positive insight: that the universal freedom embodied in the rights of civil law can be actualized historically only on the basis of modern civil society. For it is only with the rational domination of nature achieved in the latter that the history of man’s liberation from the power of nature, precisely through its objectification [*Versachlichung*], has finally been accomplished. Any and every theory that would devalue modern society and civilization as the degeneration and destruction of some originally “intact” humanity, such as Hegel encountered in Rousseauism and in the romantic estheticization of origins in general and of an immediate and original world of nature in particular, is thus directly opposed in Hegel’s *Philosophy of Right* and its emphasis on the actual world-historical fact of our rational domination of nature: “as if man in the so-called state of nature [...] were living in a state of freedom.” Insofar as such notions ignore the “moment of liberation involved in labor” (§194), they are also blind to the fact that man can be “actually” free only where nature has been objectified [*versachlicht*] and taken into possession by man as an object of human control. Thus, for Hegel, the existence of freedom itself is directly bound to man’s practical liberation from the power of nature. This insight, expressly acquired in and through the emergence of civil society in his time, stands opposed to every kind of theory of social decline or degeneration right up to the present day. It is founded on the elementary truth that the universal right to human freedom, posited as it is in the concept of human rights, is unconditionally bound to modern society and its rational control over nature. This insight also renders it perfectly intelligible that in the process of modernization all over the world, tractors, electric plants, and machines of all kinds have finally come to be seen as symbols of freedom – symbols that inspire more passionate engagement and participation than the ideas of single and individually proclaimed political and spiritual freedoms. For the latter possess no concrete existence without the objectification of nature that is presupposed by the institution of property, and without the concomitant overcoming of every dependence that still derives from the state of nature. Hegel was the first thinker in Germany to appreciate this and grasp it explicitly as the truth of civil law and of its abstract freedom restricted to the relationship of persons to things qua property.

VII

But this freedom also involves the fact that individuals as persons – restricted to this relationship to things – “have actual existence for one another as owners of property” only via these “things” (§40). The objectification of all relations between persons is itself the other side of the institution of property. Within the context of civil society this objectification does not remain limited to the person’s relation to external natural things. For it equally implies that all the skills and aptitudes of a person are now depersonalized and assume the form of “things” as possessions at every level of competence precisely in order to function socially as cases of “property.” On the basis of civil society, this phenomenon becomes entirely universal. All “aptitudes, bodies of knowledge, arts, even religious matters (sermons, masses, etc.), inventions,” all “specific knowledge and capacities” are subjected to objectification as so many external things, and thereby identified as “objects of contract” and “legally recognized things” within the overall context of buying and selling. Hegel indeed explicitly notes that we may take exception to describing such matters directly as “things” or possessions. Nonetheless, Hegel claims that even what belongs to man’s “interior” life is here “exteriorized” [*entäußert*] in the form of an “actual external existence” that facilitates its definition as a “thing” (§43). For Hegel, the universal principle of civil society consists in this objectification of all relations. Civil society’s characteristic relation to nature also draws individuals as persons under its sway. That is why the universal character of civil society manifests itself in the legal contract. The “sphere” of contract is directly characterized as a “mediation whereby one no longer owns property merely by means of a thing and one’s subjective will, but also by means of another will, and hence within the context of the common will” (§71). The “mediation” that here finds legal expression in the contract represents the positive character of civil society itself. Through the process of objectification, civil society discovers its subject as “the concrete person” that is “an end for itself as this particular individual” (§182). As “private persons,” individuals are now “citizens” of civil society who “have their own interest as their end and purpose” (§187). That is why Hegel describes the contractual sphere of civil society as “the true and genuine ground in which freedom has actual existence” (§71).

But civil society also simultaneously represents a force of “diremp-
tion” [*Entzweiung*] and “difference” [*Differenz*] (§§33 and 182 Addition)

precisely through its objectification of all relations, through their reduction to the realm of exchange defined by the activities of buying and selling, acquiring and leasing, and commercial activity in general. This force of “diremption” loosens the intrinsically social existence of individuals and their relations to one another from all substantial, personal, and ethical bonds. With this separation civil society thus establishes “the selfish end and its realization” as the single universal social principle according to which “each individual is his own end and everything else counts for nothing” (§§183, 182, and 182 Addition). With the abstractness of this objectified and externalized existence, the “indefinitely expanding satisfaction of needs, contingent desires and subjective caprice” can effectively destroy the “particularity” and the “substantial concept” of individuals. Thus it is that civil society can also present the “spectacle of extravagance and wretchedness, along with the physical corruption common to both of them” (§185). Everything that has ever been charged against civil society and its freedom in terms of the reification and destruction of human and personal bonds, against this society that “permits no other relation than that of naked interest to exist” (as *The Communist Manifesto* puts it), can already be found in Hegel’s own analysis. But whereas the revolutionary theory posits the liberation from nature as the authentic social core of the freedom embodied in civil society and then opposes this to its characteristic form of property relations, Hegel himself insists that property must possess “the character of private property” (§46). Despite the very negativity that he also acknowledges within civil society, Hegel continues to maintain that the relationship of “persons” based exclusively on “things” is not simply the condition for the liberation from nature but is also the positive condition for the freedom of individuals. For it is precisely in this relationship that “my will is made objective as personal will, and thus as the will of the individual” (§46) insofar as “I myself immediately as an individual” and as free will “become objective to myself through possession” (§47). In the context of the *Philosophy of Right* this unmistakably implies that “the intrinsically infinite personality of the individual” as such finds its actual fulfillment in civil society. And Hegel explicitly says as much. It is the domain of civil law and its rights that first historically grants a right to the “independent development of particularity,” something to which Plato was able to respond precisely only by excluding this principle “down to its very roots within private property and the family” from his “purely substantial state” (§185).¹¹

The abstract objectification that exclusively defines the human relation to nature in civil society, and the transformation of nature into “things”

that create the conditions for freedom, thus possess a fundamental significance for Hegel in general: the objective externalization of all relations between persons effectively produces freedom in the entire range of its world-historical substance as an explicit “world of spirit” (§4) and thus bestows on personality, precisely as a person, the freedom that allows persons to exist in the authentic character. The externality of civil society that presents the dual spectacle of extravagance and distress also represents for Hegel the actual existence of individual freedom.

VIII

The diremption that is constitutive of civil society would later become an explicit problem, one that was to be solved by the restoration of that integral humanity that had been lost. This would supposedly come about through the negation either of substantial historical reality or of a society that stood condemned on account of its hollow and spiritless character. But Hegel himself grasped that the diremption expressly marked by the abstractness, objectification, and externalization of all relations intrinsically represents a power that is both positive and negative. The same process through which society directs itself exclusively to the objectified world and thereby separates man socially from his substantial historical existence produces as such an infinitely positive result as well: the personality can participate in society and its functions only as an abstract person and property owner and precisely thereby it becomes the subject of all those realms of inner and ethical human existence that society has excluded from itself.

Hegel demonstrates what this means in his analysis of the legal right of “alienation” that belongs intrinsically to the institution of property. In the first place, legal alienation implies that the possibility of “withdrawing” my will from a “thing” is grounded in the status of the thing qua property and in the relations mediated through such things (§65). But this also has a further implication: within modern civil society and its law, which fundamentally distinguishes all “persons” from “things,” legal alienation presupposes the inalienable status of the person itself in the specific sense that it is able to maintain its own inner and outer existence independently of and untouched by society. That is why for Hegel – in direct contrast to all premodern legal systems still based on substantial, religious, or personal bonds – all those goods that “constitute my very own person and the universal essence of my self-consciousness, of my personality in

general and my universal freedom of will, of ethical life, and of religion” (§66) can now become my own as, in principle, “inalienable.” This is the fundamental reason why Hegel regards the freedom to own property as the principle that first properly grants existence on Christian freedom itself: insofar as society now orients itself exclusively to an objectified relation between persons that is mediated through property, it liberates the individual as personality, freeing the latter to become a “subject” in relation to the entire wealth and depth of a personal, ethical, and spiritual existence untouched by any objectification whatsoever.

IX

Hence Hegel also regarded the objectification of labor relations as the decisive principle that defines “the difference between a slave and a modern servant or hired laborer” (§67 Addition). The freedom of the latter consists in the fact that they cannot sell themselves as “things” or “alienate” themselves as such through contract, but can sell only their labor power or the use of their skills for a limited period. The inalienable nature of personality in its own sphere thus becomes an absolute limit, and every form of dominion characteristic of the state of nature and injustice. “I can alienate individual products of my particular physical and mental skills and active capabilities to someone else and allow him to use them for a limited period, because, provided they are subject to this limitation, they acquire an external relationship to my totality and universality” (§67; cf. §80). Freedom here becomes, for the very first time, the unqualified principle of a society. As a world that is characterized by objectified labor, modern society does not merely liberate man from the dominant power of nature. It simultaneously raises freedom to a universal principle through that objectification of labor and every labor relation that ensures that skills and capabilities can be alienated as things or property only for a limited period. Modern society thus grants selfhood and its realization to the person intrinsically as personality. That is why employer and employee relate to one another here no longer as lord and servant in the state of nature but as persons. For Hegel, that is the rational significance embodied in the characteristically modern relations of labor. It is through these relations that the freedom of all – even though its initial manifestation is distress – is actually realized. As a person, the free individual acquires the freedom to possess his life as his own and to be himself as a personality, a freedom that transcends society and its objectified

world. This is grounded for Hegel in the principle of person and property enshrined in right, and it brings the idea of freedom into concrete existence in relation to all human beings as persons. With the diremption of civil society grounded in objectification, every individual, precisely as personality, becomes the subject of a humanly spiritual world in all its wealth as handed down through the process of world history.¹²

X

This is why the Kantian and generally accepted division of right into the *right of persons*, the *right of things*, and the *personal right of a real kind* is expressly repudiated by Hegel as a “confusion.”¹³ For this schema fails to recognize that the freedom of personality essentially acquires existence with the civil right to person and property. If the domains of person and personality, if “rights that presuppose substantial relations, such as family and state, and rights that refer only to abstract personality are all jumbled together,” then that sense of personal existence that precisely transcends the realm of society and its abstract objectification is simply ignored. Hegel consequently grasps the *right of things* as the *right of persons*, since the former implies recognition of “the right of the person as such” (§40). Civil society is posited as an objectified world in which all individuals as persons are simultaneously subjects. Thus, civil society, as the ultimate liberation of man from nature and as the force of difference and diremption, is the condition for an unprecedented phenomenon of human history: man as such now enjoys the possibility of being a “personality” and thus procuring actual and effective existence for himself and his freedom in all the wealth of historically developed humanity and ultimately against the horizon of all previous cultures.

Notes

1. All citations are from *Grundlinien der Philosophie des Rechts*, ed. J. Hoffmeister (Hamburg, 1955). Hoffmeister also includes the handwritten comments that Hegel added to his manuscript for the purpose of “further expansion and explanation [. . .] during the lecture course,” together with the text which Hegel himself authorized for publication in 1822 in order to provide his “audience with a guiding thread for the lectures” duly delivered “on the philosophy of right in accordance with his office.” The published text thus constitutes an “outline” and “course book” and expressly omits all the things that “would receive their appropriate discussion and elucidation in the lectures themselves”

(p. 3). Prior to the publication of the book, Hegel had already lectured on “Natural Law and Political Science” at Berlin in the winter semester of 1818–19. A surviving student transcript of the course in question clearly reveals how Hegel used to proceed in his lectures (I express my thanks to Dr. F. Nicolin for drawing my attention to this material). He would dictate the relevant paragraphs before discussing more freely and directly bringing out the connections between the highly condensed text and the contemporary situation and current political and philosophical theory. Until we have a critical edition of the lectures Hegel delivered on the basis of his compendium (1821–22, 1822–23, 1824–25), drawing on all the surviving transcripts, we must continue to depend on the *Zusätze*, or “additions,” that Eduard Gans gathered from the lecture transcripts available to him and added to the numbered paragraphs in his edition of the *Rechtsphilosophie* (vol. 8 of the *Werke* as edited by “the society of the friends of the deceased” in 1832–40). Hoffmeister would certainly appear to be justified in his criticism of the way in which Gans went about selecting these “additions” (cf. p. XIIff. of Hoffmeister’s edition). The Hegel Archive in Bonn is in the process of preparing just such a critical edition of all Hegel’s works, manuscripts, and associated transcripts. The “additions” cited here are drawn from the *Jubiläumsausgabe* of Hegel’s works, edited by H. Glockner, 1927 and following years (SW VII).

Even in the general literature on the *Philosophy of Right*, it is remarkable how little attention has been given to Hegel’s theory of civil law and his associated account of private property. This is essentially because all speculative (meta-physical) theory of right has long since come to seem alien in the context of jurisprudence, which has principally been interested in legitimating its procedures in its own terms. Consequently, the theory of property is generally treated in the literature simply as one element or component in the overall systematic context of Hegel’s *Philosophy of Right*. Cf. Binder, Busse, and Larenz, *Einführung in Hegels Rechtsphilosophie* (Berlin, 1931), pp. 60ff., 69ff.; K. Larenz, “Hegels Dialektik des Willens und das Problem der juristischen Persönlichkeit,” *Logos* 20 (1931): 196ff., and *Hegel und das Privatrecht, Verhandlungen des zweiten Hegel-Kongresses* (1931), ed. B. Wigersma (Tübingen and Haarlem, 1932), p. 135ff.; A. Trott zu Solz, *Hegels Staatsphilosophie und das Internationale Recht* (Göttingen, 1932), p. 34ff.; J. Binder, *Grundlegung zur Rechtsphilosophie* (Tübingen, 1935), p. 98ff., esp. p. 102ff.; and A. Poggi, “La filosofia giuridica di Hegel,” *Riv. Int. di Fil. Del Diritto* 15 (1935): 43ff. On Hegel’s treatment of natural law, cf. F. Darmstädter, “Das Naturrecht als soziale Macht und die Rechtsphilosophie Hegels,” *Sophia*, no. 4 (1936): 181–90, 421–44, and no. 5 (1937): 212–35.

2. Since civil society is the “field of conflict for private interests of the individual” (§289) and its emancipatory abstractness excludes the personal sphere, then “those determinations that concern private property” may have to be subordinated to higher spheres of right, such as a community or the state. But such “exceptions” cannot be grounded in “contingency, private arbitrariness, or private utility, but only in the rational organism of the state” (§46). In the actual lectures, Hegel explicitly added that it is “the state alone” that can make such exceptions (§46 Addition). For Hegel, it is always an uneliminable

presupposition of the modern state that it serves to actualize freedom, and thereby “my will personally,” the “person” as “this specific entity.” This is what grounds the necessity of private property, with its intrinsic determination of being “this specific property, and specifically mine” (§46 Addition). This also remains a fundamental presupposition of any further changes or transformations to which property may be exposed in the developing context of society and the state.

3. In describing the *Philosophy of Right* as a “compendium” to accompany the lectures duly delivered “in accordance with his office,” Hegel is explicitly drawing on the “Natural Law” tradition of the Schools that had been systematically grounded in a “philosophia practica universalis” (Christian Wolff, *Philosophia practica universalis* (1738–39), and frequently reprinted thereafter; *Jus naturae methodo scientifica pertractatum* (1740–48), parts 1–8). This is also confirmed by Hegel’s choice of subtitle for the *Philosophy of Right*: “Natural Law and Political Science in Outline.” In this way, Hegel is clearly defining the task that he expressly ascribes to his own philosophy. Whereas philosophy was, for example, “formerly pursued among the Greeks as a kind of private art,” the subject has now acquired in connection with the state a “topical and public existence pre-eminently or solely within the domain of public service” (11). Hegel’s insistence that the *Philosophy of Right* is essentially a “philosophy of public service” has invited the familiar political objection that he was thereby simply providing systematic philosophical cover for the spirit of Prussian reaction, and so forth (as Rudolf Haym claimed). In fact, Hegel is here merely expressing the fact that philosophy generally, and in the newly established University of Berlin specifically, now fulfills a certain “office” within academic life. This office is dependent not on the political instructions of the government of the day, but rather on the “trust” that “governments” will rely “entirely on the scholars dedicated to this profession” to provide “the development and substantive content of philosophy” (11). In this connection, the political authorities do not even need to know the reasons why and the way in which philosophy now belongs to the domain of university teaching that is indeed maintained by government. The latter can thus assume a certain “indifference in relation to Science [of philosophy] as such,” which is simply performing its “traditional” office (11). In referring to the office and public service of the discipline in this way, Hegel is explicitly defining his own thought as a “philosophy rooted in the university” [*Universitätsphilosophie*]. It thereby assumes the substantive task of renewing the philosophical tradition that began with the Greeks and had been “continuously preserved” in the universities through the “learning of the Schools” (much “to the advantage of the sciences”). The function of philosophy now is thus to recall this tradition from the threat of decay and disappearance and reintroduce it into the present. Philosophy can then relate this tradition directly back to the actual contemporary world. This world has lost any proper sense for such a relationship insofar as it has separated the realm of pure thought from experiential content and simply relinquished the latter to empiricism. The present age in general has similarly been quite unable to perceive the continuing significance of “the older tradition of ontology, rational psychology and cosmology, or even of the former natural theology” (as Hegel says in the “Preface” to the *Science of Logic*: *GW* IV, 13). In a letter to Friedrich

von Raumer of August 2, 1816, Hegel had already explicitly dissociated himself from the prevailing view that “a determinate and manifold body of actual knowledge” is, as far as philosophy is concerned, “superfluous for the Idea, or even opposed to or somehow beneath the latter.” Hegel insisted, to the contrary, that the real task is precisely to articulate the “extensive field of objects that belong in philosophy as an organized whole configured in and through its parts” (GW IV, 319). It is in this way that Hegel strives to renew the university philosophy of the Schools in his own thought. But that does not mean that Hegel is attempting to reverse the “breach” that has certainly occurred in the intervening period. For a new principle and a “higher standpoint” has actually developed precisely with the political upheavals of the contemporary age and with the “total transformation that philosophical thought has undergone among us during the last twenty-five years or so” (4: 13). Philosophies that belong to the past can never be “resuscitated.” “Mummies brought in among the living cannot possibly survive among them” and the call to “return to the standpoint of an old philosophy” is nothing but a “refuge of impotence” (GW XVII, 77ff.). Hence Hegel’s own appeal to the philosophy of the Schools in its final phase is intended to raise the tradition that it preserved onto the higher standpoint of this new principle. The traditional task of “grounding the rational” is to be rearticulated as that of “comprehending what is present and actual” (as Hegel expresses it in the Preface to the *Philosophy of Right*, p. 14; ET: p. 20). Only this does justice to “the rich material of the present age” that asks to be mastered in thought and grasped in its profound significance” (GW XVII, 78). Regarded from this general perspective, Hegel’s *Philosophy of Right* represents a renewal of the “universal practical philosophy” propounded by the eighteenth-century “schools,” and especially by Wolff, and their traditional doctrine that was based on the “Ethics” and “Politics” of Aristotle. For more on Wolff’s “*philosophia practica universalis*” in relation to Aristotle, cf. J. Ritter: “‘Naturrecht’ bei Aristoteles,” in *Metaphysik und Politik*, p. 133ff.

4. As an expression of his “insatiable craving for facts and empirical knowledge” (Th. Haering) that marked his earliest political and historical studies, Hegel had already paid very close attention to the “Prussian Law of the Land”; cf. F. Rosenzweig, *Hegel und der Staat* (Munich, 1920), vol. 1, p. 30ff.; Th. Haering, *Hegel, sein Wollen und sein Werk* (1929), vol. 1, p. 124f. We are also in a position to investigate the still largely unclarified relationship between Hegel’s *Philosophy of Right*, and indeed other works of the time, to the actual development of legal forms and institutions during the entire period on the basis of the following contributions: H. Thiele et al., *Die preussische Kodifikation*, Privatrecht. Stud. II, ZRG, Germ. Abt. 57 (1937); Fr. Wieacker, *Privatrechtsgeschichte der Neuzeit* (Göttingen, 1952), and especially the *Vorträge über recht und Staat von Karl Gottlieb Suarez*, eds. H. Conrad and G. Kleinheyer, Wiss. Abh. d. AG. d. Forschg. d. Landes Nordrhein-Westfalen, vol. 10 (Opladen, 1960). Also cf. H. Conrad, *Die geistigen Grundlagen des Allgemeinen Landrechts f. d. preuss. Staaten*, AG. f. Forschg. Geisteswissenschaften, H. 77 (Opladen, 1858).

At this time there was always a direct connection between actual legal developments and the philosophical concept of “natural law,” as Wilhelm Dilthey showed in relation to the “Prussian Law of the Land”: “Natural law supplies its principles [. . .] and in its legal concepts and provisions Roman law becomes

- the juridical tool for developing them” (cf. “Das Allgemeine Landrecht,” in Dilthey 1960, p. 148).
5. A. F. Thibaut, “Über die Notwendigkeit eines Allgemeinen Bürgerlichen Rechts für Deutschland” (1814), in *Thibaut und Savigny*, ed. and introduction by J. Stern (Berlin, 1914; rpt. Darmstadt, 1959), pp. 41 and 47.
 6. Gustav Hugo, *Lehrbuch eines zivilistischen Kurses*, vol. 3: *Lehrbuch der Geschichte des Römischen Rechts bis auf Justinian* (1799, 1806, 1810, 1818, 1820, and frequently thereafter). Cf. note 11 in the edition of 1832, p. VIIIff.
 7. *Verhandlungen in der Versammlung der Landstände des Königreiches Württemberg im Jahre 1815 und 1816*, GW VI, 395. Hegel refuses in principle to recognize the venerable age of laws or institutions as a ground of right. “Existing positive right even if it is a century old properly and rightly dissolves with the disappearance of the basis that conditioned its existence” (ibid., 397). In this respect cf. also Hegel’s essay *Die Verfassung Deutschlands* (1802), in *Hegels Schriften zur Politik und Rechtsphilosophie*, ed. G. Lasson (1913), p. 7, among other similar references; ET: p. 6.
 8. Hegel’s theory concerning the actualization of freedom and of human nature takes up the central element of Aristotle’s practical philosophy. Cf. J. Ritter, “‘Naturrecht’ bei Aristoteles,” pp. 146ff., 166ff. Hegel’s definition of “the world of spirit” as a “second nature” (*Rph* §4) expressly and immediately refers us to the Aristotelian concept of “actualized nature” in contrast to nature as mere “potentiality.” Cf. Aristotle, *Politics* I, 2: 1252 b 32–34; in this regard also cf. *Rph* §10: “The understanding [*Verstand*] stops at mere being-in-itself and therefore calls freedom in accordance with this being-in-itself a faculty [*Vermögen*], since it is indeed in this case a mere potentiality”; but the understanding can grasp the “reality” of freedom only as an external “application to a given material,” an application “that does not belong to the essence of freedom itself.” In his lectures, Hegel illustrates this thought with the example of the child who “is in itself or implicitly a man, possesses reason in itself, is still only the potentiality of reason and is thus free only according to its concept.” The remark underlines Hegel’s general point that “what is thus still merely implicit or in itself” is not yet present “in its actuality” (cf. §10 Addition). The Aristotelian doctrine of the “actualization” of nature through “praxis” was still preserved, at least formally, in the practical philosophy of the eighteenth century; prior to Hegel himself, Christian Wolff provides a good example in his *Philosophia practica universalis*: “*quicquid naturaliter possibile est [. . .] Ad actum perducitur.*” Wolff tells us (I §33) that the acts (*actiones*) of man are directed by nature toward the full actualization of the possibilities contained in his nature (*perfectio*). But in the tradition of the Schools, which proceeded in a deductive fashion completely independent of experience and historical reality, such actualization was limited to the domain of “morality” as the purely inner ground and source of action, just as it also continued to be in Kant’s philosophy. In direct contrast to this approach, Hegel grasps institutional, ethical, social, and political actuality precisely as “the realm of actualized freedom” and thus effectively reaffirms Aristotle’s original doctrine that the nature of man does not itself come to actualization “by nature” but through ethico-political action in and through the *polis*.

9. It is characteristic of Hegel's philosophy as a whole that he seeks not simply to eliminate or replace the theories with which he already finds himself presented but, rather, to "sublate" the latter (in the sense of simultaneously preserving and transcending them). His philosophy thus "prevents the ossification and isolation of individual principles and the systems associated with them" and counters the "tendency" of the isolated parts as such to "constitute themselves as a whole or as something supposedly absolute." Cf. Hegel's essay *Die Wissenschaftliche Behandlungsarten des Naturrechts*, GW I, 525ff. (ET: p. 171ff.). Thus the various elements that contribute to his own theory of property include the normative tradition of natural law, the emphasis on labor as the source of property that derives from Locke and has proved decisive for political economy, Montesquieu's theoretical approach to law, and also Fichte's transformation of the labor principle into the idea of property as a fundamental right of the person in accordance with "the fundamental principle of every judgment of right" that all property be grounded on "the union of several wills to form a single will" (Fichte, *Grundlage des Naturrechts*, WW, vol. 2, pp. 133ff., 116, 216ff.). Insofar as Hegel's own standpoint defines philosophy as the thinking comprehension of the Reason embodied within the historical actuality of the present, the various contributions of these other theories are thus combined to articulate a specific *hermeneutic* task: to elucidate the institution of property that has emerged historically and is posited explicitly in civil society and the associated rights of the person precisely as the actual existence of freedom. Hegel thereby develops the theory of property beyond the state in which he inherited it. He abandons all deductive forms of the theory, as well as every attempt to derive the concept of property through some historical and genetic hypothesis "when the world was first peopled by the children of Adam or Noah" (J. Locke, *Second Treatise on Government*, ed. T. H. Peardon (New York, 1952), ch. 5, no. 36, p. 22) or by retracing the story from the condition of "civilized man" back to that of the "savage" as the original "*condition de l'homme naissant*" (J. J. Rousseau, *Discours sur l'origine de l'inégalité parmi les hommes*, French and German edition by K. Weisgand (Hamburg, 1955), pp. 114 and 192).
10. In his early Jena essay on *The Scientific Ways of Treating Natural Law*, Hegel had already criticized the very notion of "man's original and naked state of nature." The latter is simply a "fiction," an "abstraction from man as he is," a "hypothesis" introduced as an "alleged explanation for actual reality." This approach starts by positing an original unity "with the smallest number of determinate features," a unity that is "nothing real at all, a purely imaginary construction of thought." The unity is acquired in the first place only by "thinking away everything that such a confused approach could regard as purely transient and particular." The human state of nature posited here is simply a state of "chaos," since "all the powers of ethical life" have already been subtracted (GW I, 449ff.; ET: p. 111ff.). For Hegel we can grasp what man or what spirit is only within the context of his actual ethical and historical realization (*actualitas*) once his cultural development is complete. Culture is not something simply "external" to actual humanity, as it is deemed to be by those enamored of "the innocence of the state of nature" or "of the

simple ways of undeveloped peoples." Culture in this sense is humanity and presupposes that "natural simplicity [...] has been worked away" (§187). The same is true for the domain of right: all the determinations of right are based on the "free personality," the "opposite of merely natural determination." Hence "the state of nature [...] is a state of violence and of injustice, and nothing truer can be said of it than it must be left behind" (EPWG §415). Anyone who imagines that "man in that first state was still living in the pure consciousness of God and of Nature, still living as it were at the heart of everything that we today must earnestly strive to acquire, at the center of all art and science" has no conception of what "thought and intelligence" signifies. Insofar as "spirit is *energeia*, *enteleheia* (energy and activity) that never rests" and therefore only "finds itself in the labor of its activity," its true "concept" is to be found "not at the beginning, but rather at the end" (VPW, 161ff.; ET: p. 133ff.; cf. further *Rph* §18 Addition and §19). Since the natural state of man is always a state of mere potentiality, it is essentially "abstract" and fundamentally incapable of forming the basis for a theory of right, of society, or of the political state, quite irrespective of whether this original condition is pictured as one of "destructive war" (GW I, 450) or as some "primitive condition of perfection" (VPW 161; ET: p. 133).

11. As far as the history of universal Christian freedom is concerned, the Revolution of 1789 is thus in Hegel's eyes directly connected historically and substantively with the Reformation. Once the latter had essentially proclaimed "the subjectivity and self-certain conviction of the individual," we can say that "time from then on has had and still has no other task but to introduce this principle into the world[. . .] Right, property, ethical life, the realm of government and the constitution, and so on, must now be determined in accordance with universal standards if they are to be rational and correspond to the concept of the free will" (*Philosophie der Weltgeschichte*, GW XI, 523ff.). It is in this way that the freedom of subjectivity and its actualization becomes for Hegel the very substance and ground of the modern state. In contrast to the idea that Hegel's philosophy violates the individual and sacrifices his freedom to an omnipotent state, a view that has tenaciously established itself for almost a century, it is only in the last few years that the central importance that Hegel ascribes to human individuality and the sphere of subjective freedom has once again been fully recognized. Heinz Heimsoeth had already emphasized in his essay "Politik und Moral in Hegels Geschichtsphilosophie" (1934) that "in the context of the concept of the state Hegel [. . .] was far removed from any tendency to deny the individual, or his interiority or autonomy in its independent value and significance" (*Blätter für deutsche Philosophie* 8 (1934/35): 127ff.). In his excellent systematic study, *Hegel als Denker der Individualität*, H. Schmitz has undertaken to show that "Hegel's thought was decisively determined precisely by the struggle to acknowledge and preserve human individuality" (Meizenheim/Glan, 1957).
12. In his *Critique of Hegel's Philosophy of Right* MEGA, vol. I, part 1, Marx effectively engaged only with the relationship between private property and the state in Hegel's theory, and particularly with Hegel's position on "primogeniture" (§306). He criticizes the *Philosophy of Right* for according

“a different significance to the independence of private property in civil law than that which it possesses in the context of national law” (517ff., 522). Hegel is therefore charged with ascribing a “double significance” to private property, which simply reveals that he is “interpreting an ancient view of the world in terms of a more recent one” (522). In one of the 1844 Paris manuscripts edited by S. Landshut under the title “National Economy and Philosophy” (K. Marx, *Die Frühschriften* (Stuttgart, 1953), p. 225ff.), Marx describes private property as “the sensuous expression of man’s self-objectification” (239) and the “subjective essence” of private property as “self-consciously existing activity, as subject, as person qua labor” (228). Although the general argument here is clearly indebted to Fichte’s and Hegel’s theories, as well as British tradition of political economy, the principle disagreement with Hegel arises from the fact that for Marx, the “nature that develops along with the emergence of human society [...] is the actual nature of man, as it develops – albeit in alienated form – through the activity of industry, his true anthropological nature” (245). That is why the substantial determination of man as subjectivity falls away in Marx’s analysis. Within the overall identity of social and human existence, private property as the sensuous objectification of man is thus simultaneously characterized by alienation that transforms it into “an alien and inhuman object.” Thus, the “external expression of human life becomes its external dispossession, its realization becomes its derealization and turns into an alien actuality” (239). Whereas Hegel’s determination of the freedom of the person on the basis of subjectivity incorporates into the theory of property elements that cannot simply be produced within the context of human existence posited through society alone, Marx comprehends property exclusively in social terms in accordance with his concept of society itself as the “true nature of man.”

13. Cf. Kant, *Metaphysische Anfangsgründe der Rechtslehre* (1797), §22. Kant here defines “personal right of a real kind” as the “possession of an external object as a thing and the use of the same as a person” and grounds “domestic economy” on this right. Hegel expressly repudiated this Kantian grounding of marriage in terms of “acquisition” (§23) and “contract” as “outrageous” (*Rph* §75). For Hegel, this clearly shows that a theory of subjective freedom that is not developed further in terms of its “actualization” is fundamentally incapable of properly grasping legal and ethical institutions. While, on the one hand, Kant’s interpretation of marriage in terms of the relationship between person and thing (contract) is forced to introduce the legal concept of “thing” that directly contradicts the personal character of the institution, Schlegel’s esthetic-romantic theory of subjectivity, on the other hand, effectively reduces the institution of marriage to the “arbitrary character of merely sensuous inclinations” (§64). If the realm of “actuality” is related to subjective freedom merely in the form of given material for its external application, then it is impossible to grasp the true speculative character of the substantial relationship of marriage and the family as institutions.

6

Common Welfare and Universal Will in Hegel's *Philosophy of Right*

Manfred Baum

In the history of political ideas concerning the proper end and purpose of the state, philosophers have sought and discovered various ways of legitimating the political power that human beings exercise over each other. But there are essentially two fundamental types of approach.¹ *Either* the state (qua institution) is interpreted as an administrator of the welfare of its citizens, the preservation and promotion of which is also supposed to guarantee the properly understood and long-term welfare of these citizens, *or* the state is interpreted as that condition of society where the universal will of the political citizens governs the latter. On this view, the universal will is conceptualized as the only possible source of positive law because it is only through its deliverances (as laws) that the rights of those subjected to it can be upheld. According to this second type of approach (for which Rousseau and Kant are representative), the purpose of the state lies in the actualization of the rule of the universal will, that is, of right. According to the first type of approach (for which Plato and Aristotle are representative), the purpose of the state lies in the realization of “the good life” of its citizens. One can understand the Hegelian conception of the state as an attempt to combine and unify both these ideas of the state that derive from the Enlightenment and from classical antiquity respectively. In this connection, the central concept of Hegel’s political philosophy, namely, that of ethical life, clearly expresses his efforts to renew such ancient *topoi*, but the way in which Hegel articulates the content of this concept equally reflects the dominant features of pre- and postrevolutionary attempts to construct a specifically modern philosophy of law and right.²

I shall take a quotation from Hegel's *Philosophy of Right* as a useful point of departure for our reflections on this question: "the Idea of the state is precisely that the opposition between right as abstract freedom and the particular content that fills, that is, *welfare* [*dem Wohl*], is sublated here . . ." (*Rph* §336; my emphasis). We cannot examine in any detail here the precise significance of this passage within the *Philosophy of Right* as a whole, but it is clear with these words that Hegel is interpreting the state, the principal representative of what he calls "ethical life," in its relation to what he calls "abstract right" (the civil and penal law of the jurists) and to "morality" (the domain of individual ethics).³ According to Hegel, the Idea of the state implies the unity of law-governed norms and moral purposes, of the legality and morality of acts deriving from the rationality of the agent, that is, from the freedom of the acting will. We can understand what this "unity" properly signifies (i.e., what it means to assert that there is an "opposition" between abstract freedom of action and the particular content of individual purpose that is supposedly "sublated" in the Idea of the state) only if we provide an analysis of the fundamental concept of the entire *Philosophy of Right*, namely, the concept of the "free will." Provisionally, we may say that for Hegel, welfare as a common goal of individuals in the state, that is, the "common welfare" [*Gemeinwohl*] in a sense that has yet to be developed, and the general or universal will of the citizens are related in such a way that the latter wills the former. And further that this process involves some kind of reciprocal mediation between the particular content willed by any individual and the universal legal form of that individual's actions. Whether and to what extent this is possible can be determined, if at all, only by examining what Hegel understands by the "will."

I. The Structure of the Truly Free Will

According to Hegel, a specific philosophical science is defined by its ability to develop its entire content from one simple or fundamental concept. Although this fundamental concept remains the basis for all the other derivative concepts, it loses its original abstractness and progressively assumes more concrete form insofar as it "consolidates" (*Rph* §279) its determinations entirely from within itself. In the *Philosophy of Right*, therefore, we begin "with something *abstract*, namely, with the *concept of will*, before advancing to the actualization of the still *abstract* will insofar as it is realized in *external* existence, namely, the sphere of *formal right*, and

then we pass over to the will that is *reflected into itself* out of external existence, the realm of *morality*, and arrive finally and thirdly at the *ethical* will that is *concrete* insofar as it *unites both these abstract moments* within itself” (*System der Philosophie*, EPW, §408 Addition). In a corresponding way, it was Rousseau’s great merit “to have set up *the will* as the principle of the state” (*Rph* §258 Note) in the field of political philosophy, even if, like Kant and Fichte after him, he interpreted this principle only in terms of the singular or individual will. For Rousseau’s “*volonté générale*” does not properly signify what Hegel calls the “rational character of the will in and for itself” but merely “the *common element* [*das Gemeinschaftliche*] arising out of this singular will as *a conscious will*” (*ibid.*). For according to Hegel, there are several types of universality with respect to the will (cf. *Rph* §24, note), where abstract unity and the concrete totality of all relevant determinations constitute the principal ones. (In this connection, it is clear that Hegel did not grasp Rousseau’s distinction between the “*volonté générale*” and the “*volonté de tous.*”)

The introduction to Hegel’s *Philosophy of Right* contains the most universal determinations of this science of “objective spirit” and effectively presents us with his “*philosophia practica universalis.*” According to this philosophy, the human will as “intelligence,” namely, as the will of a thinking and knowing being, is defined and determined by this thinking. Willing is thus only a specific way of exercising the capacity of thinking. Hegel himself permits and encourages us, “for the sake of representational thinking,” that is, as an aid to understanding, to appeal to “the self-consciousness of each and every one of us” (*Rph* §4 Note). Thus, we can say that the first thing I know about my will as “practical spirit” in action (*ibid.*) is that I can also suspend any particular content of willing whatsoever, whether it be an instinctual desire that I happen to find within me or a self-consciously posited end or purpose. And I do this precisely by abstracting from this content and relating myself back to myself in thought as the willing agent. This is what Hegel calls the moment of the “pure reflection of the ego into itself” (*Rph* §5). Considered from this point of view, the will is “the *absolute possibility* of being able to *abstract* from every determination in which I find myself or which I have posited within myself” (*Rph* §5 Note). Insofar as the will is interpreted as the capacity to relate negatively to its content, as the capacity to render itself independent of that content through negating it and turning itself back purely on itself, it demonstrates “freedom as the understanding takes it.” This is a “freedom of the void,” as Hegel says, because there is nothing else left once all particular content of the will has been disregarded and

the will has been made the object of this “pure *thinking* of itself.” In its freedom as “pure indeterminacy,” the will is “absolute abstraction or universality.” The freedom of the will consists initially in this kind of empty universality on the part of the willing ego.

The second moment of the will arises from the fact that the will as willing ego is “equally” (*Rph* §6) or “also” (*Rph* §7) always an ego that wills *something*. In the experience of self-consciousness we discover the ego as “the transition from undifferentiated indeterminacy to *differentiation, determination, and the positing of a determinacy as a content and object*” (*Rph* §6) of the will. But insofar as the ego wills a determinate (natural or self-consciously posited) content, it posits itself as a determinate will. The ego’s decision to will something determinate is simultaneously a transition to a determinacy of its own, a decision to be a determinate willing agent itself, to be a particular ego.

But the will is not merely a determinate will through this second moment alone, but is also already determinate in the first moment. For there the will was the “abstraction from all determinacy” and this “abstract negativity” was determined precisely through its opposition to everything specific or particular. Here in the second moment, on the other hand, the will as particular will is itself the negation of that first indeterminacy through transition to an act of determinate willing. Only the will that wills something determinate is properly speaking an actual will. Hegel says that this second moment of the will is already contained within the first, just as the particular is always contained within the universal. (This last claim need only imply that the universal, as the universal *of* the particular, logically presupposes the particular.) Hegel regards it as the merit of his speculative philosophy to have grasped the immanent negativity that is (also) implied in the moment of universality and identity.

These two moments of the will do not therefore simply lie alongside one another in a quite unconnected way, as the language of “also” and “equally” in §§6 and 7 might perhaps have suggested. On the contrary, the will is essentially the unity of both these moments, and its freedom consists precisely in this (“speculative”) unity. For the apparent transition from the empty freedom of the universality of the will to particularity of the will as an ego that wills this or that determinate content simply meant that determinate willing was already “contained,” that is, presupposed, in the universal willing that was negated. For the universality and indeterminacy of the willing ego arose only through the abstraction qua negation of all particular willed content and the return to itself from out of this determinate willing. On the other hand, the determinacy of willing

(although no specific or determinate willing) was already implied in the very dependence of the abstracting self on certain determinations of the will from which it was able to abstract in the first place. Thus, Hegel believed he had shown that the universal willing ego essentially finds itself not in a determinacy that is supplied externally but in a determinacy that is a consequence of self-determination, that is to say, of freedom. The ego “determines itself insofar as it is self-relating negativity” (*Rph* §7). And in accordance with the preceding analysis, this means that it is only insofar as the ego relates itself to and negates its own determinations that it is the universal ego that possesses the possibility of willing this way or that way or not willing anything in particular whatsoever. This determinacy is thus the presupposition of the will’s return to self. But equally this entire sphere of determinacy constitutes the proper determinacy of the willing ego only insofar as the ego posits itself in each of these determinations, insofar therefore as the ego also relates to itself as negativity in *such* a way as to relinquish its universality and turn itself into the will that wills in this or that fashion (i.e., that wills this or that in particular). It is then that we say that the will has resolved to do something or has decided on something. To say that this determined negativity is already contained or implied in that indeterminate negativity (*Rph* §6) is simply to say that the determinations of the will would not be determinations of the ego unless they were also negated, or in principle negatable, by the ego, that is, unless they were already posited as ones that can be conceptualized only as further determinations of this their common negating element, namely, of the ego. Something counts as something willed by me only precisely insofar as I posit it as a determination of *my* will.

But this “concept” of the will, revealing as it does for Hegel that freedom or self-determination is its very “substantiality,” implies above all that the will cannot be grasped as an already “presupposed subject or substrate” of willing. As Hegel says of the will, “It is not something that is complete and universal until it is determined or until this determination is sublated . . . , for it only becomes will as this self-mediating activity and this return into itself” (*Rph* §7). The will is only will, therefore, precisely *insofar* as it posits itself as something other than it is (and thereby ceases to be the universal), insofar as it nonetheless remains at home with itself [*bei sich*] in this process of determining itself. Thus, precisely in willing something other it can be said at the same time to will nothing but itself (in a sense that has yet to be explained). To will itself in what is willed is therefore for the will to retain its universality as ego in the particular content of willing and to return to that universality in the process. (It is

not possible in this context to explore the obvious dependence of Hegel's argumentation on the first version of Fichte's *Doctrine of Science*.)

The second moment of the will, the particularity of actual willing, must itself, on closer examination, be interpreted in a twofold manner. In the first place, Hegel draws a distinction concerning the "form" of willing, with respect to whether what is willed is still something merely subjective or is something that has already been accomplished and is thus objective. The return of the will to itself through the content of its willing would thus assume the specific shape of a process in which the subjective purpose is translated into objectivity "through the mediation of activity and an external means." This kind of self-possession [*Beisichselbstbleiben*] that is maintained within the content of willing thus presupposes (1) the "will of a self-consciousness" that (2) "discovers an external world" confronting it in which it accomplishes what it wills (*Rph* §8). One of the themes of Hegel's *Phenomenology of Spirit*, and in particular of the celebrated chapter on the "Master and Slave," is precisely the significance of this self-possession in which self-consciousness remains at home with itself through the process of self-exteriorization or self-othering [*Anderswerden*], as well as the specific freedom of *poiesis* (labor) as a transformative activity exercised within and on the material world.

But such an investigation must be preceded by an examination of the differences in the relevant content of the will, namely, of the determinations of the will precisely as its "own" determinations or its subjective purposes. In accordance with its own concept, the will is free (and not merely in the sense of freedom as interpreted by the "understanding") insofar as it simultaneously takes itself as its own end and purpose in its activity of determinate willing. The will is therefore only "truly" free if and insofar as it wills its own freedom. To say that the will is thus free "for itself" is to say that the concept that initially emerged only for us, the philosophical observers, namely, the concept of the will's freedom, is actually what the will itself wills. Now the natural determinations of the will – the drives, desires, inclinations, and so forth – are simply encountered as something already given, even though I can also make them into determinations of *my* will through active decision (and indeed must do so if they are to constitute actual determinations of a willing *ego*). The natural determinations are thus initially given to me as a multiplicity of drives and desires with a contingent plurality of objects or possible sources of satisfaction, and I must first choose among them before I can come to a specific decision (as arbitrary will). The common feature of all these distinct determinations, namely, their capacity to be made into my own

through an actual decision, is something entirely formal. The content of the will is “not yet itself the content and work of its freedom” (*Rph* §13). This distinction between the universality of the thinking, choosing, and deciding ego, on the one hand, and its particular drives and inclinations, on the other, can be sublated only until and unless the will “elevates itself once more to the standpoint of thinking and confers immanent universality to its ends and purposes” (*Rph* §13, note). Once the will has done so, it is truly free because it now takes itself in its universality as its own content and end. This immanent universality of the will’s ends and purposes means that the contents of willing are now determined by the thinking nature of the will itself, and not merely that they are all mine in a formal sense or can be made so through an arbitrary decision. True freedom thus consists in the fact that the will has itself and “infinite form” in its pure universality as its content, that is, as its object and end. This requires precisely the sublation of the natural determinations of the will as such, the sublation of the particularity of the willing agent as defined by those determinations, and the elevation of the will into the domain of universal ends, an elevation that is possible only through the activity of *thought*. “The self-consciousness that purifies and elevates its object, content and end to this level of universality does so as thought realizing itself in will. This is the point where it emerges that the will is true and free will only as a thinking intelligence. . . . This self-consciousness, which grasps itself through thinking as the essence, . . . constitutes the principle of right, of morality and of all ethical life” (*Rph* §21, note). This self-realization of the thinking intelligence signifies, therefore, that the contents of the will are determined through the form of universality itself, that the willing and the willed are one and the same, that is, are both characterized by the universality of the ego. The freedom of the will consists in its remaining at home with itself in the content of willing “because it relates itself solely to itself” (which also implies that “every relation of *dependence* on something *other* than itself falls away”). But this is identical with the “truth” of the will. “The will is *true* or rather is the *truth* itself because its determining activity consists in realizing its own concept there in its *actual existence*, that is, in being something that stands over against itself.” This intrinsic correspondence [*Übereinstimmung*] between its concept, that is, the universality in which it thinks itself, and what the will itself wills and produces is not simply some contingent “truth.” Inasmuch as it is actually produced by the will itself, it is a necessary truth. Thus, Hegel’s talk of the “truly free will” not merely distinguishes it from the empty freedom of potential abstraction characteristic of the “understanding,” but also conceptualizes it positively

as a will the freedom of which lies in its "truth." Self-consciousness as a specific consciousness of the correspondence between subject and object is thereby also grasped as a principle of praxis.⁴

Hegel speaks of an "absolute impulse" [*absoluter Trieb*] on the part of free spirit, one that demands freedom as its own object. The objectivity of this object is a twofold one. In the first place, such expressly willed freedom is "the rational system of spirit's own self" that in its universality and totality transcends the particularity and subjectivity of the singular and contingently determined will. The system of right and law is just such a rational system. But in the second place, the objectivity of realized freedom consists in the fact that the system must also appear as "immediate actuality," as is implied in Hegel's conception of "ethical life." The actual existence of the concept of the free will is the "Idea" of the will, and the abstract concept of the latter is "in general the free will that wills the free will" (*Rph* §27). With this notion of the self-willing and self-actualizing character of the free will, Hegel believes he has found, according to its "Idea" at least, the principle underlying the whole of what was once called "practical" philosophy. Hegel's *Philosophy of Right* is a development of this "Idea" precisely as a philosophy of "objective" self-realizing spirit.⁵ Instead of entering into a more detailed examination of what Hegel understands by the will and its freedom, it will suffice here to summarize the crucial points that have already been adumbrated in the foregoing analysis.

1. The will that Hegel discusses, familiar to everyone on consideration of their own self-consciousness, is the practical freedom to make something an end for oneself in thought and to act accordingly. There is a question here that admittedly does not concern legal and political philosophy, where the concept of free action is sufficient, but certainly does arise for ethics implied here within the broader context of practical philosophy: namely, whether practical freedom can or cannot be detached in this way from the domain of natural necessity. This kind of metaphysical problem with regard to freedom of the will finds only a rather weak response in Hegel (cf. *Rph* §15 Note).

2. The fact that the universal is in one sense the negation of the particular, as the particular is equally the negation of the universal, naturally does not mean (in the case of concepts) that they reciprocally contain one another. The particular is contained within its universal only insofar as the latter presupposes some particular in general (not some determinate particular) *whose* universal it is. The "speculative unity" of the universal and the particular to which Hegel appeals and which he applies immediately

to the will is thus either a trivial concept or one where we cannot properly determine the meaning of the terms “unity” or “identity.”

3. If freedom signifies a process of being at home in otherness or exteriority, then the concept is already given *per definitionem* in the very thought of realizing ends and purposes. Quite independent of the problem concerning the freedom of setting ends in general and the possibility of their unimpeded realization in relation to the real external freedom of other agents, freedom of the will here is a tautological consequence of the concept of action in terms of an already represented goal, that is, of willing itself. In this respect, to will *oneself* as agent supplies no new moment to the correspondence between the will and its willed content. The fact that this “freedom” of the will is supposed to imply that the willed purpose contains the same universality that the willing ego ascribes to itself as an indeterminate capacity is certainly a new moment, but not one that has been derived from what preceded it. For the universality of ends and purposes actually implies that, in adopting and realizing the latter, I must pay substantive attention to the proposed ends or the freedom of everyone else (either by limiting or extending my proposed ends for the sake of others), whereas the “universality” of the willing ego merely signifies its freedom from any particular end or purpose. This latter is certainly a presupposition of the former, but it is not identical with it. The willing ego cannot therefore find itself any more or less in its “universal” ends and purposes than it can in any particular one. The correspondence in question simply consists in the fact that the willing is the willing of a *thinking* being whose ends and purposes are *thought* (through concepts) before they are (potentially) actualized.

II. The “Ethical Life” of Civil Society and the State

If one now asks what follows from the “Idea of the will that is free in and for itself” (*Rph* §33) in the full course of its development, Hegel gives us a threefold answer: (1) “the sphere of abstract or formal right,” (2) “the sphere of morality,” and (3) “the Idea in its universal existence in and for itself or ethical life.” The latter presents the “unity” of the two preceding moments of the development insofar as freedom here exists both as the external actuality of a world of subjects and their shared institutions and as the subjective will of individuals (*ibid.*) The highest shape of ethical life is the state, which also constitutes the real presupposed basis on which civil society and the family unfold as on a common ground.

If we would form a concept of the specific character of this “ethical life,” Hegel invariably refers us to the express unification of those essential moments that belong to the two preceding and still “abstract,” because one-sided, spheres. “The *ethical* is subjective disposition, but that of right existing in and for itself . . .” (*Rph* §141, note). Correspondingly, Hegel tells us that “right lacks the moment of subjectivity that morality in turn possesses alone, and therefore both moments have no actuality in their own right” (*Rph* §141). This “unity of the subjective and objective good existing in and for itself” (*ibid.*) can be roughly epitomized as follows: the “oneness [in which] I – as thinking – that is, as universal – will the universal – and am this willing of the universal[.] . . . *Marriage, state* – these are the only great ethical totalities. . . . [Thus:] to act in accordance [with] such totalities” (Hegel’s handwritten additions to §142) – this is what reveals the meaning of ethical life. In this specification of the “ethical totalities” or “substances,” as Hegel also calls them, civil society is conspicuous by its absence. And in fact civil society is no “ethical substance” but precisely the place where “authentic ethical life and substantial freedom” of the family is lost (*Rph* §33, Addition). Civil society presents us merely with a “system of needs,” with an “external and unspiritual concatenation” of many families (Hegel’s own addition). But even here it is possible to uncover something universal. The science of political economy may be able to recognize something like a “flicker of rationality in this sphere” (*Rph* §189), even in this “arena where the private interests of individuals contend all against all” (*Rph* §289). It is precisely because of the universality that does prevail in civil society, according to Hegel, that it has even been confused or identified with the state. Whenever the purpose of the state is conceived simply in terms of securing and protecting the institution of property and personal freedom, one has actually substituted the concept of civil society instead. Civil society is “an association of members as *self-sufficient individuals* in what is therefore a *formal universality*, occasioned by their *needs* and by the *legal constitution* as a means of security for persons and property, and by an *external order* for their particular and common interests” (*Rph* §157). One can describe such a system as the “external state” or as the “state of necessity and of the understanding” (*Rph* §183). This conflation of civil society and the rational state is understandable in the case of those philosophers who were quite unable to attain the “speculative” comprehension of reason and its actuality in the realms of nature and history, and particularly in the case of the Enlightenment philosophers. For the latter posited the individual will and the interests of individuals as the ultimate end and purpose of the state and thus, like Rousseau, could grasp

the union of individuals in the state only through the mechanical conception of a social contract (*Rph* §258), the ultimate purpose of which can lie only in the interest of individuals as such. (Here I can only assert, without developing the claim in detail, that this Hegelian opposition between individuals and the universal is meaningless when applied to the idea of the social contract and the formation of the universal will, at least with regard to Kant and Rousseau, and further that the identification of the needs, interests, and rights of human agents with the requirement of equal mutual protection represents a total misunderstanding at least of Kant's conception of constitutional law.) If the political philosophies of Kant and Rousseau had only succeeded in articulating a concept of the "external state," in Hegel's view, it was science of political economy (and the study of the administration of justice) that discovered the most important element involved in the preservation of the universal, a kind of quasirational analogy to the rational universality of the state, precisely in the domain of civil society. For civil society was interpreted as a system of needs and the satisfaction of such needs through labor and specifically through the organized division of labor. What then is the peculiar "universality" of this sphere that simultaneously accounts for its apparent similarity to the state, and what precisely distinguishes it from the authentic "ethical life" of the state?

The principle of civil society is the particular person who takes himself qua particular, that is, in relation to the satisfaction of his or her particular needs and exercise of particular capacities, as his or her own end. But this end can be realized only if he or she accommodates to the needs and capacities of other persons, that is, to the sphere of universality. Hegel says that "each particular person asserts itself and gains satisfaction through the others, and thus at the same time through the exclusive mediation of the form of universality" (*Rph* §182). The reciprocal dependence of the members of a society that produces its means of subsistence through the division of labor, and the independence of this society that is maintained only through the reciprocal solidarity and assistance of its members in the face of enemies and external obstacles of one sort or another, have constantly been invoked ever since Plato and Aristotle as the principle reasons for the emergence of social and communal life. Now this kind of "universality," conceived as the bond uniting a plurality of self-seeking individuals, can be interpreted more concretely also in specifically economic terms, as Hegel goes on to show in detail. We also can seek an explanation here for the idea of the social contract, as C. B. Macpherson has demonstrated in recent times in his analyses of

“possessive individualism” with reference to the political philosophy of Locke and Hobbes.⁶ In this view, civil society is governed by the logic of the market even and indeed especially where it understands itself as a legal order for the protection of “liberty and property.”

In this sense, Hegel’s observations tell us nothing new if we compare them with Kant’s reflections in the *Idea for a Universal History from a Cosmopolitan Point of View*, not to mention the principal celebrated contributions by Mandeville and Adam Smith. The fact that it is therefore in one’s own interest to pay attention to the interests of others in a sense compels everyone to submit to the laws of the universal in order to secure the realization and enjoyment of their own ends. “The selfish end in its actualization, conditioned in this way by universality, establishes a system of all-around interdependence, so that the subsistence and welfare of the individual and his rightful existence is interwoven with, and grounded on, the subsistence, welfare and rights of all, and have their actuality and security only in this context” (*Rph* §183). This system, which Hegel here also calls the “state of necessity,” that is, a state that arises from the necessity of surviving the insecurities of a mutual struggle of all against all, is a “system where ethical life has been lost in its extremes” (*Rph* §184). For the reciprocally conditioned character of the “particularity” of individual activities and the “universality” of their nonetheless common interests does not properly constitute an “ethical identity.” This kind of interconnection is something that cannot be described as a work of freedom, but only as the “necessity that demands that the particular raise itself to the form of universality” (*ibid.*). Hegel never tires of presenting the character of this relationship to the reader in ever new forms and examples, and he takes pains to emphasize again and again the distinction between the identity that is characteristic of the citizen (as bourgeois) and the “ethical” unity and identity that is characteristic of the state. As far as civil society is concerned: “In promoting my own purpose, I promote the universal, and this in turn promotes my purpose” (*Rph* §184 Addition). It is clear therefore that promoting the purposes of society as a whole is merely the means of promoting one’s own purposes. Thus, Hegel’s decisive objection to the failure to distinguish between civil society and the state is not difficult to understand: “If the state is confused with civil society and its determination is equated with the security and protection of property and personal freedom, *the interests of individuals as such* becomes the ultimate end for which they are united; and it also follows from this that membership of the state is an optional matter.” But Hegel raises the objection: “*Union* as such is itself the true content and end, and the destiny [*Bestimmung*]

of individuals is to lead a universal life" (*Rph* §258, note). Hegel tells us that the "substantial unity" of the state is the "absolute . . . ultimate end in which freedom attains its highest right." For the individual human being this means that "it is his highest duty to be a member of the state" (*Rph* §258).

When Hegel distinguishes in this way between civil society as a community of ends based entirely on the personal interests of its participants and the state as a union of human beings that is intrinsically necessary (for the sake of freedom of action in general), it is difficult not to think of Kant's distinction between a contingently conceived society and a society conceived in terms of virtue: "a union of many for some or other (shared) purpose (that they all *possess*) can be found in all social contracts; but a union of the same that is an intrinsic end is therefore the . . . unconditioned and primary duty: but such a union can be found in a society only insofar as the latter . . . constitutes a shared community" [*ein gemeines Wesen*].⁷ It is quite true that this distinction between civil society and the state, which is so reminiscent of this passage in Kant, is found in the very paragraph (§258) of the *Philosophy of Right* in which Hegel roundly rejects Rousseau's doctrine of the social contract, a doctrine to which Kant is also indebted. For the social contract, conceived precisely as a union of individuals coming together to form the state, clearly contradicts Hegel's own conception of the necessary union implied in the idea of the state. A contract is intrinsically based on "the arbitrariness, the mere opinion, the contingent and express consent" (*Rph* §258 Note) of the contracting parties as its foundation. But then the state would simply be dependent on the contingent emergence of the shared will of the contracting parties in question, and thus also dependent on their arbitrary interests and limited insight into the necessity of such a union of wills. In his polemic against the contract theory of the state, Hegel fails to acknowledge both Rousseau's objections to the self-alienation of freedom demanded by the contract in Hobbes, Grotius, and Pufendorf and Kant's distinction between a contingent social contract, namely, an agreement among human beings based on arbitrarily shared social ends and a "contract for the establishment of a civil constitution among human beings (*pactum unionis civilis*)," one that is "essentially" distinct from all other contracts "according to the principle behind its foundation."⁸

Kant's distinction is based on the fact that the social contract is not itself one arbitrary purpose among others, but rather one that is also an "unconditional and primary duty" because without it we would be quite unable to conceive any laws and duties binding on human beings

in relation to their external freedom. But to grasp this, we must place the concept of human right as external freedom in accordance with laws as the basis of our analysis. For this concept, according to Kant, has “nothing whatsoever to do with a purpose that all human beings share in a natural sense.”⁹ Now, if, with Hegel too, we describe this purpose as that of welfare or happiness (*Rph* §123 and Note), we can say that Kant claims necessity for the social contract precisely because the purpose of the state is right, and thus external freedom according to laws, and not individual happiness or even the common welfare of society. Thus Kant can also say that the proper health (*salus*) of the state is that condition where the greatest possible correspondence between principles of right and the existing constitution actually prevails. It does not lie in the “welfare and happiness of the citizens of the state” since the latter might be far “more comfortably and agreeably” discovered in a prepolitical state of nature or even under a despotic government.¹⁰

Thus, Hegel’s distinction between civil society and the state, despite his polemical rejection of the contract theory in Kant and Rousseau, does seem to parallel the Kantian distinction between collective happiness or the common welfare of society and the rule of universal will in the so-called constitutional state [*Rechtsstaat*]. Yet Hegel’s polemic against Kant and Rousseau should give us good reason for caution before attempting to harmonize the two positions in this way. But it is not my intention here to measure Hegel’s theory of the state against the criteria established by Kant or Rousseau or to expound the fundamental differences in method and principle that characterize their philosophies in contrast to Hegel’s. Rousseau’s doctrine and Kant’s appropriation of it are intended, rather, to provide an indicative context for the following investigation of the specifically Hegelian understanding of “common welfare” and “universal will.” It is only once we are fully aware that these are clearly extremely ambiguous terms that we can understand the importance of carefully defining the phenomena they were intended to explicate.

In the first place, it is striking that Hegel explicitly sets up and attempts to ground the proposition that “an intention to promote my welfare and that of others . . . cannot justify an *act of wrong*” (*Rph* §126). But then he adds that this reflection on the right involved in welfare concerns only what he calls “formal right,” or the private right to property, and that the “welfare” in question here refers only to “the particular welfare of the individual”: “The so-called *common weal* or *welfare* of the state, that is, the right of actual and concrete spirit, is an altogether different sphere,”

one to which not only private welfare but also private right is obviously subordinate (*Rph* §126). In this view, the welfare of the state would represent something for which right, namely, the right to property, could also legitimately be sacrificed. But then Hegel would have to tell us precisely what the common weal or welfare, the ultimate end or purpose of the state consists in. (On occasion Hegel also claims that the proposition according to which “the purpose of the state is the happiness of its citizens” is a “true” one (*Rph* §265 Addition), but as with all the “additions” in the lecture transcripts of the *Philosophy of Right* the authenticity of the passage is not beyond question.) In another passage, Hegel says that “welfare of the state” is an indeterminate expression for the “purpose of the whole” (*Rph* §278 Note). But this merely reinvents the question of what precisely does it mean to talk of the purpose of the whole? In the first instance we certainly learn something here about the social agent of the “purpose of the whole.” It is the “executive power” of government (*Rph* §287), which for Hegel also includes the judicial and administrative power, that effectively realizes the “universal interest” at work within the purposes of civil society. They do so even though they belong here to a sphere that, according to its immanent concept, is independent of the state, namely, civil society itself.¹¹ The task of the executive power is “to uphold legality and the universal interest of the state” (*Rph* §289). It is assisted in this by the patriotic attitude of its citizens, the “secret” of which Hegel finds it easy to explain in this connection: “The spirit of the corporation, which arises when the particular spheres gain proper recognition, is now at the same time inwardly transformed into the spirit of the state, because it finds in the state the means of sustaining its particular ends. This is the secret of the patriotism of the citizens in the sense that they know the state as their substance, for it is the state that supports their particular spheres . . . and the welfare of these” (*ibid.*). The secret of “the spirit of the state” is therefore the self-interested attitude of the members of civil society. The citizens become conscious of the state as their own “substance” because the “welfare” of the particular spheres actually depends on its activity as a means. Thus, the state, in relation to the attitude of the citizens from which it derives its strength, is now nothing but the state as conceived by the “understanding,” or the state as civil society, and the common welfare of the citizens now consists not in a “healthy” correspondence between the political constitution and the principles of right, but rather in the successful flourishing of the “corporations.” That is why, in relation to other states, we must claim that a particular state, that is, an “ethical substance,” actualizes its right in “concrete existence” and that “only this

concrete existence can constitute the principle of its action and behavior” (*Rph* §337 Note). It is thus the politics of interstate relations, which Hegel here explicitly excludes from any moral objections, that shows in an ambiguous or, rather, all too unambiguous fashion that the opposition of right and welfare, as we already saw above, has effectively been dissolved within the idea of the state (*Rph* §336).

If Hegel had previously struggled to emphasize the distinction between civil society and the state in order to celebrate the latter as “something divine in and for itself in its absolute authority and majesty” (*Rph* §258, note), if he had even declared that “the state is the divine will as something present, is the spirit that unfolds itself into the actual shape and organized form of a world” (*Rph* §270 Note), we now find this claim embedded in the very paragraph that begins: “The fact that the end and purpose of the state is both the universal interest as such and the conservation of particular interests within the universal interest as the substance of these . . .” (*Rph* §270). This is not a rather misleading formulation of what civil society is but is supposed to represent “the self-willing and self-knowing spirit” of the state itself.¹² The state constitutes this community of interests and ends insofar as the state already contains the family and civil society within itself. The state may well acquire concreteness in this way, but only by becoming indistinguishable from civil society in turn. The truth of the common welfare is therefore that it also constitutes the purpose of the state, and not merely that of civil society after all.

What is the position now with regard to the principle of the entire *Philosophy of Right*, and particularly of the state, the principle of the universal will? We initially began by examining the distinction between the truly universal will “in and for itself” and the alternative standpoint of the “understanding” (represented by Rousseau, and then by Kant and Fichte): the standpoint according to which the merely “common” or shared will of individuals is generated through a “coalition of every particular and private will in a people to form a commonly shared and public will,” as Kant himself expresses it.¹³ The common will expressed in a contract cannot be the principle of the state in Hegel’s eyes, as we have seen, because it depends, like any contract between private individuals, only on contingent agreement, and is therefore something quite relative to those individuals rather than being something valid in and for itself, and further because such a contractual will is intelligible only in relation to the alienation and transfer of private property, that is, of external things as objects (*Rph* §75). These three characteristic features of contract clearly

do not apply very comfortably to the essence of the state. Yet the will, as something “intrinsically universal” (*Rph* §142, Hegel’s handwritten addition), obviously can serve as the principle of ethical life if it is conceived as “the willing of the universal” and if I myself am “this willing of the universal” (*ibid.*), that is, if I am a member of the family and the state as “ethical totalities” (or “substances”). The domain of ethical life in general is precisely the domain of “identity between the universal and the particular will” (*Rph* §155). But civil society (and not merely family and state) also belongs in some sense to the domain of ethical life for Hegel. This is obvious from the fact that citizens as members of this society can satisfy their own interests successfully only insofar as they use the universal, that is, all other private persons, as a means for the purpose of realizing those interests. This in turn demands of all that they make themselves into a useful “*member* in this chain of interdependence” (*Rph* §187). Although the members of civil society are quite unaware of it, it is in the very interest of the “Idea” that they “elevate themselves to *formal freedom* and the formal *universality of knowing and willing* through the process of natural necessity as well as the contingent satisfaction of their needs” (*ibid.*). What the “Idea” thus accomplishes behind the backs of the “bourgeois” is their “enculturation” [*Bildung*] for “formal freedom” (cf. *Rph* §187 Note, and §123), that is, for a (relative) independence from natural needs and an active “concern for the particular interest as something *shared in common*” (*Rph* §188), as a willing (and knowing) that is formally universal in *this* sense, as the common will of all those who enjoy the benefits of living together in a community. This universal will of private persons that emerges quite unconsciously in this way is naturally not identical with Rousseau’s “*volonté générale*” that is necessarily conscious of itself as a contractual will, or with the “intrinsically” universal will of the state, but it obviously represents a formative and cultural anticipation of both. The state is finally “the actuality of the substantial will, an actuality that the latter possesses in the particular self-consciousness that has been raised to its universality” (*Rph* §258).

The idea that it is the particular self-consciousness that constitutes the site of actuality for the truly universal (and thus substantial) will, that the state is only effectively actual in the life, customs, and sentiments of its citizens, is certainly nothing very new in the history of political thought concerning the nature of the state. But the fact that the state, expressly conceived as actual in this self-conscious “spiritual” fashion, is here described as “*the rational* that exists in and for itself” is just as new as Hegel’s own definition of rationality as the “interpenetrating unity of universality

and singularity” or, more concretely, as the “unity of objective freedom, that is, of the universal substantial will, and subjective freedom, that is, that of individual knowing and will that seeks to realize its particular ends and purposes.” Rationality thus consists, in accordance with its very form, “in a kind of action that determines itself in accordance with expressly *conceptualized*, that is, *universal*, laws and principles” (*Rph* §258 Note), a definition that corresponds with the philosophical tradition. The fact that such action somehow represents the unity of the intrinsically universal and the particular will of the individual is thus for Hegel the most universal expression of the proper “rationality” of willing in contrast to the will conceived by the “understanding,” which is best represented in Hegel’s eyes by the universal, that is, merely common, will of individuals in Rousseau and Kant.

The Hegelian idea of the state as the very actuality of reason thus simply signifies, over and beyond the aforementioned objectivity and independence of the will embodied in it in relation to the arbitrariness of individuals, that the ethical agent actualizes this idea through the act of positing universal ends and purposes, thereby serving the state as a whole and identifying itself with the ends and purposes of the state. But it does so without insisting on the idea of its own (external) freedom conceived in terms of a social contract and thus as an uneliminable limit on the executive power of government and the purposes of the state. Here, too, therefore, as we saw at the beginning of our analysis, the universality of the universal will consists in the formal character of the purposive action that is directed not merely toward my personal and private ends but also and simultaneously toward commonly shared ends and interests. For this is now revealed for Hegel precisely as the real significance of social action that determines itself in accordance with laws and principles.

If therefore the state, with respect to our analysis of the concept of common welfare, previously appeared to be practically indistinguishable from civil society, so the universality of the will now also appears to represent precisely the same dependency (though now as a legally sanctioned one) of subjective purposes on a completely *indeterminate* and quite *indeterminable* “purpose of the whole.” Yet the latter is still interpreted as something subsisting independently in its own right that should be regarded as a well-defined principle for elucidating the duties of the citizen. The government charged with administering the correspondence between one individual’s subjective purpose and the purposes of everyone else finds itself confronted by the (quite immeasurable) task of representing the final authority in the kingdom of ends, ensuring that individuals collectively

fulfill the ends of the latter through the various institutions of law and positive right, through the activities of the “police” and the “corporation.” Hegel’s aforementioned claim concerning the divinity of the state thus appears to be entirely appropriate. For if the state, insofar as it was indistinguishable from civil society, appeared before as a great market with its own laws of exchange, it now appears as an ethical community of members dutifully devoted to the mutual promotion of one another’s ends and purposes, and thus as a kind of “invisible church” with God typically at its head as the sapient and ultimate principle guaranteeing the harmony of all human ends and purposes.¹⁴ The way in which Hegel’s state thus wavers between the model of the market and that of the church results from the fact that the binding principles of civil society and the political state alike are oriented toward the private or collective purposes of human beings and toward the idea of public freedom as a structure for the common actualization of ends and purposes.

III. Freedom and History

Ever since Marx’s critique of Hegel’s philosophy of right, it has been claimed often that civil society itself represents the inner “truth” of the Hegelian state. For in the *Philosophy of Right*, Hegel has certainly provided a vivid description of the developmental processes of civil society and the crises of overproduction that beset it, of the generation of a dispossessed “rabble,” of the progressive mechanization of what we should have to call “alienated” labor, of the impossibility of reintegrating the unemployed, “the poor,” into the productive process, of the economic necessity for colonialism and imperialism. If this interpretation is justified in the broad lines we have just sketched, at least in relation to the main principles involved, then we cannot ultimately help asking how Hegel could still come to depict this highly ambivalent “state” as the actuality of reason itself, asking how he could legitimately avoid the charge of fabricating a “mystification” of the existing order in the interests of the bourgeoisie, or more precisely of the administrative class of civil servants and state employees, asking how the reader can interpret Hegel as anything but the unconscious spokesman of certain specific class interests. Whether any of this is in fact the case, the argument concerning the ideological character of Hegel’s position remains unconvincing unless we are able to discover the element in the very material with which the philosopher works that can properly function as an explanatory ground for the theory,

and to interpret the latter just as Hegel himself interpreted it, namely, as an internally consistent and valid totality of argumentation.

Now *one* reason for the often criticized ideological character of Hegel's conception of the state seems to me to lie in the particular concepts of right and history that sustain and support the *Philosophy of Right* as a whole. We have already pointed out above that Hegel's idea of "being at home in the other," supposedly a direct result of human action itself, is trivially entailed by the concept of purpose whose structure can also be applied to the *capacity* of setting ends in general, and thus to the will itself. This idea of the freedom of the will, and thus of freedom of action, is conceptualized as the most universal structure of the actualization of ends and purposes, and can therefore simply be derived from the definition of the will. Now if we posit this technically "poetic" concept of freedom as our point of departure, then the consciousness of freedom can be conceived only as a consciousness of the conscious or unconscious process in which a kind of "work" has been effectively produced. It is thus not merely the section dedicated to "civil society" in Hegel's *Philosophy of Right* that should be read as "the only German history that stands on a level with the official modern present," as Marx put it.¹⁵ The part of Hegel's work that deals with the political state is equally directed toward the historical present, not indeed that of the most advanced industrial nations of the time, but that which reflects the political backwardness of Prussia. This of itself is not sufficient to turn Hegel into the "philosopher of the Prussian state." All the same, one can still point to Hegel's letter to Hardenberg in October 1821 where he claims that the intention of the 1821 *Philosophy of Right* is to demonstrate "the harmony [between philosophy] and that which, under his [i.e., His Majesty the King's] far-seeing government and the wise leadership of Yourself, the Prussian state is fortunate to have in part accomplished, and in part still to accomplish in future, something that can therefore procure particular satisfaction to me only through belonging to this state" (B II, 242). (Hegel's reference to future accomplishment here is probably an allusion to trial by jury and a public assembly for the Estates, two things that were not represented in the Prussia of the time but were certainly envisaged in the *Philosophy of Right*.)

Furthermore, Hegel insisted with all the clarity one could wish in the notorious "Preface" to the *Philosophy of Right* that philosophy is "the comprehension of what is *present* and *actual*, and not the postulation of a *beyond*," that the task of philosophy is "to comprehend that which is" and thereby effectively to become "*its own time apprehended in thought*." This is supposed to procure "a warmer contentment [with actuality]" than

any stance of resignation concerning the inadequacies and imperfections in matters of the state that inevitably accompany the temporal character of the world in general. ("Preface" to the *Philosophy of Right*, SW VII, 32 and 35ff.; ET: pp. 9, 11ff.).

The history of spirit is nothing but the very action of spirit in which it makes itself into an object of its own consciousness and explicitly grasps itself "in the very process of its own self-expression" (*Rph* §343). This process through which spirit becomes conscious of itself in history and as history is made possible only through the deeds and works actually produced by objective spirit. That is why Hegel can also explicitly *define* history as "the progress in the consciousness of freedom" (*VGP*, 63; ET: p. 54). In accordance with the concept of freedom that has already been fully explicated above, the condition of "being at home in the other," of self-possession in the domain of externality, simply represents, as it were, the normal and daily activity of the spirit that is essentially active as history. It is therefore not simply a case of accommodation to the existing state of things, but rather an initial consequence of Hegel's definition of history and freedom, if the conscious correspondence between the concept of purpose and its realization, that is, the consciousness of freedom itself, is possible in any and every historical present as long as the latter can be interpreted as a purposive result of self-productive activity in accordance with concepts. The actuality of reason in any political state can thus always be claimed on the basis of such a concept of history. For all we need to discover is some purposive character or other that pertains, or can be interpreted as pertaining, to the "work" of a will that is free *per definitionem*. And this then suffices to indicate a certain progress of the present in relation to the past as far as the relationship between spirit and its "work" is concerned. Such a progress will therefore inevitably be followed directly by a progress in consciousness.

To put it more precisely still: freedom is possible, and this in accordance with its own concept, only if spirit as the subject of freedom properly knows itself as free. The progress in the consciousness of freedom is thus teleologically determined in advance by a final or "ultimate purpose" [*Endzweck*]. Such progress can occur only as a continuous advance toward that which expressly belongs to the concept of freedom, that is, toward "spirit's consciousness of its own freedom" (*ibid.*), or toward a quite specific form of consciousness. The necessary progress in spirit's consciousness of freedom consequently primarily signifies not an actualization of more freedom, nor indeed a higher level in the consciousness of freedom. For these latter are rather merely the presupposition or

consequence of the actual movement of history, of the increase in the number of those who can be known to be free. The fact that at first one, then some, and finally all are known to be free is a progress in the objective and thus subordinated mode of knowing proper to consciousness. For the knowledge that the human being is intrinsically free, free in essence or as such precisely qua spiritual, is something that is acquired only gradually through the unfolding stages of consciousness itself. This knowledge thus appears as consciousness in its quantitative approach to the universality that characterizes the concept of its object. According to Hegel, therefore, factually existing unfreedom can be explained in terms of an inadequate consciousness of the intrinsic or potential essence of the human being. The final or ultimate “purpose of the world” is attained when the knowledge concerning this essence is attained, that is to say, with Christianity, or with the Reformation, or with the French Revolution, or also with an emerging modern state such as Prussia. For it is certainly necessary, for the sake of spirit’s consciousness of its own freedom, that such freedom should acquire “actuality.” But the extent to which this transpires remains entirely indeterminate insofar as it is merely recognized universally that “*all* human beings are intrinsically free” (ibid.). It is therefore only with the historical emergence of the Christian-Germanic peoples that the work of the world-spirit is accomplished: human beings *now* know that man as man is free. This attainment of human self-knowledge is a result of the action of spirit and the actualization of its purpose. But this purpose remains nothing but (formal or abstract) knowledge, and not simply as something that has yet to be actualized in principle but also and precisely as something that has already been actualized: no one has the right to demand any specific kind or specific degree of actual freedom in the present.

Hegel is thus entirely consistent in not regarding the actuality of freedom in the state as guaranteed by the fact that citizens stand under laws that they have given to themselves (by means of political representation, for example). But even the participation of representatives of the people in matters of legislation is not something that could properly be demanded in the name of freedom. For the will of the people is not the will of the state but, rather, the will of precisely that category of citizens “*who do not know their own will*” (*Rph* §301 Note). By “people” in this sense Hegel is clearly thinking of the uneducated citizens rather than simply the people itself as a whole. But the people in question here are also clearly incapable as a majority of deciding what lies in their own best interest. For as Hegel says: “To know what one wills, and even more,

to know what the will that has being in and for itself – that is, reason – wills, is the fruit of profound knowledge and insight, and this is the very thing that the *people lack*” (ibid.). For such insight, we should look, rather, to the “highest officials within the state” who are therefore “*capable of acting for the best even without the Estates*” (ibid.).¹⁶ However much, therefore, the consciousness of a modern postrevolutionary state may be marked fundamentally by the knowledge that all human beings are free simply as human beings, this does nothing to imply the civil and political conclusion that these “intrinsically” free human beings must (even merely) participate actively in legislation as citizens of the state. For it is precisely here that Hegel identifies lack of proper knowledge and inadequate insight into “what serves its own best interest” (*Rph* §301 Note) as the reason for limiting the political freedom of the people. It is therefore not simply that the universal will of the people does not represent the highest power in the state. Rather, the freedom of the human being as such, which must also and indeed pre-eminently be preserved in the state, is modified in such a way that the capacity to judge the well-being of the people, and what is best for them, is ascribed precisely to the educated stratum of higher state officials and not to the people itself as a whole.

As far as external relations between states are concerned, they necessarily enter on the scene as individual totalities. Internally speaking, it is “the universal interest as such and the maintenance of particular interests within the state as their own substance” (*Rph* §270) that defines the purpose of the state as a whole (*Rph* §278 Note). Once again this merely reveals, as we showed above, Hegel’s inability to distinguish the state from civil society after all. One can say of this state, in contrast to the people, that “it *knows* . . . what it wills” (*Rph* §270). This is particularly clear in the case of relations between states, and especially in the case of war. The actual existence and the right of the state simply coincide here in general, with the result that even as far as any judgment of right on the conduct of states is concerned, it is only “this concrete existence . . . that can constitute the principle of their action and behavior” (*Rph* §337 Note). One can even argue that “the ethical health of nations is preserved through war” (*Rph* §324 Note).¹⁷ For it is here that the citizens are called on precisely to identify with the national purposes of their respective states by relinquishing their own particular interests. This kind of patriotism is clearly distinguishable from the common spirit that sustains the “corporations,” from the promotion of the universal welfare for the sake of one’s own welfare. That is why the sacrifice of personal property and life for the

sake of the “independence and sovereignty of the state” (*Rph* §326) is the proper criterion of the ethical behavior of the citizen. But even this defense of the independence of states is not enough: “When the whole has acquired power, and has been wrenched out of its own inner life into the domain of externality, then a defensive war of defense turns into a conquering war” (*Rph* §326). The nation that actually prevails in such a war of conquest finds its rule is justified if it stands at the summit of cultural development in its own time: “Over against this absolute right as the bearer of the current stage in the development of the world-spirit the spirits of other peoples are without rights” (*Rph* §347). The rights of the world-spirit thus manifest themselves in the exercise of this all-governing rule. This right, the right of the stronger and culturally superior people, must therefore, in some sense, represent the concrete existence of freedom.

We saw how it was possible to trace Hegel’s unification of the common welfare and the universal will, the two fundamental ways of grounding political legitimation, back to his concept of the freedom of the will. This clearly reveals the dependency of Hegel’s *philosophia practica universalis* on the traditional concept of “purpose” in his analysis of freedom and right in terms of the realization of ends. For this reason we can also say that Hegel’s entire philosophy of objective spirit similarly depends on a “poetic” conception of action. This implied that the autonomy of *praxis* in relation to the realm of *theoria* was eliminated in favor of *poiesis*, thus making it quite impossible to determine right on the basis of the concept of practical freedom. What might at first appear simply as the interesting but harmless priority of theoretical over practical reason, in the sense that the freedom of the will is here identified with its truth, can thus be recognized as the original cause of the inability to distinguish between the state and civil society, of the elevation of the state into the “actuality of the kingdom of God,”¹⁸ of the effective disenfranchisement of “the people,” and of the subjugation of international right and law to the idea of cultural progress.

Notes

1. This chapter has retained the original form of the lecture first given at the Congress of the German Society for Political Science in 1975 (“Legitimationsprobleme politischer Systeme”). I must also thank Professor Otto Pöggeler for a number of critical observations on the contribution.
2. Cf. M. Riedel, *Studien zu Hegels Rechtsphilosophie* (Frankfurt am Main, 1969).

3. For Hegel's own approach to an "ethical doctrine of virtue," cf. *Rph* §148, note.
4. Freedom as independence of will is therefore a *consequence* of the correspondence between will and purpose with respect to their respective (but quite different) universality.
5. For Hegel, therefore, practical philosophy is located within the philosophy of spirit, more precisely between his "psychology" and the philosophy of art. It has thereby forfeited parity of status with theoretical philosophy or the philosophy of nature.
6. C. B. Macpherson, *The Political Theory of Possessive Individualism: From Hobbes to Locke* (Oxford, 1962).
7. I. Kant, *Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis* (Akademieausgabe VIII, p. 289); ET: *On the Common Saying: "This May Be True in Theory, but It Does Not Apply in Practice,"* in *Kant's Political Writings*, ed. H. Reiss, trans. H. B. Nisbet (Cambridge, 1991), p. 71.
8. *Ibid.*
9. *Ibid.*
10. I. Kant, *Metaphysik der Sitten* §49 (Akademieausgabe VI, p. 318); ET: *The Groundwork of the Metaphysics of Morals*, trans. John Paton (London, 1949).
11. The presence of institutions of penal justice within the domain of "abstract right," a "right" that is supposed to be binding even before we reach the sphere of the state, is equally remarkable.
12. For the relationship between civil society and the state, cf. M. Riedel, *Bürgerliche Gesellschaft und Staat bei Hegel* (Neuwied and Berlin, 1970), and my review of the book in *Hegel-Studien* 9 (1974): 253–58.
13. Kant, *Über den Gemeinspruch*, p. 297; ET: p. 79.
14. Cf. J. Ebbinghaus, "Der Begriff des Rechts und die naturrechtliche Tradition," in *Studium Generale* 4 (1951): 351, and his essay "Die Idee des Rechts," in *Gesamlte Aufsätze, Vorträge und Reden* (Darmstadt, 1968). Cf. also K.-H. Ilting, "Die Struktur der Hegelschen Rechtsphilosophie," in *Materialien zu Hegels Rechtsphilosophie*, vol. 2, ed. M. Riedel (Frankfurt am Main, 1975), esp. p. 65; ET: "The Structure of Hegel's *Philosophy of Right*," in *Hegel's Political Philosophy. Problems and Perspectives*, ed. Z. A. Pelczynski (Cambridge, 1971), p. 102.
15. K. Marx, *Zur Kritik der Hegelschen Rechtsphilosophie*, Einleitung, in MEGA, vol. I, p. 383; ET: *On the Critique of Hegel's Philosophy of Right*, trans. A. J. O'Malley and J. O. O'Malley (Cambridge, 1970), esp. Marx's "Introduction."
16. According to Kant, "the greatest conceivable *despotism*" is found in a system of government where "the subjects are forced to conduct themselves in a purely passive manner like children in their minority who cannot discriminate what is truly beneficial or harmful to them, who, in order for them to be happy, must simply await the judgment of the head of the state and simply

expect of his bounty whether he too wishes the same for them. . . ." *Über den Gemeinspruch*, p. 290ff.

17. A direct quotation from Hegel's earlier *Über die wissenschaftliche Behandlungsarten des Naturrechts* (1802); ET: G. W. F. Hegel, *Natural Law*, trans. T. M. Knox (Philadelphia, 1975).
18. As Hegel was already claiming in the so-called *Jena Realphilosophie II* of 1805–6, ed. J. Hoffmeister (Hamburg, 1931), p. 270; ET: *Hegel and the Human Spirit* (Hegel's Second Philosophy of Spirit), trans. L. Rauch (Detroit, Mich., 1983), p. 179.

7

The Contemporary Relevance of Hegel's Concept of Punishment

Wolfgang Schild

The numerous attempts that have been undertaken to reform the system of criminal law have been characterized, from the first, by a single theme: the need to bid “farewell to Kant and Hegel.”¹ And this is because the Hegelian theory of punishment – for it is largely with Hegel that we shall be concerned here – is said to represent an “invalid and frankly unintelligent, and thus ultimately also inhumane, almost mechanistic metaphysics reminiscent of the old systems of celestial mechanics.”² For the essential burden of this theory is “the idea of some remorselessly prevailing and mechanical justice that functions on its own and quite transcends the realm of human beings themselves, one that as it were automatically redresses the violation of the legal order by retaliating with like for like.”³ This kind of interpretation effectively reduced Hegel’s theory to the formula of “the negation of the negation” and thus repudiated it as immoral or unchristian, as one that essentially violated the idea of human dignity. In short: “As far as the philosophy of punishment is concerned, Hegel has nothing or almost nothing to say to an age that wishes to reflect and to act in a more precise and sober fashion in such matters.”⁴ For what, after all, could our age have to learn from such “irrational and intellectually extravagant excesses and the dubious character of such epistemological, logical and moral conceptions?”⁵

In the first instance, anyone remotely familiar with Hegel’s philosophy is tempted to respond in similar (and crude) measure to such a damning judgment, since it clearly has nothing to do with the theory of punishment that is actually propounded by Hegel. It may well be that such

retaliatory theories exist, and that they may appeal to Hegel for support. But that alone cannot justify such an essentially superficial critique of Hegel himself.

Yet, on *further* reflection, it is obvious that interpreters who take this line are not generally making a philosophical claim at all. The interest that motivates them is an essentially practical one. They are arguing for a penal code that is not defined by abstract notions of retaliation and does not operate in a mechanically inhumane fashion but which is just and preserves the human dignity of the offender. They are thus actively campaigning for something that was actually also an essential concern for Hegel, too, and indeed from the time of his earliest writings.

That is why it is also, and indeed especially, necessary to demonstrate the relevance of Hegel's theory of punishment to those who have offered the interpretations outlined above.

I. The Systematic Site of Hegel's Concept of Punishment

The first task here is to locate the systematic site of the concept of punishment in Hegel's *Philosophy of Right*. This task is essential, given the distinctive character of the book to which Hegel himself explicitly alludes in the "Preface": "It is certainly true that the primary difference between the present outline and an ordinary compendium is the method that constitutes its guiding principle. But I am here presupposing that the philosophical manner of progressing from one topic to another and of conducting a scientific proof – this entire speculative mode of cognition – is essentially different from other modes of cognition" (TW VII, 12; ET: p. 2).

We cannot enter here into closer discussion of the specific character of "speculative" thinking in Hegel's sense. But it should be noted from the first that such thinking necessarily implies a systematic exposition of the subject matter in question: there are no "parts" here that could properly be isolated one from another, but only fluid "moments" of the whole that stand essentially within a context of reciprocal mediation. That is why Hegel presents us not with any concepts that we could simply take away with us like so many fixed and finished items of thought, but rather only with certain *argumentational contexts* that can properly be grasped only as a complex whole.

For legal thought in general – as a "compiling" approach characterized precisely by the desire for fixed and finished concepts⁶ – this Hegelian

feature is itself a stumbling block, which is why jurists have generally treated and “purified” the *Philosophy of Right* in accordance with their own criteria. The most popular approach in this respect is to limit one’s attention to the first part – the domain of “abstract right” – since it is already surely obvious that positive right or law is intrinsically abstract and general in character. In support of this, one can appeal to §488ff. of the *Encyclopaedia of the Philosophical Sciences*, which simply designates the relevant part under the title of “Right,” but also to the fact that no system of jurisprudence (as a science of right) would know what to do with the domains of “morality” or “ethical life,” at least if it wished to avoid falling back into the antiquated tradition of natural law. And there is obvious textual support for this approach as far as modern jurisprudence is concerned, since Hegel speaks explicitly of “crime” and “punishment” precisely in §90ff. of the *Philosophy of Right*. The proper site of his theory of punishment would seem to be located in the context of these paragraphs and the elucidations there provided.

Given the aforementioned systematic character of speculative thought, however, this narrowly juridical interpretation must be rejected, and initially on the basis of a very simple argument. For Hegel also speaks about crime and punishment in the two other parts of the *Philosophy of Right*: in the Remark to §120 (on the concept of responsibility), in the Remark to §132 (on juridical accountability), in §209ff. (on the administration of justice), and in §260ff. (on constitutional law), for example. But there are also more important philosophical arguments to consider: for Hegel the concept of “Right” signifies every actually existing form of the free will (cf. *Rph* §29) and thus also includes the domains of morality and ethical life, whereby morality, just like abstract right, reveals itself as one-sided (and thus as equally “abstract”), thus requiring to be sublated and integrated into the domain of ethical life.

The unique character of the *Philosophy of Right* must therefore be recognized from the first: the work does not present us with a legal philosophy in the usual (or traditional juridical) sense of the term – and in this respect one need only compare the works of Radbruch, Coing, or Henkel. Hegel’s book can be grasped only within the overall context of the *Encyclopaedia* (and thus of Hegel’s entire philosophy). That is to say: the *Philosophy of Right* acquires its own systematic place only within the context of the concept of “free spirit” (*EPW* §481), of the free (thinking) will, or, as Hegel briefly puts it, of *freedom*. The *Philosophy of Right* thus presupposes the entire development of subjective spirit up to and into “universal self-consciousness” (for “Reason” in this sense cf. *EPW* §387ff.). That is why

the free will is also identical with the universal rational will – at once that of the individual human being, that of the community, and that of all human beings.

Thus, “free will” in Hegel is not simply the same as the freedom of the human will as arbitrary freedom. And the *Philosophy of Right* therefore also transcends the alternatives of “individual” and “community.” Hegel is concerned neither with individualism nor with the negation of the individual in favor of the social totality (in accordance with the slogan “From Hegel to Hitler”⁷). The decisive passages as far as this question is concerned cannot be found in the *Philosophy of Right* itself but, rather, are presupposed there as the prior basis of right. In this connection, one should examine the mediated development of desiring, recognizing, and universal self-consciousness, and the resultant transformation of self-consciousness when it recognizes itself as “reason” proper (TW X, 213 ff., §424ff.; ET: *Hegel's Philosophy of Mind*, p. 165ff.).

It is obviously impossible to explore the matter further here.⁸ It should simply be noted that the *Philosophy of Right* properly commences only with the concept of the free will and presents the actualization of this concept of freedom, which itself leads to the various configurations (the actual forms of realization) that constitute the individual stages of development up to and including the concept of world history. Each of these configurations is an actually existing form of the free will, and thus, in the terminology of §29 of the *Philosophy of Right*, a form of “Right” itself, up to the point where “the realm of actualized freedom, the immanently self-produced world of spirit” (ibid., §46) has become actual in the state.

This developmental exposition of the concept of freedom, in Hegel's understanding of philosophy, cannot be articulated or supplied through an external method (like that of any special or particular science), but can arise only as *the self-determination of the concept* (and thus as an essentially internal development): “The method must lie within the concept itself. The concept is active and develops itself, while we merely look on, allow the process to happen and grasp its determinations accordingly” (VPR4, 158). The self-development of the concept thus involves its own principle of movement which presents itself as a threefold process of advance: the concept first posits itself immediately or, as Hegel puts it, only implicitly or “in itself” (not yet posited for itself and through itself); the concept also arrives immanently at the limit of this its first determination and is thus “thrown” back on itself (the level of reflection into itself); but the concept must also recognize the limit of this mere being “for itself” and thus discover its entire and proper content in the unity of these sublated

moments (in being in and for itself). The concept has thereby now become through its own activity what it always already was.

These remarks provide little but a brief sketch of the central claim of Hegel's philosophy, but they already imply an important conclusion: the steps we have outlined also trace the self-actualization of the concept of the free will (of freedom), and this is consequently also what determines the developing exposition of the individual shapes of its actual determinate existence.

It is also worth expressing this difference between Hegel's approach and juridical philosophies of right in a terminologically precise fashion by avoiding concepts that can be interpreted in a double manner, that is, concepts that also possess a specifically juridical significance (such as "property," "contract," but also "crime" and "punishment"). This principle also should hold for the characterization of the three fundamental "parts" of the *Philosophy of Right*: in the following discussion they will therefore be described and presented as the respective spheres of the personal, of the subjective, and of the ethical will (or the spheres of the person, of the subject, and of objective spirit⁹).

The first part – which Hegel, surely following Kant's terminology here, calls that of "abstract right" – presents the actualization of the free will merely in an immediate form, that is, only "in itself" and not expressly out of itself: it is merely *personal* will, the will of a person that initially gives itself actual existence [*Dasein*] solely in and through an external thing [*Sache*]. Mediated in this way through the commodity character (and value) of things, the person then realizes himself in a common will, albeit a will that is only superficially common in the final analysis (not a will that is truly universal, and thus not one that is expressly free in and of itself). This insufficiency on the part of the merely personal will, which is nonetheless an actual form of the free will (although precisely in its immediacy), and thus the insufficiency of this immediacy, becomes evident at the level of "wrong" [*Unrecht*] as the denial of right. It is quite true that wrong – as the expression of the particular individual will that challenges all universality of will in general (and even its realization as personal will) – can itself be negated, but only through the agency of "avenging justice," that is, only in turn through another particular will (namely, that of the injured party) that itself thereby posits a new wrong, and so on. The sphere of the person has thereby encountered its own limit; such immediacy cannot represent the final word in the actualization of the free will; and the contradiction implicit in vengeance must itself be resolved. This contradiction can be resolved through the requirement of "a justice

freed from subjective interest and subjective form and the contingency of power – that is, a *punitive* rather than an *avenging justice*. *Primarily*, this constitutes a requirement for a will that, as a particular and *subjective* will, also wills the universal as such” (*Rph* §103).

The second sphere of actualization – which Hegel designates as “Morality” – is consequently that of the *subjective will*, of the subject (hence the “primarily” in the preceding quotation). We are no longer concerned here with the actualization in the external domain of things or of a common will, but rather with a process of reflection-into-self [*Reflexion auf sich selbst*]. Man here makes an object of himself, wills himself as a person, wills all things as an “immanent interconnection” (*VRP*₄, 300). Passing through the concepts of “purpose” and “guilt,” “intention” and “welfare,” the development leads us to “conscience” and the human being as “pure inwardness” (*Rph* §139). The free will has thus become entirely “for itself”: “Conscience, practical reason, is spirit that is at home with itself, which relates to the practical domain. . . . Conscience is the sacred and inviolable site of the human being, it is the pure certainty of myself” (*VPR*₄, 361).

This absolute inwardness also leads in turn to the limit of the subject and thus reveals the abstractness and one-sidedness of the latter: for conscience is “merely subjective, is insufficiently objective, whereas the first sphere (that of the ‘person’) was too objective, was an entirely external matter. Here, on the other hand, there is too little objectivity, for if I abstractly will only myself, then there is no difference, no objective standing, presented here” (*VPR*₄, 165). The sphere of the subject thus involves only the formal moment of conscience as abstract self-determination. Since it is also capable, as such, of degenerating into a mere form or semblance (as hypocrisy or bad conscience, for example), it must be sublated in “true conscience” (*Rph* §137), just as the first sphere of personhood as the immediate actualization of the will was also formerly sublated. Both spheres are mediated in the unity of a will that expressly in and of itself (conscientiously and for itself) simultaneously actualizes itself in accordance with its own concept, and thereby also assumes external form precisely as such.

And the expression “sublated” here must be understood in its fullest sense (and thus its manifold signification): the abstract spheres are recognized as one-sided and thereby negated as far as their claim to articulate the essential and definitive truth is concerned, but they are simultaneously taken up (and preserved) within the third sphere, recognized now as moments of the latter and thereby simultaneously elevated to a higher

level. This ensures that they are not merely relinquished in the unfolding process of development but rather integrated within the mediated whole that results.

This *ethical* will – the third sphere that Hegel characterizes as “ethical life” – is objective spirit in the full and proper sense, the actualization of free spirit as the realm of freedom. Once again in immediate form, this ethical will presents itself initially as the *family* (the institution of marriage) that still rests merely on the sensuous foundation of feeling and an intimate unity of love and mutual trust in which the individuals concerned are not conceived as independent “persons.” Hence it is necessary for “the natural dimension to enter the realm of the understanding; this is the chapel in which the natural is purified, in which the form of thought is attained” (VPR4, 417). “The form of universality is brought about through civil society, and is entirely necessary if the spirit is to exist as free spirit” (VPR4, 483). For the free will, as we have already seen, is essentially a thinking, rational, and universal will.

Here *civil society* takes up the (sublated) moments of the person and the subject into itself and its own abstract form. Civil society is the proper site of cultivation [*Bildung*] (the casting off of particularity) and of the thinking understanding [*des denkenden Verstands*] that defines universal perspectives, albeit perspectives that are here subject entirely to the interests of particular individuals or particular groups. That is why civil society “affords a spectacle of extravagance and misery as well as of the physical and ethical corruption common to both” (TW VII, 341; *Rph* §185).

In spite of this, civil society is a sphere that allows for the formation and cultivation of universality, the division of labor, and the “system” of needs (TW VII, 346; *Rph* §188 Remark). Individuals desire simply to pursue their own interests, but thereby discover their actual dependence on one another. “This show [*Schein*] of universality within particularity is precisely the interesting and essential thing that is considered here” (VPR4, 475). In other words: civil society is necessary only for this reason, and thus only in the “interest of the Idea” of freedom (cf. TW VII, 343; *Rph* §187) as this rational form of universal will. One could thus say that true universality realizes itself gradually by means of, or more precisely through, the human interests pursued within civil society.

Individuals thus desire to satisfy their respective needs in a reliable and secure fashion. Consequently, they formulate universal and publicly promulgated laws and institute civil courts to ensure the observance of the latter. At the same time, this kind of “legal constitution” [*Rechtsverfassung*]

(*TW VII*, 306; *Rph* §157) represents a further step in the actualization of the free will. This external realization of the will is even more clearly expressed at the level of the regulatory and welfare functions of the community. Finally, the “ethical returns to civil society as an immanent principle; and this constitutes the determination of the corporation” (*TW VII*, 393; *Rph* §249). The corporation, it is true, also pursues its own interests, but it grasps its overall end and purpose as a unified one and thus represents something like a “second family.”

This effectively posits the transition to the *state*, which makes unity as such into its end and purpose and is determined by Hegel precisely as the will that wills this unity. The state is actualized freedom, the actual existence of free will, universal rational will in its own actual form, the will that unfolds in the legal order as the shape of “existing justice” and as “the actuality of freedom in the development of all its rational determinations” (*TW X*, 332; *EPW (Philosophy of Mind)*, §539).

For Hegel, therefore, the state is understood primarily not as an external “power,” as a “people,” or as a geographical “domain,” but rather as the ethical will of human beings that is simultaneously actual in existing form as an order of laws and customs. The state therefore does not essentially confront human beings as an alien power, but rather possesses its own “mediated existence in the self-consciousness of the singular individual, in the knowing and acting of the latter” (*TW VII*, 398; *Rph* §257). The state is at once true conscience and essential (substantial and conceptualized) freedom (cf. *TW VII*, 255; *Rph* §137), and is so precisely as the “customary practice” [*Sitte*] of the individual (cf. *TW X*, 304; *Philosophy of Mind* §485).

One could also put this in another way: for Hegel it is only the actualization of the free will in this sense that properly counts as the “state,” and thus also provides the appropriate criterion for grasping the legitimacy (the rationality) of those power structures that have presented themselves as states in the course of history.

The legal order, as this “actuality of freedom,” is thereby related to the legal constitution that is mediated through civil society inasmuch as the establishment of specific positive laws (and of the courts) is required to secure the domain of particular interests. At the same time, a certain tension is posited along with the concept of “positive” law or right: the latter owes its “positive” character to civil society and thus to the struggle between particular interest groups, but possesses its authentic actuality only as actualized freedom (which one could also describe as “justice” in this connection). Which regulations are therefore just

(and express the will of the state) and which simply serve the individual interests of powerful groups in the domain of civil society is something that must be constantly examined afresh.

We cannot here provide more than such a brief consideration of the *Philosophy of Right*, one that does not claim to offer an overall interpretation, but simply aims to emphasize just how “unjuridical” a work this is, and therefore how difficult it is to apply it fruitfully in relation to specific legal and juridical questions. For this would constantly require a laborious process of translation beforehand.

But it should already have become evident that our question concerning the significance of Hegel’s concept of punishment cannot properly be answered simply by examining §90ff. of the *Philosophy of Right*. The essential burden of those paragraphs concerns the limitation (the abstractness) of the sphere of the purely personal will that encounters its own contradiction in the phenomenon of vengeance and is thereby forced beyond itself, into the sphere of the “subject.” What interests us here is not such “avenging, but rather punishing justice” (*TW VII*, 197; *Rph* §103). Indeed, Hegel himself already has indicated expressly that we cannot yet speak of “punishment” as long as we remain within the sphere of the “person.” For punishment “transpires in the state in a legally determined and orderly fashion by means of the courts. . . . Here, where we have yet to consider the state, the sublation of crime must be considered abstractly and as such. In this sphere of right in its immediacy the sublation of crime is still simply vengeance” (*VPR*₄, 276; similarly *VPR*₃, 307). This already implies that we also at least must consider civil society (as the location for the establishment of the courts from a systematic perspective; cf. *TW VII*, 373ff.; *Rph* §219ff.) and the state if we are to examine Hegel’s concept of punishment in a genuinely fruitful manner.

We shall attempt such a further examination in what follows. In this connection, it will also be necessary to outline Hegel’s concept of crime, together with that of punishment, and it is with the former that we begin.

II. Hegel’s Concept of Crime

Any proper examination of Hegel’s concept of crime must take the sphere of the “person” as its point of departure. The free will here realizes itself as immediate will first in an external object and second in a superficially “common” will. This actualization of the will is what is attacked by the

criminal will. The criminal will does not simply appropriate or remove the object in question, but rather fails to recognize personal will itself. Thus, the criminal will does not merely commit "harm," but rather denies the realization of the free will as such. "Through the criminal act I am not merely injured as a person in accordance with the fundamental determination that I here possess; but rather my capacity to bear right itself is hereby negated. . . . But through the criminal act I am not treated as a person; and personality is the fundamental determination, or right in itself. I am thereby [through the criminal act] not merely harmed, but the validity of myself [as a person] is attacked" (VPR3, 229ff.). The attack is directed therefore against an actually existing form of freedom (VPR3, 301: "Crime is always an attack on an actual existence [*Dasein*] of freedom").

Given the various possible ways in which a person can realize his or her freedom, there are quantitative and qualitative differences in the possible modes of injury and harm involved in this attack on right (cf. TW VII, 183; *Rph* §96). The criminal act is also dangerous in itself because it always transpires in a broader context. An arsonist, for example, who sets fire to a piece of wood in order to burn down a particular building, may under certain circumstances also endanger an entire series of buildings. Or to take another example: "The case of street robbery [in addition to normal theft] disrupts the general domain of human communication, and renders it insecure; this further effect also produced by the act is something that inheres in the latter. The sense of security and safety that is presupposed in using the highway, something that is more extensive [than the theft of property], is also jeopardized here, and this is therefore a qualitative feature of the criminal act itself. In crime therefore the mediated aspect of representation is involved, since the overall context can also be represented in our minds. Thus we represent the highway to ourselves as the safest of places" (VPR4, 279).

But this already involves reference to the sphere of civil society: "since property and personality have legal recognition and validity in civil society, crime is no longer an injury merely to a *subjective infinite* but to the *universal* cause whose existence is inherently stable and strong" (TW VII, 372; *Rph* §218).

The danger that crime poses for society thereby acquires significance for the question concerning the quantitative and qualitative range involved in violated right (cf. TW VII, 184; *Rph* §96 Remark) – and initially in the manner we have already suggested: the potential dangerousness increases the negative significance of the criminal act. "On the other hand

the power of society has now become sure of itself, and this reduces the external *importance* of the injury and so leads to greater leniency in its punishment” (TW VII, 372; *Rph* §218). “If society is secure, and a peaceful condition prevails, crimes are thereby demoted to cases of individual acts. If the laws are upheld, then crime has not really damaged society as such” (VPR4, 550).

“But danger has another side to it. . . . If I commit a crime, I do not merely perform an act that is supposedly valid for me, but as a thinking being I perform something universal, I thereby set up a law [*Gesetz*] that is to be binding, that not merely possesses validity for me but is supposed to be posited [*gesetzt*] as a universal form of actual existence. . . . Anyone who performs acts at all, does something, as a thinking human being, which is to count as valid in general. From this perspective, the danger in question is a determination that belongs to one’s act as such” (VPR4, 28off.). A criminal act embodies a bad example: “an example because it is, certainly, an individual case, but it does not possess the character of being simply an individual case, but has the significance of an exemplary act, of a universal. The universal is what is essential here” (VPR4, 549). But if civil society is sure of itself and the laws are generally recognized, then the criminal act does not obviously present itself as an exemplary case, as an encouraging example to follow: “Then I do not infer from the existence of crime that it is also supposed to embody the existence of my evil will, but it becomes rather a quite particular affair, and the side through which the crime might become more dangerous also equally well can be disregarded under the law-governed conditions of civil society” (VPR4, 551).

This aspect of potential danger as far as civil society is concerned constitutes a necessary moment of crime because it represents less a particular violation of right than the violation of the penal *law* itself, since right in general, as we saw, must assume a “positive” form in this sphere. Only what is covered by the penal code may be properly punished, and only in this context may the dangerousness of an act also be considered. Acts that cannot be subsumed under the regulations of the penal code, however contemptible they might be, are not in themselves punishable and are not crimes (VPR4, 537).

But everything so far discussed here merely presents *one* (and the more external) side of crime. And we should not overlook the fact that crime also has *another* side to it, namely, the “subjective moral quality that touches on the higher distinction as to whether an event or deed is an act at all, and concerns the subjective nature of the latter” (TW VII, 184; *Rph*

§96 Remark). In this context, "moral" simply signifies acting in the sphere of "morality" (of the subject). For the crime is not merely an external occurrence, but also an act that arises out of the inner reality of the human being (of the subject) and the inner conviction of the latter. Despite this, the penal law is not essentially concerned with the entire sphere of the subject and takes no account of conscience. And it cannot actually do so, for otherwise it would be entirely compromised by the abstract character of this sphere. The subjective conviction of the individual cannot be made into a criterion relevant to legal judgment.

In addition, legal right must be applied and under certain circumstances enforced. "Consequently, the law of the state must not attempt to extend power over attitudes, for in the moral domain I exist for myself and force has no significance here" (VPR3, 328; cf. also TW VII, 365; *Rph* §213).

Hegel also introduces the concept of "*legal responsibility*" and expressly in connection with the "right of objectivity" in relation to the subjective conscientious will (namely, in *Rph* §132 Remark). For the sphere of the subject as such is formal and abstract: "and the *right of the rational* – as the objective in relation to the subject [thus] remains firmly established." And for this reason, similarly, "in the *state*, as the *objectivity* of the concept of reason, *legal responsibility* must not stop at what the individual considers to be in conformity with his reason or otherwise, or at his subjective insight into rightness or wrongness. . . . In this objective field, the right of insight applies to insight into *legality* or *illegality*, that is, into what is *recognized* as right, and is confined to its primary meaning, namely, *cognizance* in the sense of *familiarity* with what is legal and to that extent obligatory" (TW VII, 245ff.; *Rph* §132 Remark).

We hereby leave the sphere of civil society and arrive at the sphere of the state (and the legal order) as the realm of actualized rational freedom. This step is not merely justified from the perspective of the overall structure of the *Philosophy of Right*, but also corresponds to Hegel's understanding of positive law as described above. For in relation to penal law, it follows that its regulations are not merely imperatives of the most powerful interest group in the context of civil society, but equally are a form of "custom." As imperatives such regulations can command a certain "external validity" only insofar as they simply "concern the abstract (i.e., intrinsically external) rather than the moral or ethical will" (TW X, 326; *Philosophy of Mind* §530). As custom, on the other hand, they represent the rational character of the will and thus the authentic form of validity.

The tension within the concept of positive (penal) law also permits, in connection with the idea of “legal responsibility,” a solution for the problem concerning the actual *consciousness of wrong*, one that more or less corresponds to the currently prevailing view in the field of criminal justice and has itself been enshrined in law. This is the recognition that ignorance or error concerning the law is no defense. “Through the public character of the laws and the universality of customs, the state removes the formal aspect that attaches to the right of insight” (*TW VII*, 246; *Rph* §132 Remark). It suffices here that the law in general has been publicly promulgated (*TW VII*, 368; *Rph* §215). This does not hold for the purely positive detailed legal determinations that do not presuppose universal custom as their background and general support. Here cases of ignorance or error may be significantly relevant, and legal responsibility for crime must be ascertained in a different manner (e.g., by insisting on a specific legal duty to be familiar with the law in the exercise of a specific occupation).

It should also be noted that Hegel understands “crime” in principle as a deliberate offense. Yet this concept of legal responsibility, oriented as it is to the “right of objectivity,” can also be fruitfully developed in relation to offenses of deliberate default and negligence (an approach I have attempted to develop in my aforementioned postdoctoral dissertation in terms of various “forms of responsibility”).

III. Hegel’s Concept of Punishment

The different moments of the concept of punishment correspond to the individual moments of the concept of crime.¹⁰ Here, too, therefore we must start with the sphere of the “person.” As the negation of personality (and thus of an actually existing form of the free will), crime reveals itself as a will that opposes the very concept of will, and thus as a will that assails its own actuality (qua concept), that thus destroys itself as will. It is quite true that such a criminal will actively manifests itself inasmuch as it gives itself actual existence, for example, in the harm or violation it exercises on something. But since it is a negation of its own concept, the “true relationship” that is involved here shows that “the crime produces only an intrinsically nugatory existence” (*VPR3*, 308). Hence theft, for example, is an act that does not properly correspond to the concept of human action itself, any more than a diseased body properly corresponds

to the concept of the living body (cf. *TW* VIII, 323; *Encyclopaedia Logic* §172 Addition).

Nonetheless, the violation in question is “a positive external existence” (*TW* VII, 185; *Rph* §97) and the intrinsically nugatory will of the criminal has acquired actual existence. This will therefore likewise must be negated in an external manner if its nugatory character is to be revealed as such and the free will is to be shown as reestablished in actual existence. “It is therefore the criminal’s own will that has to be violated. Now this will is an actually existing will in general, and it can be violated only in relation to its otherwise external existence. . . . This actually existing will of the criminal is what is claimed here, and what itself must be attacked. . . . And this involves the fact that any punishment must make itself felt in some way to the criminal. If the punishment is not felt, then the criminal’s actually existing will is not violated in this, that is, he has already relinquished that which is touched, that which we thought to have violated, and it has become quite indifferent to him, something from which he has already withdrawn his will.” Hence Hegel can say: “What he wishes to retain is what must be attacked” (*VPR*4, 285).

The manifestation of the nugatory character of the crime, which also reveals itself in actual existence as the mere semblance or “show” that it always was as the negation of its own concept, is not something alien that befalls the criminal act from an external source. On the contrary: “Nothing reveals itself in punishment but what already lies in the crime [i.e., in the criminal will]” (*VPR*4, 282). Hegel elaborates this famous idea as follows (and it is necessary to notice the precise terminology employed): “Right is the actual existence of the will; here we now have two kinds of will: one is the universal will, the inwardly universal will, the intrinsic right that right itself should have actual existence, that freedom should have actual existence. The other will is the particular will of the criminal, which also has actual existence; this is also will, and is also free. These are the two sides in accordance with which right must transpire. On the one hand, right should transpire in itself; that which is in itself right is different from the will of the criminal, right in itself stands opposed to the will of the criminal as particular will. In itself the will of the criminal is also the universal will, for *that* right should transpire is also his own will. The other side, however, is his will in its particularity; he is free in this and this freedom, too, should acquire affirmative right, not merely right over against the will of the criminal but right in the sense of the will of the criminal, for he is free and actual existence must also be accorded to

his will. . . . The first aspect is thus right over against his will, the second is right in accordance with his will” (VPR₄, 283). That is to say: “Freedom is itself, with its actual existence, and freedom is the particular freedom of the subjective will of the criminal – and right must transpire with regard to both” (VPR₄, 288).

“This appears to be a contradiction,” as Hegel says (VPR₄, 283). But it is a contradiction that lies in crime itself and is resolved in punishment. In the first place, right must transpire with regard to freedom, to the will in itself. “As a human being every individual is free will, and thus his right transpires for him in accordance with the intrinsically free will” (VPR₄, 289). Because crime is an expression of will, it must be regarded from the perspective of the concept of the *will*. Because the criminal is a human being, he must be considered from the perspective of the concept of the *human being* (as free will). “It is the highest honor a human being can encounter that reason itself is revealed as binding on the criminal, that he is treated in accordance with its determinations rather than in terms of any lower relations” (VPR₄, 288). From the perspective of the concept of the criminal as will (as human being), crime as the negation of this concept must be canceled, and its nugatory and purely apparent existence must be revealed precisely as the right of the criminal human being himself. Thus, punishment initially presents itself as the intrinsic right of the criminal, as the actual existence of his freedom.

But right must also transpire with regard to the right of the subjective will of the criminal, that is, to the will that has violated right and posited wrong. Now according to Hegel, this subjective will must also be regarded as the will of a rational thinking human being, a being that can be regarded no longer simply as a purely individual entity, but as one that possesses the sense of the universal. “As the expression of a rational being the act embodies something intrinsically essential, something intrinsically universal; or the act has thereby set up a law. As the action of a rational being this is no empty and indifferent singular event, but a law, a universal determination . . . rather has been set up in the process” (VPR₃, 315), one under which the criminal also can be subsumed. “What is a right for one human being in relation to others, what is binding for him, is also binding for the others in relation to him. In this regard the criminal also receives his own right, and not merely his right in itself; his will [also] acquires actual existence in accordance with what his particular will itself has posited” (VPR₄, 289). In this connection, the criminal’s own will must not be taken in relation to its entire content, since he cannot be treated as a rational being by making an irrational will (which is what crime is) into

the law. On the contrary, “this law is merely formal, the rational is merely potential or in itself. . . . As far as the rational character of the irrational act is concerned, there only remains the formal rationality that the act set up something universal. It is this universal, which it has itself set up, that allows the will to be violated [in turn]. . . . The act of the criminal as this universal sets up the permission as such to violate the will. This is what the criminal has expressed through his own deed” (VPR₃, 316). The punishment is therefore also the criminal's own right insofar as one treats him as a rational and thinking human being. “It is an honor that man encounters here, that is, that what the human being does as a free being is recognized as such, that he is not subjected to an alien law, but only to his own” (VPR₄, 289ff.).

The ultimate reason for the justice and necessity of punishment lies in the concept of the will, of the human being as such, of freedom, all of which must acquire concrete existence. This is “the side of right as right, the side of the will that should have concrete existence in accordance with its freedom; and thus this concrete existence, once violated, must be reestablished, the wrong that has transpired be undone” (VPR₄, 288). The idea of punishment – its “inner nature” – can be grounded only in the light of that freedom and thus also of the freedom of the criminal who is honored as a rational (and thus ultimately free) being (VPR₄, 291).

What essentially must be emphasized here is the following: Hegel's theory claims to represent the only humane theory of punishment in the sense that it corresponds to, or follows directly from, the concept of the human being (of the human will), or expressed in modern terms, the only theory of punishment that also does justice to the human dignity of the criminal and is thereby just in general. Since it is widely believed today, as the quotations we have supplied clearly show, that Hegel's theory does not qualify as such an account, I should like here to expand further on these ideas

The decisive thing in Hegel's eyes is that “the concept and criterion of punishment should be derived from the [criminal] act itself” (TW VII, 191; *Rph* §100 Remark). We should not treat those aspects that are alien to the act itself – such as moral improvement, deterrence, and so forth – as the essential character of punishment. This does not mean that Hegel regards these traditional interpretations of the purpose of punishment as entirely irrelevant. For Hegel, too, they are indeed “of essential significance, but they presuppose the justified claim that punishment is something that is *just* in and for itself” (TW VII, 188; *Rph* §99 Remark). In fact, as we shall show, Hegel himself supported the idea of resocializing the offender,

but he refused to identify the *concept* of punishment with this aspect. For Hegel distinguishes between the concept of punishment (the nature of punishment) and the various purposes that can and should be served by the threat, the adjudication, and the application of punishment: such purposes presuppose the original concept of punishment.

Punishment can be understood conceptually as a kind of repayment only to the extent that it is intrinsically grounded in the act of crime itself. Hence the criminal ultimately punishes himself and the justice of punishment can consist only precisely in this. Every other attempted justification of punishment violates the idea of human dignity, interpreted under certain circumstances whether as an individual act of vengeance or as a defensive measure on the part of society, and thus fails to take the criminal seriously precisely as a human being.¹¹

In this connection, one should consider Hegel's well-known attitude to Feuerbach's theory of punishment: "Right and justice must find their ultimate ground and site in freedom and the will. The making of threats does not address freedom at all, but only unfreedom, just as when we raise a stick to a dog. In this case one is therefore treating a human being like a dog, and not in accordance with his honor and freedom" (VPR4, 311ff.; cf. *Rph* §99 Addition).

Hegel's theory of punishment is therefore not really a theory of retaliation, and not in the sense of the principle of "an eye for an eye, a tooth for a tooth," either. It is quite true that he demands an equivalence between the crime and the punishment, and consistently, too, since the latter is only the ultimate manifestation of the former. But this equivalence must be determined with regard to general value¹² and not in accordance with the precise harm or injury inflicted (Hegel explicitly describes the latter thought as "absurd"; VPR3, 321). The criterion here is the violation of the freedom that the criminal has negated both as the actually existing freedom of another and as that which belongs intrinsically to him- or herself.

Every punishment therefore is, in accordance with its essence, a free punishment (including capital punishment and financial punishment). Hence every attempt to construct a theory of punishment can begin only with the idea of freedom, rather than some kind of harm or evil (such as the sensuously perceptible injury). Hegel sees the principal failing in traditional interpretations of punishment precisely in the fact that they attempt to determine punishment *conceptually* in terms of evil or harm. For from this perspective, it is in fact irrational "to will an evil merely because another evil is already present" (TW VII, 187; *Rph* §99 Remark).

It is quite true that punishment is also an evil that is inflicted on the criminal, but this feature flows from the concept of freedom, as we showed above.

Hegel is perfectly clear that this approach does not itself provide a specific measure for determining the manner and the gravity of punishment: the idea of equivalent "value" can be regarded only as a general guideline. The precise determination of punishments remains a question of purely positive law and itself cannot be grounded by philosophy, that is, grounded in the concept (*TW VII*, 193 and 367; *Rph* §§101 and 214 Remarks).¹³

In other words, the relevant passages in the section on "Abstract Right" concern only the concept of punishment – as the manifestation of the nugatory character of the criminal will and as the reestablishment of the actual existence of the free will – but say nothing at all concerning the kind and degree of punishment appropriate or the precise way in which punishment is applied. These passages do explicitly refer us to the institution of the courts, that is, to the domain of "penal justice" (*TW VII*, 197; *Rph* §103), where further conceptual determination of judicial punishment is required.

But, as the earlier reference to the purely positive aspect of determining punishment implies, this involves the further sphere of civil society and the state. For the "penal code is therefore primarily a product of its own time and of the current condition of civil society" (*TW VII*, 372; *Rph* §218 Remark). At this point, we should turn back to our earlier account of the concept of crime: for in relation to the universal legal recognition and validity of the person the criminal now assumes the aspect of *dangerousness* to society in general. On the one hand, the potential magnitude of the crime is increased; on the other – once civil society is firmly established – the external importance of infringement of the law is reduced. This last point has particular consequences as far as punishment is concerned: "By virtue of the strength of society itself crime assumes the role of something merely subjective, that appears to have arisen less from the firm and steady will than from the natural impulses and particular aspects of the agent. In society the will is firm, is familiar with the laws, familiar with the fact that everything transpires as founded on the presence of right. If a crime is committed, it is ascribed not to the firm and steady will but to passion and the natural aspect of the will. This removes something of the responsible character that attaches to the crime. On this perspective the significance of crime is lessened, and the corresponding punishment is lessened likewise. Crime is thereby posited as something that possesses no

validity in itself, as something insignificant, and the punishment is reduced accordingly. For it is simply the invalid character of crime that is posited through punishment. But in society crimes already possess no intrinsic validity" (VPR₃, 663ff.). It is quite true that the criminal must continue to be regarded as a rational agent, and we must therefore recognize the way in which the law is posited in and through his own act. "But in a society that is firmly established this aspect of the positing of law through crime is so weak that the reduction [of penal law] also can be measured in terms of that weakness" (VPR₃, 664; cf. also VPR₄, 280ff.).

In a securely established social order, the criminal act can be seen within a broader perspective: "a human being is born with this character, is marked by these passions and these states, is mistaken with regard to basic principles: these are all kinds of circumstances that are to be considered in a concrete case of crime, and are used in order to excuse a crime" (VPR₄, 286ff.). We shall return to this problem below.

The prevailing order and security of society also gives rise to a further feature of punishment: *the moral improvement of the criminal*. Generally, this aspect of Hegel's theory of punishment is entirely overlooked, and although Hegel himself did not express it so clearly in the *Philosophy of Right*, it is certainly suggested there. The Griesheim transcript of Hegel's lectures is clearer in this regard: "If the social order is sure of itself, crime does not affect the basis of representation in general, does not assume this form of existence, does not function as a typical act [*Exempel*]. . . . I do not infer from the existence of crime that this must also embody . . . an existence of my own will. It has thus become an entirely singular universal. . . . If we now therefore behold the existence of the crime in the will of the criminal [alone], there are two sides within the will itself to be considered: one is the abstract will, the will of the individual as such, the other is the will of inwardness in itself" (VPR₄, 551). That is to say, the first side concerns the criminal will as such, the will that has here assumed sensuous existence. In this regard, punishment must reveal the nugatory character of this will and exercise an effect on the sensuous reality of the will. "Second, however, the will is also something inward in a concrete sense: it determines itself, it is free in and for itself, is the intrinsically universal in relation to any specific limitation which it has assumed. . . . It is thus considered as the will that mediates itself with itself, that determines itself through its own inner representation and can also transcend the act of crime, that is, the will can give itself a different determination, and its first determination [as criminal act] sinks down to become a particular moment. In this manner . . . we encounter an inner

sphere of representation itself where the determination of evil itself can be sublated. . . . It is this actual existence [of the criminal act] that can be sublated, and the court, the penal judgment can regard such a sublation as its own purpose. That is, it can desire to improve the criminal, can make this its own purpose" (VPR₄, 552 ff.). "Under the conditions of society the aim and purpose of improvement can enter into the question of punishment. It is important that it does so, and is even necessary" (VPR₄, 553).

In accepting the aim of improvement into its concept, punishment simultaneously acquires a deeper content, becomes "a higher way of destroying the evil will" (VPR₄, 550) than it ever could be either in the sphere of "abstract right" or in that of civil society. The sublation of the criminal will thus properly transpires in the sphere of the state.

The latter is also the sphere of (objective) spirit. In his very early writings, Hegel had already paid central attention to the problem of the relation between "spirit" and "punishment" and had elaborated a theory of "reconciliation" on the basis of these reflections, albeit only with reference to "moral punishment," which he strictly distinguished from legal punishment as an expression of right (cf. especially the early essay "The Spirit of Christianity and Its Fate": TWI, 274ff.; ET: p. 182ff.). In the early writings, Hegel was clearly still heavily influenced by Kant's philosophy (with its distinction of legality and morality) and this is here reflected in the fact that law in the juridical sense can appear only as a dead, alien, external, and abstract principle that, with cold necessity, inevitably demands punishment in response to crime. Juridical punishment under the sway of this conception was essentially characterized in turn by the principle of retaliation: "an eye for an eye, a tooth for a tooth." All thought of reconciliation is here excluded (TWI, 331ff. and 339ff.; ET: pp. 218ff. and 225ff.).

By the time he came to write the *Philosophy of Right*, Hegel had abandoned this particular point of departure for analyzing the problem: punishment is now (at least also) a problem pertaining to ethical life itself. This becomes particularly clear if we compare Hegel's mature theory of punishment with his treatment of "moral punishment" in the very early writings. There moral punishment was described as something that is not external at all since the "act is the punishment in itself; however much I have seemed to have injured alien life through my deed, it is just as much my own life that I have injured" (TWI, 305). The ("moral") punishment here is not the effect of an alien law, but rather "the equal return of the act to the perpetrator of the crime himself, a power that he himself has armed,

an enemy that he himself has armed, an enemy that he himself made into his enemy" (TW I, 343; ET: p. 230; cf. also SS, 41ff.; ET: p. 131ff.). But it is clear that this account is essentially congruent with the concept of *legal* punishment as Hegel develops it in the *Philosophy of Right*.

We may also compare the discussion in the *Essay on Natural Law* that also anticipates Hegel's later critical analysis of punishment: "If punishment is understood as coercion, it is posited merely as a specific determinacy and as something purely finite, carrying no rationality in itself. It falls wholly under the common concept of one specific thing contrasted with another, or as an item with which something else – the crime – can be purchased. The state as judicial power trades in specific wares, called crimes, for sale in exchange for other specific wares [punishments], and the legal code is its price-list" (WBN in TW II, 480; ET: p. 139).

Given the similarity of approach in the early writings, it is possible to draw on Hegel's remarks on "moral punishment" in order to develop the concept of punishment presented in the *Philosophy of Right* in relation to the sphere of spirit in general. In the essay "The Spirit of Christianity and Its Fate," Hegel begins from a consideration of the injunction of Jesus: "Judge not lest you be judged." Thus to place another human being under the judgment of the law is interpreted as essentially a loveless act. "This subsumption of other human beings under a concept that is revealed in the law may be called a weakness on the ground that the one who judges is not strong enough to accept them wholly as they are, but must separate them out, cannot endure their independence, takes them not as they are but as they ought to be. . . . But with this act of judging he has recognized a law and subjected himself to its bondage, has set up for himself also a criterion of judgment; and through the loving concern with which he would remove the mote from his brother's eye he has himself fallen below the realm of love itself" (TW I, 335; ET: p. 222). In this case one treats the other no longer as a human being but as a criminal.

In his essay "Who Thinks Abstractly?" (1807), Hegel undertook to describe this relationship in terms of the concepts of "concrete" and "abstract": "It is essentially abstract thinking when nothing whatsoever is seen in the murderer other than this abstract fact that he is a murderer, when every other human thing about him is eliminated through this one single quality" (WDA in TW II 578; ET: p. 463). Someone who is truly familiar with human beings, on the other hand, will think in a more concrete manner: "he will consider the path on which the life of the criminal has taken shape, discover a poor education in his past, and a poor family

relationship between the father and mother, some terrible hardship endured by this man for the sake of a relatively minor offense, which in turn embittered him toward the social order, an original reaction against the latter that served only to drive him out of it and has now brought him into a position where he thinks he can survive only through crime" (TW I, 578).

The idea of *reconciliation* actualized through love is a crucial concept in Hegel's theory of punishment in the early writings. In this context, just as with his account of "moral punishment," it is the individual and his conscience that stand at the center of Hegel's interest. Here Hegel employs the concepts of "fate" and, above all, "life," with the latter term being assimilated to the concept of "spirit" in his later writings. In fact, it is quite possible to appropriate the insights of these early writings in relation to the realm of objective spirit, the life of the ethical will in the state. For the intrinsic "majesty of spirit" harbors the capacity for "realizing the power of the spirit to render undone what is done, to annihilate the act of crime in forgiveness and forgetting" (*Rph* §282). "What has been done the spirit can make undone in the spirit, so that it no longer exists in the spirit" (*VPR*₄, 684). "In the state man can thus make undone what has been done" (*VPR*₄, 287).

It is in the concept of reconciliation that we find *the deepest concept of punishment* (and also the deepest concept of right as ethical will). But reconciliation should be considered here not simply as a process of re-socialization. For it represents not merely the reintegration of the criminal into the social process of labor, but also his readmission into the community as such. But there is even more involved here: it is the reconciliation of the criminal with himself insofar as his criminal act also injured him as a rational and free human being. "A criminal who is punished may well regard the punishment inflicted on him as a limitation on his freedom; in fact, however, the punishment is not an alien power to which he is subjected, but simply the manifestation of his own will, and insofar as he recognizes this, he thus relates to it as a free being" (TW VIII, 304; *Encyclopaedia Logic* §158 Addition). "Punishment is thus the re-establishment of freedom, and it is true both that the criminal remains free, or rather has made himself free, and that the one who punishes has acted in a rational and free manner" (*WBN* in TW II, 480; ET: p. 139).

Yet there is still a difficulty. Are we still talking about the juridical concept of punishment here, or have we not already passed beyond the limits of positive right and law, beyond the limits of what is possible

(and permissible) for the latter? Is it anything more than coincidental that Hegel should already have mentioned religion (the spiritual domain) and divine mercy in relation to the problem concerning the improvement of the criminal? (*VPR*₄, 550 and 553).

Closer reflection reveals that the emphasis on reconciliation through love transcends and dissolves the realm of positive law and right, and thus prematurely overleaps a necessary mediating stage in the self-actualization of the free will. The *Philosophy of Right* has clearly and unambiguously demonstrated the necessity for the “positive” character of law, and the dissolution of the latter also would endanger ethical freedom itself. “Justice becomes something indeterminate that falls victim to arbitrariness” (*VPR*₄, 288).

Once again, we are confronted here with an *inner conflict* within the concept of positive law and right: in this case it leads to the distinction between justice and clemency. As Hegel had already observed in his early writings: “An avenger can forgive, can relinquish the pursuit of vengeance; a judge can cease to behave as a judge, can pardon [the offender]. But in that case justice is not satisfied” (*TW* I, 339; *FS* [ET]: p. 226).

The Hegelian concept of “clemency” [*Gnade*] should not simply be identified with the modern concept of a “pardon” [*Begnadigung*], although Hegel himself seems to suggest this in §282 of the *Philosophy of Right*. Yet in the Remark to §132, Hegel brings out the difference. The sphere of clemency involves all those features connected with the particularity of the crime: momentary loss of control, passion, “in general what is described as the strength of sensuous motives” (*TW* VII, 247; *Rph* §132 Remark). Here Hegel includes such things as “psychological conditions and moral considerations” (*VPR*₃, 350) and generally “all the circumstances that are to be considered in a concrete case of crime and that may be used to excuse the crime in some way” (*VPR*₄, 286ff.), that is, character traits, passions, mistakes, and so on. In modern terminology, we would describe these as attenuating circumstances that might provide grounds for exculpation or the reduction of punishment and that would affect the process of conviction and sentencing. This would be the natural place, for example, to consider conditional and commuted sentencing, and so on. Hegel does not himself make these distinctions because they had not yet been elaborated in the legal systems of his time.

Hegel holds that the courts are not in a position to pardon offenses precisely because they do not stand completely within the realm of “spirit” (*VPR*₃, 326; *VPR*₄, 287ff.). Hence it is only the princely ruler, representing the “majesty of the spirit,” who is in a position to grant a pardon.

Such a view is untenable and actually contradicts Hegel's own insights in this domain. For in relation to the settled and securely established reality of civil society, the phenomenon of crime already appears in its natural aspect, in terms of "natural impulses," and is punished less severely precisely for that reason (*VPR*₃, 663ff.). Thus, a form of mercy is already being exercised in this context. In addition, the domain of jurisdiction itself forms part of the executive power and thus of rational will within the state (*Rph*, §287, in *TW* VII, 457). It is not intrinsically necessary, therefore, that only the head of state can in principle exercise mercy. The legal system could bestow this power perfectly well on the judge, as has often been done in modern codes of criminal law.

Taken together, these points all indicate the necessity of distinguishing between the *concept* (the essence) of punishment and the specific *modalities* of conviction and sentencing. From a conceptual perspective, punishment can be understood only as retribution for a crime committed, as the consequence of crime that can be conceptualized properly only in relation to the latter. But this implies nothing substantive with respect to any particular punishment. In this regard it is other considerations, which come together in the idea of "mercy," that play a decisive role. The criminal should not simply be abandoned but should be given an opportunity for reintegration into society and the community of the state as a whole.

Since general philosophical considerations cannot predetermine precisely how the idea of mercy and the concept of punishment should relate to one another in a particular fashion, this represents a task that must constantly be addressed anew by the individuals who constitute the community of the state. But the continuing tension between these two perspectives cannot itself be eliminated. As Hegel says: "All these considerations, of reformation, of deterrence, and so on, are important, but punishment must always and above all retain the quality of justice; [the concept of] punishment as punishment must not be relinquished, although the kinds of punishment can themselves be modified in such a way that those other ends may also be realized" (*VPR*₄, 554).

It should also finally be noticed that Hegel mediates the concept of punishment by reference to the will of the criminal, who has set himself in opposition to lawful right (and thus to himself). For this reason, the argument here applies only to intentional offenses. For offenses of negligence, punishment must therefore be determined in a different way, and the idea of educating and deterring the offender will play a central role here.

IV. The Contemporary Significance of Hegel's Theory of Punishment

By way of conclusion I should like to indicate the contemporary relevance of Hegel's theory of punishment.¹⁴ As we have expounded it here, this theory would seem in the first instance to correspond to the "unified theory" of punishment that prevails in contemporary legal thought. In this respect, Hegel's theory would already present itself as an essentially "modern" one. But closer examination also reveals the relevant differences between these theories and actually demonstrates the superiority of the Hegelian concept of punishment. The features of retribution, of general and special deterrence, that are simply presented as isolated and juxtaposed elements in the "unified theory," are developed in Hegel's account as organic moments of the concept itself. It is this which first bestows on his theory a unity that is more than a result of unifying other one-sided theories. That is to say, retribution, general, and special deterrence are all required not because each of these features is inadequate on its own (and thus needs uniting with the others), but rather because they all arise out of the concept of punishment itself.

In addition, the difference between the *concept* and the *purpose* of punishment is also clarified here: it is untenable to present theories of retribution and deterrence (as "absolute" and "relative" theories of punishment) on a single level and then compare them in terms of their respective purposes. It is rather the case that punishment, conceptually regarded, is retaliation, while considered in relation to conviction and sentencing it also serves the purposes of general and special deterrence. The contemporary relevance of Hegel's theory and hopefully also the future direction of legal thinking lies in this restriction of such purely "functionalist" approaches, oriented solely to instrumental ends, and their effective integration within the total movement of conceptual thought.

V. Summary Recapitulation

Hegel's concept of punishment (of crime) should not simply be extrapolated, as it is in most current interpretations, from the section on "Abstract Right" in the *Philosophy of Right*. For the concept acquires its essential content only through the proper development of the concept of freedom (of the free will) in the forms of its own external realization. In the first place, therefore, crime and punishment should not primarily be grasped

as "evils" or in terms of infringement and threat, and so on, but must be interpreted explicitly from the perspective of the concept of freedom (and thus of the concept of the human being as such). In the second place, it is also necessary to examine the specific spheres covered in the *Philosophy of Right* (personal will, subjective will, objectively ethical will) and elucidate their significance for the question of crime and punishment in general.

Such examination reveals how crime initially presents itself as a self-contradiction within the will. This will, although as a form of personal will it already represents a concrete existence of freedom, negates itself (and not merely the freedom of others) in violating the actualized forms of freedom. At the same time, crime violates the interests of civil society and of right in general (since personality is legally recognized and protected in the domain of civil society and the state). On the one hand, the criminal act hereby acquires a greater dangerousness, while on the other, once laws are universally recognized in society, it can be regarded as less important in itself (and in relation to the sense in which it sets a poor example and serves to encourage further crime). In addition, crime is a violation of lawful will in the state, something that is of considerable significance for the question concerning the general consciousness of right and wrong that Hegel pursues and expounds in his theory of "legal accountability."

It follows that the concept of punishment is initially to be interpreted as retribution: punishment actualizes the self-contradiction of the criminal by manifesting the nugatory character of the criminal will precisely through its sublation and thus revealing it as a deficient form of freedom. The particular way in which this is accomplished (not through vengeance but through criminal justice as expressed in the form of courts and laws) depends on the prevailing historical conditions of civil society (and the state). Where the laws are universally recognized and accepted, the designation of crime as a deficient form of freedom (i.e., the purpose of general deterrence) needs to occur only in an effectively declaratory fashion. The function of punishment (of sentencing) in reforming and improving the criminal himself (i.e., the purpose of individual deterrence) thus moves into the foreground. In the domain of right as an expression of will in the state, the idea of reconciliation, already developed by Hegel in his earliest writings, now comes to acquire significance: the criminal is not simply to be regarded (abstractly) as a violator of right, but also to be recognized as a human being who may have been led into crime through particular deficiencies of background and education. The criminal therefore is not to be abandoned, but must be given the opportunity for reintegration into the community of the state. In this context, we must pay attention to Hegel's concept of "clemency," which involves several features that find

equivalent formulation in modern criminal law as specific grounds for exculpation, exemption, or commutation and for conditional sentencing or remission, and so on. Every age is continually called on afresh to find appropriate concrete form for this interplay between (abstract) justice and (concrete) “mercy” (understood in this context as a specific acknowledgment of the individuality of the agent).

Considered as a whole, therefore, punishment is thus conceptualized by Hegel as a form of retribution (as negation of the criminal will) that through applied threat, conviction, and sentencing is also to fulfill the purposes of general and special deterrence. At the same time the deepest ground of punishment – the reconciliation of the criminal with humanity (with the concept of the human being that is embodied both in him- or herself and in those who constitute the community of the state) – is thereby brought to light as something that continues to remain a postulate that governs the actuality of existing positive law and right.

Notes

1. So runs the title of an essay by U. Klug in J. Baumann, ed., *Programm für ein neues Strafgesetzbuch* (1968), p. 36ff. A similar line is pursued in the following contributions, for example: U. Klug, “Phänomenologische Aspekte der Strafrechtsphilosophie von Kant und Hegel,” in *Festschrift für G. Husserl* (1969), p. 212; F. Bauer, “Strafrecht, Wertordnung und pluralistische Gesellschaft,” in B. Schwarz, ed., *Menschliche Existenz und moderne Welt* (1967), vol. 1, p. 597ff.; H. P. Kühlwein, *Grundlegung zu einer Kritik der Strafrechtstheorien* (1968), p. 34ff.; P. Noll, *Die ethische Begründung der Strafe* (1962), and “Strafe ohne Metaphysik?,” in J. Baumann, ed., *Misslingt die Strafrechtsreform?* (1969), p. 48ff.; G. Patzig, *Ethik ohne Metaphysik* (1971), p. 127ff. Cf. also note 9 below.
2. P. Noll, *Strafe*, p. 49.
3. P. Noll, *Begründung*, p. 6.
4. U. Klug, *Abschied*, p. 36.
5. *Ibid.*, p. 41.
6. For this whole question, cf. my essay “Juristisches Denken und Hegels Rechtsphilosophie,” in *Österreichisches Zeitschrift für öffentliches Recht* (1978), p. 5ff.
7. This is the title of a book by H. Kieseewetter (1974).
8. On this, cf. P. Bockelmann, *Hegels Notstandslehre* (1935), p. 21f.; O. K. Flechtheim, *Hegels Strafrechtstheorie* (1975), p. 82ff.; K. H. Gössel, *Über die Bedeutung des Irrtums im Strafrecht*, vol. 1, pp. 182ff., 204ff.; W. Heinemann, “Zur Dogmengeschichte des Rechtsirrtums,” in *Zeitschrift für die gesamte Strafrechtswissenschaft* 13 (1893): pp. 371, 430f.; R. Honig, *Die Einwilligung des Verletzten* (1919), p. 51ff.; G.-J. Kuhlmann, “Das Bewusstsein des

- Rechtswidrigkeit von Feuerbach bis zu den Hegelianern," diss., Kiel, 1954, p. 43ff.; E.-J. Lampe, *Das personale Unrecht* (1967), pp. 13ff., 73ff., 230; H. Mayer, "Kant, Hegel und das Strafrecht," *Festschrift für K. Engisch* (1969), pp. 54, 76; P. A. Piontkovskii, *Hegels Lehre über Staat und Recht und seine Strafrechtstheorie* (1960), pp. 134ff., 224ff.; J. Sander, "Die Begründung der Notwehr in der Philosophie von Kant und Hegel," diss., Rostock, 1939, p. 37ff.; R. Schmidt, "Die 'Rückkehr zu Hegel' und die strafrechtliche Verbrechenslehre," *Gerichtssaal* 81 (1913): 241, 259ff.; E. Sulz, *Hegels philosophische Begründung des Strafrechts* (1910), p. 5ff.; O. Tesar, *Die symptomatische Bedeutung des verbrecherischen Verhaltens* (1907), p. 155ff.; R. Tompert, "Wahrscheinlichkeitsurteil und Handlungsunrecht," diss., Bonn, 1961, pp. 32ff., 54ff.; P. Vogel, *Hegels Gesellschaftsbegriff* (1925), pp. 40ff., 102f. This does not include all those contributions that touch on one aspect or another of Hegel's concept of crime (such as "act" or "responsibility"). Cf. note 9 below.
9. On this, in addition to the works named above, cf. E. Bitzer, "Die Akzentverschiebungen im Staatsdenken Hegels," diss., Bonn, 1952, p. 99ff.; F. Von Bülow, *G. W. F. Hegel, Recht, Staat, Geschichte* (1970), p. 277ff.; G. Dulkeit, *Rechtsbegriff und Rechtsgestalt* (1936), p. 124ff.; R. Falckenberg, *Die Realität des objektiven Geistes bei Hegel* (1916), p. 20f.; K. Fischer, *Hegels Leben, Werke und Lehre* (1972), pp. 279ff., 702ff.; O. K. Flechtheim, "Die Funktion der Strafe in der Rechtstheorie Hegels," in *Von Hegel zu Kelsen* (1963), p. 9ff.; also O. K. Flechtheim, "Zur Kritik der Hegelschen Strafrechtsphilosophie," in *Archiv für Rechts- und Sozialphilosophie* 54 (1968): 539ff.; G. Göhler, "Dialektik und Politik in Hegels frühen politischen Schriften," in *Hegel: Frühe politische Schriften* (1974), pp. 337, 517ff.; N. Hartmann, *Die Philosophie des deutschen Idealismus* (1974), p. 514ff.; R. Von Hippel, *Deutsches Strafrecht* (1925), vol. 1, p. 307ff.; H. Kiesewetter, *Von Hegel zu Hitler* (1974), p. 3f.; J. Kopper, *Die Dialektik der Gemeinschaft* (1960), p. 39ff.; K. Larenz, "Vom Wesen der Strafe," in *Zeitschrift für deutsche Kulturphilosophie* 2 (1936): 26, 43ff.; G. Lasson, "Einleitung," in *Hegel: Grundlinien der Philosophie des Rechts* (1911), p. L1ff.; B. Liebrucks, *Sprache und Bewusstsein*, vol. 3, pp. 110ff., 219ff., 466ff., 527ff.; R. Marcic, *Hegel und das Rechtsdenken im deutschen Sprachraum* (1970), and "Hegel und das Recht," in G. K. Kaltenbrunner, ed., *Hegel und die Folgen* (1970), p. 181; also R. Marcic, *Geschichte der Rechtsphilosophie* (1971), p. 321ff.; H. Marcuse, *Reason and Revolution* (1941); M. E. Mayer, "Besprechung von Jellinek, *Die sozialethische Bedeutung*," in *Deutsche Juristenzeitung* (1909), p. 1273; H. Mayer, *Strafrecht: Allgemeiner Teil* (1953), p. 32ff.; T. Miskell, "Hegels Lehre vom abstrakten Recht," diss., Freiburg/Breisgau, 1972, p. 159ff.; Ch. Schefold, *Die Rechtsphilosophie des jungen Marx von 1842* (1970), p. 188ff.; E. Schmidhäuser, *Vom Sinn der Strafe* (1963), p. 19ff.; E. Schmidt, *Einführung in die Geschichte der deutschen Strafrechtspflege* (1965), p. 294ff.; W. Schulz, *Philosophie der veränderten Welt* (1972), p. 758ff.; H. Seeger, "Die Strafrechtstheorien Kants und seiner Nachfolger," in *Festschrift zum 50. Doktorjubiläum von A. F. Berner* (1892), vol. 1, p. 16ff., 30ff.; G. Sodeur, "Vergleichende Untersuchung der Staatsidee Kants und Hegels," diss., Erlangen, 1893, p. 20; H. Wenke, *Hegels Theorie des objektiven Geistes* (1927), p. 108ff.

From a Marxist perspective, cf., apart from P. A. Piontkovskii (note 8 above), J. Lekschas, *Der Mensch in der Hegelschen Strafrechtstheorie und im sozialistischen Strafrecht, Staat und Recht* (1970), p. 1616; Lekschas, "Vorwort," in P. A. Piontkovskii, *Hegels Lehre über Staat und Recht und seiner Strafrechtstheorie* (1960), vol. 5, p. XXVff.; P. A. Piontkovskii, *Über die Hegelsche Rechtsphilosophie, Staat und Recht* (1956), pp. 964, 970f.; also P. A. Piontkovskii, "Zur Frage der politischen Wertung der Hegelschen Rechtsphilosophie," in *Studien zu Hegels Rechtsphilosophie in UdSSR* (1966), pp. 1ff., 5ff.

10. Cf. TW IV, 225, where Hegel says that it lies "in the absolute will of the criminal that he be punished." This also implies a distinction over against the use of "punishment" as a means for educating children: cf. TW VII, 326; *Philosophy of Right*, §174.
11. Hegel thus describes "deterrent" theories of punishment as "mechanical" (cf. TW VII, 251; *Encyclopaedia Logic*, Addition to §121). It is interesting to note that the same objection has been raised against his own theory.
12. Hegel appears to make an exception in this connection: "An individual life is something quite different, for this involves the entire sphere of existence, and here the retaliation must be precisely measured accordingly. The death penalty is thus decreed for murder" (VPR3, 322). "As a murderer the criminal sets up the law that life is not to be respected. He pronounces the universal through his deed; but he thereby also pronounces for himself punishment by death" (VPR3, 318ff.). But this position does not necessarily follow in the overall context of Hegel's philosophy. For such punishment should not merely be seen as an automatic consequence of sentencing. Hegel himself cites a case in which a murderer would have to be punished with incarceration: that is, if the offender committed the murder only in order to be executed. For in that case the carrying out of the death sentence would not challenge the will of the criminal (VPR4, 285). But then Hegel also adds: "In more recent times we have become more lenient in this connection, insofar as the attitude to punishment can depend on the level of education and culture of a people" (VPR3, 322). This already would seem to imply that the threat and use of the death penalty is also dependent on the actual condition of civil society. Cf. also the following note.

Finally, the idea of improving and reforming the criminal would appear to suggest the possible replacement of the death penalty through punishment by incarceration (VPR4, 553).

13. As far as the determination of punishment in detail is concerned, Hegel says explicitly that philosophy itself can provide no criteria here. For not everything outside the self-actualization of the concept can be regarded as a case of merely contingent existence. Hegel recognizes that there are domains where final decisions are required but which "lie beyond the concept as determined in and for itself and thus leave a certain range for further determination that must be decided differently, now on one ground and now on another, and which is therefore insusceptible to a secure and final decision" (VPR4, 553). Here it is external contingency or the play of arbitrary will that decides the matter or, alternatively, those "reasons" that human beings are capable of

developing through other kinds of argument (cf. *TW VIII*, 61ff.; *Encyclopaedia Logic*, Remark to §16). In addition to the question of defining particular punishments, Hegel also mentions the precise determination of taxation levels in this connection (*TW VIII*, 61; *Encyclopaedia Logic*, *ibid.*; for this entire issue, cf. *TW VII*, 93, 366ff.; *Rph*, Remarks to §§101 and 214). But these points also hold good for the question of capital punishment, which philosophy cannot actually derive from the concept in relation to civil society and the state (cf. note 12 above).

14. It is not possible to pursue the question of the contemporary relevance of Hegel's concept of crime any further here, but the question is one that can certainly be developed in a number of fruitful ways. In this connection, we should not concentrate solely on the concept of (legal) accountability that I made central to the discussion in my aforementioned postdoctoral dissertation. For example, the claims of Hassemer (*Theorie und Soziologie des Verbrechens* (1973), p. 130ff.) concerning the social grounds for the further extension of property law and the reflections of Arzt (*Der Ruf nach Recht und Ordnung* (1976)) could certainly find significant support in Hegel's work.

III

ETHICAL LIFE

8

Natural Ethical Life and Civil Society: Hegel's Construction of the Family

Siegfried Blasche

The more recent literature¹ on Hegel's philosophy of right has revealed something that almost had disappeared from view in German neo-Hegelianism in the period before the Second World War with its almost exclusive interest in Hegel's philosophy of the state in the narrower sense: *namely, that Hegel's philosophy of right is a theory of civil society.*

The placement of the section on civil society within the chapter on ethical life, and especially Hegel's own remarks in the preface to the work emphasizing that he was primarily concerned with comprehending the state, would seem to contradict this claim. From the perspective of the book's overall *structure*, the section that deals explicitly with civil society is indeed only one of several. For family and the state are institutions that are treated *alongside* and in addition to civil society. But it is the very way in which Hegel himself treats these institutions that seems particularly to contradict the claim that the philosophy of right is essentially a theory of civil society. From the perspective of historical development, and that of the concept, Hegel clearly ascribes a certain priority to the family and the state.² For *historically* speaking, the practice of family life, based on agriculture (*Rph*, 280ff.; ET: p. 131ff.) as the essential foundation of its subsistence, already existed before the emergence of civil society that depends economically on a developed industrial base. The very first states, as more encompassing "forms of universality," arose precisely from the institution of the family, organized as it was along essentially patriarchal lines (*ibid.*).

In the philosophy of right, by contrast, Hegel speaks of a transition from the family to civil society and from civil society to the state. The transition in question did not transpire *historically* in this sequence, or to put in another way: the transition from the family to civil society and finally to the state is not interpreted historically at all in relation to the emergence of these institutions. The historical transition was a direct one from the family to the state. Family and state existed prior to civil society: “Within the domain of actuality . . . the *state* itself is rather what is first, and within which the family first develops itself to civil society . . .” (ibid., 327; ET: p. 155).

But it is not simply from the perspective of history, but also from that of the *concept*, that the family and the state are privileged over civil society. Hegel formulates the concept that functions as a criterion here in the introduction to the philosophy of right: “the abstract concept of the idea of will is *the free will* in general that wills *the free will*” (ibid., 78; ET: p. 32).

What is the implication of this concept? And how does it establish the primacy of the family and the state in Hegel’s account? The will is “free” or in accordance with its “concept” if we can say that its content derives solely, in Kantian terms, from the spontaneity of reason. The will is “formally” free only if its content is already ultimately given (through nature) or previously regarded as ultimately given (through historical tradition). In this case the will must be described as merely “reflective,” as the capacity of choice with respect to different contents (ibid., 66ff.; ET: p. 27ff.). The will is the form of a content that is itself not reducible to the will. The form and content of the will here fall apart. Insofar as the will now makes its own form into its very content (cf. ibid., 72ff.; ET: p. 29ff.),³ it has acquired a content that is no longer simply ultimately given in advance. Insofar as the will has itself for its object, as Hegel says, it is “truly free” or “will existing in and for itself,” it is a form of self-possession. Now according to Hegel, institutions are precisely to be defined as realized forms of such a free will. Wherever human beings, in the course of their development, have assumed a relation to their will in accordance with the concept (“in accordance with the will itself”), they have also developed institutions at the same time. Such realizations of the free will constitute “right” [*das Recht*] (ibid., 79; §29; ET: p. 33), or, as we could say, institutions that are regarded as right or “just” [*gerecht*]. The examination of such institutions, and this involves a normative judgment, shows how they already partly fulfill their ultimate purpose and to that extent represent a realization of the “idea of right” in Hegel’s sense of

“actual determinate right.” But in part they also fulfill other purposes beyond themselves, purposes that are in turn defined in terms of given contents. To this extent they still represent a deficient realization of the free will: form and content ultimately still fall apart or fall apart once more.

Hegel’s *conceptual* articulation of the problem in the introduction to the philosophy of right shows that the family and the state, in accordance with the “concept,” enjoy a certain priority as far as civil society is concerned. Or at least this priority holds for *that* family and *that* state that Hegel claims to be examining in his *general* remarks on these institutions.

Both the family and the state are reconstructed here in terms of the free will that has itself as its purposive content or more precisely are *constructed* on the basis of the concept. The family is the *immediate* ethical totality, whereas the state is the *mediated* ethical totality. The family and the state are structures of interaction that do not *subsist* for the sake of any purpose beyond themselves, even if they originally may have *arisen* for the sake of such external purposes.⁴ If we assume Aristotelian terms of definition here, we can say that the family and the state, as purely interactive forms of social organization, are paradigmatic examples of *praxis*.

As what Hegel calls “the system of needs,” civil society is ultimately and irreducibly bound to the naturally determined individual needs as the given content of its purposes. As an institutionalized system of legal right, civil society succeeds in giving a *free* form to the will and finds therein its defining *spiritual* character as a form that is determined by the will. But it remains purely formal insofar as the universality attained here still finds its underlying content in “the particularity of purposes” (ibid., 275; ET: p. 128). In civil society, right is only a means, and the free will here reaches only what we could call the *first* nature of the human being. Considered from the perspective of the concept of the free will, civil society represents a “dirempted ethical life.” It eliminates the immediate form of ethical life in the family insofar as the latter is not defined simply in terms of needs. By virtue of the manner in which civil society maintains itself, families now enter into the system of needs as individual “persons.” From this perspective they no longer possess any valid standing as specifically ethical substances. Their only valid relationship to one another is now defined by their status as private owners, and it is on this that the legal system is based. As far as the sphere of the market is concerned, it is this characteristic *alone* that possesses any significance.⁵

From the perspective of the concept, then, civil society is determined negatively in relation to the family, and that in two senses. On the one hand, the concept, which finds its immediate realization in the family, also

supplies relevant conceptual determinations of civil society that stand in direct contrast to the family (and explain the transition from the family to civil society). On the other hand, the application of the concept as a criterion reveals civil society, in negative contrast with the family, as an ethically corrupted form of life [*entsittlichte Lebensform*].

And this negative determination directly bears on the relationship between civil society and the state, a relationship that also generally bears on the distinction between “first” and “second” human nature, of *need* and *reason* under the conditions of the actual historical world that has been shaped by the self-understanding of spirit.

The claim that Hegel’s philosophy of right is a theory of civil society certainly appears questionable in the light of the structure of the chapter on ethical life, of the historical genesis of the relevant institutions, and of the conceptual analysis and its governing cognitive interest.

But then Hegel’s theory of civil society is found not only in the second section of the chapter on ethical life. The chapters on abstract right and morality, where Hegel develops the traditional theories of natural and rational right, are in fact *exclusively* concerned with civil society. In these chapters, Hegel effectively reconstructs the conditions of existing social life: on the one hand, the domain of private property (and the “abstract person”) that grounds social interaction, and on the other, the subject (or “concrete person”) that has its individual welfare in view, holds itself responsible for its own actions, and posits its conscience as a criterion.

And in real terms, although this is not entirely transparent to Hegel himself,⁶ civil society is also at issue when he discusses the individual functions of family and the state. It is perfectly clear to Hegel, however, that he is essentially speaking of family and the state under the conditions of existing civil society. He speaks not of the state as an institution in general but, rather, of the “modern state.” The modern age – in contrast to the world of the ancient *polis* – is defined in terms of its effective and highly developed moment of subjectivity (*ibid.*, 337ff.; §260; ET: p. 160ff.). In this sense Hegel was quite consciously reflecting here on a *bourgeois* state. At the same time, however, this bourgeois state is distinguished from the state that civil society itself produces, the “state of need and the understanding,” as Hegel describes it (*cf. ibid.*, 263; §183; ET: p. 123).⁷ For Hegel, the modern state is the traditional state as it had existed before civil society but is considered now *after* the development of civil society. The “state of need and the understanding,” on the other hand, is the state that is derived precisely from the social demands of such a society, with respect to both its general validity and its historical genesis. It exists as

an integral system within the older traditional state, whose form it now helps to shape.

The criticisms of Hegel's conception of the state that were originally mounted by the Left Hegelians, and especially by the young Marx, attempted to show that the modern state as articulated in the final section of the chapter on ethical life cannot properly fulfill its claim to embody the "idea of freedom." According to this criticism, the modern state is effectively subsumed into the very "state of need and the understanding" that Hegel himself had defined. The criticism then completes the claim that Hegel's philosophy of right is indeed a theory of civil society by proceeding to examine the individual functions of the state and the way in which they are discharged. The criticism even undertakes, finally, to expose the allegedly ethical character of this institution as a kind of "necessary illusion" that is required to transfigure the reality of existing circumstances. The state as a state marked essentially by class division is itself therefore a social institution.

And something similar holds for the family. Hegel is quite aware that the object of his analysis is not the family as an institution in general, that he is essentially speaking about the bourgeois family. It is in the small bourgeois family that the institution of the family finds its ultimate conceptual form and fullest development.

But Hegel's treatment of the family in the philosophy of right is actually a remarkably abbreviated one insofar as Hegel does not explicitly identify some of the tasks and functions that define the bourgeois family. It does not escape his attention that the intimate family sphere, to which he ascribes a fully realized ethical character, itself developed only after the traditional family had suffered a certain loss of social function, that is, when it had ceased to be a domain that was capable of ensuring its own elementary subsistence. The family as intimate ethical sphere becomes possible only once the satisfaction of needs is relegated to an independent system of economic life. What does escape Hegel, however, is that new tasks come to face the family with the emergence of such social relationships. Hegel fails to see that society can continue to exist only if it also in turn exerts an influence on the family. This influence also directly affects the intimate sphere that was separated from the sphere of needs. Insofar as the family now takes on social tasks even within its own intimate domain, it effectively becomes a *social* institution. The family thus finds itself bound to aims and purposes that lie outside its own originally self-defining character. Thus, the critique of Hegel's construction of the family here also serves to support the claim that his philosophy

of right – and we can say more precisely, in part explicitly but also in part as a consequence of our critical analysis – is indeed a theory of civil society.

The modern sociological literature on the family already offers a vocabulary that would permit just such a critique of Hegel's observations on the family in the philosophy of right. This literature is essentially concerned with the same type of family life that confronted Hegel in his time. It is therefore quite legitimate to compare and contrast Hegel's treatment of the family with the results of more recent research into the subject.

Hegel is well aware that he is describing a specific and historically situated form of family life. Hegel arrives at the view that this kind of family life represents the family itself appropriately grasped in accordance with the concept of the free will precisely because of the highly abbreviated account mentioned above. This is where criticism of Hegel's position must properly begin.

What is the concept of the family itself? From the perspective of the concept of the free will, ethical life is defined as the historically emergent and developed form of living interaction in the *present*, a form of interaction that – “free” of all aims and purposes dictated by needs – fulfills its ultimate purpose within the context of its own active life. The *concept* of ethical life is thus realized freedom, or right that has properly become “Idea.” What Hegel defines precisely as the essence of the state – namely, that here “the true content of purpose is *union* as such . . . and the vocation of individuals is to lead a universal life” (*ibid.*, 329; ET: p. 156) – also holds for the institution of the family. The difference between the state and the family here concerns the degree of universality and explicit reflection involved. On the one hand, the family is only one field of social interaction produced between certain individuals who act toward one another in a particular fashion.⁸ On the other hand, the family is a form of social union that *ultimately* depends on the sensibility of human nature rather than exclusively – as in the state – on explicit acts of will.⁹ In this latter sense, the family is a form of *natural* ethical life.¹⁰ The family attains this concept of itself, that is, its grounding in nature, only when civil society already exists, when it has relinquished the purpose of the satisfaction of needs to “the system of needs.” It is only under these conditions that the family can concentrate on its real core, the natural relationship between two individuals of different sex – or *marriage*. The family realizes its ethical purpose therefore on the basis of natural relations that involve, alongside the differentiation of the sexes, the raising of children in the affective context of all family members and the explicit positing of this affective relationship as the ultimate purpose of the family itself (*ibid.*,

237, 240; ET: pp. 110–11). In this respect, marriage constitutes the central institution of family life.

Independent of the grounding of the family under the conditions of a highly developed social system – and this marks the crucial distinction between the ancient and modern worlds – the individuals are already moral subjects. In addition, they are also legally recognized as “abstract persons.” As moral subjects they are submitted to and, indeed, expressly submit themselves to their own freely willed decisions.¹¹ Under the conditions of civil society, therefore, the family is grounded not only on personal feeling, but also on an explicit act of will, in the “freely willed consent to *constitute the family as a single person*” (ibid., 240; ET: p. 111). If the natural foundation of the family is provided by “the *particular inclinations* of the two persons,” as the “subjective starting point,” then the aforesaid act of will represents the corresponding “objective starting point” (ibid.). It is only with the latter that the family also becomes expressly identifiable as such both for itself and for other persons. This freely willed consent of individuals, which finds its subjective motivation in the sphere of feeling, is still essentially alien to the pre-bourgeois world in which the moral subject has not as yet explicitly developed.¹² In this sense it is the bourgeois family that Hegel has in view here. For in the pre-bourgeois world, by contrast, “the parents dispose freely over marriage arrangements in accordance with their own wishes without consulting the individuals concerned, and the latter accept this since the *particularity of feeling* [emphasis added] as yet makes no claims for itself here” (SW VII, 241; ET: p. 262).¹³

Hegel’s concentration on the small family unit also shows that it is the bourgeois family that he is concerned with here. In the section on the family, Hegel does not speak of the *general social family* that Aristotle thematized in his political theory when he spoke of the *oikos*, and that remained a guiding theme for all subsequent literature concerning the “domestic” (patriarchal) household right down to Hegel’s own time.¹⁴ Hegel’s theme is precisely not the “integral household” that W. H. Riehl still found embodied in the “persevering powers” of family life among the aristocracy and the peasantry as late as 1854.¹⁵ Nor does Hegel speak about the essentially *extended family*, the lesser or greater community of blood-related individuals.¹⁶

The traditional social family that was displaced by the small bourgeois family was still shaped and determined by a largely agrarian economy, which is to say, by a relatively undifferentiated structure of labor and need. Its form of organization was patriarchal and its representative was

the “master of the house.” It included a broader circle of people as its members, which extended beyond the limits of the core family (the parents and children).¹⁷ Such a family provided the elementary basis of subsistence for its members *throughout life*, that is, even when they were no longer engaged in the process of economic production.¹⁸ The members hardly really left the general sphere of the family at all. They did not pursue a trade or career independently or outside the family. The latter was essentially a small community of production and largely autarchic in this productive activity. The relevant means of production (land, tools, etc.) still lay wholly within the hands of the family itself. The family was not defined – and this is the essential difference for Hegel – as external to the sphere of needs, neither in the context of consumption nor in that of production. In the traditional family, where individuals did not yet articulate their positions as independent of one another, the praxis bound to needs and that bound to social interaction were still fused as one and could not strictly be separated from one another. But we must note here that this large social family is not to be understood as an ethical system that fully fulfills its purpose in the exercise of its own free activity.¹⁹ In the *Philosophy of Right*, Hegel defines the family exclusively in terms of its *ethical* significance. What is the specific reason for Hegel’s doing so?²⁰

Hegel can see the difference between the modern and the traditional family very clearly. The modern family is essentially based on the collapse of the traditional one, on the fact that the latter had lost its original cohesion and, as it were, released its members as *subjects* in their own right. Hegel also employs the concept of “household” in relation to the traditional form of family, while observing that the modern family is now determined as a “separate” organization that is relatively independent of other, more encompassing forms of organization. The modern family thus owes its existence to the decision, grounded in love, of autonomous persons to constitute “a single person.” The modern family no longer has “the natural blood-relation as its natural basis” (cf. *Rph*, 250; §172; ET: p. 116). The way in which the family is grounded in “nature” has effectively changed.

In a handwritten addition to his text, Hegel explicitly notes the “dissolution” that is a uniquely characteristic feature of the modern family (*ibid.*, 251; ET: p. 117). The children eventually leave the home and the family continues to exist only as long as the “marriage” survives.

The modern family is essentially a family of spouses²¹ and finds the ground of its existence in the freely determined love of the partners in

question. This love becomes “objective” in the children: “The mother loves her husband in the child, and the husband likewise loves his wife in the child; both of them behold their own love in the child” (*Rph*, 251; ET: pp. 264–65). Thus, it is not the children who effectively complete and perfect the family, for the latter already exists. The children perform a function of objectification in relation to the married partners. Nor does the family perpetuate itself through the children, since the latter, in the same way as their parents before them, now start their own independent families.²²

Hegel’s treatment of the “substantial estate” in the section on civil society also clearly demonstrates that he is essentially concerned with the difference between the traditional and the modern family (cf. *ibid.*, 280ff.; ET: p. 131ff.). For civil society also contains a relic of precisely the type of patriarchally organized family that was based on an agricultural economy. In the modern world, the satisfaction of needs is principally relegated to an independent system, but Hegel believes that agricultural production cannot fundamentally be pursued in an industrialized fashion. Now civil society also itself depends on the elementary natural means of subsistence, even though agricultural production can be sustained only within the traditional organizational framework that predates the industrial division of labor. Thus, in relegating the satisfaction of needs to an independent economic system, Hegel is also forced to relegate the fully traditional family to a particular “estate” [*Stand*] within civil society. But precisely because this “substantial estate” now performs an essentially social task and function, it no longer represents an expressly “ethical” form of life. Hegel’s description of the traditional form of the family is therefore found in the section on civil society and not in the section on the family.

The traditional form of the family was, like the “substantial estate” now, essentially a community of production and was thus bound up directly with the “first nature” of human beings. The relegation of the satisfaction of needs to an independent system, the relegation of the traditional type of family to civil society itself, and the gradual process in which the traditional family has increasingly come to lose its original function all creates a necessary condition for the ethical life of the modern family: the independence of aims and purposes that are simply given in an ultimately irreducible fashion.

R. König has argued along very similar lines. He believes that it is the modern family that first properly fulfills a uniquely “familial function,” namely, to facilitate “apart from simple propagation the construction of

a social-cultural personality," the "second birth" of man as an "ethical human being."²³ König also explains this liberation of the family for its proper ethical task in terms of the disappearing function of the traditional family. That gradual loss of function has produced a "social loosening"²⁴ in the historical evolution of institutions, one in which other "cultural sectors" are increasingly emerging *alongside* the family and "functioning relatively independently of one another and are thus relatively autonomous in character."²⁵ The process of social development is directly connected with a loss of function on the part of the family and with a displacement of the tasks the family once discharged on these other newly emerging institutions (in sociological terms, we are dealing with "social-functional transposition").

But what does this loss of function in the course of social development precisely consist in, and how is it fully to be accounted for? What functions still remain for the family independently of this development, and what new functions does it acquire under these new conditions? It is our answer to these questions that will determine our assessment of Hegel's claim that the modern family is indeed an effective form of ethical life.

W. J. Goode distinguishes five functions that characterize the family in "all societies": (a) reproduction (biological propagation), (b) bestowal of status, (c) socialization and social control, (d) biological maintenance of the individual, and (e) emotional and social maintenance of the individual.²⁶ For the sake of simplicity, I should like to ignore whether it is in fact meaningful to attempt to determine the principal functions of the family once and for all in precisely *this* way. I should merely like to employ this delineation of the relevant functions as a general point of orientation insofar as I am assuming that the traditional family at least did perform this range of functions. The traditional family was a single community of production and consumption, and both these aspects defined its relationship to the satisfaction of human needs. The sphere of production is subsequently assigned to an independently functioning system. Familial and professional life fall apart from one another as a consequence. Essential aspects of the actual and effective life of particular individuals are thus detached from the domain of the family and oriented directly toward the demands of society at large. The individuals now take their bearings from the need to find and subsequently maintain a place within this society. Originally, the individual was simply born into a traditional family and belonged irrevocably to that family henceforth. But now the individuals must acquire the capacity to pursue and fulfill their own ends from others, since this is the only way they can secure their own

subsistence within the context of the market. This is precisely what leads in modern life to the separation of the spheres of the economy and the household,²⁷ one to which the separation between private and professional life also corresponds in the individual sphere of life. Hegel's separation of family from civil society, and that of the "concrete person" (the subject) from the "abstract person," does justice to this state of affairs.

The family now loses "its function *within* the realm of production," as Habermas puts it. But it continues to perform a certain function "*for* the realm of production" through the financial resources it introduces into the process of capital accumulation.²⁸

But the family that has forfeited its function within the productive process, though it still retains a certain role for that process, is essentially a transitional form of family life. And it is this transitional form that Hegel presents to us in ethical terms. As a "person" with property ("wealth"), the family enters the sphere of civil society that first reveals "what that wealth consists in and what the truest way of maintaining it should be" (*Rph*, 249; ET: p. 116). The family is represented over against "others" through "the husband as the head of the household" whose pre-eminent task is "external economic provision, concern for the family needs, the disposition and administration of the family wealth." This family wealth is "common property" so that "no one member of the family possesses their own particular property but each has a right to the common property of all" (*ibid.*, 250; ET: p. 116).²⁹

Now Hegel was still unable to see that the currently prevailing type of family, especially now that it was reduced to the small family group, was also increasingly losing its function *for* the production process and was effectively entering a new stage, namely, "that reduction of family wealth to the income of the sole individual earner that is typical of contemporary life."³⁰ Hegel fails to see that the *bourgeois* family is in the process of turning into the *petty bourgeois* form of family that pre-eminently lacks its own wealth and the security that that wealth once provided. This reveals once again that Hegel is in effect analyzing only a specific historical and transitional form of family life, and therefore undermines his claim that the modern family is a definitively conceptualized self-contained institution constituting an *autonomous* intimate sphere of its own alongside society and the state.

It is structural economic changes that are effectively responsible for the separation of the family and society, which themselves were once "spheres structured along similar lines,"³¹ and for the progressive reduction of the larger family to the smaller core family unit. The character of modern

economic production, directed as it is toward the assessment of capital value and connected with "attitudes geared to the further production of wealth,"³² presupposes a higher level of "education" (division of labor, individual capacities, flexibility, etc.) than the earlier form of production based on agriculture ever did. Modern production presupposes more "industriousness" and more "technical understanding" (*Rph*, 282; ET: p. 132), along with a greater expenditure of relevant time. But in particular, industrial production also implies, through its concentration of labor power in a *single* place of production, an increased temporal and spatial detachment of human beings from the immediate family context. The various spheres of individual life thus come to be strictly separated out from one another.

It is the development of society itself that is responsible for the fact that "the broader connecting bond of the family in terms of lineage" is being dissolved (*ibid.*, 316ff.; ET: p. 148ff.).

In the system of needs the individual counts "by virtue of what he achieves: he has the value he has insofar as he earns the latter . . ." (SW III, 269). The individual counts as such through his own individual and characteristic capacities for action. The individual who has been released from the framework of traditional family life increasingly learns that the satisfaction of his needs or those of his family is dependent on these characteristically individual capacities for action, that is, on individual endowments and specific abilities. And in this way the individual is transformed into the "subject," estranged from tradition, who now explicitly pursues his or her own welfare *alone*, who explicitly structures and defines his or her *own* ends and purposes, who learns to determine his or her *own* will for him- or herself and binds that will to those chosen ends and purposes. Communal interaction in the social domain, a form of praxis organized in accordance with the division of labor, assumes the explicit character of being simply a means ("the universal as means") for the fulfillment of aims and purposes defined by needs according to the principle of particularity. And thus it is that civil society begins to take shape as a *universal* sphere bound to particular needs and mediated by social interaction.

The cohesion of the large traditional family was maintained by its participation in the domain of production. The general interest of the family here exercised, in contrast to a system of industrial production, a principally integrative effect on the institution. The rather static character of social life, itself conditioned by the agrarian mode of production, facilitated the continual schooling of entire generations into the same kinds of

action and behavior, of practices and customs, which in turn produced a secondary level of social integration. Production and consumption within a very small compass and immediate social control resulted in the consolidation of general structures of interaction that largely determined the entire course of human life.

In the modern social realm, such integrated forms of life are no longer binding, and the rational perspective of the subject oriented to his or her own interest is suddenly reconnected in a new way with the life of the family. On the one hand, individuals now increasingly detach themselves from the original sites of the larger traditional family and take up residence in the vicinity of their place of productive labor (the separation of town and country). On the other hand, they also detach themselves inwardly from the traditional bonds of family life insofar as they learn to apply criteria of utility to the tradition itself.

The cohesion that was previously supplied by the agrarian mode of production and the concomitant *immediate* interdependence of the various family members now disappears. The interdependence of small social groupings is ultimately dissolved by the universal and anonymous interdependence of *everyone*, and the family is thereby reduced to the core that defines itself as separated from society at large. The family is thus reduced to its *emotional* basis, to the relationship of the two sexes.

If the rational calculation of means and ends successfully asserts itself in the social realm, on the one hand, we also simultaneously can see the family acquiring new affective and emotional significance, on the other. The “purely personal and subjective relationships now emerge increasingly into the foreground.”³³ The self-contained sphere of intimacy and the outside world of bourgeois society start to drift so far apart that even the dialectical thinker Hegel feels compelled to regard the family in “abstract” terms as no longer properly belonging to the “actual world” (SW III, 269).

But this dissociation of family and society is quite characteristic of the eighteenth century at least, and is only one aspect of the matter. As society increasingly realizes its own principles it also eventually overtakes the institution of the family and defines its tasks and functions in new ways. This *process of the progressive socialization* of the family has not come to an end even in our own times.

The specific capacities and skills that are demanded of individuals by society cannot be provided either by the large or small family unit. And thus, as a first step, society now removes the highly differentiated sphere of knowledge required by educational and professional needs from the

sphere of the family altogether. The family, however, retains the task of providing the elementary level of care and education for the children. On the one hand, this education consists in imparting to the growing child the use of language with its associated intellectual skills. On the other, it consists in the primary socialization of the child through which he or she is integrated into the general social contexts and value judgments of the social environment. The fundamental constants of the "ethical personality" are thus laid down in the first instance by the family.³⁴ The family consolidates the schemata, as it were, within which the future will-formation of the individual can take shape.³⁵ Thus the family retains the task of ensuring the development of individual character. But insofar as the family now responds to a social demand in forming the character of individuals for life *within* society, it actually becomes a "social-moral institution of society for constructing the social personality of the human being."³⁶

We must acknowledge then that the family, under these social demands, suffers a loss of function as far as the educational provision of knowledge is concerned,³⁷ and that it now serves to adapt the primary formation of will (and of character) to this social demand.

We also can observe a transformation of the traditional family in the direction of the modern family with regard to the issue of status ascription. In a traditional context, the status of the individual in the domain of *political* life is determined by the family to which that individual belongs. One's standing as a "citizen" here is still dependent on particular family membership and the position one occupies within the family itself. Aristotle has defined the conditions that a citizen must fulfill.³⁸ And these conditions continued in force, with some modifications, right up to the modern age. According to Aristotle, (1) the citizen must be free from all concerns with the satisfaction of needs; (2) he must be head of a household; and (3) he must himself be able to show his ancestral descent from citizens. The status of the other family members (wife, children, relatives) who merely take a small part in activities beyond the immediate family sphere (the communal play of children, purchasing goods at the market, etc.) also is determined according to family membership and position within the family.³⁹

In the context of an advanced level of social development, however, status is defined by what the individual is capable of *achieving* within society at large. One's membership in *a* particular family, and increasingly one's position *within* the family, are not decisive.⁴⁰ And, indeed, Hegel himself no longer mentions the role of the family in bestowing status in his discussion.

In summary, then: by virtue of historical change dictated by the development of specifically *social* relations, the family as such has also undergone significant transformation. The family has lost its function both *in* and increasingly *for* the sphere of production. As a result of this loss, it has come to constitute itself as a core family essentially centered on marriage. The children now stand in a much more distanced relationship to the family than heretofore. The socialization of the children is increasingly assumed by institutions beyond the family sphere. As far as the individual relationship between the spouses is concerned, the family remains a domain of interaction in which, on the basis of permanently maintained affection and accustomed practice, that relationship itself is, at least in general, successfully sustained as an end in itself. It is obvious that we are speaking here of the *bourgeois* type of family life. The proletarian family type never developed this particular form of intimacy.

But there is a peculiar ambivalence attaching to the bourgeois family that Hegel, with his one-sided emphasis on the ethical moment of the institution, failed to perceive. Hegel sees only that the family is an institution that is detached *from* society at large. He does not properly see that society itself also exerts its own effect in turn on the family and thus tends once again to deprive the latter of its ethical character.

As a form of life pursued in its own right, rather than entered into, like a contractual relationship,⁴¹ for the sake of any further particular purpose,⁴² the family is an institution based on love and trust that does not reflect society in general. It acquires this characteristic precisely through its socially conditioned loss of function and turns into a form of relationship set off against society as conceptualized here precisely through the further development and direct influence of the latter. To the degree that the family loses its original task of satisfying economic needs, it acquires the character of intimacy on the basis of which the individuals act in society and take their place in the process of pursuing their particular aims and purposes. The family is furthermore *the* site where the individual can return from the sphere of social life⁴³ and thereby relinquish his or her particularity.

But the family is not merely one institution alongside society in general. It is itself increasingly affected by the process of advancing socialization. Hegel expressly says that “the family is something subordinate [. . .] as far as civil society is concerned” and further that “society pulls human beings toward itself, demands that they work for it and that they be and do *everything* [emphasis added] in and through society” (*Rph*, 315; ET: p. 148). But Hegel does not conclude from this insight that it is therefore

necessary to examine the external functions of the family and assess it normatively in this light. Hegel notes the deleterious ethical effects of civil society in general but continues to hold that the family, after the loss of traditional function that has overtaken it, effectively represents a small and enduring intimate sphere grounded on love.⁴⁴ He believes that the progressive weakening of ethical relationships remains a process that is ultimately external to the sphere of the family. The family thus stands intrinsically intact *within* civil society with its inner affective core untouched by the consequences that Hegel's dialectic generally indicates for any sublated moment, as an autonomous person in reciprocal reified relationship with others.⁴⁵

In spite of the ethical content that it undoubtedly *also* retains, the family has not been able to isolate itself even in its innermost core (marriage) from the advancing process of social development.⁴⁶ At the primary level of the socialization of children that is accomplished by parents who have themselves long been integrated into social life, the family helps to produce the kind of individuals who are capable of surviving in a world deprived of ethical life and are directly subjected to the principle of particularity. The family produces people already adapted to society,⁴⁷ rather than the kind of schizophrenic individuals that are genuine human beings at home and alienated citizens in the outside world.

Alongside the task of adapting individuals to society, which latter also exercises an effect on relationships within the family itself by virtue of the kind of character formation required, the family performs a certain compensatory function as well. Conflicts that could break out in the social sphere are contained on an individual basis within the family. In part, the problems and failures suffered by the individual are defused in an authoritarian fashion and transferred to the other members of the family. But, in part, family solidarity also makes itself felt where a particular conflict threatens to overwhelm the individual. Such family solidarity is naturally most likely to be expected where the intimate affective sphere is strongly founded. This kind of compensatory response to conflicts in the context of individual or very small groups itself serves to maintain society insofar as it neutralizes those forces that taken together might come to threaten the continued existence of the society in question. Thus, even the intimate affective sphere, which is best fitted to neutralize possible conflicts between the individual and the universal, is firmly embedded within the functional circle of the social whole.

The inner core of the family is further affected by the dominant position of the father, who as the exclusive locus of relevant action in cases of

internal family conflict, is much more capable of making his influence felt than are any of the other family members.⁴⁸

Hegel did not see that the intimate sphere was being deprived of its ethical significance by the formation of individual character according to social demands, by the compensatory functions already mentioned, or by the economically dominant position of the father. Thus he believed, for example, that equal status ultimately prevailed in the relationship between spouses (*Rph*, 246ff.; ET: p. 114ff.). Of course, he holds that different tasks and functions accrue to the man and the woman by virtue of their “nature.” That alone, however, does nothing to weaken the ethical significance of life within the family sphere for Hegel. For the father enjoys a particular and special authority only in relation to the outer world, to the sphere of society (*ibid.*, 246, 249ff.; ET: pp. 114, 116). Within the family itself, the wife guarantees overall unity through her “subjective and substantial feeling character” (*ibid.*, 246; ET: p. 114).⁴⁹ In distinction to the wife, the husband possesses his “actual and substantial existence in the state, the realm of learning and knowledge, and so on, and elsewhere in the context of struggle and labor in the outer world . . .” (*Rph*, 246; ET: p. 114).

Hegel’s claim that the family is an autonomous and self-reinforcing intimate domain of ethical life is thus revealed from several angles as a very questionable one:

(1) It is already incoherent in terms of the methodological framework of the analysis. The grounding of the family in nature, that is, on an ultimately pregiven content that is irreducible to the will, a content that should have been defined methodologically as a *need*, places the family in direct contradiction to the concept of the free will.

(2) Hegel certainly treats the family under the conditions of existing civil society, but he determines the concept of the bourgeois family too narrowly from a systematic point of view. He does not sufficiently acknowledge the effects that society in its turn exercises on the familial context and brings the dialectic to a standstill through his one-sided attention to the ethical character of the family.

(3) Hegel is not aware that he is merely describing a historically situated transitional type of family.

Notes

1. In this connection, one should refer above all to the writings of J. Ritter, J. Habermas, and M. Riedel on Hegel’s philosophy of right. The relevant

contributions can be found in the following collections: J. Ritter, *Metaphysik und Politik* (Frankfurt am Main, 1969); J. Habermas, *Theorie und Praxis* (Neuwied, 1963); M. Riedel, *Studien zu Hegels Rechtsphilosophie* (Frankfurt am Main, 1969), and *System und Geschichte: Studien zum historischen Standort von Hegels Philosophie* (Frankfurt am Main, 1973). The observations of my essay have drawn on the conclusions of these commentators, and particularly those expressed in Riedel's essay "On the Concept of 'Civil Society' and the Problem of Its Historical Origin," which makes an important contribution to the issues analyzed here. Apart from these authors, one should also draw particular attention to two essays by W. Euchner: "Freiheit, Eigentum und Herrschaft bei Hegel" and "Hegel und die Umwälzung der bürgerlichen Gesellschaft," in W. Euchner, *Egoismus und Gemeinwohl: Studien zur Geschichte der bürgerlichen Philosophie* (Frankfurt am Main, 1973). K.-H. Ilting's edition of *Hegel's Vorlesungen über die Rechtsphilosophie* (Stuttgart Bad-Cannstatt, 1973) provides further supporting material for the interpretation of Hegel's philosophy of right as a theory of civil society. This edition at last offers access to Hegel's detailed remarks on civil society that are contained in the lecture transcripts of his students. (In his 1833 edition of the *Philosophy of Right*, Eduard Gans had utilized only a small selection of these remarks.)

2. On the priority of the state from a historical and conceptual perspective, see *Rph*, in *SW VII*, 327ff; ET: p. 254ff. All references are to this edition of Hegel's works, unless otherwise specified.
3. Until recently, the secondary literature has paid hardly any close attention to the "Introduction" to the *Philosophy of Right* where Hegel first presents the concept of the free will, even though the entire method and purpose of the work can be explicated only by reference to this concept. The suggested transition from the "reflective will" to the "will in and for itself" represents, I think, the appropriate interpretive key for elucidating Hegel's normative assessment of civil society and the state.
4. The Aristotelian distinction (*Politics*, 1252 B25–27) according to which the state first *arose* for the sake of life alone, but now *continues* for the sake of the good life, is also effectively to be found in Hegel. As an existing form of life, the state is essentially a self-comprehending system of interaction, even if also there historically have been states, even if there is still a state "of needs and the understanding" in the context of contemporary social life, which merely had life alone as its end and purpose. The modern state is a form of *praxis* in the emphatic sense because it has effectively relegated the satisfaction of needs to an independent system, that is, to civil society. As a result, it is now possible to define the state and the family as contexts that transcend the sphere of needs. The Greek *polis*, on the other hand, had not yet developed a specific system of needs. Here the *oikos* with all its members continues to fulfill the general life-maintaining functions of the community. But the state itself is already conceived as free from this particular role, and that is precisely what the Aristotelian definition expresses. In the Greek world, "the particularity that belongs to the satisfaction of needs is [...] exclusively reserved for the class of slaves" (*Rph*, 454; ET: p. 221).

5. Cf. *ibid.*, 27off.; ET: p. 189ff.
6. The opacity here is grounded in the normative perspective of Hegel's whole approach and the cognitive interest that derives from it. For Hegel is attempting to show *that* existing institutions can be grasped as forms of the ethical realization of freedom. That is why Hegel frequently loses sight of the effects that an ethically deprived form of social life directly exerts on the ethical character of these institutions.
7. For the conflation of civil society and the state, cf. *ibid.*, 329; ET: p. 156.
8. In Hotho's lecture transcript, there is a more precise formulation than any found in the Gans edition of the *Philosophy of Right*: "substantiality in the form of 'feeling,' of the immediate spirit that here assumes the character of naturalness, is 'proper' to the family" (VPR₃, 504). In Eduard Gans's own lectures on *Natural Law and the Universal History of Law* (delivered in the winter semester of 1832–33 and transcribed by Immanuel Hegel), the issue in question is formulated in the following manner: "Ethical custom in its immediacy, that is, in the sphere of feeling and love, in its unreflective character and naivete, is the relationship between human beings established through love and feeling, *namely, the family.*" And further: "The family is the feeling of ethical life sensing itself; love is made into its principle: the consciousness that possesses a feeling of itself and composes a unity out of several different individuals" (p. 81). I should like to thank M. Riedel for making available to me this previously unpublished material.
9. There is an interesting parallel to Hegel's concept of *natural* ethical life in S. Pufendorf's theory of natural law. Pufendorf assumes a natural "*appetitus societatis*" that flourishes in small communities. But this social instinct is insufficient to account for the formation of the state. Cf. S. Pufendorf, *De jure nature et gentium libri octo* (Francoforti ad Moenum, 1684), p. 208ff. The whole passage is quoted in H. Welzel, *Die Naturrechtslehre S. Pufendorfs* (Berlin, 1958), p. 45, note 49. For Hegel, too, as the passages quoted reveal, there is a natural ground to social interaction in general. But the remarkable thing, given this assumption, is why he is still capable of subsuming the family under the concept of free will. It is quite true – as I attempt to show below – that the family is grounded on its "objective" side in an act of will, namely, the free consent of the partners. But this act of will is related to a pre-given content, namely, the sensibility of the individuals, which itself in turn represents a specific sphere of interaction.
10. Natural ethical life is implied in the Hegelian concept of the family.
11. "[T]he sentiment [of family life] consists in the fact that self-consciousness finds its individuality *within this unity* as something existing essentially in and for itself, in order to be within it not as a person for him or herself, but as a family *member*" (*Rph*, p. 237).
12. D. Leclerq in *Die Familie* (Freiburg, 1955) says that the institution of marriage unites independent and self-sufficient "persons" who pursue their own ends as human beings in an autonomous fashion (p. 13) and that "marriage [...] is the essential act in which the human being take control over [his or her] life" (p. 15). But this is actually true only for the institution of the

modern family. It is only with the development of the "person," that is, only as a result of certain historical learning processes on the part of the species as a whole, that individuals are first placed in any position at all to take some *control* over themselves in this manner. The fact that individuals can take such control over their lives presupposes an emancipation from the "universal," and in this case that means from the traditional extended family. It is only individuals that have expressly detached themselves from traditional forms of association and bonding who now find themselves in a position to join together, on the basis of a developed individual will, within the more complex "person" of the family. But this is a process of emancipation that is essentially accomplished with the emergence of civil society. From a historical point of view, the disintegration of the extended family, which is in turn grounded in the transformed economic conditions, is the condition for the liberation of individuals from their traditional forms of association.

13. In this connection, R. König speaks of the "priority of the family with respect to marriage." For, in the strict sense, marriage was not traditionally responsible for the grounding of the family. Marriage represented, rather, the incorporation of a new member, usually the wife, into the existing family association. As the affected party, the existing family participated in the choice of appropriate spouse. The sentiments of the marriage partners themselves played a distinctly subordinate role in this regard (cf. R. König, "Soziologie der Familie," in *Soziologie*, eds. A. Gehlen and H. Schelsky (Düsseldorf-Köln, 1955)). Hegel also recognizes the priority of the family with respect to marriage as far as the older traditional form of the family is concerned (*Rph*, 251; §172; ET: p. 116).
14. Cf. O. Brunner, "Hausväterliteratur," in *Handwörterbuch der Sozialwissenschaften* (Stuttgart-Tübingen-Göttingen, 1956), vol. 5, p. 92ff., and the literature there cited.
15. Cf. W. H. Riehl, *Naturgeschichte des Volks*, vol. 3: *Die Familie* (Stuttgart-Berlin, 1904), p. 158ff. Riehl laments the disintegration of the integral household as a result of contemporary "dynamic forces" at work within the bourgeoisie and the proletariat. Cf. also the second volume of his study concerning the nature of civil society.
16. Cf. for a comprehensive typology of the family St. Munke, "Familie," in *Handwörterbuch der Sozialwissenschaften* (1961), vol. 3, p. 472.
17. The family here also included the servants, in addition to parents, children, grandparents, and the more extended family. Kant still speaks of the family in this broad sense: see *The Metaphysics of Morals, the Doctrine of Right* (§§23 and 30) and his letter to C. G. Schulz of July 10, 1797. The fact that the servants are included in this way is one of the characteristic features of the broader family unit as an economic body, and indeed W. H. Riehl interpreted the emancipation of servants from the family as a sign of its final collapse. Even as the nineteenth century advanced, it was still in part assumed that the servants formed part of the family (cf., e.g., C. V. Rotteck and C. Welcker, "The Family" in *Staatslexicon* (1846), vol. 4, p. 606). It is worth noting in this

connection that Rotteck, a liberal publicist for the cause of constitutional change, found it quite "reprehensible" and "absurd" that adult offspring should remain within the body of the original family unit (p. 604). The fact that the offspring generally remained within the family unit was just as characteristic of the broader traditional family as the incorporation of servants within the latter.

18. This is a task that Hegel, recognizing that a functional displacement has taken place here, ascribes to the "corporations" or the "police," that is, to an essentially social institution. The corporation takes over the "concern for particular contingencies" (*Rph*, 324). As far as welfare for the elderly is concerned, the corporation steps in when those persons that *belong* to it as members find themselves in a situation of extreme need that they are unable to meet from their own immediate resources. Hegel does not say that the children who have now detached themselves from the immediate family association have a duty to care for their parents in this respect. Hence, it is quite reasonable that he also speaks of the corporation as a "second family" (*ibid.*). "The universal power (the police) assumes the role of the family as far as the *poor* are concerned" (*Rph*, 317; ET: p. 149).
19. W. H. Riehl and F. Le Play (*Les Ouvriers européens* (Paris, 1855)) are widely regarded as the founders of the modern sociology of the family, although their own researches were marked by distinctly conservative purposes (cf. G. Schwägler, *Soziologie der Familie: Ursprung und Entwicklung* (Tübingen, 1970), pp. 33–51). Both authors, who are followed in this by subsequent sociological research into the family, interpret the extended family as the traditional family type and note the tendencies at work in the modern world leading to its disappearance and the resulting emergence of the smaller family centered around a nucleus of its own. Their researches were principally directed toward the field of juridical regulation (Schwägler, p. 137), and they ignored, for lack of relevant empirical evidence, those real living conditions that deviated from the positively established legal norms. Subsequent historical research has produced a rather modified picture of the situation in this respect. One more recent investigation, for example, has paid attention to general longevity, the age at which partners get married, and the duration of marriages, and has thus revealed that from the seventeenth to the nineteenth century, it was rare for more than two generations to continue living together within the same household, that the number of family members therefore was actually maintained within relatively narrow limits (cf. E. J. Walter, "Kritik einiger familiensoziologischer Begriffe im Lichte der politischen Arithmetik des 18. Jahrhunderts," in *Schweizerische Zeitschrift für Volkswirtschaft und Statistik* (1961), Bd. 97, pp. 64–75, and in the same connection, Schwägler, p. 141ff.). It is universally accepted that the traditional family tended toward a much more extended structure, that "distant relatives, attendants, personal employees, dependent tenants and domestic servants" (Schwägler, p. 141) were regarded as members of the family in this broader sense, a situation that was also expressly recognized juridically and theoretically (as the literary genre concerned with the head of the family, the "Hausväterliteratur," reveals).

20. For the sake of completing the overall picture, one also could cite certain passages from Hegel's earlier writings in which the family is emphatically celebrated as the ethical relationship par excellence. "It seems that the ethical dimension must be located in the relationship between the individual family members and the whole family as their own substance" (SW II, 342, *PbG*; ET: p. 269; cf. also Hegel's more detailed remarks on the form of interaction characteristic of the family: SW II, 347ff.; *PbG*; ET: p. 273ff.). "The first necessary relationship in which the individual enters into relation with others is that of the family" (SW III, 88). "*Life within the family* [...] is a personal relationship, a relationship of feeling and love, of natural faith and trust"; *it is not a bond founded on a thing*, but is a natural bond of blood; *the child counts as valuable here simply because it is a child*; the child receives the love of its parents without having to merit that love, just as it also has to bear their anger without any right to oppose it" (SW III, 269). It is obvious that Hegel constructs the family as natural ethical life in distinction from the "world" in which 'merit' counts above all, in which the human being counts [...] in accordance with his or her aptitudes and skills, his or her usefulness in one or other sphere of this world."
21. [I]t is marriage and the married couple that [...] become the inner core of this type of family to which the children relate with a certain independence from the first, and indeed with a certain distance" (König, *Soziologie der Familie*, p. 138).
22. Thus as far as the family in modern society is concerned – "in contrast to almost all other types of family" (Goode) – individuals generally find themselves involved with *two* families in the course of their life, the one into which they were born and in which they were originally socialized (the so-called orienting family), and the one they establish for themselves (the "propagating family"). Cf. on this W. J. Goode, *Die Struktur der Familie* (Köln-Opladen, 1960), p. 78f.; also cf. Hegel's remarks on the two families in *Rph*, 255 (§177).
23. Cf. R. König, "Familie," in "Soziologie," *Fischerlexicon*, ed. R. König (Neuausgabe Frankfurt am Main, 1967), p. 145.
24. Cf. R. König, "Desintegration und Desorganization der Familie," in *Materi- alien zur Soziologie der Familie* (Köln, 1955).
25. König, "Familie," p. 78.
26. Cf. Goode, *Die Struktur der Familie*, pp. 19 and 32.
27. For the separation between society and family, cf. J. Habermas, *Strukturwandel der Öffentlichkeit*, p. 168ff. (ET: *The Structural Transformation of the Public Sphere*, §17: The Polarization of the Social and the Intimate Spheres).
28. *Ibid.*, p. 171.
29. There is an exemplary description of this transitional type of family in Stifter's *Nachsommer*. The financial resources of the family, exclusively administered by the father, are precisely calculated in capitalist terms. The wealth specifically inherited by the children, legally separate though it is, is also included in the process of valuation. The resulting construction of the house *outside* the

town thus also leads to a distinct external separation between the personal and the professional spheres of life. This is merely to draw the appropriate conclusion from the fact that the family, indeed, has long since ceased to exercise any function *within* the sphere of economic production, although it has still retained a function *for* that sphere. It is now only the head of the family who finds himself involved *within* the sphere of production, that is, within an essentially social context of life. The rest of the family remains and is expressly maintained within the reserved and private sphere of domestic intimacy, which constitutes a kind of refuge for the father. One could say that the Hegelian idea of the family has found its exemplary expression in Stifter's novel.

30. J. Habermas, op. cit., p. 171.
31. *Ibid.*, p. 168.
32. Hegel distinguishes this attitude from that which formerly prevailed in what he calls the "substantial estate," or in the traditional form of family life, which "could be described as the *older kind* of family that essentially consumes what it has before it" (*Rph*, 282; ET: p. 270).
33. König, *Soziologie der Familie*, p. 138.
34. Cf. *ibid.*, p. 146.
35. Sociologists oriented toward psychoanalytic theory have attempted to define the process of character formation more precisely in terms of its genesis and function. In this regard, cf. the groundbreaking "Studien über Autorität und Familie," ed. M. Horkheimer (Paris, 1936). The "General Section" by Max Horkheimer and the "Social-Psychological Section" by Erich Fromm are of particular interest (reprinted in M. Horkheimer, *Kritische Theorie*, ed. A. Schmidt (Frankfurt am Main, 1968), vol. 2, pp. 277–360).
36. König, *Soziologie der Familie*, p. 146. The fact that the family is also increasingly losing its former tasks of primary socialization shows that its place and function in society is still continuing to change. Cf. D. Riesman, *The Lonely Crowd*, and J. Habermas, *The Structural Transformation of the Public Sphere*, and the further literature cited there.
37. Hegel clearly sees that social and political institutions are now explicitly intervening in the roles and functions once traditionally ascribed to the family alone. He concedes the "right" to such intervention. In this connection, see Hegel's particularly clear remarks in *Rph*, 314ff. (§238ff.).
38. Cf. Aristotle, *Politics*, III 1, 1275 a 1ff.
39. Cf. the example provided by König, *Soziologie der Familie*, p. 139f.
40. Modern sociological research clearly has shown the need to qualify such observations, and that particular family origin and background is still decisive for one's status in society, for example. Cf. the empirical evidence that those occupying privileged positions in state and society are almost exclusively drawn from families that are already part of the social elite (W. Zapf, *Wandlungen in der deutschen Elite 1919–61* (Munich, 1965)). There is also evidence to show that, despite claims concerning the total permeability of social class, the actual upward mobility of members from the lower social groups is in fact extremely

limited (as is further confirmed by empirical research concerning the persisting educational barriers to advancement). Cf. P. M. Roeder et al., *Sozialisation und Schulerfolg* (Heidelberg, 1965); H.-G. Rolff, *Sozialisation und Auslese durch die Schule* (Heidelberg, 1967).

41. Hegel does not regard marriage as a contractual relationship, since in the latter case individuals determine their wills solely in relation to things while otherwise remaining "independent persons" (*Rph*, 131ff., 242; ET: pp. 58ff., 112).
42. "The *ethical* dimension of marriage consists in the consciousness of this unity as a substantial end, and thus consists in the love, the trust and the shared character of one's individual existence as a whole . . ." (*Rph*, 241; ET: p. 112). Within marriage the shared ("universal") will not simply be a means, as it is in civil society, but has a substantive content in its own right.
43. M. Horkheimer was one of the first to investigate the repercussions of society in general on the family and emphasize that the primary socialization of children within the family produces precisely the kinds of *character* that "social life specifically demands" (Horkheimer, op. cit., p. 330). But he has *also* stressed the kind of ethical life that remains peculiar to the domestic sphere: "in the family [. . .] the human being has always also possessed the possibility of acting not merely as a function but specifically as a human being"; "the experience of a shared interest [. . .] has acquired a positive form in the context of sexual love and, in particular, of maternal concern and solicitude"; "to that extent the family leads not to the idea of bourgeois autonomy, but rather to an intimation of a more satisfying condition of life in general." And in the context of these observations, Horkheimer specifically notes that "Hegel [. . .] recognized and presented precisely *this* opposition between the family and the social whole" (*ibid.*, p. 346ff.).
44. H. Krempel claims that "Hegel does not recognize the place of love within the family [. . .] and leaves no room for the development of a loving relationship" (H. Krempel, *Zur Moralphilosophie Hegels* (Berlin, 1972), p. 105). This is obviously quite untrue. Hegel was merely concerned to point out that a purely instinctual love was insufficient to maintain a lasting relationship and that the task was to develop the marriage relationship imaginatively and deliberately in order to eliminate the "ephemeral, capricious and simply subjective" element (*Rph*, 240; ET: p. 262; cf. also the passages from Hegel that Krempel himself cites). It is by no means the case, as Krempel claims, that Hegel one-sidedly emphasizes "reason" at the expense of "feeling" in order "to construct an ideological justification of the family based on the institution of private property" (*ibid.*). For it was Hegel above all who expressly refused to regard marriage and the family as a legal contract and insisted on defining their essential character independently of the sphere of economic needs and private property. Private property comes into question only where the family's relation to society in general is concerned.
45. Hegel does not criticize the collapse of traditional family relations as an ethical decline, as Marx tends to do. Marx regarded the dissolution of family relations that were based on agriculture, through "original accumulation" that destroys

the material basis of the latter, as “terrible and disgusting” (cf. K. Marx, *Das Kapital*, in MEW, vol. 23, p. 514).

46. Horkheimer, op. cit.
47. T. Parsons and the exponents of the structural-functional theory whom he largely inspired draw particular attention to the role of primary socialization in the family for the process of social integration generally, although there is no expressly critical intent involved here. Cf. S. Blasche, “Gesellschaftsbegriff und Sozialisationsprozess in den Theorien von E. Durkheim und T. Parsons,” Ph.D. dissertation, Erlangen, 1973.
48. “Where the family still constitutes an association of producers, the head of the family is immediately visible through his productive social achievements, but in the family that has largely shrunk to an association of consumers, his position is mediated by the income he earns and all the more fatefully so in relation to the rest of the family. By virtue of the time he now spends elsewhere, every bourgeois father, even if he bends his back to work or occupies the most wretched position in social life, can take his place as master at home and exercise the crucial role of instructing his children in humility and obedience” (Horkheimer, op. cit., p. 340).
49. It is instructive to consider Stifter’s novel in this context as well. The mother assumes an important part in defining the significance of the intimate domestic sphere in general, and in particular a clearly defined role in the education of the children. One should compare *Rph*, 247 (§166, Addition) with A. Stifter, *Nachsommer* (Darmstadt, 1963), p. 349.

9

The Role of Civil Society in Hegel's Political Philosophy

Rolf-Peter Horstmann

The seemingly endless debate over the proper interpretation of Hegel's political philosophy with respect to its supposedly progressive or reactionary implications and to its supposedly liberal or conservative presuppositions naturally regards Hegel's theory of civil society as a decisive issue in this respect. For, on the one hand, Hegel's development of the concept of civil society, more than any other theoretical element offered in his richly elaborated system of objective spirit, would seem capable of providing the principal burden of proof that all talk of Hegel as the philosopher of the Prussian state, as the dutiful apostle of authority, as the very metaphysician of the state, should simply be consigned to the realm of tendentious legend. And his concept of civil society would seem to suggest that Hegel, on the contrary, should be regarded and interpreted as a theorist of a typically modern form of society, one who can apparently propose the principle of the freedom of the individual as the legitimating foundation of its constitutional structure and social mechanisms. But on the other hand, the "progressive" character of Hegel's theory of civil society, especially when considered in relation to his theory of the state, also would seem to provide grounds for the strong suspicion, voiced repeatedly since the time of Rudolf Haym, that Hegel's "apparent recognition" of the progressive characteristics of modern political reality merely provided him with the best means of "blunting or defusing" the "free attitude and outlook that belongs to those characteristics."¹ And Hegel did so, on this view, precisely in favor of an entirely *étatiste* conception of politics that served to legitimate political quietism by justifying the limitation of individual

freedom through appeal to a universal interest largely identified with the existing executive power of the state.

This ambiguity, which seems to be rooted at the heart of Hegel's political theory itself, has also raised problems for more recent interpreters of Hegel's philosophy, especially those who have striven rather exclusively to establish the "progressive" aspect of his political theory. Thus, George Lukács² and Joachim Ritter,³ in particular, simply to name two representative and influential examples, are forced to perpetrate some interpretative violence in attempting to make the theory of civil society the central focus of Hegel's philosophy, from the sole perspective of which a proper understanding of his entire philosophical approach is to be accomplished. For Lukács, Hegel's early insight into the phenomenon of civil society not only provides the authentic source and origin of the dialectical method, but simultaneously also guarantees the principally "progressive" character of this philosophy, which for him essentially means its explicit orientation to social reality as such. But since Lukács in particular cannot overlook the fact that such a principally progressive character hardly can be predicated of many teachings even in Hegel's earlier political thought, he is forced to extreme measures in attempting to avoid the consequences of this fact for his own claims. Thus, all those elements of Hegel's approach that clearly resist the "progressive thesis" are ascribed to a persistent "idealism" that Hegel was unable to overcome (although it is not so much Hegel himself but the intellectual conditions of Germany at the time that are ultimately responsible for this) or are explained in terms of "the narrow and sometimes primitive boundaries" within which "the social existence of Germany forces and restricts . . . the Hegelian dialectic."⁴ This kind of psychologizing attempt to rescue Hegel from certain elements of his own theory cannot be satisfactory, insofar as the specific problem of the theory in its mature form, precisely its supposed ambiguity, is not resolved in this way, but rather implicitly acknowledged.

It should therefore be regarded initially as a distinct advance in argumentation when Ritter attempts to demonstrate the alleged primacy of the Hegelian insights developed in the context of the theory of civil society, and especially in relation to the theory of the state, by recourse to the conceptual means of Hegel's philosophy itself. Yet he is able to accomplish this only by interpreting the theory of the state as a kind of methodological appendix to precisely the theory of civil society.⁵ This interpretive approach, which in the form elaborated by Ritter has nonetheless generated many fruitful insights with regard to the function of the philosophy of history within Hegel's thought as a whole, simply runs counter

to the texts of Hegel's political philosophy. This approach is inadequate, above all, because it fails to present the full intention of Hegel's political philosophy, and this because it largely abstracts from the specific conditions in which Hegel developed his conception of "ethical life" in the context of the *Philosophy of Right*.

It is therefore symptomatic of the interpretations of Lukács and Ritter that both regard the emphatic role of the phenomenon or the theory of civil society in Hegel's political theory as an argument that frees Hegel from the suspicion of ambiguity in a central part of his philosophy. More recently, however, Manfred Riedel has attempted to interpret this ambiguity as the consequence of a fundamental aporia that Hegel's political philosophy was unable to resolve.⁶ For Riedel, this aporia emerges when we consider the logical-conceptual means at Hegel's disposal in his attempt to sublimate the difference between the state and civil society. These means, according to Riedel, are such that "the very element that Hegel calls on to accomplish mediation here simultaneously expresses the unsublatable character of this difference."⁷ This finds substantive expression in the fact that Hegel was forced to revoke certain liberal moments implicit in his theory of civil society if he was to provide a successful mediation within his theory of the state. This interpretation, convincingly advanced by Riedel as it is, certainly exposes a basic problem that hardly can be denied in the theory of ethical life as presented in Hegel's *Philosophy of Right*, but it is hardly adequate to explain the reasons for this problem. For we must still ask ourselves what it was that led Hegel to present in 1821 a political philosophy that depends on the precise articulation of the difference between state and civil society and the postulated possibility of mediation between them, when in the first edition of the *Encyclopaedia of the Philosophical Sciences* (1817) he had already outlined a political theory in which the developed analysis of this difference is obviously of quite subordinate significance. If the problem of the theory presented in the *Philosophy of Right* is really supposed to lie in the logical difficulties arising from the attempted mediation of the difference between state and civil society, this can be regarded, at most, only as a further problem resulting from the changed conditions of the presentation of the conception underlying Hegel's political philosophy itself. The question concerning the reasons for this change cannot simply be answered by identifying the logical difficulties of Hegel's political theory in its mature form.⁸

The various attempted interpretations of Hegel's political philosophy and its difficulties that we have mentioned here not only suggest that the proper assessment of the role of civil society in Hegel's political theory

remains as much a matter of controversy as before, but also indicate that the key to understanding the political intentions of this theory lies precisely in the appropriate interpretation of the relationship between the state and civil society. But in order to clarify this relationship, it is certainly not sufficient to concentrate primarily on the philosophy of ethical life as developed in the *Philosophy of Right*. For the latter can be understood properly, as I hope to show, only as the result of a development that consists in the elaboration and exposition of various original approaches. It is therefore necessary to consider this development in its particular aspects if we are properly to grasp the specific shape that Hegel's mature theory finally assumes. It will thereby become apparent, if I may anticipate the central claim that follows, that (1) the problem that governs the whole of Hegel's political philosophy was already thoroughly articulated in the Jena period when Hegel first developed his political theory, that (2) Hegel was quite certain of the conceptual means required for his specific solution to this problem very early on, namely, by 1805–6 at the latest, and that (3) the later changes in the presentation of his theory should be regarded as “didactic modifications” of his basic systematic approach.

I

Hegel's early political philosophy, that is, the various approaches initially formulated in the writings of the Jena period, all can be understood as an attempt to realize an original program that was principally concerned to secure the classical, that is, the ancient, concept of ethical life over against the individualistic approaches that characterized the specifically modern tradition of natural law. But “ethical life,” as the principle underlying the classical doctrine of politics, was not simply to be hypostatized over against the influences that the modern natural law tradition had already exercised on political theory. For Hegel, it was, rather, a question of reformulating the classical concept in such a way as to be capable of grasping the social and political actuality of the modern age, and without forfeiting the possibility of grounding and explaining the political institutions of modernity in ways that had first been opened up by the modern theory of natural law.

For Hegel, the program itself is defined essentially by two factors: first, by the conviction that the classical ideal of the state is superior to that of the modern age, and second, by the recognition that the classical

ideal simply cannot be restored given the specific conditions under which the social and political reality of the modern age presents itself. These conditions find their appropriate expression, on the one hand, in the principle of individual autonomy, of the singular individual who is also supposed to provide the foundation for all the more comprehensive structures that include her. Later, in the *Philosophy of Right*, Hegel will describe this same principle as “the principle of conscience” that has been introduced by Christianity as the characteristic principle of modernity and has come to legitimate the standpoint of “morality” that is typical of the modern age. On the other hand, the specifically modern conditions also find expression in the phenomenon of a distinct sphere now separated from the state, one that is essentially determined by the activities of singular individuals in pursuit of their particular and individual ends and purposes apparently without the possibility of these activities being related to one another through anything like a universal end or purpose. It is this sphere that describes “civil society” in the *Philosophy of Right*.

The effective realization of this program lies therefore, provisionally expressed, for Hegel primarily in the problem of mediating the political ideal articulated in the classical tradition with the actual conditions of modernity. Hegel’s early Jena text *On the Scientific Ways of Treating Natural Law* (1802)⁹ must be regarded as his first major attempt to realize this program of uniting the contributions of antiquity and modernity in a systematic fashion, a conception that had already been developing during his Bern and Frankfurt years with his critique of Kant’s practical philosophy and his reflections on the principle of property, and through his considered response to Hölderlin’s ideas concerning the significance of the world of classical antiquity. In this text, Hegel develops a conception of “ethical life” in the context of a critical discussion of the modern theory of natural law, whose empirical version (Hobbes) and formal version (Kant and Fichte) are both charged with an inability, given the individualistic starting point of their respective deductions,¹⁰ to disclose the “scientific totality” (*WBN*, 423; *ET*: p. 109) of society as the unity of opposed determinations. It is this conception of ethical life that will allow us first, according to Hegel, to grasp the concept of natural law in the appropriate way. Within the exposition of this notion of ethical life, which Hegel understands in its totality as a “people” and which thus clearly reveals its Platonic-Aristotelian inspiration,¹¹ Hegel now attempts for the first time to integrate a realm whose elements, as he puts it, constitute “the system of what is known as political economy” (*WBN*,

450; ET: p. 141). He describes these elements themselves as the interrelation of “physical needs and pleasures that, in turn, posited for themselves in their totality, obey one single necessity in their infinite complications” and thus constitute “the system of universal mutual dependence with regard to physical needs and the labor and accumulation [of resources] that these require” (ibid.; ET: p. 141; cf. also ibid., 455; ET: p. 147). It is hardly necessary to point out that it is precisely these elements that later define the sphere of civil society in the *Philosophy of Right*, even if here in this early essay they are still being analyzed as a “system of morality” (ibid., p. 434; ET: p. 122; and several other passages) or as a “system of property and right” (ibid., p. 457; ET: p. 149) in the rather barbarous terms that characterized Hegel’s use of language in that period of his development.

Hegel here interprets this sphere of needs and labor from three perspectives: (1) as a determinate form of universal ethical life, (2) as an independent realm within the ethical universe that must stand in some determinate relationship yet to be explained to the domain of absolute ethical life, and (3) as a determinate “estate” among other estates. It is necessary to explicate these three perspectives briefly here principally because they are capable of clarifying what should be regarded as the very basis and problem of Hegel’s political philosophy as a whole. As far as (1) is concerned: within the realm of the ethical totality, formally interpreted by Hegel as the “indifference” of all the determinations otherwise merely fixed in terms of “relation” (cf. ibid., pp. 479, 433; ET: pp. 173, 121; and several other passages), the sphere of needs and labor appears as the “absolutely negative” (for the following, cf. *WBN*, p. 449ff.; ET: p. 14off.). This description, heavily indebted to Hegel’s peculiar terminology as it is, is intended in the first place to emphasize that this sphere represents a realm that is certainly to be accepted as a “moment” of the ethical totality, but also must be grasped as the moment that is specifically defined as the “[continued] existence (*Bestehen*) of opposition” (ibid., p. 450; ET: p. 141) within the unity of the ethical cosmos here represented as a living being. The phrase “subsistence of opposition” exactly expresses the thought that is implied in Hegel’s characterization of the sphere of needs and labor as the “real negative.” For given the organic living character of pure ethical life, everything that is then defined, in its very structure, by a principle that reveals itself as rigid, inert, and thus intrinsically lifeless must assume the determination of the negative. But this principle, which defines the realm for which it is constitutive as one subsisting “in negativity” (ibid.), makes this realm into one of *real* negativity only when the principle

reveals its own lack (its incapacity to express the living unity of ethical life) as if it were something positive, when it fixes itself as something negative, as Hegel might put it, or subsists as opposition. And when Hegel describes the sum of all possible determinations of the sphere of needs and labor as the “system of reality,” this is not in order to express a resigned recognition of the existing conditions of the modern world. It is intended, rather, to express, as trenchantly as possible, the doubly one-sided character of this sphere whose principle not only lies in the moment of difference in relation to the true unity of ethical life but actually exists, as it were, as this difference and to that extent is the real negative itself.

As for point (2): the relationship between this realm and that of absolute ethical life as defined over against it is also construed on the basis of this, albeit initially purely formal, determination of the realm of needs and labor within the overall context of potential ethical relations. For if the realm of needs is that of the real negative, then two problems immediately arise. In the first place, we must ask how this realm, which must still be acknowledged as a dimension of the ethical cosmos for all its difference in relation to the living unity of ethical life, can possibly be integrated into the structures of absolute ethical life without effectively destroying the latter. And in the second place, we must be able to explain how the ethical totality in the form of the positive that is opposed to the negative, namely, as the state (*ibid.*, 451; ET: p. 142), relates to this negative moment. Hegel attempts to answer the first question by recourse to his interesting theory of the “inorganic nature of the ethical” (*ibid.*, 454, 458; ET; pp. 146, 151) to which pure ethical life “gives up and sacrifices part of itself” (*ibid.*, 458; ET: p. 151) in order to maintain its purity and vitality and thereby simultaneously to reconcile itself with its inorganic nature.¹² These reflections reveal more clearly than anything else the central conception that governs Hegel’s early political philosophy: precisely in order to uphold the idea of pure and living ethical life as the concrete universal over against an actuality increasingly organized according to principles that in Hegel’s eyes possess the status of one-sided abstractions, it is not a question of simply attempting to cancel the validity of these principles, something that itself would result merely in the establishment of further one-sided abstractions. That is why he strives to develop a model that does preserve the absolute claim of ethical life as what is exclusively valid, but that is also in a position to integrate what is itself negative and inorganic in relation to that life, namely, the realm of needs and labor, as one of the “zones of the ethical” (*ibid.*, 461; ET: p. 155). Hegel attempts to meet this twofold demand with his theory

of sacrifice, which effectively succeeds both in separating the “other” of absolute ethical life, as the realm of necessity and fate, from the zone of living ethical life and in preserving it, precisely as the fate of living ethical life, in a relationship to that whose “other” it is.

With regard to the second question, that concerning the relationship between absolute ethical life as the positive and the real negative of the sphere of property and labor, Hegel emphatically opts for a positively conceived ethical life of the state that functions to limit the activities characteristically pursued within the sphere of the negative: “since this system of reality exists wholly within the realm of negativity and infinitude, it follows in respect of its relationship to the positive totality that it must be treated by the latter in an entirely negative fashion and must remain subject to its rule.” For “whatever is by nature negative must remain negative and may not become a fixture” (*ibid.*, 450; ET: p. 141). Absolute ethical life, functioning as the state that has assumed its own shape precisely by isolating the realm of the negative, thus takes over the task of limiting the realm of needs and labor so that the independence of the “positive ethical life of the state” (*ibid.*, 451; ET: p. 142) is not endangered, that is, is not corrupted by the one-sided dominance of this realm in its own claim to be the positive expression – if also one-sided in assuming its own specific form – of genuine ethical life. The state accomplishes this purpose of maintaining the realm of needs and labor “in a feeling of its inner nullity” and of preventing its “quantitative expansion and the production of ever-increasing difference and inequality” (*ibid.*), so Hegel says, in a “largely unconscious manner” by recourse to the specific means at its disposal, that is, through an “increasing expenditure . . . thereby reducing possession and making acquisition more difficult. . . . War does most to accelerate this tendency by bringing multiple confusion into the process of acquisition, but also by [encouraging] jealousy on the part of other classes and placing restrictions on trade” (*ibid.*). The task of the state, conceived as the positive expression of absolute ethical life, is therefore not to destroy the realm of needs and labor by overturning the principles that prevail within and essentially govern that realm. The task of the state is, rather, to acknowledge this realm as the sphere of “reality,” which is immanently justified according to the Hegelian concept of ethical life precisely through the recognition of its necessity.

As far as point (3) is concerned: Hegel gives more concrete shape to this initially formal structure, reflecting the different relations in which the ethical whole is organized, only through his doctrine of the estates as

the real shapes of those relations. In accordance with his general division of the ethical totality into forms that are to be regarded as the unimpaired expression of his idea of vital ethical life and those in which the principle of ethical life appears only in a highly distorted way, Hegel principally distinguishes between two “estates,” that of the free and that of the unfree. The general orientation of Hegel’s thought toward the Platonic-Aristotelian doctrine of the state is once again very clearly revealed when he defines the character of the estate of absolute ethical life, that of the free, in terms of “what the Greeks named *politeuein*,” something that for Hegel implies “the maintenance of the ethical organization as a whole” (ibid., 455; ET: p. 147) even at the cost of one’s own life. And the manner in which he defines the estate of the “unfree”¹³ reveals the substantive reasons why he cannot accept the realm of needs and labor as an expression of the true structure of ethical life and interprets it, on the contrary, simply as resulting from the distortion of the principles of the latter. For this realm is essentially defined for Hegel through the exclusive validity that is here ascribed to the principle of property and right (ibid., 451, 454ff.; ET: pp. 142, 146). Yet property, understood as legally secured possession, and right, understood as the purely formal legitimating basis of property, are for the Hegel of the Jena period nothing but forms of particularity, that is, abstract determinations that are not, contrary to the demands of truly ethical determinations, in a position properly to mediate their universal character with the domain of concrete singularity, but only can subsume the individual as a case beneath that universality.¹⁴ When Hegel therefore characterizes the principles of right and property as forms of particularity, he wishes to emphasize their character as “abstractly universal” precisely in order to distinguish them structurally from the realm of the “concrete universal” of true ethical life.¹⁵

But Hegel cannot successfully define the function of the estate of the unfree, which must be regarded as the shape in which the realm of needs and labor also appears in actuality, by demonstrating the particularity of the principles operative here. What allows Hegel to define this function is, rather, the fact that the particularities of “property” and “right” in the sphere where they characteristically prevail also simultaneously appear as something universal. To that extent, they do not merely usurp a status that does not properly belong to them as principles of a one-sided shape of ethical life, but rather they thereby determine the context within which the realm of needs and labor is essentially enclosed. For if the principles of right and property are the sole criteria under which this realm can understand itself in ethical terms at all, this also thereby simultaneously

determines the limits of its possible role within ethical life as a whole. For the principles of property and right then represent precisely the only thing that is relevant for the members of this realm as far as their position and existence in relation to the other members of society are concerned. That is why Hegel can say: “The status [*Potenz*] of this class is accordingly determined by the fact that its province is possession in general and the justice that is possible in this context, that it at the same time constitutes a coherent system and [. . .] each individual who is inherently [*an sich*] capable of possession is related to all others as a universal entity, or as a citizen in the sense of a *bourgeois*. For the political nullity that results from the fact that the members of this class are private individuals, these citizens find compensation in the fruits of peace and of gainful employment [*des Erwerbes*], and in the perfect security, both as individuals and as a whole, in which they enjoy themselves” (ibid., 458; ET: pp. 150–51). It is precisely because the members of this estate, characterized exclusively by the validity of the principles of property and right, cannot themselves, unlike the members of the first estate, assume concern for the preservation of the ethical whole, that their effective contribution must be regarded on the conception Hegel presents here as an essentially unpolitical one, as something that is negative in relation to truly ethical action.

This first detailed exposition of the systematic placement of the sphere of needs and labor within his political philosophy and the interpretation of its function in the context of ethical life as a whole not only sharply reveals the overall approach that will also determine Hegel’s later theoretical engagement with the realm of civil society and that he expounds as the question concerning the possibility of articulating the appropriate relationship between the universal and the particular. It is also revealing with regard to the authentic motivation behind Hegel’s necessary examination of the relationship between this realm and an absolute form of ethical life. For Hegel’s determination of this relationship ultimately legitimates his general critique of modern theories of natural law. Insofar as modern natural law is characterized for Hegel by the fact that it develops the theoretical basis of its deduction of all social and political, that is, of all ethical relationships from the concept of the isolated singular individual, and thus provides the means – expressed in Hegel’s terminology – of transforming the singular into the universal, it no longer leaves any room for the idea of a universal ethical life as Hegel understands it. Universal ethical life, as the concrete universal, is specifically and precisely supposed to constitute the ground for all its own internal particular articulations and to that

extent also first properly provides the basis for speaking meaningfully of each singular individual as one who can step forward as a “subject” in ethical, that is, in social and political contexts and relationships. Modern natural law for Hegel is therefore something to be contested not merely on account of its one-sided aspects (*ibid.*, 427ff.; ET: p. 114ff.), but rather and above all because it renders the (Hegelian) concept of ethical life itself impossible (*ibid.*, 445ff., 442ff.; ET: pp. 135ff., 132ff.). On the other hand, however, Hegel sees very clearly that the modern individualistic theory of natural law is not without its own *fundamentum in re*, and thus that its formal principle, that of transforming the singular into the universal, adequately reflects the specific conditions under which the social reality of the modern age has developed. Hegel must therefore strive to limit the validity of the principle of natural law to a realm that certainly has its place within ethical life as a whole, but is not itself identical with that ethical whole. And this realm is precisely that of needs and labor over against which absolute ethical life appears in the positive shape of the state.

If we bear this distinction in mind, we can also formulate the substance of Hegel’s sharp criticisms of the individualistic modern tradition of natural law by saying that its weakness in Hegel’s eyes lies in essentially conflating the state and civil society (*Rph* §182 Addition).¹⁶ For this conflation eliminates the possibility of grasping the “difference” that Hegel has introduced and thus destroys his entire approach to the problem. The reason therefore why Hegel assesses the realm of needs and labor as he does lies in the attempt, essential to his own theoretical conception, to articulate a structure that can plausibly be regarded as that of ethical life. And this explains why Hegel identifies the central problem for both the theory of ethical life and ethical reality itself in the one-sided dominance of the perspective of the singular individual elevated to the level of a universal principle, quite irrespective of whether this singular individual presents himself as absolute individuality or as the particular abstraction derived from right and property. For “sickness and the seeds of death are present if one part organizes itself and escapes from the authority of the whole; for by isolating itself in this way, it affects the whole negatively, or even forces it to organize itself solely for [the benefit of] this area; it is as if vitality of the intestines, which serves the whole [organism], were to form itself into separate animals, or the liver were to make itself the dominant organ and compel the entire organism to perform its function” (*WBN*, 476; ET: pp. 169–70).

II

Hegel's early theory of the sphere of needs and labor in terms of a developed conception of a living ethical totality already clearly expresses the fundamental assumption that will continue to govern the further development of Hegel's political philosophy: the priority of the universal with respect to the moments of particularity. It also clearly reveals that the problem of integrating domains governed by one-sided and consequently abstract principles at the level of the "universal," namely, the problem of integrating typically modern kinds of social relations based on the modern forms of labor and production within an overall conception of ethical life, represents the central task for a political theory such as Hegel's that is oriented to classical models. The theory presented here is still incomplete, however, insofar as it is marked by some uncertainty concerning the concrete articulation of the universal, that is, of the dimension that constitutes the framework for the living ethical totality within which the sphere of needs and labor finds its appropriate place. And there are good grounds for this uncertainty. For Hegel was essentially concerned, as we saw, both with distinguishing the sphere of needs and labor within the postulated universal and somehow incorporating that sphere into the latter. But the universal itself thereby inevitably appears under a twofold guise: on the one hand, as the absolute ethical life that embraces all its manifestations within its own living organized form, and on the other, as the positive universal that has assumed a living form of its own, one that stands as such over against other forms of the ethical world and is thus specifically determined by Hegel as the "state" (*ibid.*, 451, 454; ET: pp. 142, 146).

The difficulty that this twofold function of the universal raises is not so much the logical problem of determining the relation between absolute and positive universality as the question concerning the substantial determination of the positive universal that stands over against the other forms of ethical life. Or expressed in another way: if we understand the state as absolute ethical life that has assumed a specific form of its own, if we posit a distinction between absolute ethical life and the positive ethical life of the state, then we must ask precisely how this distinction can be sustained within the concrete determination of the state. We must ask, in other words, how the state can indeed be regarded as a universal, though only as a positive universal, which is permeated by the concrete universality of ethical life in such a way that the latter can find its adequate

expression only in the state, which is yet also to be distinguished from it. The problem here is to establish a conception of the state within the framework of a theory of absolute ethical life without being able to assert the identity between the state and absolute ethical life. At the same time, the theory must lay claim to this identity if it is effectively to demonstrate the specific difference of the state with respect to the other forms of ethical life. We shall see that it is the resolution of this difficulty that conditions the obvious transformation that Hegel's conception of the state subsequently undergoes.¹⁷

Hegel attempts to resolve the systematic problem identified here by distinguishing between "absolute" and "universal" government over against the realm of particularity expressed in the aggregate of the various classes or estates.¹⁸ The "absolute government," which Hegel characterizes in manifestly Platonic terms as that of "priests and elders," is interpreted as an absolute power that stands *above* all classes (*SS*, 486ff.), and to that extent as a concrete expression of the absolute idea of ethical life the various particular forms of which are of no concern to it (*ibid.*, 485). In this respect, universal government thus stands over against the particular forms of ethical life as itself a specific or particular form (*ibid.*, 488ff.). It hardly seems to have escaped Hegel that this differentiation does not really remove the problem of the twofold and mutually incompatible determination of what appears as the government or the state¹⁹ (namely, of having to be both the adequate expression of absolute ethical life and one particular form over against others), since the difficulty has now merely been displaced onto the concept of "absolute government" itself. For although Hegel describes absolute government as the "indifferent Idea" (*SS*, 485) or as "absolute indifference" (*ibid.*, 484), which is to say as the reality of absolute ethical life itself, he is thereby also forced to admit that it is counterposed qua government to the sphere of particularity and cannot for that very reason be the "absolute soul of what is living," cannot thus be the ethical totality. This latter resides, according to Hegel, in "the people itself as a whole" (*ibid.*, 485).

Now although this early attempt does not properly resolve the problem of the relationship between government or state and absolute ethical life, it does lead to a certain reformulation of the position that Hegel had adopted in the *Essay on Natural Law*. For he is now compelled to rethink the formerly sharp distinction between the sphere of needs and labor as the purely negative dimension over against both positive and absolute ethical life. For insofar as Hegel, in the *System of Ethical Life*, places absolute government as the pure expression of ethical life over and above *all* classes

and interprets the former in distinction from all classes, the sphere of relative ethical life, presented here as the “estate of probity . . . with respect to need-based labor, possessions, acquisition and property” (ibid., 477), is initially grasped as a specific form among others of an ethical life that particularizes itself in and through the estates. As far as the attempt to determine the relationship between organic ethical life and its concrete shapes is concerned, the principal opposition is thus now no longer that between a living totality of ethical life and its own inorganic nature. The opposition is, rather, between government, as the expression of absolute ethical life that is itself a particular form standing over against the particularity of the estates, and the estates whose own shared character of particularity now comes to the fore over against the specific form of particularity that characterizes the sphere of needs and labor. Consequently, the sphere of needs and labor now appears formally integrated as a realm of association that is distinguished as a whole from the “indifferent idea” of government.

But such formal integration cannot be interpreted as an indication that Hegel has changed the foundations of the model he had developed in the *Essay on Natural Law*. Rather, it must be seen as the attempted systematic articulation of the project for which Hegel had already formulated the foundations in the *Essay on Natural Law*, namely, a theory of ethical life capable of demonstrating the priority of the people as the universal, represented as a living organism, over against the individual interests of particular social formations within the totality of ethical life.

In the systematic approach that is sketched out in the *System of Ethical Life*, the substantive motivations behind Hegel’s political philosophy thus retreat somewhat behind the logical problem of determining the relationship between the government or the state and absolute ethical life, on the one hand, and the particular forms of ethical life, or the estates, on the other. And the logical problems are subsequently resolved for Hegel through the rearticulation of the concept of state and ethical life as grounded in and derived from the structure of self-consciousness.²⁰ This new position finds expression in the texts formerly known as *Jena Realphilosophie II*, a manuscript produced for lecturing purposes in 1805–6. For insofar as Hegel now grasps the ethical whole as the “unity of individuality and the universal” (*JR II*, 248; *ET*: p. 157), he can interpret the various concrete forms in which the ethical whole is expressed as the various forms in which the said unity presents itself. The government and the state²¹ are thus certainly determined as the universal, but as the universal in the form of individuality.²² And the other forms of the whole are

certainly determined as “entrails” of the whole and to that extent as moments of the universal unity of the ethical, but they are also moments that “constitute themselves in their abstraction” (*JR* II, 252; ET: p. 161) and thus acquire the determination of universality only as the form of their isolated shape. It has often and rightly been observed before that this new standpoint effectively implies the abandonment of a political conception substantially oriented toward the ethical life of the classical *polis*.²³ For precisely the principle of singularity, or individuality, could not be integrated within the concept of “ancient ethical life” in the *polis*²⁴ in a way that also acknowledged its standing as an independent extreme within the living totality of ethical life. That is why the principle had to be interpreted in the form of particularity, as the negative to which living universality could relate only in the mode of sacrifice. The position as presented in *Realphilosophie II* accomplishes this integration, which appeared to Hegel in the *Essay on Natural Law* and the *System of Ethical Life* as the most significant problem facing a political philosophy oriented toward the ancient concept of ethical life, by developing the principle of singularity and by determining the relationship between singularity and universality as one that first arises out of the unity of both determinations, as the very ground of the possibility of a relationship in general.

III

This new articulation of the foundations of Hegel’s political philosophy stands at the end of a process that could be described as a transition from a philosophical model oriented toward the concepts of life and organism to one conceived in terms of the structure of consciousness.²⁵ Hegel now sees himself in a position to sustain systematically his own critical position with respect to the modern natural law tradition without having to appeal to theoretical and conceptual resources of antiquity. Taking the totality of all social and political relations conceived as the unity of singularity and universality as his point of departure, Hegel can now demonstrate two things: (1) that even the aggregate of individual interests and purposes must be logically distinguished from the universal interest and purpose, and (2) that the ways in which the particular forms of the ethical whole – and here that means the estates and the government – appear can be constituted only on the basis of this unity of singularity and universality that unfolds itself into its various extremes. The possibility of demonstrating point (1) also presents the possibility of substantiating the claim that

Hegel critically had raised against modern natural law in both its empirical and formal variants, namely, the charge that such an approach merely established a one-sided theory of the ethical totality that was incapable of grasping the living concrete universal except as something abstract and thus itself particular. And the possibility of demonstrating point (2) provides the condition for providing a systematic framework for this critical claim of Hegel's. We should acknowledge that Hegel had good reason, in his subsequent developments of this freshly grounded position, for believing that the problem from which his political philosophy began, namely, the relationship between the particular determinations of ethical life and the idea of a universal living ethical life in general, had been effectively resolved by the categorial means elaborated in *Realphilosophie II*. Thus we do not have to pursue the exposition of this problem in the context of Hegel's later systematic political theory in such a way as to justify the original genesis of his projected solution. Thus in the shorter outlines of his political philosophy that Hegel provided after the Jena period (e.g., in the curricular material produced at the Gymnasium in Nuremberg²⁶ or in the first edition of the *Encyclopaedia of the Philosophical Sciences* of 1817), Hegel began, as he had earlier in the *Essay on Natural Law* or as he would later in the *Philosophy of Right*, not by emphasizing the inadequately one-sided character of particular forms of ethical life but by developing these particular forms from the concept of "society as state"²⁷ and of the "free substance" (*EPW* §431) which is "the universal work" (*ibid.* §433). He proceeds in this way not because he is unclear, for example, about the structural difference between the principles of the "true" or "relative" forms of ethical life, but rather because the very awareness of this difference demands an account that can provide a "rational" basis for this difference, an account that Hegel believed he already could present. It is only superficially surprising, therefore, if in the first edition of the *Encyclopaedia* (1817) Hegel divides the relevant chapter on ethical life as follows: "1. The individual people 2. International law 3. Universal world history" (*ibid.*, XV). For the basis for this division, on Hegel's systematic presuppositions, is not so much the question concerning the inner structure of the state, already clarified in terms of the universal principle of ethical life, but that concerning the relationship between the various states as subjects to one another, a relationship that is then presented as a further case of the "dialectic" (*ibid.* §448) of universality and particularity.

It is all the more genuinely surprising that in the definitive exposition of his political thought, the *Philosophy of Right* of 1821, Hegel should depart

from the kind of presentation that as we have sought to show, forms the consistent culmination of the development of his theoretical standpoint. He does so in favor of a formulation that is principally concerned with determining the specific difference between the universal and particular, namely, between the state and civil society, and that thus once again takes the question of the constitution as the central issue for demonstrating the coherence of his political theory. Understanding the reasons for this change of approach is decisive for any proper “political” assessment of Hegel’s mature political philosophy, especially as far as his theory of civil society is concerned. In this connection, we should note that although the conceptual formulation of the term “civil society” represented a relatively new category in Hegel’s political theory the identification of the domain within ethical life that is designated by this term certainly cannot be regarded as a new element in Hegel’s theory but is largely identical with the sphere of needs and labor (*NRA*, 450 and several other passages), with the abstractions from the organic whole (*JR* II, 252), in terms of which Hegel had earlier defined the realm where particularity prevails. The question concerning the new presentation is therefore less a question of substantive alteration than one concerning the precise reasons why Hegel should have changed the exposition of a theory that remained largely unchanged with respect to its essential foundations.

In this context, it is particularly interesting to consider a piece that Hegel composed shortly after the appearance of the first edition of the *Encyclopaedia* and published in the *Heidelberg Yearbooks* toward the end of 1817, namely, the *Proceedings of the Estates Assembly in the Kingdom of Wurtemberg 1815–1816* (or the *Essay on the Estates Assembly*; *SPR*, p. 155ff.). This piece, in which Hegel very clearly engaged with a topical question of contemporary politics, expresses an extremely critical view of the position adopted by the Estates Assembly in considering the projected constitution that King Frederick II had offered them for the Kingdom of Wurtemberg, and of certain aspects of the projected constitution itself. There has been much debate about what precisely prompted Hegel’s intervention; the whole question has long been a subject of heated controversy;²⁸ and there is no effective unanimity on the issue even today. The only thing that is fairly clear is that Hegel was reacting in this essay to certain difficulties that arose from an argument with his Heidelberg colleague Paulus. The latter was a spokesman for the so-called advocates of ancient right, that is, those who supported the position of the Estates Assembly against accepting the projected constitution offered by the King.²⁹

But the *Essay on the Estates* should be seen not merely as an expression of a topical controversy of the day, but also as an application of the principles of Hegel's political philosophy to a specific political situation. This situation is characterized for Hegel by the fact that the Estates Assembly was attempting to oppose and frustrate the "establishment of a rational monarchical arrangement" (*SPR*, 161) and insisting instead on the rights formerly guaranteed through the old constitution of Wurtemberg. Hegel regards the establishment of a monarchy, and thus the creation of a political constitution with "provision for a representative constitution, of a state of law, of the participation of the people in matters of legislation" (*ibid.*), as a "higher necessity" because this alone properly constitutes the "rational" form of organization for the state as something that is truly universal. In attempting to boycott the establishment of such arrangements in favor of former particular privileges, the Estates Assembly, so Hegel argues, was essentially failing in two ways. In the first place, it shows no insight into the nature of the "living" interconnection that the state, properly understood, presents, something that is secured only "within an articulated whole whose parts themselves form particular and subordinate spheres" (*ibid.*, 177). In the second place, it overlooks the fact that its insistence on particular "ancient" rights has become an anachronism under the conditions that have been created by the French Revolution. By these new conditions, to which the political consciousness of the time should properly respond, Hegel is thinking not so much of the unavoidable political "realities" that must be acknowledged after the dramatic transformations of the Napoleonic era and that have also led to the reorganization of Wurtemberg and the resulting necessity of establishing a new constitution. Nor is he primarily thinking of the kind of political positions that came to exercise considerable influence through the Revolution itself and that he himself sharply repudiated.³⁰ What Hegel is thinking of here is, rather, the fact, which he repeatedly welcomes, that the French Revolution marks the beginning of the struggle for a "rational political order based on right" over against the entire "mass of positive rights and privileges" (*SPR*, 198). This struggle, according to Hegel, has arisen out of the insight that "with regard to the constitution nothing should be recognized as binding unless it can be recognized by the rights of reason" (*VPG*, 535; *ET*: pp. 207-24). The Wurtemberg Estates Assembly, in opposing the claims of a new political actuality legitimized through reason and insisting on the old rights and privileges even under these changed conditions, is therefore not merely mistaken in their assessment of what is right and just, but is also inevitably placing itself in the absurd position

of “demanding that the present be changed into the past, the actual into what is not” (*SPR*, 186).

The Estates Assembly is falling victim to this judgment because, as Hegel says, it has “slept through the last twenty-five years, the richest that world history has surely had to show” (*SPR*, 199). On the other hand, the very opposite could be claimed of the proponents of the active electoral rights and rights of consent with regard to taxation as outlined in the draft constitution. For Hegel, they were, one might say, rather too wakeful in relation to the “democratic abstractions” of the French Revolution. As far as the right of consent with regard to taxation is concerned, Hegel actually thinks that the provisions suggested in the draft constitution (that no new taxes can be introduced and no existing taxes raised without the consent of the Estates; *ibid.*, 179) harbor the danger that the state may become dependent on the particular interests of the estates, and to that extent the possibility that the pursuit of the particular purposes of the estates may well impede the realization of the purposes of the universal. If these reflections are again another clear expression of Hegel’s mistrust of any particular sphere that might acquire independent power over against the interests of the universal, then his repudiation of the provision for electoral rights rests in turn on his own organological conception of the state. For insofar as the draft constitution takes a particular age limit and a particular amount of property as a condition for exercising such electoral rights, and ignores the relationship of the citizens to any specific social group, it proceeds from a conception of the state that specifically underestimates the characteristic feature that Hegel wishes to emphasize: that the state is not just a whole, but rather an organic whole. For age and degree of ownership as such are precisely not the kind of social features that properly indicate the relationship between a specific individual and the universal context that supports and sustains the latter. To regard age and degree of ownership as the sufficient conditions for participation in the universal, or the state, is thus simply to interpret the universality of the state as the inorganic aggregate of isolated social atoms. This conception of the universal “has more in common with the democratic, and even anarchistic, principle of individualism [*Vereinzelung*] than it does with the principle of an organic social order” (*ibid.*, 176). Hegel’s argumentation here clearly goes back to the *Essay on Natural Law*, in which he had already formulated his critique of the modern individualistic natural law tradition, and bears directly on the concept of the state that had been so vigorously encouraged through the French Revolution. But we must distinguish Hegel’s criticisms of certain conceptions of the constitution

developed on the basis of the French Revolution from the critical position he adopts with regard to the Estates Assembly. For Hegel accuses the Estates of basically failing to appreciate the concept and the nature of the state in general by stubbornly clinging to their “ancient” rights and privileges instead, a failure that marks their position as one of unthinking political reaction in Hegel’s eyes. But Hegel’s repudiation of certain points in the King’s draft constitution concerns those one-sided conceptions that spring, according to him, from a false, because ultimately individualistic, interpretation of the principle of universality.³¹

Hegel’s criticisms of the behavior of the Estates Assembly and of the draft constitution of the King can thus with some justice be seen as one application of his political philosophy to a specific political situation. For the creation of an organological concept of the state, the concomitant repudiation of the conception of the state as an abstract universal³² and of the domain of particular interests as defining the universal purpose had revealed itself from the very beginning as the primary goal and central theme of Hegel’s political theory. To that extent, the *Essay on The Estates Assembly* in particular appears rather ill-suited to explain the reformulation of Hegel’s political philosophy as presented in the *Philosophy of Right* in 1821. And indeed it was not the essay itself so much as the public reaction to it that actually led to the relevant change of presentation. The reactions to Hegel’s essay are fairly well known: from Niethamr, an old friend of Hegel’s, who accused him of having “cleverly supported a dubious cause” (B II, 172), through to the leading opponents of the draft constitution, the more enlightened liberal camp of political opinion has generally regarded the *Essay on the Estates Assembly* as an expression of a “restorationist” position. Thus Haym later described the work as a “servile and sycophantic defense of the government line” and an “Asiatically eloquent” glorification of the Wurtemberg monarchy at the expense of the interests of the people.³³ This impression was further strengthened by the fact that a separate printing of the essay actually appeared with the approval and support of the Wurtemberg government,³⁴ something that could easily be interpreted as just another indication of the restorationist tenor of Hegel’s position on the whole question.

Now there is certainly no doubt – as all interpreters, including Rosenkranz, agree – that Hegel’s *Essay on the Estates Assembly* is indeed marked by a crudely one-sided partisanship for the views expressed by the government of Wurtemberg. But it by no means follows from this that a restorationist political position actually formed the basis for Hegel’s partisanship. For just such a position had already been formulated and had

found highly topical contemporary expression, precisely around 1818, in *The Restoration of Political Science* by K. L. von Haller.³⁵ But von Haller's theory, despite its not entirely superficial affinity with certain political claims also vigorously defended by Hegel – especially with regard to the monarchy and the role of “disposition” in the political consciousness of the citizens – cannot be assimilated to Hegel's approach without completely falsifying the Hegelian conception and its underlying intentions. For von Haller's theory is based on premises that are in fact diametrically opposed to the kind of argumentation and justification that characterize Hegel's political philosophy. Thus it appears as a central doctrine in von Haller's formulation of the “restorationist” theory that we cannot draw any meaningful distinction between the state or civil society and other forms of natural society as far as the relevant governing principles are concerned.³⁶ It is typical of this restorationist theory that the doctrine in question is based on an interpretation of all social relations in terms of civil law.³⁷ From this perspective, the differences between particular forms of social life essentially become a question concerning the degree of complexity of the totality of relations involved,³⁸ and there is therefore no acceptance of any qualitative distinctions between, for example, the family and the state. But this is precisely not the view that Hegel adopts as the theoretical context for his own political position.³⁹ This restorationist approach does not even recognize the emergence of the very structures that served to govern Hegel's political theory. For Hegel, such an approach can appear only as a regression with respect to the theoretical achievements of the modern theory of the state, and his bitter critique of von Haller and his *Restoration* leaves us in no doubt whatsoever about his own attitudes in this respect (*Rph* §258 Remark).

The idea of assimilating Hegel's perspective on the constitutional problems of Wurtemberg with positions that not only were developed independently of his contributions, but rather were fundamentally opposed to the foundations of his political philosophy therefore reflects a distorted assessment of the reasons that lay behind his critique of the Estates Assembly. The fact that such a distorted assessment could arise in the first place was due less to the one-sidedly monarchist and *étatiste* consequences of his position than to the fact that Hegel had not yet presented publicly the basic lineaments of his political philosophy in a way that would serve to obviate certain misunderstandings.⁴⁰

In order to confront the possibility of such false assessment of the basis of his position, for lack of an adequate exposition of his fundamental principles, Hegel now undertook to present the systematic development

of the specific difference between state and society as the crucial feature in arguing his political theory. And it is certainly no accident that Hegel properly emphasized this distinction, with a fully developed and appropriate terminology, only in the first lectures on the philosophy of right which he delivered after publication of the *Essay on the Estates Assembly* and the subsequent reactions it had provoked. These were the lectures on natural law and political science that Hegel presented in Berlin for the first time, in the winter semester of 1818–19.⁴¹ But it should be noted that Hegel's express introduction of this distinction brings nothing substantively new into the discussion as far as his mature political theory is concerned.⁴² One can even say that he actually returns here to the earliest forms in which he had tried to explicate his political philosophy, namely, to the concept of ethical life he earlier had developed in terms of the relation between universal and particular and already had expressed in the *Essay on Natural Law*. What Hegel wished to accomplish now, in a situation where the intentions of his theory have been subject to potential misunderstanding, through reintroducing this distinction in a systematic fashion, is something different and something more than before. We can consider this question from two principal perspectives: first, the systematic development of the distinction allows Hegel to contrast his own position with the restorationist views of von Haller, for example, and second, it gives him the possibility of theoretically defending his monarchical ideal of the state against the charge of simply representing a legitimist view oriented solely to the political present.

Hegel can substantiate the contrast with restorationist positions by demonstrating, in line with his fundamental premises, the different principles that govern the state and civil society and are supposed in turn to reveal the relative "rationality" of civil society as the sphere of particular interests (*Rph* §184) and the absolute "rationality" of the state as the existing universal (cf. *ibid.* §258). For this argument implies a criticism of the restorationist view that all forms of society, including the state, are properly modeled on the family relationship insofar as the very identification of the different principles underlying the specific form of the social organization of ethical life in each case is a necessary condition for properly explicating the concept of the state in the first place at all.⁴³ And this criticism implies more than the mere correction of an otherwise avoidable mistake. For it also indicates that the attempt to deny the differences that, at least according to Hegel, are constitutive for any ethical whole leads to the fatal consequence that one no longer possesses any means for establishing the concept of the state as an autonomous expression of ethical life.

As far as legitimating his ideal of the state by reference to the different principles constitutive of state and civil society is concerned, Hegel develops this distinction to explicate the prevailing universality in the state as the manifestation of reason over against the sphere of civil society. For in Hegel's eyes the higher claim of universality in the state as universal purpose is not simply a presupposition for determining the other spheres of the ethical whole as relatively rational ones or as ones that are concrete in their own right, which cannot simply be argued away as far as the ethical actuality of the modern age is concerned but which represent necessary constituents of that actuality. The primacy of the state in Hegel is grounded, rather, in the thesis that only the true universal that firmly expresses itself in institutions, that is, the universal that always already appears as a specific unity that has overcome and internally sublated all possible particularized moments of the ethical whole, is capable of avoiding the aporetic consequences harbored within the sphere of ethical life that defines itself in terms of the principle of particularity, namely, within civil society. This thesis, as we have already clearly seen, has itself a twofold ground: on the one hand, it derives from Hegel's "old" conviction that the truly universal domain of the state cannot be identified with the sum of all those particular formations (individuals, families, estates) that constitute an ethical whole; and on the other, it results from Hegel's argument, topically pursued in his critique of the claims of the Württemberg Estates, that the dominance of forms of ethical life defined through the category of particularity not only threatens the primacy of universality, but also leads to the potential destruction of those particular forms themselves.⁴⁴

The developed exposition of the difference between the state and civil society is therefore a necessary condition for properly grounding the primacy of the universal and thus of the state. Now Hegel thinks he has shown that the principle of particularity properly characterizes the domain of civil society that is defined by the mutual interconnection of individual interests, and further that the very validity of this principle for that domain requires the moment of universality as a necessary form of particularity itself (*Rph* §184), that is, of a power that limits particular interests lest that domain be destroyed by its own principle. Precisely insofar as he has demonstrated this point with respect to civil society, Hegel can affirm both the necessity of the state as the existing expression of universal purpose and its primacy over against other forms of organized ethical life. Thus, the grounding of Hegel's political philosophy in its mature form through a systematic explication of the difference between the state and

civil society is capable of countering the possible consequences of a mistaken assessment of his theoretical motivation in the debate concerning the Wurtemberg Estates, that is, of helping to avoid certain “political” misunderstandings of the real foundations and implications of his theory. But there are two kinds of conclusion that should not be drawn from this: first, that Hegel’s doctrine of the different principles governing the state and civil society first arose as a specific object of reflection out of the debate over the Estates (it is only the specific form in which Hegel developed this difference after 1818 that emerged as a result of the *Essay on the Estates Assembly*), and second, that Hegel’s relatively late emphasis on the terminological specification of this difference involved any substantial changes to the conception that Hegel first developed in his Jena period. On the contrary, one can say that Hegel remained extremely true to his original approach right up to and including the final formulation of his political theory. The purpose of Hegel’s mature political philosophy therefore also lies in demonstrating the necessity for a universal that can exercise power over all that is merely particular, that is, of the necessity of the state. The doctrine of civil society as a domain defined by the principle of particularity performs the systematic function, within the Hegelian theory, of providing precisely this demonstration. To that extent, the doctrine is simply a means to an end, and itself cannot be considered as the real end and purpose of Hegel’s political philosophy as such. Acknowledging this fact, however, does not prevent us from recognizing that the resultant overcoming of the traditional identification of the state and civil society rightly should be regarded as a contribution toward the adequate understanding of modern social and political relations. But it can be seen from Hegel’s political philosophy itself that this overcoming of the identification of the state and civil society does not immediately resolve the problem of the relationship between them. For Hegel’s proposed solution to the problem can be regarded as the result of a false inference: he imagines he can present the ideal of universal ethical life, in the form of a hereditary monarchy and a constitution articulated according to estates, as the existing manifestation of reason precisely because he has succeeded in showing the irrational potential that attaches to civil society. But from the fact that one thing is declared irrational it hardly follows that something else is inevitably rational – not even if we adopt the Hegelian way of talking about “Reason.” Such a consideration doubtless would strike Hegel as “abstract.” For in the overall context of Hegelian philosophy, that which decides whether something should count as rational or not is not what one generally calls reality, but rather speculative logic as the

typical form of metaphysics on his view. But the precise relationship of this logic to existing reality is one that has always remained quite unclear, in spite of Hegel's assurances to the contrary. If we may also return finally to our original point of departure, we could say that the alleged ambiguity of Hegel's political philosophy as far as a "political" evaluation is concerned is nothing more than the product of an interpretive approach that is itself politically motivated. For this issue becomes a problem only if one believes it necessary, in order to demonstrate the fundamentally liberal character of this political theory, to detach Hegel's doctrine of civil society from its integrated role within the argumentational and systematic structure of his entire philosophy. As a result, Hegel's political philosophy appears to present the unfortunate spectacle of division between a "liberal" part, the doctrine of civil society, and an extremely "conservative" part, the doctrine of government and the state, with both contrasting parts largely unconnected to one another. If we pay due attention, on the other hand, to Hegel's sustained and persistent attempt to assign a central role to the realm of civil society within his political philosophy, and precisely for the purpose of demonstrating the necessity of the state, then such a division appears unintelligible and the potential ambiguity of his thought from the perspective of a "political" judgment irrelevant. The basis for any such judgment therefore can be decided not on the basis of Hegel's doctrine of civil society, but only on the basis of his doctrine of the state. For it is the state to which all domains of ethical life are subordinated as their own ultimate truth. But it has seldom occurred even to Hegelians, and if so certainly with no good reason, to describe this doctrine as evidence of political liberalism on Hegel's part.

Notes

1. R. Haym, *Hegel und seine Zeit* (Berlin, 1857; rpt., Darmstadt, 1962), p. 380.
2. G. Lukács, *Der junge Hegel und die Probleme der kapitalistischen Gesellschaft* (Berlin, 1954); ET: *The Young Hegel*, trans. R. Livingstone (Cambridge, Mass., 1976).
3. J. Ritter, *Hegel und die französische Revolution* (Frankfurt 1965); ET: *Hegel and the French Revolution*, trans. R. D. Winfield (Cambridge, Mass., 1982).
4. Lukács, *Der junge Hegel*, p. 644.
5. Ritter, op. cit., p. 69.
6. M. Riedel, *Bürgerliche Gesellschaft und Staat bei Hegel* (Neuwied, 1970).
7. Ibid., p. 74.

8. The first volume of K.-H. Ilting's edition of Hegel's lectures on the *Philosophy of Right* appeared shortly after completion of this chapter (Hegel, *Vorlesungen über Rechtsphilosophie 1818–1831*). In his introduction, Ilting develops his version of claim for the fundamentally liberal character of Hegel's political philosophy, one that principally depends on an interesting thesis concerning the origin of the published text of the *Philosophy of Right*. Since I was unable to take account of Ilting's claim in the present chapter, I refer the reader to my review of the first volume of Ilting's edition, published in *Hegel-Studien*, vol. 9 (1974) under the title: "Ist Hegels Rechtsphilosophie das Produkt der politischen Anpassung eines Liberalen?"
9. *Über die wissenschaftliche Behandlungsarten des Naturrechts, seine Stelle in der praktischen Philosophie und sein Verhältnis zu den positiven Rechtswissenschaften*, in Hegel, *Gesammelte Werke*, vol. 4: *Jenaer Kritische Schriften*, ed. H. Buchner and Otto Pöggeler (Hamburg, 1968), p. 467.
10. K.-H. Ilting has convincingly shown how this conception of ethical life arises from a combination of Aristotelian and Spinozistic elements ("Hegel's Auseinandersetzung mit der aristotelischen Politik," in *Philosophisches Jahrbuch* 71 (1963–64): 38–58). For my purpose here, it suffices to refer the reader to this contribution, since we shall principally be concerned with the moments of Hegel's ethical theory that derive from classical sources.
11. On the formal structure of Hegel's concept of ethical life, cf. R. P. Horstmann, "Probleme der Wandlung in Hegels Jenaer Systemkonzeption," in *Philosophisches Rundschau* 19 (1972): 95ff.
12. Hegel's so-called "Fragment of a System" of 1800 already contains first formulation of this theory, which sees sacrifice as a possible way of integrating within a single living (ethical and religious) context those dimensions of reality that cannot simply be abrogated or eliminated. Cf. Hegel, *Theologische Jugendschriften*, ed. H. Nohl (Tübingen, 1907), p. 349f.; ET.: *Early Theological Writings*, trans. T. M. Knox (Philadelphia, 1971), pp. 309–19.
13. Those who are "unfree" in this respect include two estates in turn: that of the peasantry and that concerned with property and commercial activity (cf. *ibid.*).
14. This critical interpretation of the ethical function of property also clearly reveals how much Hegel is relying on positions already worked out in Frankfurt, that is, before 1801. In particular, Hegel's insight into the ineliminable necessity of private property, in spite of its negative implications for ethical life, under the given conditions of historical reality, was one of the achievements of his Frankfurt period (cf. *Theologische Jugendschriften*, esp. pp. 273 and 349). This view had gradually come to replace the more skeptical perspective on the character of property that Hegel was still defending during his time in Bern (cf., e.g., Karl Rosenkranz, *Hegels Leben* (Berlin, 1844), p. 525).
15. For further elucidation of what Hegel here calls "the concrete universal," cf. *WBN*, p. 462.
16. Cf. also M. Riedel, *Studien zu Hegels Rechtsphilosophie* (Frankfurt, 1969), p. 141.

17. For further interpretation of the concept of absolute ethical life, cf. also J.-H. Trede, "Mythologie und Idee: Zur systematischen Stellung der 'Volksreligion' in Hegels Jenaer Philosophie der Sittlichkeit (1801–03)," in *Das Älteste Systemprogramm*, ed. R. Bubner (1973) (*Hegel-Studien Beiheft* 9), p. 167ff. Trede explores the context of this concept in terms of its implications for the philosophy of religion.
18. The so-called *System of Ethical Life*, composed shortly after the *Essay on Natural Law*, can be regarded as an expression of this attempt. The former text is henceforth cited from the edition of G. Lasson, *Hegel: Schriften zur Politik und Rechtsphilosophie* (Leipzig, 1913); ET: *System of Ethical Life and First Philosophy of Spirit*, trans. H. S. Harris and T. M. Knox (Albany, 1979), pp. 99–177.
19. That "government" and "state" are here treated more or less as synonyms corresponds only indirectly to Hegel's usage in the *System of Ethical Life* to the extent that he there avoids the term "state" for describing the power that limits and harmonizes the particular interests of the various estates. Only once does he speak of the "revenues of the state" (p. 498) that depend on the measures taken by government. According to the conception Hegel develops here, the revenues of the state can derive only from a source that is not itself an estate, though its survival is guaranteed through the coordination and limitation of the particular interests of the estates. This moment presents itself as a universal power in relation to the estates and to that extent can be described as part of government. The concept of the state is thus broader than that of government and for Hegel covers at least two other aspects. On the one hand, it stands for the totality of the social and political organization of a people (this is what Hegel means when he speaks of the constitution of the state or the society of the state). On the other hand, it stands for the universal moment that asserts itself over against particularity (the "positive ethical life of the state") and defines itself as government in relation to the domain of the particular (the estates and particular interests in general). For an analysis of the various meanings that attach to Hegel's idea of the state, cf. Z. A. Pelczynski, "The Hegelian conception of the state," in *Hegel's Political Philosophy: Problems and Perspectives*, ed. Z. A. Pelczynski (Cambridge, 1971), pp. 1–29.
20. For this change in the systematic basis of Hegel's approach, cf. H. Kimmerle, *Das Problem der Abgeschlossenheit des Denkens: Hegels "system der Philosophie" in den Jahren 1800–1804* (Bonn, 1970) (*Hegel-Studien Beiheft* 8), and R. P. Horstmann, "Probleme der Wandlung in Hegels Jenaer Systemkonzeption" (cf. note 15 above).
21. Here, too, Hegel uses the term "state" in two senses. The state represents both the executive power that stands over against particular interests (cf., e.g., pp. 233 and 259) and the overall organization of an ethical whole (cf. pp. 246ff. and 254).
22. This idea involves two points. It explains why the state can present itself as a particular domain in its own right over against other organized forms of ethical life and provides a justification of hereditary monarchy as the form of government that is appropriate to the idea of ethical life (cf. p. 250). K.-H. Ilting overlooks this last aspect in his otherwise significant essay, "The

Structure of Hegel's *Philosophy of Right*," when he claims: "Whether this representative of the sovereignty of the state was a monarch who possessed the trust of the citizens, or an elected head of state, would have had no special importance in the framework of Hegel's political philosophy" (in *Hegel's Political Philosophy: Problems and Perspectives*, ed. Z. A. Pelczynski, p. 90ff.).

23. Cf. M. Riedel, *Studien zu Hegels Rechtsphilosophie*, p. 55.
24. S. Avineri also points out the constancy of the substantive concerns of Hegel's political philosophy throughout the Jena period (*Hegel's Theory of the Modern State* (Cambridge, 1972), p. 85). But since he places less emphasis on the development of the different systematic models into which these concerns are integrated, Avineri also regards Hegel's different attempts at presentation simply as more sophisticated expressions of his substantive analyses.
25. For this, cf. H. Kimmerle, *Das Problem der Abgeschlossenheit des Denkens*, and M. Riedel, "Hegels Kritik des Naturrechts," in Riedel, *Studien zu Hegels Rechtsphilosophie*.
26. I am referring here to the relevant passages of the *Rechts-, Pflichten-, und Religionslehre für die Unterklasse* (1810 and later years.), §§22–31, and the *Philosophische Enzyklopädie für die Oberklasse* (1808 and later years.), §§194–202, in *Hegel: Nürnberger Schriften*, ed. J. Hoffmeister (Leipzig, 1938); ET: G. W. F. Hegel: *The Philosophical Propaedeutic*, trans. A. V. Miller (Oxford, 1986), pp. 1–54 and 124–169, respectively.
27. *Nürnberger Schriften*, pp. 169 and 287.
28. Cf. R. Haym, *Hegel und seine Zeit*, p. 350ff., and Karl Rosenkranz, *Apologie Hegels gegen Dr. R. Haym* (Berlin, 1858).
29. F. Rosenzweig, *Hegel und der Staat* (Munich, 1920), vol. 2, p. 38; P. Gehring, "Um Hegels Landständeschrift – Friedrich List im Spiel," in *Zeitschrift für philosophische Forschung* 23 (1969): 117.
30. Hegel specifically describes and criticizes the political-ideological consequences of the French Revolution as the principal misfortune arising from the whole enterprise. The "French abstractions" (p. 177), which are manifest above all for Hegel in the demand for democracy and for equal and universal electoral rights, are the expression "of abstract theory and superficial prattle" (p. 198) that result only in the kind of abuses the elimination of which furnished the original justification of the Revolution. For Hegel's assessment of the French Revolution, in addition to the work by Ritter mentioned above (note 3), cf. more recently K. H. Nusser, "Die französische Revolution und Hegels Phänomenologie des Geistes," in *Philosophisches Jahrbuch* 77 (1970): 276ff., and J.-F. Suter, "Burke, Hegel and the French Revolution," in *Hegel's Political Philosophy: Problems and Perspectives*, ed. Z. A. Pelczynski, p. 73ff.
31. In order to avoid misunderstanding here, it should be noted that Hegel's "assessment" of the political situation and of the position adopted by the Wurtemberg Estates Assembly represents an extremely one-sided interpretation of the factual circumstances of the constitutional debate. For Hegel takes no account whatsoever of the actual historical conditions that lay behind the conflict and abundantly justified the suspicions of the Estates Assembly with

regard to any constitutional offers on the part of the King. And this background certainly helps to explain the attitude of the Estates Assembly in this matter. On the other hand, the very one-sided emphasis of Hegel's account does not imply that the arguments Hegel raises against the demands of the Estates Assembly were themselves also groundless or false in themselves. As far as the entire question is concerned, the remarks of F. Rosenzweig remain highly instructive (*Hegel und der Staat*, vol. 2, p. 30ff.).

32. This is also the essential point that underlies Hegel's evaluation of Rousseau's theory. Cf. *Rph*, Remark to §258 and *VPG*, p. 532ff.; *ET*: p. 210ff. (excerpt from the *Lectures on the Philosophy of History*).
33. R. Haym, *Hegel und seine Zeit*, p. 352ff. Rosenkranz offers a characteristic example of his style of Hegelian apologetics when he claims that "narrow-minded aristocrats derided Hegel as a sycophant precisely because he defended the rational character of the King's will and its appropriateness to the interests of the people against their own egotistical outlook" (Karl Rosenkranz, *Hegels Leben* (Berlin, 1844), p. 312) – as if critics of Hegel's essay such as Niethamr and Paulus could possibly be included in the category of narrow-minded aristocrats. For a view that is very close to Rosenkranz, compare the remarkably sympathetic account of Hegel's essay on the Estates Assembly in S. Avineri, *Hegel's Theory of the Modern State*, p. 72ff.
34. This has emerged with particular clarity from the debate between Beyer, Buchner, and Hocevar concerning Hegel's relationship to a piece that appeared in the *Württembergischen Volksfreund*. The contribution in question expressed strong support for the government view of the King's constitutional proposals. Cf. W. R. Beyer, "Hegels Mitarbeit am *Württembergischen Volksfreund*: Zu einem unbekanntem Hegel-Text," *Deutsche Zeitschrift für Philosophie* 14 (1966): 709–19; R. K. Hocevar, "Ein unbekannter Hegel-Text entdeckt?," *Zeitschrift für philosophische Forschung* 21 (1967): 146–49; H. Buchner, "Ein unbekannter politischer Text Hegels?," *Hegel-Studien* 4 (1967): 205–14; W. R. Beyer, "Ergänzungen und Korrekturen zu dem Aufsatz 'Hegels Mitarbeit am *Württembergischen Volksfreund*,'" *Deutsche Zeitschrift für Philosophie* 16 (1968): 605–9; and H. Buchner, "Hegel im *Württembergischen Volksfreund*," *Hegel-Studien* 5 (1969): 264–66.
35. The first and essentially fundamental volume of this six-volume work appeared in 1816. It thus began to exercise a public influence around the time when Hegel himself was making his contribution to the general political debate. On this, cf. F. Rosenzweig, *Hegel und der Staat*, vol. 2, p. 190.
36. Cf. K. L. von Haller, *Restauration der Staatswissenschaft oder Theorie des natürlich-geselligen Zustands, der Chimäre des künstlich-bürgerlichen entgegengesetzt* (*The Restoration of Political Science, or Theory of the Natural and Social Condition as Opposed to the Chimera Theory of the Artificial and Civil Condition*) (reprint of second 1820 edition; Aalen, 1964), vol. 1, p. 460f.
37. *Ibid.*, p. 337ff.
38. This is particularly clear from von Haller's definition of states, which are supposedly distinguished from the family and other natural forms of socialization only in the sense that they are "*independent social associations*, that is, ones

- that subsist in and through themselves, *complete and connections between self-enclosed human beings, independent relations of service or association*" (p. 463).
39. As Rosenzweig reports (*Hegel und der Staat*, vol. 2, p. 56), some of the responses to Hegel's essay by defenders of the Estates Assembly did indeed attempt to associate him with such "restorationist" claims.
 40. One must remember that, with the exception of the *Essay on Natural Law* of 1802, there was as yet nothing to document Hegel's political philosophy apart from the nine pages from the chapter on ethical life in the first edition of the *Encyclopaedia of the Philosophical Sciences*.
 41. This lecture course has come down to us only in the transcript by G. Homeyer; cf. *VPR*, 217–351.
 42. To that extent, the observation of J. Ritter, followed here by M. Riedel, that civil society emerges only as an explicit theme of Hegel's political philosophy around 1820 is perfectly correct. But the reasons with which Ritter and Riedel attempt to explain this fact are not entirely convincing. Ritter claims that it is only in the *Philosophy of Right* that "civil society definitely comes to occupy the central place in philosophy and political theory for Hegel in the wake of classical political economy as the potentially universal labor-based social form that is beginning to spread over the entire world" (J. Ritter, *Hegel und die französische Revolution*, p. 58f.). This view can be accepted only with considerable qualifications since, as we saw, the phenomenon of civil society as a domain governed by the principle of particularity was regarded by Hegel, long before the *Philosophy of Right*, as the principal problem for any political philosophy attempting to do justice to the conditions of the modern age. Riedel, who clearly recognizes this point, presents a more cautious claim: "It is the impossibility of applying classical concepts from the older political tradition to the social circumstances of a revolutionary century that becomes the vital nerve, around 1820, of Hegel's conceptualization of 'civil society' as the sphere of difference between the state and the family. For prior to 1820, before the appearance of the *Philosophy of Right*, Hegel makes no use either of the expression itself or of its essential conceptual significance" (M. Riedel, *Studien zu Hegels Rechtsphilosophie*, p. 153). But Riedel also overlooks two things here: first, that Hegel had already clearly recognized the inapplicability of traditional classical concepts by 1805–6 at the latest – both through his explicit denial of the possibility of reviving the "ancient ethical life" of the Greeks and through his development of a model of constitutional monarchy. And second, that Hegel indeed already was using the notion of the bourgeois "civil order," for example, long before the *Philosophy of Right*, namely, in the *Essay on the Estates Assembly* (cf. Lasson, pp. 169, 174, and 175), in essentially the same conceptual sense as the later term "civil society." R. K. Hocevar has already pointed out, against Riedel, that Hegel had in fact used the expression "civil society" even earlier (Hocevar, *Stände und Repräsentation beim jungen Hegel* (Munich, 1968), p. 9). But Riedel's essay nonetheless possesses the important merit of showing that, as far as other contemporary literature is concerned, the expression "civil society" plays a similarly central role, albeit in a quite different substantive sense, in von Haller's *Restoration of Political Science*. For

Riedel, this is simply “a remarkable fact in the conceptual history of the term ‘civil society’” (*Studien zu Hegels Rechtsphilosophie*, p. 138).

43. Thus, Hegel explicitly opposes positions such as that represented by von Haller: “some have regarded the patriarchal relationship between parents and children as the essential character that belongs to the state – this is a fatuous principle” (Homeyer transcript, §77). Ilting reads the remark following the dash as: “is too simple a principle” (*VPR1*, p. 294). It is difficult to determine which reading is the correct one.
44. Thus, Hegel’s dislike for the regulations in the Wurtemberg draft constitution concerning assent to taxation, for example, should be interpreted as an expression of just such a fear. For if the members of the Estates Assembly must first give their assent to taxation levels, then they might, if the necessity of war arose, for example, refuse the required levies by appeal to certain falsely understood special interests. In that case, it would be not merely the ethical totality in general that would feel the consequences of military defeat resulting from the withholding of levies. The Estates Assembly could thereby also lose its own position and constitution and thus have destroyed itself precisely in fulfilling, as it were, its own function of representing particularity.

IV

THE STATE

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Logical Form and Real Totality: The Authentic Conceptual Form of Hegel's Concept of the State

Dieter Henrich

It was both the strength and pride of Hegel's philosophy that had effectively enabled speculative philosophy to grasp the entire world of actuality in terms of the specific theoretical form of that philosophy. Hegel was a historical thinker, and one who was oriented essentially toward the history of constitutions and of organized forms of social life in general. The speculative form of philosophical theory, whatever the theoretical reasons that made it seem indispensable to him, validly and effectively counted for Hegel only to the extent that it succeeded not merely in describing such forms of life in all their internal complexity, but also in grasping them and rendering them intelligible in a conceptual form that was peculiar to and derivable only from the standpoint of speculative philosophy. For only speculative thought is truly concrete. And such thought is concrete only insofar as it articulates itself precisely in the proper form of its own concepts.

We actually know very little about the specific convictions and particular intellectual steps that first led Hegel to this idea of an authentic conceptual form through which, at every stage in the development of his system, he would attempt to comprehend the various individual domains of actuality both in their concrete character and in the form of their systematic structure. Hegel must have taken most important steps in this direction during his last years at Frankfurt. For even then Hegel was already developing the foundations for his dissertation *On the Orbits of the Planets*. And the solar system subsequently always remained for Hegel at once the simplest and most striking example of an actual whole whose

structural organization can properly be grasped only in speculative conceptual form. Even Hegel's later influential theory according to which the speculatively interpreted syllogistic form can and must provide the formal paradigm for the interpretation of any internally unified real system already can be traced back to Hegel's reflections in Frankfurt. For this is one of the "theses" that Hegel expressly defended in the oral examination of his dissertation in 1801.

All the manuscripts in which Hegel's convictions and intellectual steps found direct expression have been lost. But the most important motivating factors that lay behind them can still be identified, both the influences exercised by ideas and works that were decisive for Hegel and the substantive grounds that were implied in the position he himself adopted.

A "philosophy of union" [*Vereinigungsphilosophie*] can properly be described as a self-contained and independent theory only if it attempts to do more than simply indicate the possibility of overcoming the perspective of singularity and separation. For in this form it still remains theoretically dependent on the fact of separation rather than representing a properly independent theory in its own right, and thus can be defended only in terms of a general metaphysical thesis and a moral philosophy transformed into a general thesis concerning the meaning of the world process as a whole. This perspective could be turned into a properly monistic theory, one that would not expressly and additionally then have to account for the given character of singularity within the system, only through a further step. One would have to derive the difference of the moments that come together in union from their own already unified character, and also would have to think the condition of this union itself in such a way as precisely also to include the singularity of the various moments that are necessarily presupposed by all talk of "union" in the first place. If we cannot successfully articulate the concept of unity in this way, then the unity implied in the union can be thought only by questioning the actuality of the very moments in relation to which and through which the unity is itself to be accomplished. But in that case the unity in question would simply collapse into an indeterminate oneness. If we simply speak of a "unity" [*Einheit*] that embraces everything, then the relationship to the collective category of "allness" [*Allheit*], the totality of singular and individual moments, has already been completely lost. And the very monistic idea that was to have rendered the actuality of the world intelligible turns into one that precisely excludes any relationship to that actuality. Unity as the unity of everything can be properly thought only if the idea equally involves the actuality of each and *every* thing – albeit in such a way that precisely the

independence of each and every thing is grasped as a function of the entire context and system in which and in relation to which the whole consists and realizes itself.

Schelling had already directed the construction of his philosophy of nature to the problem of grounding the dynamic character of the natural process from the reciprocity of the activities of each individual moment that serve to generate the whole.¹ But Schelling's formulation, which employs "activities" and the "initiation of activities" as its fundamental concepts, already seems to imply a conceptual form that would first properly allow us to think of singularity in terms of its implied and indissoluble relationship to the overall unity of system. If this implication could be rendered explicit and formally derived in a perspicuous fashion, it would have to be understood in terms of the structural connection that binds the relation to unity with the relationship of difference.

It must have been this conviction that encouraged Hegel to appropriate Plato's metaphysics of form for the purposes of his own monistic program. For Plato's theory itself had already attempted to think unity as something that permitted and indeed required the dimension of difference. And in the *Timaeus*, above all, Plato had suggested an approach that also allowed the different moments as such to be conceptualized within a completed unity, one that could no longer be transcended in turn by any further postulated unity and would thus prevent the monistic idea from falling back into something merely indeterminate. Throughout his life, Hegel would continue to regard this Platonic approach – namely, the complete presentation of all the possible connections between the terms of a relevant relation – as the ultimate paradigm of properly speculative knowledge.²

It is true, of course, that Plato was thinking of arithmetical proportions in this context. And he regarded the latter merely as an *example* of the most beautiful and complete relation that allows us to grasp the structural significance of reality as a whole in accordance with the quite different formality of the ideas themselves. But it is fairly easy to see how Hegel could connect this thought with the problem concerning the mediation of unity and singularity that arose directly for him out of the program of the "philosophy of union" and the current state of thought as represented in Schelling's philosophy of nature. In place of Plato's numbers, which were to be brought into perfect relation through the proportionality of the "fairest bond," we must now present the fundamental ontological concepts of philosophy. The task of a monistic metaphysics is to grasp the internal systematic relationships between these concepts as more than simply a set of correlations, but also simultaneously to prevent

the relevant conceptual distinctions from simply dissolving back into some undifferentiated unity. If we now look for some appropriate way in which the monistic program might successfully be explicated through Plato's doctrine of forms, then Hegel's speculative interpretation of the logical relationships within and between the various forms of syllogism offers itself almost immediately as a plausible solution.

The syllogistic forms are interpreted here as nothing but integrated conceptualizations of something that is itself already an intrinsic determination of form. Thus, they can be described in the literal sense as "syn-logisms." They unify what is thought in such a way as to confirm rather than simply to dissolve the determinate character of the thoughts from which they arise. In addition, the kind of union conceptualized here is always grounded in a differentiated unity and in the differentiation of the singular moments involved. In this sense the thoughts in question arise from a kind of unity that requires and constitutes the indissolubility of unity into singularity as well as the reciprocal inseparability of unity and singularity. These thoughts are precisely a kind of union of unity and difference that is not simply set over against this internal relationship, that therefore does not simply also repeat, or find itself forced *ad infinitum* to repeat, a unity intrinsically opposed to difference.

The kind of complete union that Plato had in mind cannot be accomplished by a single syllogistic thought (syn-logism). For all syllogisms depend on the concepts that function as middle terms (*mediis terminis*). And the fact that the syllogistic form must be connected and articulated precisely through "mediation" exercised a considerable influence on the way in which Hegel developed speculative conceptualization and on his inclination for grasping the latter in terms of syllogistic form. But in each kind of syllogism it is only one of the ontological terms that accomplishes the process of mediation. The "fairest bond" is thus properly generated and internally completed only if every one of the interconnected syllogistic terms can also perform the mediating role. But such a "bond" would then have to connect the various forms of syllogism with one another as well. If everything actual is therefore also to be understood in accordance with the conceptual requirements of monism as a syn-logism, then any actual whole within the world, anything that could also be described as a developed system, would equally have to be thought in accordance with the whole form of the syllogistic process and its conclusion. "It is only through the nature of this concluding, or through this triad of syllogisms with the same terms, that a whole is truly understood in its organization" (*EPWB* §198 Note; ET: p. 27).

This remark has great programmatic significance for Hegel's system as a whole. But it will also provide the guiding thread for the following reflections concerning the formal structure of Hegel's *Philosophy of Right*, because in Hegel's text it comes explicitly and immediately after an exposition of the state itself according to the schema of the three syllogisms. We can show how the exposition given there is compatible with the statements of the *Philosophy of Right* only if we can also shed more light on the formal structure that governs the latter.

The interpretation of an actual system in accordance with the forms of syllogistic relationship excludes, in the first place, an understanding of the system in terms of causal relations or conditions. With his syllogistic theory, and in a fashion specific to himself, Hegel thus opposes any simply causal analysis of actuality, just as Schelling had already done in demanding that a philosophy of nature must understand the things of nature in their authentic genesis and not merely in their reciprocal dependency. Within a system organized on a syllogistic structure, we certainly encounter forms of both unilateral and reciprocal influence. And in determining the significance of such influences, we must take account of the formal relationships themselves and of the level and development of a particular syllogism within the totality of syllogistic forms. But we can never grasp the form-aspect characterized by the syllogism or the actual particular system constituted by the syllogism simply or even primarily as the causal effect of another one or of all the other ones together. For "effects" of this kind can transpire only between actuality and types of actuality that must themselves be derived from the original form-relation itself. In this respect, too, Hegel's ontology is fundamentally Platonic in character, and must indeed be understood as Platonism intensified and transformed into a thoroughly monistic theory. For him there is no autonomous or specific realm of material determination, but merely a domain of causal effects that is opened up by the form-relationships themselves and that for its part is simply an implication of those form-relationships as such.

This characteristic feature of Hegel's approach can be seen most clearly once again in his theoretical construction of the solar system: the effects of light and magnetism emerge precisely out of the relationship of the heavenly bodies to one another, a relationship that itself cannot be conceived in causal terms at all. But in Hegel's eyes we also must attempt to grasp the reciprocal relations that are involved in political bodies and systems in a similar noncausal way. If the state therefore can be said to govern and control the sphere of society, this presupposes that the latter enjoys a certain autonomy of its own and constitutes itself in turn

precisely in accordance with its own internal and specific relationships. This also implies, on the other hand, that we can show that particular forms of the state have come to be under, and remain subject to, the influences of such social relationships. But this itself does not mean that states can be regarded simply as functions of social relationships in terms of any causal dependency. If “function” here means something like a “factor involved in the complex mechanism of self-preservation of an actual existent,” then neither state nor society can be reduced to a function of the other, as if either one represented the original actuality of the other. Conceived together, on the other hand, they serve to constitute a syllogistic totality – and in such a way that both also are organized internally and autonomously through further “mediations” in each case. If the state itself can be said to emerge from society, it does so precisely as a formal implication and more developed stage of the former in terms of a syllogistic “conclusion” [*Schluss-Folge*].

Marx’s early critique of Hegel’s *Philosophy of Right* thus transposed the logic of the latter into a quite different conceptual form altogether. It is true that the critique does retain certain features of Hegel’s original theoretical model insofar as Marx, like Hegel, thinks it is legitimate to describe actual existence from the perspective of the overall totality of the relationships involved in that existence. But the formal foundation of such a description, as articulated in Hegel’s system, is thereby partly repudiated and partly ignored in the process. This happens directly either because Marx never explicitly questions the status of causal analysis as the ultimate foundation of all explanation or because he limits such analysis to a different conceptual form of his own that has developed quite independently. The fact that Marx recognized the theoretical foundation underlying Hegel’s approach and understood its impact on the construction of the Hegelian theory does not itself immediately tell us whether such structural analyses are intrinsically to be regarded as ultimately irreducible ones or whether they are permitted simply as abbreviated forms of a causal analysis that is assumed as ultimately decisive. Yet a theory such as Hegel’s explicitly repudiates the latter approach and develops its own characteristic power precisely in so rejecting it. If one then attempts both to criticize and to pursue such a theory without addressing this fundamental issue at all, this inevitably produces an extremely obscure conceptual basis for the resulting analysis and an almost unavoidable lack of clarity concerning the relationship between the two positions. And they now can be distinguished from one another only as the theoretically perspicuous starting-point and the theoretically obscure result of a critical repudiation

and appropriation of the former. A theory that was originally intended as a reversal of Hegel's position that would preserve the inner formal features of Hegel's own analyses thus ends up, instead, as a systematic distortion of the latter. But the position that thus presents itself as a direct counterthesis to Hegel and, as far as this self-presentation is concerned, actually also possesses a certain clarity of its own with respect to the material content that it has indeed succeeded in illuminating cannot initially help misrepresenting the thesis it means to oppose through its own failure to grasp the theoretical and conceptual form adopted by the thinker who developed the original thesis. It also follows directly from this that in one essential respect, Marx's reception of Hegel's thought itself rests on a mistake.

What we have described as Hegel's "syn-logistic" system of mediations also has a further peculiarity: it requires precisely that contrary and *prima facie* mutually incompatible forms of dependency relation between the already internally organized components of an independent system all can be simultaneously valid. For the same terms reappear in each individual "conclusion" of the syllogistic totality, albeit in different types of relationship and kinds of coordination in each case. Now it is not merely legitimate but actually imperative to regard the relevant mediating term as the ground and basis of the entire relation as well. But the syn-logistic structure must always also be retained and recognized in its *entire* process when any one of these relationships is being expounded and developed in its own right. This is effected by grasping the constitutive accomplishment of any particular mediation in the light of the other constitutive accomplishments that furnish its own presuppositions at the same time. This yields an essentially reciprocal relationship that nonetheless can be distinguished clearly from a merely irreducible correlation of terms. We cannot say that this relationship is *preceded* by some other fundamental state of affairs that would itself first serve to ground or explain the interdependence in question. It is quite true that this relationship of interdependence arrives at a completed whole. And the mediation that finally concludes the process comprehends the preceding moments in a different way than all of these also themselves involve and include this mediation. But that does not mean that the process of moving through relations that are not themselves conclusive merely represents a process of discovery leading to the ultimate ground of the entire structure of relationships, a ground that then could be grasped as the proper "cause" of the latter. The process leads us to something like a ground only in the sense that the final completion of the analysis allows the exhaustive concept

of the entire structure to emerge. Thus one can understand easily why Hegel also can describe this completion as an “ultimate end” [*Zweck*] – an external end not indeed in the sense of a “purpose” for which certain instrumental means have been introduced and employed but in the sense of a self-contained form within which the functional significance of all other forms and formal relationships are determined, and which is itself incapable of being further revised or transcended.

If Hegel’s syn-logistic approach is now applied to the theory of rights and legal principles, and in particular to the theory of the state, we can see why it is also legitimate for him to grasp the state as an organization for satisfying the needs of socialized human beings. It is further both legitimate and necessary to see the state as emerging from the free activity and the union of human beings as subjects of right. The state must be grasped in both ways at once to the extent that the very concept of the state presupposes both these modes of mediation. But although the state needs be defined in direct relation to the latter, it must also be regarded in turn as a mode of mediation in its own character and its own right. The structure of the state derives not its own authentic form, or its capacity for an actual independent existence that is internally consistent within itself, from the two other modes of mediation. For they themselves can emerge properly only within the systematic political body in its actuality as a whole. For the state as an actual institution constitutes a conclusive structure of its own that nonetheless presupposes and confirms the other conclusive modes, effectively securing the latter within the actually subsisting whole. In Hegel’s view, the independent motions of the heavenly bodies are not in any way denied, but rather first properly grounded when they are grasped as implicated in the gravitational system as a whole. So here, too, the independent character of the mediations constitutive of the political system as a whole is not an obstacle to understanding, but rather itself an implication of the form and autonomous actuality of the system in question. As the passage we have quoted above from the Berlin edition of the *Encyclopedia* (§198 Note) clearly shows, Hegel was convinced that holistic relationships as such could be rendered intelligible only by this convergence of intrinsically independent explanatory approaches, connected and united through the entirely transparent formal structure of the various syllogistic interrelationships. That is why the conclusive logic of the syllogism represents for Hegel the proper conceptual form for realizing a monistic metaphysics that is much more than a merely abstract thought, one that might indeed lead reason toward an ultimate perspective but only at the cost of simultaneously leaving the world of

actuality behind altogether. The logic of the syllogism allows us to gather together the concepts of what actually exists in a unified conceptual form that simultaneously implies all the particular relationships that are involved and clarifies them as a totality. And the logic of the syllogism can accomplish this precisely because it liberates our understanding of such relationships from a purely external consideration based on apparently conflicting perspectives. The internally mediated conclusions of the syllogism thus represented for Hegel the appropriate conceptual form and the conditions of possibility for any concrete interpretation of the actual world. This approach essentially results in a theory concerning the form of the world as such. One can describe such a theory as “idealism” – but only in the same sense in which a coherent mathematical theory of matter is also a kind of idealism.

In order to clarify the way in which the ontological terms function in general, and function specifically within the system of the *Philosophy of Right*, it is necessary to undertake further analysis of these terms in the conceptual form they here demand. The program of monistic ontology is oriented toward a specific relationship obtaining between the categories of singularity and unity. The program attempts explicitly to defend and to explicate in proper conceptual form the claim that the sheer multiplicity of singular moments need not and should not constitute the ultimately irreducible point of departure for any attempted comprehension of the structural character of the world. The coexistence and order of singularities is not simply an ultimate fact that cannot be further comprehended, one that merely corresponds to the factual multiplicity of those singularities. For we are here confronted with “order” in a quite different sense altogether, and one in which the very concept of order allows us to *understand* the existence of the singularities in question. The concept of order here is derived not from the presupposition of the existence of many singularities, and in relation to which it thus would function only in a secondary or at least dependent fashion, in the way in which irreducibly dependent elements may depend on one another. The unitary significance of order here is itself autarchic, and the singularity of the finite dependent moments is radically dependent on and reducible to that order.

Thus, the monistic program also requires that the significance of singularity must be *developed* out of the fundamental concept of unity that a monistic ontology demands. The only available concepts that are capable of fulfilling this task are those of unity and difference. In the logical context of syn-logism as we have defined it, these concepts must be understood simply as relationships of form. It therefore would be impermissible

to grasp the unity in advance as the unity of the world and the difference as the indeterminate multiplicity of singular entities. One might be justified in doing this insofar as the syllogistic conclusion from premises, now reinterpreted as a syllogistic unification of Platonic forms, were also simultaneously transformed from a syllogism of subsumable propositions into a syllogism that gathers singular entities together into a unity. This still would involve the problem that the whole argument would transpire without any reflection on the formal significance of singularity, that it would transfer the significance of difference onto that of singularity in a way that obviously depends on prior knowledge concerning the unitary significance of the world and the significance of the singularity within that world. We thereby simply would be presupposing a conception that is already familiar in advance. Hegel had every reason, therefore, for developing the significance of singularity out of the significance of a difference of form in a way that could be articulated formally and reconstructed in thought.

Hegel was fully aware of the importance of this approach in successfully fulfilling his monistic program. He was also aware that it is something that decisively distinguishes speculative thought from the kind of explanatory approach that simply presupposes the systems of the existing world and restricts itself to the relationships that obtain within and by virtue of these systems (cf. *WL* II, 260; *ET*: pp. 618–19). As always in problematic situations of this kind, Hegel was confident of his capacity to articulate the specific character of speculative thought and his monistic system by developing the conceptual speculative form out of the natural relationships of form in the *simplest* and *most direct* fashion possible. But he equally attempted to do so in such a way that the appropriateness of this conceptual form for explicating concrete phenomena also could be clarified without further difficulty. If Hegel conceives the relationship between unity and difference as a natural conceptual relationship, he does so by constantly presupposing a dimension of singularities to which such concepts can be applied as predicates. The monistic ontology must itself sublimate or supersede this presupposition as such. But that means that such an ontology must trace the significance of singularity back to the relationship of form between unity and difference. Since this ontology has been articulated precisely in the light of the relationship of form obtaining between concepts, it has absolutely no other means at its disposal than the distinction between unity and difference, on the one hand, and its own original postulate of unity, on the other. But then it also can develop the significance of singularity only from a specific conception of the relation

of unity to difference purely as such. If the monistic program is to be fulfilled in this way at all, then what appears to our natural understanding simply as the irreducible presupposition of the relationship of unity to difference must be expounded precisely as the authentic *significance* of that relationship.

This formal significance of singularity, to which Hegel emphatically appeals, naturally requires further elucidation if its character is to be properly grasped and reconstructed. It is obvious that Hegel himself did not provide sufficient clarification of his intentions in this respect, which is the reason why the significance in question has never been recognized in the historical reception of his thought. This circumstance in itself has produced one of the greatest difficulties in understanding the general significance and the original problematic of his system.

If singularity is not presupposed as the context for the use of unity and difference in conceptual relationships, then difference as such must already be posited along with the significance of unity as such. Unity becomes determinate only through the positing of the distinctions that are constitutive of itself. This claim also requires further elucidation for its part. This can be done by considering Hegel's analysis of the concepts of determinacy and indeterminacy, an analysis that is itself inscribed within the context of his theory of negative relations. But even without this further elucidation, Hegel's claim concerning the required self-specification of any monistically conceptualized unity possesses more than a merely strategic functional role. For it also possesses a significance that does not wholly run counter to our normal ways of thinking: every unity realizes itself in a specific fashion, and the determinate character of this realization is constituted and revealed in a series of specific features that all can be understood in their own right.

Now such a unity itself also can be described as something singular in the following way: the differences do not merely arise from the significant unity in question. Rather, they are also *held together* within the unity in such a way that their potential tendency to produce opposed effects or to render themselves independent is seen to be governed by the unity itself. The self-differentiation here is controlled by the unitary significance of the whole and thereby preserved from possible self-disintegration. The unity, described as "universality" on account of its indeterminacy over against all posited determination, relates to the differences arising from their specification in a way that is comparable to a process governed by differences describable precisely as its own specification. But this is just the kind of unitary sense that we also quite naturally ascribe to singular things within

the world. Such things preserve a certain constancy over time, they resist the tendency to dissolution, and they assume new properties, and not arbitrarily but in accordance with those persisting features that are essential for the determinate character and unitary significance of the things in question. To this extent, singular things are always also complexes that display various distinctive features and that behave in their own specific way and relate differently to many other singular things. The kind of elementary particles that arise only in relation to other specific particles and are capable of displaying only a single state or condition cannot be described as “singular things” in this sense, but rather represent “events” such as a flash of lightning, a suddenly cast shadow, or a noise. The significance of authentic singularity finds its most exemplary expression in a developed living being that exists at all only through a constant process of self-differentiation and self-preservation. And the self-differentiation of the living being always transpires precisely in relation to the unitary significance of its own life. It can be regarded as a single entity within the world only insofar as it unfolds and asserts itself on the basis of this governing unity.

The relationship between indeterminate universality and specific determination, something that seems for its part to represent a merely formal and abstract relation, thus can be conceptualized as the inner form of a singular being as long as an original unitary significance and its internal specification can be presupposed. Thus universality *as such* becomes a specific universal insofar as unity becomes unitary singularity. Even when this conceptual move is not explicitly presented as the definition of singularity, Hegel still described it as the very core of the speculative form of thought in general: the category of “being-there” [*Dasein*] is thought more determinately as “something that is there” [*ein Daseindes*] (WL I, 102; ET: p. 115) and life is likewise thought more determinately as an individual living being (EPWB §216). Hegel thinks that the various transitions from the concept itself to the act of conceptual understanding, and consequently from the form of thought to the subject, basically observe the same logic. And the transition from the form of the Idea to the actuality of spirit, and thus from the highest level of significance to the highest subject, further reveals itself as the foundation for a speculative theology that is capable of ascribing the character of singularity to the absolute and with it the fundamental form of determination as personality.

This concept of singularity is of fundamental significance therefore to Hegel’s logic of the syllogism and his philosophy of right alike. It enables him not only to introduce singularity into the ontology of pure forms, but

also to distinguish the various levels of singularity from one another. A differently constituted singularity emerges in each case according to the way in which the determinations of unity are related to unity itself and thereby organized in relation to the totality of all its other determinations. The solar system is thus a singularity, but in such a way that the determinations of its unity enter into relations of real distinction (cf. *WL* II, 382; *ET*: pp. 731–32). That is why the unity implicit in them can reveal itself only as the connected movements of the heavenly bodies, but in such a way that the form of this movement appears ineluctable and is subject to disturbance, if at all, only under the most extreme conditions. Where the singular living being is concerned, the determinations of unity are merely partial subsystems that are incapable of any independent existence on their own. Each such system exists at all only insofar as it constitutes, together with the others, a single being, so that it is not first bound up in unity with the other systems through any movement of its own (or any independent process of its own). The unity that belongs to the singularity of the actualized Idea as such, that is, of spiritual actuality itself, is different in kind again. This unity permits the independent existence of its determinations but still holds these independent moments within the unity of its own organized form, not merely with respect to the movements of these moments but in every aspect of their actual existence as well. To this extent the constitutive structure of the state and the actuality of knowledge, as forms of singularity, are also intrinsically self-contained systems that can be described as modes of “spirit” by virtue of this singularity.

It was the speculative significance of this concept of singularity that really first allowed Hegel to incorporate the phenomenon of epistemic self-relation into the idea of the overall form of the world. And this possibility was itself a step directly demanded by Hegel’s programmatic theory of monism. For cognition is actual, and is only actual, in a form of knowing that is also intrinsically capable of knowing itself. It is through this self-knowing that cognition is first constituted and authenticated as an act of knowing on the part of a knower. If the world is indeed the totality of the “one and all,” it must be possible to grasp such knowing as continuous with the fundamental concept of that totality. And this presupposes the idea of an actuality that articulates itself precisely as something that is actually there, that is therefore there in the form of singularity. Hegel attempts to satisfy this postulate by ascribing the simplest form of self-relation, namely, the “feeling of self,” to the form of singularity that organizes all of its specific determinations entirely from the perspective of

its own overall unity. This “feeling of self” first properly emerges in the animal organism that, in contrast to the plant or vegetable organism, does not simply develop its organized moments indefinitely or allow them to assume an independent existence of their own (cf. *EPWB* §356). But this self-relation first properly reveals itself as actual knowledge and as self-knowledge only in “spirit” as that which also allows for the independence of “other-being” within its own inclusive unity.

Now it must equally be emphasized here that the entire typology of the forms of singularity also constantly presupposes that singular beings of the same type can exist as a multiplicity of cases, that in relation therefore to singularity there is also the multiplicity of external variety. This multiplicity is not the constitutive foundation for the significance of singularity as such or in accordance with the logical form of the latter. From the perspective that governs speculative thought, this cannot be the case because the world itself, the absolute, God, then could be thought only as universal forms rather than according to the logical form of singularity. For the world, the absolute, or God cannot possibly be thought as if there could be a plurality of them. And then self-consciousness also could be ascribed only to the finite person within a community of persons. But the authentic significance of singularity is ultimately derived by Hegel from the significance of unity and internal determination. If Hegel were thus forced to make a decision here, he would have to claim that a singular being is in each case a unique one according to its specific character and the type of singularity it exemplifies. Nor would this idea be entirely lacking in a certain plausibility insofar as it would inevitably lead to an intensified form of the kind of metaphysics already suggested by Leibniz. And yet finite singularity exists – and this is also Hegel’s own view – as the existence of a singular being as distinct from that of a type, and as distinct, with regard to the type of the organism, from that of a generic species. Hegel derived this feature of multiplicity through a series of logical developments that do not themselves belong to the logic of unity and singularity. But these developments nonetheless betray a certain similarity and correspondence to those that are also operative within the logic of singularity itself. For singularity connects the determinations of unity together in such a way that the singular being can now be grasped as something capable of active self-affirmation [*Selbstbehauptung*]. This self-affirmation is more than simply a process of securing itself against the threat of self-loss or self-dissipation that can arise from the inner dynamics of self-specification generally. For the self-affirmation in question is equally bound up with the capacity for self-preservation that consists precisely in setting itself

over against every other singular being within the world. Schelling had already shown that no singular being possibly can exist in the world unless it can acquire and preserve a certain constancy and determinacy over against the totality of the world process itself and over against every other singular being that emerges from that process.³ For Hegel, however, this structure of opposition constitutes the nature only of finite singular beings. But this characteristic feature of finitude can be described also in relation to the typological differences involved in the singular individualization of unity. It is there where unity has yet to be unfolded as the determinate existence of the Idea as such, there where the independence of determinations has yet to be integrated completely as a totality, that we find the logical space for the multiplicity of singular beings, one that leaves room not only for singular beings of different types but also for singular beings of the same type. And this is irrespective of whether they possess the same (material) mode of existence, the same species, or some form that excludes identification under a common genus. The latter case obtains when the form in question only allows for individuals articulated specifically in accordance with their own formal characteristics and who can therefore relate to and affirm themselves over against one another. It is above all the various world-historical peoples and the political states associated with them that exemplify this latter finite type of singularity.

The logic of syn-logism depends entirely on the fact that we can indeed distinguish the various types of singularity and interpret them in accordance with that logic. For the authentic form of the syllogistic conclusion in its entirety consists in the systematic unity implied in the relation between three forms of mediation. These mediations must be thought in a specific sequence if they are to be grasped in and as the unity of a single overall syllogism. But this sequence, in turn, can be thought only in accordance with a specific sequence of the formal determinations of singularity.

Every application of the complete form of syllogistic logic according to the threefold character of the entire system of syllogisms presupposes a determination of the concept that is capable of being interpreted and developed in terms of totality. If therefore everything rational is also a syllogism (*WL* II, 308; *ET*: p. 664) and is thus in a certain respect, indeed in several respects, a moment within a totality, it remains the case that only a totality as such can constitute an entire system of syllogistic forms. This explains why Hegel's system employs only a small number of concepts that are analyzed in accordance with the syn-logistic approach as such: the solar system, chemism, organism, objective spirit, and the forms

of spirit that involve the knowledge of spirit precisely as spirit. The basic form of threefold syn-logism is the same in all cases: its permutation begins and concludes with singularity, while the first syllogism takes difference, the second takes singularity, and the third takes unity as the relevant middle term. In each case the entire mediation must be oriented toward the idea of a unity in difference, an idea that is already supplied by the fundamental determination of the concept and is attained once again in the third syllogism of the sequence of permutations. This therefore yields the following sequence: Singular–Particular–Universal, Universal–Singular–Particular, Particular–Universal–Singular. This sequence also provides, irrespective of any further determination of the concepts of unity, the universal schema for the logic of all the syllogistic forms that Hegel expounds in the *Science of Logic*. Thus, the singularity of the first syllogism presents the self-differentiation of some particular singular that realizes its universal form through this process. The singularity of the second syllogism presents the opposition of a singular in the self-preservation through which it sustains its own unity over against determinacy and difference. For in part this determinacy and difference is independent and external over against the singular, but it is also simultaneously a determinacy that belongs to the latter. In the third syllogism, the universal form of unity is conceptualized as that by virtue of which that singularity and every determinacy that belongs to it exists. To that extent, the third form of singularity is the one that is also peculiar to unity itself, here described as “universality” and which to that extent can be said to include within itself the singularity of the first position and the singularity of opposition.⁴ Whenever Hegel thinks it appropriate to provide an exposition according to a different sequence of terms with respect to the three syllogisms, as he does in his theory of organic life (cf. *EPWB*, §342, Addition), this variation must still be accommodated within the fundamental form of the syllogistic series and justified with reference to the latter.⁵

But Hegel does explicate the concept of the state clearly and emphatically in accordance with the fundamental pattern of the three syllogisms. Nor does he treat the formal correspondence of this concept with that of the solar system in §198 of the Berlin edition of the *Encyclopedia* simply as a passing analogy. For Hegel also explicitly repeated the point in the lectures he delivered on the subject of the philosophy of right (cf. *Rph* §33 Note). What is more, the passage from the *Encyclopedia* is clearly grounded in the argument of the *Science of Logic* itself and thus possesses solid theoretical support in its own right (cf. *WL* II, 373–74; *ET*: pp. 723–24).

The articulation of the doctrine of the state itself in terms of the doctrine of the syllogism is directly suggested by Hegel's conceptual determination of the state as "objective spirit." For it is in the latter that the spirit is supposed to develop a proper world for itself, to acquire an objectivity in accordance with the concept of object that governs the fully developed logic of "mechanism": the solar system is the Idea that has become object, that has thereby certainly dissipated itself into external relationships but nonetheless also has preserved itself in the totality of its form. The systematic syllogistic exposition requires the form of the Idea that has developed entirely in terms of objectivity and thereby assumed the form proper to the totality of a system (cf. *EPW* §401 and *VPR*4, 148).

Yet Hegel's explicit writings on the philosophy of right do not explicate the doctrine of the state in accordance with the formal principle of the sequence of the syllogisms. And the relevant texts even seem to contradict the kind of explication of the doctrine of the state that is provided in the *Encyclopedia*. The account given in the *Encyclopaedia* presents the state as a system in which the first syllogism connects the singular individual as person to the universality of right and the constitution organized in the state in and through the particular character of the individual's needs. In the second syllogism of the state, the free person, who already acts in accordance with the principles of universality, is conceptualized as active ground for the realization of the social and political order. It is only with the third syllogism that the order of right of the state constitutes the substantial ground in which individuals and the ends that they seek to satisfy "possess and acquire their fulfilled reality, their mediation and their subsistence" (*EPWB*, *ibid.*). Each of these syllogisms is presented as a specific aspect in its own right within the concept of the state as a whole. In addition to the institutions connected with the constitution, which ultimately mediates all the others, the state thus functions also as the organization of social action and as the union of all free active persons. Hegel's writings on the philosophy of right fail to emphasize these two aspects in any comparable fashion, either in his conceptual determination of ethical life or in that of the state as such. The *Philosophy of Right* thus presents ethical life and the ethical state as "substance" in which the individual self-consciousness of the person finds the embodiment of his or her own existence. The individual seems therefore here to submit to the power of an existing body of institutions that possesses "absolute authority" for it and in which its self-consciousness is activated simply as an expression of unquestioning trust or the fulfillment of unconditional duty. This suggests the awkward conclusion that the argument reconstructed from the

Encyclopedia apparently plays no foundational role within the systematic structure of the *Philosophy of Right*.

In this situation one can consider three hypotheses in turn. I shall first present and then exclude the first two.

1. The conceptual reconstruction provided in the *Encyclopedia* could represent a comprehensive summary of Hegel's writings on the philosophy of right as a whole or of the three levels of the theory of ethical life – much the same kind of summary and preliminary overview that Hegel often provides us with in the *Science of Logic*. For there, too, within these overviews, Hegel employs forms of logical argumentation that are not the same as those that constitute the authentic logical structure of the argument in the actual execution of speculative thought.

2. It could be that the sequence of the three syllogisms in the *Encyclopedia* concerns the concept of the state only with respect to one specific question: how the organizing concepts of abstract right and those of civil society also can be combined and united in the concept of the rational state. In both “spheres” we are presented with a separation between universality and the singular will: in the sphere of abstract right through the authority of rightful punishment in response to the violation of right, in the sphere of civil society through the administration of justice and welfare provisions in response to the effects of competition and economic insecurity. The state characterized by ethical life must incorporate these two forms of universality, which are not essentially factors of substantial ethical life, into its own totality and ground them effectively through its own solid actuality.

Apart from the fact that both these hypotheses inevitably appear as rather ad hoc solutions, there are also quite compelling reasons to reject them. The reconstruction of actuality as a whole structure of syllogisms is Hegel's method for exhibiting the inner form of a developed totality. Such reconstruction represents an ultimate logical means for explicating our understanding of any real totality, even if it can and must still be derived from theoretical considerations concerning the processes of negation. To that extent it can not simply perform the function of providing a provisional overview that still lacks adequate logical explication. Nor can it serve simply as a means for expounding a relationship in which various levels of theoretical development and various forms of speculatively comprehended reality are connected with one another. The triple structure of the syllogisms always serves rather to construct and to exhibit the rational nature of a single system in accordance with its inner character and constitution. This consideration also invalidates the second hypothesis. If

the state is a totality, then it is so not merely by virtue of functions that arise from conceptual determinations of other spheres of right and that the state would have to include within itself as the logical successor to their own universality.

3. There is therefore only a third hypothesis remaining, which thus becomes our central thesis here: Hegel's reconstruction of the state as a syllogistic sequence actually develops the logic of the ethical state in a form that truly expresses the authentic systematic form of the latter. But there were also reasons to explain why this conceptual form fails to emerge in the *Philosophy of Right* with the same clarity and force. Hegel's syn-logistic method is a flexible means of conceptual explication and can be applied plausibly only in connection with conceptual determinations that are already given. Nor does this method possess the rigid character of a purely formal system in which all its possible interpretive variants must also be formally prescribed in advance. One must also pay due attention therefore to the fact that the expositions that Hegel provides of one and the same "real totality" reveal certain differences. These expositions differ from one another not simply by virtue of the perspective that governs their presentation in each case, but rather by virtue of the speculative interpretation of the authentic constitution of the single phenomenon that is being subjected to analysis. Yet the conceptual reconstruction Hegel offers in the *Encyclopedia* is so remote from that prevailing in the *Philosophy of Right* that it is hardly possible to decide whether it should be regarded as a later, more developed phase in Hegel's speculative grounding of political philosophy or as a different form of grounding with some validity of its own that Hegel may have been prepared to introduce and teach alongside and at the same time as the system presented in the *Philosophy of Right*. One must at least try, therefore, to bring these two modes of conceptual explication into some coherent material relationship to one another.

It would be extremely interesting to attempt to interpret the whole of the *Philosophy of Right* in terms of the logical forms developed in Hegel's doctrine of the syllogism. The work would then appear as an internally interconnected sequence of several syllogisms of various range and of differently determined character in each case. In attempting to define the state in syllogistic terms, we should then have to distinguish at least four such sequences: (1) the domain of right as a whole in which the state as ethical life would correspond to the universality of the first syllogism and simultaneously to the "syllogism of necessity"; (2) the domain of ethical life in which the state would in turn yield the third syllogism that unites the immediate universality of substance with the opposed moment of

self-consciousness; (3) the syllogism of constitutional right or law through which the institutions of the individual state are articulated, and which themselves (4) would also constitute a further triad of syllogisms. Such an exposition is perfectly possible.⁶ But the original texts offer nothing to suggest that Hegel ever actually presented the material of his philosophy of right as just such an interconnected sequence of syllogistic triads. Such an approach would certainly represent a continuation of Hegel's earlier efforts at conceptual construction, like the "triangle of triangles." And it also would correspond to the metaphor of the circle that is itself constituted by circles, one whose inner configuration returns into itself in the manner of Plato's "fairest bond" that was mentioned earlier, the figure that also represented the original historical model for the ultimate "unification" accomplished in the triad of syllogisms. But in fact Hegel only ever applied the logic of the syllogism in the interpretation of a single totality and its own the inner mediation. And another reason for this lies precisely in the aforementioned speculative-logical approach according to which a self-contained whole of syn-logisms can be articulated only in terms of the Idea developed as actual totality through the concept.

If therefore the syllogistic triad governing the interpretation of the state in the *Science of Logic* and the *Encyclopedia* does find a certain correspondence within the system of the *Philosophy of Right*, then it would have to appear at one particular level in the developmental argument of the material presented in that work. It would therefore have to be an explication of a particular stage in the developing course of the concept of right itself and of the formal relationships appearing at this stage, and not simply as a retrospective summary or one that merely recapitulated several earlier stages. But the only possible candidates for such stages are the universal concept of ethical life⁷ and the more determinate concept of the state that is more specifically articulated as the character of constitutional law [*das innere Staatsrecht*].

But both of these identifications produce considerable difficulties of their own. The first one is problematic because the syllogism presented in the *Encyclopedia* contains no corresponding form that could be applied to the family. The second one seems to fail because the syllogistic triad of the *Encyclopedia* is not related at all to the three formal aspects of constitutional law. The only possibility, therefore, is to interpret the syllogistic triad in the *Encyclopedia* as a conceptual determination of the state that precedes the logic of constitutional law and the speculative identification of its constituent institutions, but nonetheless internally underlies the systematic structure of these institutions. The syllogistic triad would then

actually constitute an exposition of the state itself precisely in accordance with the mediation that belongs to it as a whole. And in that case there also no longer would be any conflict among Hegel's employment of the syllogistic triad in general, the *Encyclopedia's* claim that the syllogistic triad articulates the concept of the state, and the systematic correlate of this claim in the system of his political philosophy and in the "Outlines" of the *Philosophy of Right* as such.

But in order to substantiate the compatibility of the conceptual reconstruction provided by the *Encyclopedia* with the system presented in the *Philosophy of Right*, we actually must return to the concept of the state as developed in the context of the concept of "objective spirit." For it is in this form of spirit that "subjective spirit" creates a world of its own, one in which it acquires determinate existence for itself. Here the concept of subjective spirit no longer simply folds exclusively back on itself, no longer simply separates the natural world from itself to make itself into a system modeled on the form of the Idea. For here subjective spirit acquires a world for itself, a world that corresponds to its own form. But it does so in such a way that this form is actualized precisely as the independent existence of institutions that are indissolubly bound up with one another even though they also simultaneously enjoy a specific external and independent existence in their own right. Objective spirit thus remains closely and constantly connected with the actual world of the freely active spirit of finite subjects. But spirit does not become objective by relinquishing all subjectivity or simply abandoning itself to some systematically predetermined form of external existence with an immanent dynamic all of its own. It becomes objective rather by articulating and actively sustaining an actual world out of and precisely for its own subjectivity, an actual world that corresponds to the idea of subjectivity itself (cf. *EPWB* §514).

Now this relationship between spirit and world cannot be conceptualized as one between a world and a subjective constituting ground that would merely remain master of its actual constituted product at some reflected remove from the latter. The fact that free subjectivity finds its actualization in the ethical world means precisely that subjectivity moves out of this kind of reflected distance and thereby "knows and wills" the structure and character of its world as its own actuality. On the other hand, this actuality itself means absolutely nothing independently of this form of consciousness in its self-actualization: the state as a social and political order only exists at all to the degree that its free subjects find and recognize themselves within that order. And this immediately implies that all rational forms in which freedom actualizes itself, insofar as they

possess any universality at all distinct from their reflected activity, also belong to the conceptual determination of the rational actuality of objective spirit.

Now this entire line of thought would seem to encounter a decisive difficulty in the fact that the concept of ethical life first expresses itself as the domain of the family and that it is civil society alone that first liberates that finite subjectivity of the person that underlies the actuality of abstract right. And yet Hegel expressly taught that the state leads back to the substantial form of actual social life that is peculiar to the family. And this would seem simply to reflect the fact that Hegel's exposition of the concept of the state in the published version of the *Philosophy of Right* takes the ordered institutions of organized social life as its sole theme. Free subjectivity thus appears to be as completely bound in with these institutions as the consciousness of the singular individual is bound up in the loving social union of the family prior to any thought of the free subjectivity of being-for-self.

But this difficulty also disappears if we take care to examine the universal logical form of the concept of objective spirit. The Idea as spirit is to be grasped essentially as process (*EPWB* §215). This proposition, too, is a universal axiom that guides Hegel's exposition of the various forms of spiritual actuality. It belongs to the very process of the Idea that the latter initially abandons itself to the realm of immediacy. The Idea does not thereby forfeit or relinquish itself as in some sphere of alien externality. But the Idea must still reaffirm its own subjectivity over against this immediate form of existence in order to attain a form of an actualization where it can be objective for itself with undiminished self-consciousness and thus also with freedom. This processual structure, which prescribes as it does the path of ethical life, begins with the life of the family and leads through the individualizing activity of society and the universalization that results from that activity to the concept and actuality of the state (cf. *VPR*4, 417). It is because objective spirit is Idea, and because it is as such spirit, that the state cannot be the first conceptual determination of this spirit, even though the state does ultimately constitute the entire conceptual determination of the same. But this ultimate determination can be understood properly in its entire structure only if it is grasped as the syllogistic triad expounded in the *Science of Logic* and the *Encyclopedia* and thereby also presented as the concept of the state that claims ultimate validity in Hegel's eyes.

In terms of the text of the *Philosophy of Right*, this syllogistic mediation would find its suitable place first in Hegel's introductory development of

the concept of ethical life and second in the exposition of the concept of the state itself. The philosophy of right as it is presented in the *Encyclopedia* also actually allows us to grasp the proper place for the fully determined concept of the state more easily than does the separately published *Philosophy of Right*. In the *Encyclopedia* version it is clear that the substance of the state is the actuality of free persons who not only recognize the state, but also bring it into being through their own activity – not in the reflected distance of some purely external “production” but in the entire self-consciousness of their own free activity (EPWB §514). However, with respect to the first syllogism of the syllogistic triad, whose middle term is constituted by the particularity of needs, the organized form of the state also reveals that the state is always also one that serves the self-preservation of the citizens who constitute it. The government not merely directs the state, but also equally undertakes at least to ensure the survival and security of society. And the interests of the individual subjects, whose very actuality the state presents, are also immediately acknowledged within the legislative process. But Hegel demands that these interests must already have been articulated in the universal form open and appropriate to them through the institution of the “corporations.” The state thus stands for society not because it necessarily relates to some presupposed reflection of civil society, but because the state already contains *within itself* the conceptual determination of that society, and precisely as its very first syllogism. But since this first syllogism is already involved in the sequence of the three syllogisms, this in no way implies that the state is essentially an institution that is simply organized for, or one that can be understood simply in terms of, the satisfaction of needs and the maintenance of rights. The syllogism in which the state is mediated with society by means of the needs of singular subjects already can presuppose the universality of those needs by virtue of their particularity and the process of organization involved in them. The state is also thereby maintained, as it is through the relation of every syllogism to the general syllogistic sequence and to the final syllogism where universality at once unites and concludes the whole movement, precisely within the universality of spirit that is objective and determined by the Idea itself.

The syllogistic triad of the *Encyclopedia* thus allows Hegel’s theory of the state to appear as a theory of freedom in a sense that cannot be suspected so easily of abandoning the individually felt freedom of subjective spirit to a kind of higher “nature” or justifying the authority of the state that is actual only as a system of reciprocally related institutions that resemble some collectively operated apparatus. Hegel’s concept of

institutions must always be distinguished from the idea of institutions as interpreted by the functionalist approach. For Hegel, institutions also make up the state of actualized subjectivity insofar as the state itself rests on the self-consciousness of subjectivity and insofar as the logic of its institutions not merely corresponds to but also must be sustained and activated by that subjectivity. Hegel directly and inexorably opposes only that conception of subjectivity that would make the freedom of the latter dependent on a reflected distance over against any real actualization. Freedom is entirely involved and included in the very process of the Idea. Freedom can be complete only where it is capable of understanding itself in terms of its own actuality. And freedom therefore also can attain its own actuality there and ultimately only there where freedom articulates a form of objectivity out of and together with itself. This objectivity certainly rests on the activity of freedom, though it is not the kind of freedom that cannot simply be translated into existence in the form of strategic action or reflective decision, nor one whose recognition stands under permanently sustained reflective reservations. The state and the constitution cannot be regarded as something that is simply fabricated. And precisely to that extent, both of them constitute the very actuality of subjective freedom and also nothing other than that. It is for just this reason that Hegel holds that the development of the state owes its existence solely to the depth attained by the consciousness of freedom rather than to the organization of particular political acts or interventions.

Both with regard to its precise articulation within the system and with regard to its overall unity and intention, Hegel's political theory can be much better understood and presented from the perspective of the syllogistic triad in the *Encyclopedia* than any direct orientation to the text of the *Philosophy of Right* would ever allow. But this insight does not automatically suffice to resolve all the problems, difficulties, and controversies to which every attempt to understand Hegel's political thought has led previously. Thus, it cannot merely be regarded as a consequence of Hegel's method of exposition that his theory of constitutional law and right concerns itself exclusively with the conceptual development of the institutions of the organic state. One certainly can stress that the very method of Hegel's social and political philosophy demands that the institutions of the state, through which it acquires objectivity and becomes actual just like anything else, be developed individually in detail once the entire concept of the state has been attained and once it has also been ascertained that the relevant institutions exist only as long as they are sustained and activated through free self-consciousness. But Hegel still

ascribes to such institutions a place and a significance that cannot be justified or explained solely on the basis of his general method of exposition. The state in which freedom actualizes itself is supposed to be precisely the kind of actuality that also can be correlated with the actuality of the solar system in its own authentic sense, even if the former undeniably also represents a higher and spiritual form of actuality. That is why the state must become a real “individual,” and also why it must establish itself as a “subject” in the ideal form of monarchical power. But this latter subjectivity comes not only into practical conflict, but also into actual formal tension with the free subjectivity that has to sustain and activate the entire substance of the state. And this also helps to explain the ambiguity of Hegel’s answer to the question of how the self-consciousness that is essential to all spiritual actuality is to be accommodated within the singular existence of a state – in the spirit of the people where the subjects all unite with one another or in the effective practical power of the political institutions with which the individual self-consciousness would simply identify itself. But above all one should not challenge Hegel where he assumes that even the self-consciousness of the singular individual cannot possibly arise for that individual merely through his or her own immediate self-relation or separation from others. For in accordance with its very form, self-consciousness is a phenomenon that is at least accessible to interpretation as an event that is necessarily mediated through objectivity. But if we are to derive self-consciousness and active self-affirmation exclusively from the institutional forms of the organized state, then it is difficult to see how the free subjectivity of the spirit that finds its actuality in the state could be anything other than a mere “attribute” of an actuality to which it has also simply abandoned itself in the course of its supposed self-realization. But it is Hegel’s express purpose to ground the concept of the state on the concept of free spirit, and also to do so explicitly in such a way that the freedom of this spirit is preserved and sustained as effective within the developed concept of the state. Hegel’s exposition of the state in the form of the three syllogisms never relinquishes or loses sight of this purpose. And it is also only in this logical approach that the form of objective spirit can be rendered intelligible at all as an anticipation of the consciousness that belongs to the domain of absolute spirit. But the logic of institutions as it is unfolded in the *Philosophy of Right* forces the concept of the state into a different position. The motives that first gave rise to this conflict are quite profoundly rooted in Hegel’s entire conception of the world as a single whole, in the world of spirit as he understood it.⁸ Thus, one can clarify this conception properly, along with other alternative

versions of the monistic hypothesis that might avoid such a conflict, only by carefully examining the project of “first philosophy” itself. But it at least should be clear here that the authentic conceptual form of Hegel’s theory of ethical life and the ethical state cannot simply be read off from the kind of interpretation and exposition presented in the published text of the *Philosophy of Right*. Hegel himself has explained with some clarity, and in passages much better suited to the conceptual determination of formal relationships, the kind of logic in which such a conceptual form should be developed. The interpretation of his philosophy of right should no longer ignore this logic in the future.

Notes

1. Cf. F. W. J. Schelling, *Entwurf eines Systems der Naturphilosophie*, ed. Manfred Schröter, vol. 3, p. 70. This passage played an extraordinarily important role in the development of Hegel’s own philosophical thought.
2. Cf. Plato, *Timaeus* 31c–32b. In this passage, which was probably extremely significant for Hegel’s subsequent development, Plato explicitly says that the unity of all things is to be discovered through the mediation of “the fairest bond.” In his later *Lectures on the History of Philosophy*, Hegel refers to this passage with particular enthusiasm: “This is an excellent thought, and one that we have retained in philosophy to this day” (VGP II, SW XVIII, 252; ET: II, p. 75).
3. See note 1 above.
4. This basic interpretation of the three syllogisms and their application is very clearly suggested by Hegel’s own elucidations of the syllogistic logic of his philosophy; cf. “Hegels Notizen zum absoluten Geist,” ed. H. Schneider, in *Hegel-Studien* IX, 1974, pp. 35–38.
5. When the particular context or the need for some perspicuous analogy seemed to demand it, Hegel also was prepared to present the three syllogisms of the state in a sequence and numbering that do not correspond to the inner structure of the syn-logistic pattern. Such an explanation is clearly indicated by the important passage in WL II, 373–74; ET: pp. 723–24.
6. An attempt in this direction was first made in the unpublished postdoctoral dissertation of A. Schöpf.
7. Occasionally, Hegel’s exposition of the Idea of ethical life directly reveals its dependence on the syllogistic triad, as in the case of the Griesheim transcript to §151 (VPR4, 405). It is generally acknowledged that in both the printed edition of the *Philosophy of Right* and his lectures on the subject, Hegel was very sparing in discussion of the logical foundations of his theory, even though he expressly desired the treatise and the articulation of its parts to be understood and judged as a whole “in accordance with the logical spirit on which they rest” (*Rph*, Preface, paragraph three). Without careful and detailed explication, the theory

of the syllogisms is unintelligible, and perhaps more so than other elements of speculative philosophy. This theory thus easily could become a source of resistance to Hegel's philosophical theory as such as well as its actual content.

8. For more on this, see the final section of "Vernunft in Verwirklichung," my introduction to an edited transcript of Hegel's lectures on the philosophy of right (Hegel, *Philosophie des Rechts* (Frankfurt, 1982)).

II

Constitution, Fundamental Rights, and Social Welfare in Hegel's *Philosophy of Right*

Ludwig Siep

It is the fate of texts concerned with legal and political philosophy that they tend, much more than other philosophical writings, to be read emphatically in the light of subsequent events and later experience. This is particularly clear in the case of the controversy that has surrounded Hegel's *Philosophy of Right* from the Young Hegelians through Marx and Haym up to the Anglophone critiques of Hegel's thought in the middle of the last century (Russell, Popper, Hook, etc.).¹ The question of whether Hegel's political philosophy properly belongs in the "liberal," the "Prussian-restorationist," or even the "totalitarian" tradition is one that has been constantly and repeatedly encouraged by the specific experiences of modern German history. Nor indeed is it an illegitimate question, as long as one is capable of distinguishing between Hegel's work in this field and the story of its influence, or its "effective history," capable of distinguishing between Hegel's general systematic conception and certain of his own historically conditioned views and remarks.

During the last few decades there has been a concerted effort to answer the question decisively above all by reference to previously unpublished student transcripts of Hegel's lectures. Yet the attempt to descry in these manuscripts a hitherto unknown "liberal" and "democratic" Hegel, who with the *Philosophy of Right* of 1820 effectively joined with the Prussian Restoration or accommodated himself to the spirit of the Karlsbad Decrees, is quite implausible.² For there are no really decisive differences between the principles elaborated in the *Philosophy of Right* or the laws and institutions described there and the perspective represented by his actual

lectures. But the lectures certainly show that the “restorationist” tone of the published *Philosophy of Right* is a largely superficial feature of that text. As far as the principles of the work are concerned, it is clear that Hegel is no “populist” romantic or devoted to the idea of “power” and “authority” as such and that he propounds no special “German Path” in the context of modern history. It is obvious, on the contrary, that he actually stands firmly within the modern European natural law tradition. And one can easily delineate the precise steps with which he advances on Hobbes, Locke, Rousseau, or Kant. Of course, there are also considerable differences between Hegel’s position and the characteristic political philosophy of the Enlightenment or the first stirrings of parliamentary democracy in the Western European sense. These differences arise largely from his repudiation of social contract theory and of the general conception that he believed followed naturally from it: that of a legislative assembly based on general electoral procedures where individual and particular interests are represented and struggle continuously to attain (“contingent”) majorities. Hegel is equally decisive in fundamentally rejecting the “checks and balances” conception of the division of powers under the overall primacy of the legislature.³ Even when Hegel does consider the idea of an essentially reciprocal and interdependent relationship between the monarch, the government, and the prevailing view of the representative assembly, as in his Heidelberg writings of 1817–18,⁴ the thought remains quite different, for systematic reasons, both from the classical doctrines concerning the division of powers and from the contemporary ideas concerning a “national assembly” that would be elected by all the citizens. In order to appreciate the significance of Hegel’s social and political philosophy for his time, and in some respects even for our own, it is quite unnecessary to play off the lecture transcripts against Hegel’s actual published writings of 1817 and 1820. One can and should see the lectures rather as providing a more detailed commentary on Hegel’s social and political philosophy in general. Then it is possible to grasp Hegel’s concept of a constitutional monarchy, based on the rule of law and a special version of the division of powers and involving elements of a welfare system and a self-organized representation of “estates,” in a much more precise way. This does not render the debates concerning the ultimate significance of Hegel’s political philosophy or its relation to specific traditions (from the theoretical or historical perspective) simply redundant. In what follows I should like to discuss the role of the constitution, of basic rights and of general welfare provisions within that overall conception. Hegel’s claims about the constitution as an expression of “the spirit of the people” [*Volksgeist*], about the “higher

right” of the state in relation to the legal freedoms and actual welfare of the individual, have been misunderstood in many respects. These issues, too, now can be interpreted more precisely by reference to the newly available texts – interpreted with respect to their place in the history of ideas, to their capacity for resolving genuine problems, and to their possible limitations and deficiencies.⁵

I

The problem of the “constitution” was a central one for Hegel’s social and political philosophy from the beginning to the very end of his career. Hegel’s first sketches and publications concerning political philosophy all revolve around the issue of the constitution: his translation of and commentary on Cart’s essay on the constitutional arrangements in Bern, his essay on the municipal constitution of Württemberg (“The Magistrates Should Be Elected by the People”), and the various drafts that make up the text now entitled “The Constitution of Germany.” And Hegel’s last published work (1831) also concerns itself directly with constitutional reform in the context of the English Reform Bill.⁶ Since the middle of Hegel’s Jena period, the issue of the “Constitution” (1805–6) and what he later calls the “inner constitution” of the state is the central theme of his systematic exposition of social and political philosophy. But his concept of the constitution is a very broad one that cannot be limited to the sphere of constitutional law (in either written or traditional form). Hegel’s concept of the constitution embraces both the “inner structure” of the social and political “body” in general – a metaphor that Hegel, like Rousseau, Hobbes, and many other “forerunners,” understands as a substantive and systematically significant analogy⁷ – and its functions and processes insofar as they influence the existence and capacity for action of the body politic as a whole. The necessary organization of society, according to Hegel’s view, into a specific number and types of estates based on profession – principally, agricultural workers, the commercial class, and the class of civil servants in the broad sense – forms just as much a part of the “constitution” as the executive power and the most important branches of administration (economic affairs, the military, the sphere of education).⁸ It was only in his Heidelberg and Berlin periods that Hegel expressly distinguished the legally defined exercise of state power as the “political constitution” from the order of estates in the sphere of civil society and the related functions of internal administration and organization

(the “police” in the broad sense of the term then current). In the *Philosophy of Right* of 1820, this is even marked terminologically with the distinction between the “particular constitution” (the institutional organization of civil society and of “the state as conceived by the understanding”; *Rph* §265) and the “political constitution” (the legal organization of the powers of the state; *Rph* §267). But even this latter “organization,” the “subsisting distinctions” involved in the legally established functions and spheres of executive power, represents only one aspect of the constitution – for the “process of the state’s organic life” also must be considered here (*Rph* §271).

But how does the written constitution of a state and the decrees and changes that it enacts relate to the constitution in this very broad sense as the organized “process” of social and political functions in general? One can begin to answer this question by elucidating Hegel’s Note to §273 in the *Philosophy of Right* in the light of §§134–37 in *RphW*’s transcript of Hegel’s Heidelberg lectures on social and political philosophy. In both texts, Hegel discusses the question of “who should make the constitution” (*Rph* §439). This issue is of great significance to Hegel from both a historical and a theoretical point of view – even if his own response is largely to downplay this significance here. In his Heidelberg lectures, the issue is directly connected with Hegel’s stance in the debate over constitutional reform in Wurtemberg (as expressed in Hegel’s essay *The Proceedings of the Estates Assembly in the Kingdom of Würtemberg* of 1817).⁹ For what was at stake here – apart from the content of the constitution itself – was whether the constitution should be expressly established through a contract between the Estates and the King, through general consent to the King’s own proposal for a constitution, or through direct imposition (or “Oktroi”), as in France in 1814. In terms of political philosophy, this had been a live and topical question at least since Hobbes, who had fused the social and governmental sides of the contract in one and rejected the idea of a collective subject of rights as a precondition for a valid constitutional contract. Hobbes’s interpretation of the contract as a chain of reciprocal renunciations of right in favor of a “third” party expressly charged with establishing right proper is conceivable only in ideal terms, and cannot be conceptualized as actually “in time.” It was Rousseau who struggled with this problem at greatest length – and as far as the history of theory is concerned, Hegel engages principally with Rousseau in this regard. Rousseau’s attempted solution in the *Social Contract* was of course to distinguish between the extrapolitical role of the “architect of the constitution” (the *legislateur*) and the consent to the proposed constitution

on the part of the “sovereign power” that first constitutes itself precisely through this consent: the self-legislating people or the assembly of all full citizens. Through both of these acts the subsisting and valid legal will of the community, the *volonté générale*, acquires a temporal beginning in the context of a particular people. The “divine authority” of the architect of the constitution translates this will into a concrete social contract and the legislative assembly founded on the latter is henceforth regarded as “vox dei.” In respect of this suggested solution, Hegel takes over the idea that the universal will, as the source of legal validity for concrete laws, can be neither “created” by nor “posited” within a people. The constitution must therefore be grasped as *causa sui*, as generating itself out of time. The temporal beginning for Hegel is thus neither the act of an original “architect” – except in the “heroic times” of antiquity – nor its acceptance through the people, but rather the historical development of an understanding of right and law within a people, that is, within the so-called spirit of the people. But for Hegel, too, this historical development now has reached a stage when the “habitually established” laws and rights – here Hegel follows Hume and Herder – must be proclaimed and codified explicitly in legal and constitutional texts. The French Revolution was a consequence of one-sided and, until 1814 at least, unsuccessful attempts to establish such codification.¹⁰

The decisive thing, therefore, is that such attempts at codification be understood not as an act of simple creation, but as a conscious formulation of a constitution of rights and laws that is already latent or implicit. *Who* it is that finds, declares, and realizes these formulations is then a secondary matter. In the *RphW* transcript Hegel puts it succinctly: “The constitution should be regarded rather as the foundation of a people’s life in the spheres of right and ethics, existing in and for itself, and essentially not as something made and subjectively posited. Its absolute cause is the principle of the national spirit [*Volksgeist*] as it develops in history. The causes of the individual factors determining this development may be very diverse in shape. This historical element in the development itself gives the constitution the shape of a higher authority” (§134, 189; ET: 239).

The published text of the *Philosophy of Right* emphasizes this character of the constitution as *causa sui*, as something “divine,” even more strongly, but also refers directly back to the original underlying problem that faces social and political philosophy here: who possibly can “make” the source of all rights itself rightfully binding? The question about any such “making” or original drawing up of the constitution presupposes

that “no constitution as yet exists, so that only an atomistic aggregate of individuals is present. How such an aggregate could arrive at a constitution, whether by its own devices or with outside help, through altruism, thought or force, would have to be left to it to decide, for the concept has nothing to do with a mere aggregate” (*Rph* §273). For Hegel, too, a people without a constitution cannot be regarded as a collective rightful “subject” – but then without any constitution whatsoever, that is, without any consciousness of rights and laws or at least of established ways of doing things, no people can possess an identity in the first place. Is the historical codification of constitutions thus simply to be abandoned to the contingency of chance – and thus also of “violent” – events?

First of all, it is necessary to distinguish between altering an already “existing” constitution and the proclamation of a new constitution. If the first is at issue, then “making merely signifies an alteration, and a constitution itself already and directly presupposes that such alteration can take place only in a properly constitutional way” (*ibid.*).¹¹ But Hegel does not envisage any particular procedure for doing this – and he is certainly a long way from endorsing Fichte’s “Rousseauian” proposal for changing the constitution through the direct assemblies of the people.¹² Hegel does not deny that the right to undertake such alteration lies with the legislature, but he clearly regards this right as already actualized in the normal legislative process with the mutual cooperation of all three powers of the state.¹³ The establishment of specifically convened occasions for deliberating on the constitution have no place within the framework of Hegel’s social and political thought, since for him there is no “people” as such to be represented over and beyond its articulation in terms of the social estates. *What* is changed in any particular case arises therefore from the actual change in customs and practices insofar as the latter are “codifiable” in a rational fashion that corresponds to the principles of the constitution.

If there is *no* such already given and express constitution, then the historical development of the “national spirit” remains determinative. But this does not imply the irruption of irrationalism in Hegel’s position, since there is no role here for mystical and mysterious “national characteristics” or “national destinies.” The development of the national spirits in Hegel represents, as it were, various local histories of rights and constitutions that can be interpreted according to a universal and “world-historical” paradigm. This is so at least to the extent that national spirits can be said to shape and define their epochs and thus attain what Hegel calls a “world-historical status.”¹⁴

Hegel's conception of world history as essentially a history of political constitutions is clearly based, as the Heidelberg lecture transcript reveals, on classical sources concerning the different forms of the state and the dynamic reinterpretation of these sources in terms of historical transformations of such social and political forms. But according to Hegel this history leads toward a certain "telos," one that reflects a completely articulated unity of the rational moments implicit in the traditionally defined forms of the state (monarchy, aristocracy, democracy). This telos is the constitutional monarchy. "The articulated development of the state into the form of constitutional monarchy is the achievement of our more recent world in which the Idea has attained the infinite form [appropriate to it]" (*Rph* §273). The "Idea" in Hegel's sense signifies, briefly formulated, the self-actualization of the conceptually necessary element of nature and history. The "infinite form" of the Idea is the unity between "objectively" rational forms of social life (laws and institutions) and the subjectively rational will. Constitutional monarchy may be said to assume this form when it involves an "organism" of different powers in the state and an ultimately decisive individual will (the monarch). The powers in question may be said to be organic and rational when each "functions" as a particular way of integrating the universal, the particular, and the singular will – as law, as deliberation concerning particular points of view, as final enactment [*Beschluss*]. Or expressed in the ontological terminology of Hegel's *Logic*, when they embody a syllogistic structure [*Schluss*].¹⁵

The development of such a constitution, then, is not a case of a "rational proposal" projected in advance, but rather an achievement that is the "work" of history: "The history of this true articulation of ethical life is the concern of universal world history" (*Rph* §436). In the published text of the *Philosophy of Right*, Hegel presented universal world history as the conclusion of his social and political philosophy and as the "ultimate" determining power behind all the developments of right and political power. In the Heidelberg lectures world history is still directly related to the question of establishing a constitution in the first place, and thus even more clearly related to the history of the various forms of the state, as formulated most influentially by Polybius in antiquity and reformulated above all by Machiavelli (in the *Discorsi*) and Rousseau in the modern age.¹⁶ It is this general approach that still underlies the history of state and society as outlined in the second part of Rousseau's *Second Discourse*. In his Heidelberg lectures on the philosophy of right, Hegel interprets the various historical forms of the state, presented concretely in terms of historical "epochs" or "realms," as a development that leads from a "natural

form of the state” [*Naturstaat*] through to one that essentially embodies the “freedom of the will” (*RphW* §135; ET: 242ff.). “The patriarchal and oriental system, further the aristocratic and finally the democratic system mark the transition from a purely natural principle based on the intuition of the naturally divine to the principle of will, namely, the principle of the spiritually divine” (*ibid.*).¹⁷ But “democracy” is not yet the ultimate *telos* – for with a further “reverse” movement we now pass from classical democracy through the feudalism of the “Germanic” world to the system of constitutional monarchy. And it is here that the “rationally divine” moment, the constitution based on the freedom of the will, and the “naturally divine” moment, the monarch who is elevated by birth above the conflicts of particular wills, are both united in an “organic” system (*RphW*, 194; ET: 243ff.). In the first phase of this development, “physical” and “spiritual” authority gradually drift apart – we pass from the “divine” race of heroes and theocratic kings to the “democratic” principle of the *polis* “where each individual beholds his freedom” (*RphW*, 194; ET: 243). But this “intuition” of freedom is still entirely “holistic” in character, and the individual finds his “identity” only in the *polis* and its ends: “Particularity of purposes does not enter into play in democracy here, but rather the state as a whole; to the extent that customs in a democracy cease to be virtuous, freedom is lost.” Hegel here appeals, as he also does later in the *Philosophy of Right*, to the intrinsic connection between democracy and (patriotic) virtue as described by Montesquieu. The liberation of particularity, not merely of a greater consciousness and explicit pursuit of private ends and purposes, but also, and above all, of subjective reflection as the ultimate criterion of truth in fundamental questions of social and political life (in religion, morality, and philosophy) is the real “work” and achievement of the “modern” Christian-European epoch. Particularity can be liberated rationally and at the same time moderated within a legally organized social order only in the context of a certain kind of state. This state will involve the institutions of private property and civil law, a civil society and a structure of social estates, an organic division of powers and an independent monarch who will act and ultimately decide matters in the “spirit of the constitution.”

What if such a constitution, once established in custom, has now become explicitly conscious of itself, has been codified by the “educated class” (*RphW*, 190; ET: 240), and has been realized effectively “by contractual means or by force” (*ibid.*, 192; ET: 242)? How can one ever introduce any change to it if “the constitution as a whole” stands upon “an absolute foundation of immutability” (*ibid.*, 191; ET: 241)?

According to Hegel's Heidelberg lectures, "single provisions" can be changed, but not "the whole that is gradually evolving." If the constitution is ultimately identical with the "spirit of the people," that is, with the customary forms of law and right and the consciousness of a politically united people concerning those forms, then "the people cannot suddenly change the whole consciousness of its spirit" (ibid.). Instead of this, Hegel speaks of the "rejuvenation of the constitution" and is obviously thinking, as in the *Philosophy of Right*, of a change "in accordance with the constitution" accomplished along the legislative path. But what is "eternal" in a constitution, and what can "age" here? What is still changeable in institutions that represent the "*telos*" of history? And what would the criteria for such changes be like?

II

In his 1817 essay *Proceedings of the Estates Assembly in the Kingdom of Wurtemberg*, Hegel mentions the "permanent regulators that must underlie any revision or extension of the already existing [constitutional] arrangements, if either should prove necessary" (TW 4: 492; ET: 271). These are the "General provisions relative to the constitution of the kingdom and the rights and duties of the King's subjects" (ibid. 491; ET: 270).¹⁸ Referring directly to the constitution proposed by the King, Hegel cites the fundamental rights of equality before the law, of equal opportunity and access to government posts or official positions (though this is restricted to the three Christian denominations in the state), of proportionally equal contributions to public charges and taxes, of the freedom to emigrate, of freedom to choose one's own profession or occupation and the appropriate means of education or training for the latter (ibid.). He compares these fundamental rights with the "*droits de l'homme et du citoyen*" as proclaimed by the French Revolution and claims in this connection: "It is an infinitely more important step forward when intelligent thought has advanced to the knowledge of the simple bases of political institutions and learned how to express them in *simple* propositions like an *elementary catechism*" (ibid. 492; ET: 270).

Hegel's praise for this conception of fundamental rights, however, is not without reservations. In his view, it is crucial that such rights are not interpreted as traditionally handed down rights intrinsically prior to the state proper, rights agreed contractually between the traditional estates and the future head of state. For, according to Hegel, that implies that

private or civil law would constitute the foundation of the state, that all right and law would then become an object of constant negotiation of independent groups and interests, that the old system of feudal right and traditional privilege once more would be allowed to return. Hegel had fundamentally and steadfastly opposed this idea since his very earliest writings on social and political questions – above all, in the *Essay on the German Constitution* (1799–1802) – and appealed instead to the modern conception of rational law [*Vernunftrecht*]. It is not merely in the context of constitutional practice, but also with regard to the theory of law and the state as such, that Hegel rejects any separation between the specifically rational demand for fundamental rights and for an open domain of public law in general. For Hegel, the fundamental rights are therefore intrinsically and conceptually inseparable from the “executive powers of the universal will” of the state – here, too, we must recognize the relation of mutual implication and thus of reciprocal presupposition that characterizes Hegel’s logic of reflection. As far as constitutional law is concerned, this means that the fundamental rights, as “organic determinations of the constitution,” cannot be separated in principle from the “actual laws” that prevail, and that the former must be more precisely determined, concretized, and given “positive” form through the latter, and therefore through the legislative process itself (TW 4: 493; ET: 271f.).

It is quite impossible to argue that Hegel had abandoned this position by the time he published the *Philosophy of Right* in 1820. One should not allow oneself to be deceived in this respect either by his polemics against the populist and sentimental-religious political philosophy of Fries and Schleiermacher, as he interpreted it, or by the sharply “loyalist” tone of his language (something that was equally evident in the essay *Proceedings of the Estates Assembly*). In his vigorous polemic against von Haller’s attempted restoration of the *lex naturalis*, which implied the justification of “natural” social and political hierarchies on the basis of the supposed will of God, Hegel was also defending what he called “national freedoms” or “the juridical and constitutional laws of nations” (*Rph* §258, footnote; ET: 280). For Hegel, these are based not on insignificant original claims or ancient documents, but rather on the living customs “that have had an effect on every garment the individual wears and every morsel of bread he eats, and whose effects are daily and hourly present in everything” (*ibid.*). But quite apart from their embeddedness in the everyday customary behavior to which Hegel – like Hume – accords such importance, the fundamental rights in question also find their systematic

place within the *Philosophy of Right*. They are to be found in the domain of “abstract right” (the freedom of personality, of property, and of contract), but also in the domain of “morality” (freedom of conscience) and “civil society” (freedom to pursue a self-chosen occupation and publicly accountable procedures in the “administration of law”).¹⁹ But are they still the “regulators” of the constitution and of legislation, and can the political institutions of the state still be “subsumed” under these fundamental principles (cf. *TW* 4: 493; *ET*: 271)?

In this section of my chapter and the following one I should like first to examine the extent to which Hegel’s *Philosophy of Right* succeeds in giving concrete form to these fundamental rights or makes them the genuine foundation of the institutions presented in that text. Only then, in Section IV, will we be in a position to discuss the protection of such fundamental rights as possible counterrights against the state. It is not so much in the first regard (i.e., concretizing fundamental rights in the state), but much rather in the second that Hegel’s *Philosophy of Right* undoubtedly reveals its deficiencies.

Hegel’s conception of “abstract right” resolves the problem of understanding rights not as “external” but as essentially “internal” to the state while still recognizing their truly “fundamental” character. Hegel builds on Kant’s method of treating civil law as an unconditionally valid form of rational law, but one that is regarded only “provisionally” in relation to a condition of public legislation, so that the establishment of such a condition itself remains a categorical imperative. But because of the way in which Hegel links civil and constitutional law, he goes further than Kant here. In Hegel’s terminology, the legal right involved in property, personality, and contract is “abstract” in a twofold sense. In the first place, it is abstract because it is only “one-sided,” merely one sector within a “holistic” overall system of rights, institutions, duties, and claims that go beyond those that strictly can be demanded and enforced (i.e., “ethical” duties and claims). It presupposes institutions for its own realization – not only through legal coercion, but also through economic and financial provision – and also can be limited by these institutions, above all by the state’s own “capacity for action.”

It is also “abstract” in another sense, because the universality, particularity, and singularity of the will are connected here only in an external and contingent fashion: a formally correct contract can frustrate both the “meaning” of right and the genuine claim of a free person. Without due consideration of the factors of intention and responsibility, of the immediate personal economic situation – the object of the “morality”

chapter²⁰ – and established concrete juridical practices (“customs”), but also without consideration of the judicial procedures, the competence of the judge (the “administration of justice”), and so on, civil law remains a system of regulations that can be applied unjustly and inappropriately.

On the basis of the “abstract” character of right in this sense, it is already obvious that the rights of the free person find their proper “realization” in the *Philosophy of Right* in its entirety. Hegel expressly wishes to distance himself from Kant’s “abstract” notion of rational law precisely by incorporating the institutional – but also the economic – conditions of a stable and noncontingent realization of the rights of freedom into the very “meaning,” or, in specifically Hegelian terms, into the “concept” of right. He claims therefore to derive the moral conditions (responsibility, conscience), the social conditions (family, occupation), and the economic conditions (welfare, security) immanently from the concept of right itself. As Hegel says in §8 of the Heidelberg lecture transcript: “Right expresses in general a relationship that is constituted through the freedom of the will and its realization[. . .] The realization of freedom has necessary stages. And to study this process is the aim of our science” (*RphW*, 10; ET: 56).

To secure the economic and social conditions of right or of freedom in general is certainly the task of the political institutions and those of the Estates that make up “the constitution in the particular sense.” To that extent, the elementary rights of the person remain “regulatory” for the constitution and express the purpose of the state itself. But as we already saw at the beginning, Hegel distinguishes the “political constitution” from this “constitution in the particular sense” and subordinates the latter to the former. But the fundamental rights we have discussed are obviously not the principles of the political constitution itself. With regard to what principles, then, would any potential revisions of the political constitution be carried out? Before attempting to answer this question, I should like to discuss the significance of social arrangements and “welfare” provisions within Hegel’s *Philosophy of Right*.

III

The significance of securing the social and economic welfare in relation to the rights of citizens was certainly no new theme in Hegel’s time. A general problem already widely discussed in the social and political philosophy of the eighteenth century was how the equality of all citizens before the

law and the strictly universal character of laws could be combined with the economic inequality of property-owners and the particular character of measures aimed at sharing and distributing social goods more fairly. Rousseau, above all, who elevated the “*volonté générale*” into the sole principle of right and subjected the laws as “acts” of this will to very strict formal, substantive, and procedural criteria of universality, discussed and examined this particular problem in some detail.²¹ In his radical “critique of the modern age,” as developed in the *Second Discourse*, Rousseau had already connected the classical theme of the rule of the wealthy with the social contract theory of the state. The social contract is “deceitful” insofar as it is the rich who profit from the legal protection of property, while the poor are harmed by this further sanction of what already has been unjustly acquired by others. Here contract, along with the legal rights associated with it, lead only to the concentration of power in the hands of the few, and finally of a tyrant who renounces the need for legal forms altogether.

In the “normative” theory presented in the *Social Contract*, Rousseau therefore expressly concluded that the distribution of property must already be “leveled out” before the establishment of the social contract. The harmony between the laws of freedom and the common interest – the “*volonté générale*” and the “*intérêt commun*” – is possible only in a society that is not characterized by major differences in the ownership of property. In his *Sketch of a Constitution for Corsica*, Rousseau draws the appropriate economic consequences from this and recommends an autarchic society of small-holders and artisans that is as independent as possible from external trade. But the problem he fails to resolve concerns the legal and rightful establishment of such a society in the first place. Since laws must be strictly universal and binding on everyone in equal measure, economic redistribution *after* the social contract has been concluded is hardly feasible. A just situation in this respect therefore can obtain only in “societies with a leveled middle class” – or it is the task of the “*legislateur*,” the architect of the constitution, the educator of the people, to ensure the appropriate distribution in the first place. But this cannot itself be achieved by legal or rightful means.

The German “Rousseauians” Kant and Fichte drew different conclusions from this dilemma. Kant regarded the “paternalism” of the “Ruler of the Land” as a form of despotism that was quite incompatible with the autonomy or at least the required “participation in legislation” of the citizens as “legal persons.” In the first place, therefore, Kant dissolved the connection between right [*Recht*] and welfare [*Wohl*]. Right now is

concerned merely with equal freedom of action for all with respect to the possibility of acquiring and maintaining property. However, in his “General Remark” on constitutional law in *The Metaphysic of Morals* of 1796, Kant also made “redistribution” an object of legal right: “The universal will of the people has precisely united to form a society that should continue to maintain itself henceforth, and has to this end subjected itself to the executive power in order to maintain the members of this society who are incapable of maintaining their subsistence. In the name of the state, therefore, the government is justified in compelling those who do have this capacity to procure the means of subsistence for those who do not as far as the necessary conditions of nature are concerned” (AA VI: 326). For this purpose, Kant regarded “compulsory” contributions rather than public charitable organizations as the only legal form that is “appropriate to the right of the state” and one “from which no one who wishes to live can withdraw” (ibid.). I shall not discuss here whether or to what extent this physical maintenance of all citizens as the “purpose of the state” – over and beyond the establishment and maintenance of a public state of law – can be said to follow strictly from the principles of Kant’s doctrine of right in general. But obviously, all Kant was ascribing to the state here is the task of securing a minimal level of existence to “the protected” within a law-governed community that, as is well known, does not include any voting rights to the citizens.

Fichte, on the other hand, connected the idea of right with the welfare of persons even more closely than Rousseau had done. For Fichte interpreted the right to property as a right to maintain oneself through the exercise of one’s own labor. I shall not discuss here precisely how Fichte derives this thought from his concept of subjectivity in terms of spontaneous “self-positing.” But it clearly follows from this concept of right that the law-governed community itself must guarantee to everyone the possibility of maintaining themselves through their own labor. This directly involves the state ownership of property with respect not only to the means of production, but also to the resulting products the marketing of which must be guaranteed through a planned and effectively realized system of exchange. Finally, a certain share in the results of excess production also “belongs” to the state, which the latter must use to ensure capacity for work generally or for maintaining those who cannot work through no fault of their own. “Absolute property,” which stands at the free disposal of the citizens, is simply the remaining sum of products that have been exchanged for money with the state, together with the consumer goods thereby acquired (Fichte, SW III: 240). In his *Foundations of Natural Law*

of 1796–97 and his essay *The Closed Commercial State* of 1800, Fichte proceeded to “deduce” this “proto-socialist” conception of the state and the economy in all its detailed implications.

For his part, Hegel retains the connection between right and welfare as emphasized by Fichte and Rousseau. His own conception of “welfare” embraces not merely the “maintenance,” but also the “happiness” (*Rph* §123) of the citizens as the “reflected” life plan of securing the maximum harmony with respect to the interests of the individual. Such a plan, and its attempted realization – the “pursuit of happiness” – is itself a rational form of a universalizable free will, is a “right” of the individual. Without this necessary connection between the will to right and what we could call the “will to welfare,” the required acceptance of right in general is incompatible with the “total will” of the individual. Even when he is speaking of authentically political virtue, of loyalty to the state or “patriotism,” Hegel declares that they depend on the settled consciousness of correspondence between the private pursuit of happiness and the existence of the state itself.

For Hegel, therefore, a whole series of social measures necessarily belongs to this right to welfare, but also to the claim to a noncontingent use of property rights. But Hegel does not support the Fichtean idea of a planned economy, because he believes that the development of personal abilities and the pursuit of the life plans of particular individuals is possible only in the context of the effectively private pursuit of interests, involving the free choice of profession or occupation and the private disposal over the means of production. The originally Christian, and subsequently the modern-bourgeois emancipation of private conscience, together with the private assessment and pursuit of what is “right for me personally” – what Hegel calls “the rights of particularity” – is not compatible with the state-planned and state-enforced correspondence of private and social self-maintenance through labor in the Fichtean sense. Hegel therefore regards the market of producers and products as a necessary element within a rational system of law. We must accept the attendant crises of consumption, the problem of overproduction and unemployment, and the process of “proletarianization.” But Hegel also very clearly perceives the possibility already invoked by Rousseau in this connection, namely, the undermining of right through the formation and accentuation of class conflicts in society: those who no longer have anything further to lose will come to feel “indignation” instead of willingness to comply with the law – and those who can buy anything and everything for themselves will display only a corresponding arrogance.²²

From this perspective, then, the significance of these institutions of social provision is clear: they are demanded by the concept of right itself, and thus are openly available to the individual as such, while at the same time securing the existence of the law-governed community of interests in general. For this purpose, Hegel develops a system of measures at the level of the family, of professional and occupational life, and of society as a whole (the “police” in Hegel’s broad sense of the term), which are all intended to counter the crises involved in a market economy, to protect those affected by such crises while still preserving their own sense of maintaining themselves independently. For Hegel, such institutions even serve to replace on a higher plane – that of universally willed and actually effected measures not simply dependent on private dispositions – the moral duties of mutual benevolence, or, in Kantian terms, the duty of encouraging and supporting the “happiness of others.” The solidarity of assistance that is not enforced by law but is essentially involved both in the family and in the “corporation” (the “second family” within civil society; *Rph* §252), as well as the state’s “provision . . . for the protection and security of the mass of the populace in relation to particular purposes and interests” (§249), are supposed to unite considerations of right and welfare without recourse to a paternalistic conception of tutelary guardianship. But, of course, this also implies that there is no question here of claims that automatically can be demanded according to a judicial procedure. “Right” for Hegel does not necessarily mean a strictly enforceable claim on the part of the individual. Rather, he holds that there is a general claim for the state to implement appropriate “policies” with regard to trade, transport, communications, public health, conditions of labor, and so on, and the general administration of laws. But if the state can fulfill these claims only through its own “thoughtful policies,” rather than through granting express rights in this respect, and if it must furthermore pursue other “higher” ends of state (namely, those of the “political constitution” in the strong sense), does this not imply that the person’s rights to freedom and the social and political “realization” of these rights remain merely subordinate components of the constitution as a whole? My final considerations are concerned precisely with this question.

IV

The question of priority in this regard would seem to be resolved without ambiguity in §258 of the *Philosophy of Right*. Hegel claims that to make

“the security and the protection of property and of personal freedom” into the “ultimate purpose” of the state is to confuse and “conflate the state with civil society.” The state for its part “has a quite different relationship to the individual; inasmuch as he is objective spirit, the individual himself possesses objectivity, truth, and ethical life only insofar as he is a member of the state. This unification [*Vereinigung*] as such is itself the true content and purpose, and it is the vocation [*Bestimmung*] of individuals to lead a universal life.” One simply could translate this into terms drawn from the history of philosophy and Aristotle in particular: man as a rational being is essentially a political being and must therefore live in a community in which the rules have to be established and realized through shared deliberation, legislation, and decision (*krisis*). Or in terms drawn from Kant: as a being that is capable of exercising practical reason in the case of external conflicts necessarily arising from the shared occupation of a finite terrestrial space, man is unconditionally obligated to enter into a condition of public right and law. This would make it quite clear that Hegel is not just turning any or every kind of unity with the “state” into the final end and purpose of individual and social life. But why, then, does he emphasize, over against Kant and Rousseau, that “personal freedom” is not the ultimate purpose of the state and claim that the latter in its “substantial unity,” possesses the “highest right over against the individuals”?

But this formulation, too, first must be read in its precise context. For the substantial unity referred to in the second sentence of §258 is actually described in the first as “*that* [emphasis added] of the substantial *will*” that the latter “possesses in the particular *self-consciousness* that has been raised to its universality.” This unity of social institutions with the “proper” self-consciousness of individuals is the Idea of the state that is actualized, according to the following paragraph, in the constitution, in international law and in world history. And according to §257, three subjective and three objective moments belong intrinsically to this unity. Objectively speaking, in terms of “objective spirit,” the state must be ethical, “transparent,” and an expression of self-conscious will. That is to say, the state has to involve genuinely “functioning” social and juridical practices that must be properly transparent, that is, expressly codified and publicized. The state must also possess the appropriate organs for establishing and realizing shared rules and decisions, organs that should rest on “thought” (due counsel and consideration) and “knowledge” (professional expertise and knowledge of fundamental principles) rather than on essentially arbitrary decisions (in terms of oracles or “contingent” majorities). Subjectively speaking, regarded from the perspective of the

individual citizen, this unity equally must be a matter of living “custom” [*Sitte*], that is, a familiar form of life that regulates conduct and helps to avoid internal conflicts and that has effectively become like “flesh and blood” to the individuals involved. But it further must also be a matter of “self-consciousness,” that is, something subjected to the critical reflection of each individual, and of “disposition,” that is, something habitually based on shared insight and consensus. Hegel describes the habitual and largely unconscious preference for an expressly political rather than stateless form of life as that of “patriotic disposition.” The latter consists precisely in the consciousness of the “ultimate purpose” of political life: “that the universal does not attain validity or fulfilment without the interest, cognition, and will of the particular, and that individuals do not live as private persons merely for these particular interests” (*Rph* §260). Hegel insists on his understanding of the classical concept of the “*politikon*” or of “*politeuein*.”²³ In this view, a life led in the context of universal – and that means political – affairs, an active participation in the public “formation of the will,” and a conscious contribution to the common welfare constitute the very “vocation” of man and serve to distinguish his properly “ethical” freedom from the literal “idiocy” of the purely private pursuit of particular interests. The autonomy of the individual presupposes that of an independent polity, and the “participation” of the mortal individual in an immortal and objective spirit is possible only in the context of a community of laws that itself persists through time. For Hegel, as for Rousseau, the *polis* itself thus comes to acquire the characteristic features of the “*civitas dei*.”

Like Kant’s idea of “the highest good,” the “ultimate purpose” of the state in Hegel reveals two distinct moments that cannot, however, be separated from one another. The ultimate purpose in its complete form is simply the intrinsic connection between political unity and sovereignty, on the one hand, and the rights and universal interests of the citizens, on the other. But it is the first of these moments that takes priority here – and the rights of the citizens can be restricted temporarily for its sake.

But how far must the “Idea of the state” be realized in any actual existing state if the latter is to claim the “highest right” for itself in relation to the individual? Does this right belong, as Hobbes and many of his followers believed, to any structure of power that enforces the laws and overcomes the “private justice” of the “*status naturalis*,” of potential or actual civil war? Or does it belong only to the state that essentially corresponds to that outlined in the *Philosophy of Right*? Hegel provides no precise and unambiguous answer to this question. And this presumably

is because history has already given us the answer: the contemporary European state, which has successfully emerged for Hegel through the process of world civilization itself, implicitly contains all the principal moments of the concept of the state as articulated in the *Philosophy of Right*. Certain “diseases,” as when a partial power within the political community acquires a temporary independence of its own, must be acknowledged as a “worldly” possibility where the Idea of the state is inevitably connected with particular temporal, spatial, and historical – which is to say also contingent – conditions (cf. *Rph* §258 Addition). But how far can such restrictions on freedom go, how far and for how long may “personal freedoms” be suspended? Again Hegel provides us with no answer. We can certainly infer from the paragraph concerning the relationship between church and state (§270) that the state cannot be said to exist or to be “present” in the case of either theocracy or “despotism.” For there we clearly lack “right, free customs, and organic development” – in effect a brief Hegelian formula for abstract right (of persons), self-chosen membership in particular social groups and forms of life, and a constitution with internally articulated powers.

The state to which – in particular circumstances – the rights and interests of individuals are subordinated is thus after all the same state the “purpose” of which is fundamentally constituted by the rights of the free person. But the state that serves *exclusively* for the protection of person and property remains, according to Hegel, entirely dependent on particular constellations of interests and thus, as in the case of Rousseau and Fichte, can be “terminated” by its members as a purely private contract.²⁴ In Hegel’s view this ultimately leads back to the feudal form of the state. Hence the claim to the potential subordination of civil freedoms where the existence of the state is at issue (military service in the event of war) or in a state of general emergency remains essential. Hegel provides no indication of the appropriate limits here with respect to the inviolable and “essential core” of fundamental rights in this regard. Nor does he suggest any procedure for permanently securing such rights against potential abuse or violation on the part of the state. It is precisely here that the principal deficiency of Hegel’s *Philosophy of Right* lies. Hegel’s interpretation of the role of the Estates Assembly – “summoned at the behest of the monarch” – in the second chamber of the legislature is so limited that we cannot regard this as a remotely effective defense of fundamental rights.²⁵ Hegel showed no understanding whatsoever for the beginnings of the idea of a constitutional court – as in Fichte’s projected “Ephorate,” for example. As far as the “misuse of power on the part of the political authorities”

is concerned (*Rph* §295), Hegel clearly relies on the institutions of communal and professional self-government, the possibilities of appeal, the “legal constitution” (*Rph* §301), and the monarch (*ibid.*). This may well be appropriate for “everyday” cases of arbitrary procedures on the part of the authorities, but it is quite insufficient as far as institutional infringements of fundamental rights are concerned. Hegel does not develop the concept of the rights of personality from any perceived tension between personal right and the governing right of the state – from the thought, for example, that the protection of individual freedoms over against the state monopoly of power is part of the very “meaning” of human rights in general. Some of the typical rights to freedom that have emerged precisely from the experience of such conflict – the freedom of assembly or the protection accorded to personal and confidential correspondence, for example – either are not mentioned by Hegel at all or, as in the case of freedom of the press, are accepted only in a considerably restricted fashion (§318f.).²⁶ For Hegel’s conception of a state in which individual rights constitute the purpose of the state and the individuals can take up the purposes of the state into their own will, this conflict remains a secondary issue. The protection of the individual in relation to the power of private persons and particular groups is essential, but protection in relation to the preponderant power of the state is not. It is here – along with his rejection of the supposedly “atomistic” model of electoral choice and political representation – that the decisive limits of Hegel’s “liberal outlook” are most clearly revealed.

Notes

1. For the Anglophone debate in this respect, one should consult the still instructive collection of essays edited by Walter Kaufmann, *Hegel’s Political Philosophy* (New York, 1970).
2. On Iltting’s theory concerning the influence of official “censorship” on the *Philosophy of Right* (in the “Introduction” to vol. 1 of his edition of Hegel’s lectures on political philosophy), cf. H.-C. Lucas and U. Rameil, “Furcht vor der Zensur? Zur Entstehungs- und Druckgeschichte von Hegels Grundlinien zur Philosophie des Rechts,” in *Hegel-Studien* 15 (1980), pp. 63–93.
3. On Hegel’s conception of the division of power, cf. Siep 1992, p. 240.
4. According to §140 of the *RphW* transcript, Hegel claimed: “The minister has to sign the sovereign’s decision and is answerable for it” (*RphW*, 205; ET: *Hegel: Lectures on Natural Right and Political Science*, trans. J. M. Stewart and P. C. Hodgson (Berkeley, 1995), p. 256). Further in §156: “[...] the cabinet must essentially have the majority in an assembly, but the opposition

must necessarily be there as well" (*RphW*, 241; ET: 291). Hegel speaks of three necessary "parties" [*Parteien*]: the people, the government, and the aristocracy (ibid.). This clearly corresponds to the two chambers and the government itself (*RphW* 232; ET: 282). We find a very similar conception in Hegel's 1817 essay on the Wurtemberg Estates Assembly (*TW* IV: 476; ET: "Proceedings of the Estates Assembly in the Kingdom of Wurtemberg 1815–1816," in *Hegel's Political Writings*, trans. T. M. Knox (Oxford, 1964), p. 258). Except for the significance of the opposition, §313 of the *Philosophy of Right* also presents the relationship between the chambers and the government in a similar way (with the aristocracy as the arbitrator or "mediating moment"). And likewise according to the Heidelberg transcript, electoral rights belong to "local communities" and "associations" rather than to "individuals" (*RphW* §153, 234; ET: 285).

5. In this connection I cannot discuss the precise historical place that Hegel's thought occupies in European constitutional history or the "ultimate" systematic and philosophical grounding of his position in his philosophy of spirit and logical ontology. For the historical issues, cf. Lucas and Pöggeler (1986) and for the conceptual foundations, cf. Henrich and Horstmann (1982) and Jermann (1987).
6. For these texts in particular, cf. G. W. F. Hegel, *Politische Schriften*, afterword by J. Habermas (Frankfurt, 1966). The "Afterword" is translated under the title "On Hegel's Political Writings" in J. Habermas, *Theory and Practice*, trans. J. Viertel (London, 1974), ch. 5. For Hegel's concept of the constitution, cf. Grawert (1986) and Siep (1992), p. 275ff.
7. Cf. the way in which Rousseau draws a parallel between the various powers of the state and the brain, the nerves, and the circulation of the blood in the context of "political economy" (J. J. Rousseau 1989, vol. 1, p. 339). Hegel provides a precise "system-theoretical" interpretation of the same analogy in the context of his philosophy of nature (cf. Siep 1992, p. 259ff.).
8. For Hegel's concept of the constitution during his Jena period, cf. Kimmerle (1970).
9. On this issue, cf. Lucas and Pöggeler (1986, p. 200ff.).
10. In the Heidelberg transcript, Hegel treats the imposition of a constitution by Louis XVIII in 1814 as a successful conclusion to the previously "deficient" attempts at constitutional reform (*RphW*, 190; ET: 240f.). On this, cf. the contributions by G. Planty-Bonjour, J. D'Hondt, and E. Fleischmann in Lucas and Pöggeler (1986).
11. The concept of "presupposition" here also has the specific meaning that is developed in Hegel's "logic of essence": "posited" right, as rational right, implies its own already "presupposed" validity. It is not created but "discovered" (*WL* II, 15ff.).
12. In §273 of the *Philosophy of Right*, Hegel criticizes the Fichtean idea of an "Ephorate" that, according to Fichte's 1796 *Doctrine of Natural Law* (Part I) may indict and dismiss the government for violation of the law or the constitution. For Fichte, the final judgment in such a "conflict of organizations" within the state lies with the entire people or the "community": "What

the community decides is what becomes constitutional law" (Fichte, SW III: 173). On the other hand, Fichte tells us that changing the constitution requires "absolute unanimity" (III: 184). On this issue, cf. Baule (1989), p. 86.

13. On this, cf. Grawert (1986, p. 273f.).
14. As Hegel's brief outline of the philosophy of history at the end of the *Philosophy of Right* shows, the epochal developments of the spirits of the peoples (in terms of the "oriental," the Greek, the Roman, and the "Germanic," i.e., Christian-European, epochs) cannot be identified with those of "nations" in the modern sense of the word.
15. On this, cf. Ottmann (1982, p. 390), Wolff (1984), and Siep (1992, p. 263ff.).
16. Cf. Kersting (1988, p. 68).
17. Hegel's explicit emphasis on the "spiritually divine" or "rationally divine" element here at the expense of the "naturally divine" obviously reflects his direct critique of A. von Haller. On this, cf. Jaeschke (1986, p. 231).
18. On the following, cf. Dreier (1986, p. 67) and Lübke-Wolff (1986). In what follows I have corrected my own earlier assessment (Siep 1982, p. 272ff.). For Hegel's essay on the Württemberg Estates Assembly, cf. Jamme (1986).
19. Cf. Lübke-Wolff (1986, p. 443) and H. Siedler (1989, p. 89ff.).
20. Cf. Hegel's justification of what he calls "the right of necessity" – "not as a favor but as a right" – in §127 of the part on "Intention and Welfare" in the *Philosophy of Right*.
21. In this part of the discussion I refer principally to the following works of Rousseau: *Discourse on Inequality*, *The Social Contract*, and the *Sketch of a Constitution for Corsica*.
22. Cf. *Rph* §241 and §244. The emergence of such a disaffected "rabble mentality" [*Gesinnung der Pöbelhaftigkeit*] and the entire socioeconomic problem associated with it is discussed more fully in another surviving transcript of Hegel's lectures: *Hegel: Philosophie des Rechts: Die Vorlesung von 1819/20 in einer Nachschrift*, ed. Dieter Henrich (Frankfurt am Main, 1983), p. 193ff. and 196 in particular.
23. Cf. Hegel's Jena essay *Über die wissenschaftlichen Behandlungarten des Naturrechts* (TW II: 489) where the idea of "living in and with and for one's people, leading a universal life wholly devoted to the public interest" is still reserved, in a characteristically Platonic fashion, to "the estate of the courageous" and to that of the philosophers (ET: Hegel, *Natural Law: The Scientific Ways of Treating Natural Law, Its Place in Moral Philosophy, and Its Relation to the Positive Sciences of Law*, trans. T. M. Knox (Philadelphia, 1975), p. 100).
24. For both thinkers this naturally would result in exclusion from membership in the existing community of the state – but Hegel himself also argues for the right to emigrate.
25. Cf. *Rph* §§301–13. In addition to the numerous restrictions concerning the summoning of the chambers, legislative initiatives, and the qualifications required of potential deputies, §313 demands the agreement to all resolutions by the chamber of the landed aristocracy. For a different assessment, cf. Lübke-Wolff (1986, p. 446): through the Estates Assembly the second

estate is itself “placed in a position to oversee the realization and the protection of its freedoms.”

26. R. Dreier claims that “Hegel’s theory of morality occupies the place in his system where a theory of fundamental rights of the *status negativus* must be sought” (1981, p. 325). He rightly draws attention here to the positive “sublation” of morality within “ethical life.” This also involves the right to pursue one’s own “welfare” and the free exercise of personal conscience, which is protected from any direct “coercion” but not from the possibility of legal punishment.

I 2

Hegel's Organicist Theory of the State: On the Concept and Method of Hegel's "Science of the State"

Michael Wolff

Hegel's "organicist" theory of the state is usually, and surely rightly, regarded as the expression of a specific political outlook on his part. But this understanding of Hegel's theory all too easily can lead us to overlook the theoretical insights that originally motivated the organicist approach and the theoretical insights that this approach itself may have made possible. One should at least attempt to determine the theoretical value, from Hegel's own standpoint, which this organicism possessed for his theory of the state. It is at least possible to show that this organicism derived from a philosophical conception that was not merely, or indeed principally, developed in relation to the domain of political philosophy but was governed by an ideal of knowledge that also was implicitly decisive for Hegel beyond the context of his political philosophy. In the published text of the *Philosophy of Right*, this ideal repeatedly finds expression in the use of the term that already stands programmatically in the original title of the work, namely, "science of the state" [*Staatswissenschaft*], or "political science," as the word is often rendered in English. Hegel thus clearly was attempting to maintain the program that is expressed by the explicit use of the word "science" [*Wissenschaft*] in the titles of all the principal works that he published himself: the program of a "philosophical science" in general. It is entirely in line with this program that the "Philosophy of Right" should be pursued and presented as a "science of the State." The typographical layout of the two titles on facing pages in the first edition of the work in 1821 shows this very clearly.

For Hegel, there was an internal connection between the meaning of the concept of “philosophical science,” itself derived from Kant, and the particular structure and character of the *object* of such a science. Philosophical science was supposed to be distinguished from the so-called finite sciences, or individual sciences in the usual sense, through its own specific method of grounding and demonstration. The justification for this method was supposed to consist in the fact that the “infinite” science of philosophy takes an “infinite” object as its theme. This use of the adjective “infinite,” as a characterization both of philosophical science *and* of its object, also has a direct connection with the intrinsically organic structure of philosophical science and its appropriate object. Expressions such as “organism” and “organization” already served in Kant for designating, on the one hand, the specific (teleological) method and structure of grounding proper to philosophical science – as the science of the final ends of human reason – and, on the other, the specific (teleological) causal structure proper to a specific kind of object, namely, those that, since Leibniz, have been called “organisms.” For Kant such an object precisely *as* organism was not a possible object of properly scientific “doctrine,” *either* of a philosophical *or* of a nonphilosophical science, because its organic character was neither an object of experience for us nor constitutive for the object itself. Hegel took a completely different view of the matter. For him it was precisely the distinguishing feature and ultimate aim of every philosophical science to comprehend a “whole” in accordance with its immanent self-organizing character, that is, as an organism, *and* simultaneously through this comprehension to unfold itself as a methodically structured and organized system. The task of a philosophical science that takes the inner and external character of the state as its object was synonymous for Hegel with the task of understanding it as an organism, that is, as a self-organizing whole.

In broad outline this was precisely Hegel’s perspective, and it is in such terms that we must interpret explicitly the overall concept that underlies his social and political philosophy. In saying this, I by no means wish to deny that Hegel’s “science of the state,” indeed precisely *as* a philosophical program, was equally a political program, too, and one that can be read and assessed as such. But I think it is nonetheless instructive to reconstruct in some detail that relationship between Hegel’s programmatic “science of the state” and his organicist theory of the state as we have just sketched it. For it is only in this way that Hegel’s “organicism” properly can be distinguished from other earlier and later “organological” conceptions of the state. It is also because of this specific relationship that Hegel’s

theory of the political organism even could be interpreted as a significant scientific advance by Marx, although he himself attempted to reveal the precise political tendencies in Hegel's conception and judged them in essentially negative and critical terms. Thus in the critical notes on Hegel's *Philosophy of Right* in Marx's manuscripts, we find the following: it was a true "discovery" and a great "advance to consider the political state as an organism, and thus to consider the differentiation of powers no longer mechanically but rather as a living and rational distinction."¹ At its heart, Marx's critique is directed not explicitly at Hegel's organic conception of the state as such but only at the precise way and manner in which Hegel "presents" the new dimension of his own theory. Marx himself saw no reason simply to ascribe Hegel's organicism to the conservative side of the latter's conception of the state. It would in a sense be perfectly plausible if Marx indeed had done so. For just like the contemporary "Christian-Romantic" conception of society and state (which even presented itself explicitly as a "science of the State" in the work of Adam Müller in 1819), Hegel also directly connected, for example, the organic character of the state with the idea that it is something that has grown into what it is and thus to that extent cannot simply be fabricated. At least superficially considered, Hegel could be said to have approached the romantic versions of political organicism in other respects as well: in the fact, for example, that he explicitly criticized the ideas of the French Revolution, or that he strongly opposed liberalism and individualism, or that he expressly recommended a "corporate" political community of "social estates." All of these views have some connection with Hegel's organic conception of the state. One hardly can claim that Marx's positive evaluation of Hegel was based on such views as these, which only makes that evaluation all the more striking and remarkable from our perspective. There is a further remark by Marx that is no less interesting in this respect. In a journalistic polemic of 1842, which is explicitly directed against Christian-Romantic doctrines of the state, Marx compares the achievements of Hegel's theory of the state with some of the classical theories of natural law in the following terms: "But if the earlier philosophical theorists of the state constructed the state on the basis of certain instincts, whether of ambition or sociality, or indeed on the basis of reason, albeit the reason of the individual rather than the reason of society, the more ideal and fundamental perspective of the most recent philosophy [does so] on the basis of the idea of the whole. This perspective regards the state as a great organism in which legal, ethical, and political freedom are to find their actualization, and in which the individual citizen of the

state obeys in the laws of the state [*Staatsgesetzen*] only the natural laws [*Naturgesetzen*] of his own reason, of human reason.”² Here Marx expressly refuses to place Hegel’s organicism in immediate proximity to the Christian-Romantic conception, but rather connects it with the tradition of natural and rational law associated with Hobbes, Rousseau, and Kant. This remark also clearly reveals the substantive reason for Marx’s positive evaluation of Hegel’s conception of the state: regarding the state as a great organism does not necessarily imply anti-individualism as such, but on the contrary allows us, and better than the earlier tradition of natural and rational law was able to do, to ground the freedom of the individual citizen of the state on the autonomous exercise of his own thinking. Hegel’s organicism is, as Marx writes in the same connection, the most successful attempt yet “to look upon the state from the perspective of human eyes and to develop its natural laws [*Naturgesetzen*] on the basis of reason and experience.”³

It seems to me that Marx has precisely and properly grasped Hegel’s own intentions here. It is certainly true that the profoundly un-Hegelian expressions such as “the reason of society,” “the natural laws of the state,” and “the natural laws of reason” already suggest certain notions specific to Marx and Engels that would later become familiar (such as the idea of freedom as insight into necessity or, more particularly, of the laws of motion as implicit within existing social reality). But just as this insight is supposed to represent a “scientific” perspective once expressed in its developed form, so too Hegel’s social and political philosophy is based on the conviction that the self-determining will is a matter of thinking and knowing, that this self-determining will is, in its truly proper shape, nothing but philosophical science itself. In a way that we have yet to analyze further, the task of a philosophical science of the state is to display the “necessary emergence” of the concept of the modern state with its specific laws and institutions out of the very concept of the self-determining will (the will that expressly “frees the free will,” according to §27⁴). To display the “necessity” of the concept of the state in this way is to provide what he calls the “*scientific demonstration* of the concept of the state” (§256, Note).

Now it is relatively easy to explain how and why the concept of the state that Hegel hopes to “demonstrate” essentially involves the concept of organism. It is indicative that this explanation can be provided in two ways. We may either attempt to grasp what the “demonstration” of a concept in the context of a philosophical science amounts to for Hegel, and thus determine what the “necessity” of the relevant concept consists in.

Or we may attempt to clarify the nature of the state whose concept Hegel seeks to "demonstrate." First of all, I should like first to sketch these two approaches, discussing the second one (in Section I) in rather more detail than the first (in Section II). How it is possible for both of these paths, despite their completely different starting points, to lead us to the same goal will become fully clear only at the end of the analysis. In order to advance along both paths, we should initially orient ourselves in each case to the text of §256, already cited above, which speaks (in the note) of the "scientific demonstration of the concept of the state" and functions as the point of systematic transition to the section entitled "The State" (§§257–360). It is at the end of the note to §256 that Hegel's organic concept of the state first makes its appearance in the text of the *Philosophy of Right* (if we ignore the introductory paragraphs 5, 31, and 33). Hegel here declares that it is "through the form of *thought*" that "spirit is objective and actual for itself in the *laws* and *institutions*, in its *conceptualized* will, as *organic* totality," and further that this "form of *thought*" is a "moment" of the "infinite form" that "ethical substance" acquires "in the development of civil society." We shall have to return to the significance of this remark later.

I

1. First I shall sketch the second approach and concentrate specifically on what the paragraph says about the state, the "concept" of which is to be "demonstrated." Here Hegel says simply that "the sphere of civil society" now "passes over into the *state*." The justification for the alleged transition runs as follows: "the purpose of the corporation as something limited and finite" finds "its truth in . . . the *universal purpose* in and for itself and the absolute actuality of the latter." Hegel does not claim that the transition to the state takes place because civil society itself already gives rise to an institution such as the "corporation" and this institution in its particular functions also serves a universal purpose. The text of the paragraph makes it quite clear, on the contrary, that Hegel does not wish to ascribe to the corporation *any* universal purpose that transcends the sphere of civil society, but simply a finite and limited one. Nor obviously had it escaped Hegel (cf. §255 Addition) that without higher supervision on the part of the state the corporation would collapse in its functional role as a social institution, would simply "ossify, degenerate internally, and decline into a miserable system of castes." The highest function that Hegel sees performed by the corporation is to bestow upon

the second estate (the business, commercial, and professional class) what the other estates already possess without need for a specific institution, namely “honor within one’s estate” [*Standesehre*] (§253 Note). Hegel regards the lack of any corporate honorable status (among other things) as the “*ethical* reason” for the emergence of “luxury and extravagance within the commercial and professional classes” and the concomitant “generation of a rabble” that is (and rightly to some extent) outraged by the spectacle of the former. For without “*honorable status*” the individual finds himself “reduced through isolation to the selfish aspect of his trade, and his livelihood and sense of satisfaction lack all stability” (*ibid.*). “The sanctity of marriage and the honor attaching to the corporation are the two moments around which the disorganization of civil society revolves” (§255 Remark). It is quite true that Hegel sees the two “*ethical* roots of the state” (§255) in the corporation of the commercial estate and the institution of the family (which for reasons connected with direct inheritance of property finds its most secure form in the agricultural estate). But he also assumes that these roots will inevitably wither if they are cut off from the total organism of the state. On Hegel’s view they will lose their effective functional role with respect to the particular, limited, and finite purposes of their members unless they simultaneously function for the state as well. Such a loss of function produces a disorganizing effect for civil society as a whole. The reasons for this process of disorganization ultimately lie, according to Hegel, within civil society itself: in its technically and economically conditioned diremption into a class society.

If we now ask again what it is that grounds the necessity of the transition from civil society to the state according to Hegel, we can provide the following answer: the functional context that the institutions of civil society appear to provide for the latter and its members cannot be sustained at all in actuality if these same institutions do not simultaneously belong in a quite different functional context, namely, that of the state. With this transition we find a transformation in the order of that relationship of end and means or ground and consequence under which all the institutions of civil society characteristically stand. Whereas the end purpose or the ground of these institutions initially seemed to lie in the *particular* interests of the members of civil society, in their “*particular will*,” it now transpires that it is the interest of the state, or a “*universal will*,” that constitutes their ground and final purpose. In the first functional context, the ethical socialization of the individual members of civil society (or, alternatively expressed, *the universalization of singular wills*) was only a consequence of or a means toward the realization of their purposes. In the second

functional context, what we find is *the particularization of singular wills*. For the state as the *ground* of the institutional articulation of society not only precedes the emergence of these institutions in a historical and temporal sense (cf. §256 Remark), but also performs the task of countering the inner "disorganization" of civil society. It does so through a continued political reorganization of the totality of social institutions and the "allocation" of individuals to these institutions (cf. §§262–65). To this extent, the state arises from civil society not as its mere "consequence," considered merely, for example, as the sum of its institutions, but rather "as its true *ground*" (§256 Remark).

2. Here I also point out in advance that the two forms of the means/end and the ground/consequent relationship also can be expounded in terms of Hegel's doctrine of the syllogistic forms. For the fact that different forms of the syllogism are directly involved here is something on which Hegel lays the greatest emphasis from the methodological point of view. The ethical socialization or universalization of the singular will in the context of civil society can be interpreted as a mediation of the singular and the universal will and thus presented explicitly as the first figure (S-P-U) of the "syllogism" [*Schluss*].⁵ To see this we must adopt Hegel's symbolism and read the letters S, P, and U (Singular-Particular-Universal) not as variables, but rather as abbreviations for the three moments of the "concept," in this case the concept of the will. They hereby designate, in Hegel's specific terminology, the singular, the particular, or the universal will. S-P-U thus represents a specific relationship of ground and consequent that can be described as follows: the singular will is universal will only because (or insofar as) it is particular will (which as such wills the universal). Or expressed in teleological form: the singular will has the universal will as its end and purpose only because (or insofar as) it has the particular as its end and purpose. In precise correspondence to this, what I have called the particularization of the singular will can be expounded as the third figure of the syllogism (P-U-S): the singular will is particular will only because (or insofar as) it is universal will (which as such wills the particularization of the will). Or again, expressed in teleological form: the singular will has the particular as its end and purpose only because (or insofar as) it has the universal as its end and purpose (which consists in the particularization of the will). Precisely by virtue of this syllogistic structure, Hegel tells us in the Remark to §256 that with the state considered "as the *true ground*," we see how "all *mediation* and the semblance already referred to are just as much *sublated* in the form of *immediacy*." In other words: with the transition from civil society to the

state, the (syllogistic) mediation of the singular will with the universal will is sublated as a mere “semblance” insofar as an *immediate* relationship between the singular and the universal will is here revealed. The universal will itself now assumes a mediating function.

We shall see more below that the state as organism is essentially supposed to contain all three syllogistic forms of mediation (thus also including the second figure: U-S-P). In the *Science of Logic* (WL II, GW XII, 144ff.; ET: pp. 722–73),⁶ and in the “Lesser Logic” of the *Encyclopedia of the Philosophical Sciences* (EPW §198, Remark), Hegel already draws explicit attention to this structure. In the *Encyclopedia*, he writes: “It is only through the nature of this (syllogistic) self-concluding, or through this triad of syllogisms with the same terms, that a whole is truly understood in its organization.”⁷

But before I attempt to elucidate why Hegel regarded this syllogistic interpretation of the relationship between the three moments of the will as something more than an empty formalism, I should like to return to my earlier question concerning the sense in which Hegel understood the state as an “organism.” For this conception of the state is directly connected with the relationship of ground and consequent and the relationship of means and end as outlined above.

3. At first sight one might wrongly conclude from what has been said that in Hegel’s view it is not the state as such but only “the state as envisaged by the understanding,” namely, the entirety of the institutions of civil society, that can be said to constitute an organism. For it is precisely in relation to these institutions that Hegel speaks of the “disorganization” of civil society and charges the state with ensuring their reorganization. For anything that can be disorganized or reorganized surely already must be something intrinsically organized in the first place, and in this sense must be regarded as an organism itself. But Hegel first speaks explicitly of the organism of the state only in the text of §259, and systematically speaking the concept of the political organism finds its proper place only in §267 and §269 in the section concerning constitutional law. By talking of an “organism” here, Hegel is thinking of what he calls the “political state” or the “political constitution.” This latter is the system of political powers and must be distinguished from what Hegel describes in §256 as “the *constitution* [. . .] in the *particular* sense.” It is only this constitution in the particular sense that can be identified with “the state as envisaged by the understanding” [*Verstandestaat*] or with the totality of the institutions of civil society. This does not include the political constitution of the state as such but merely provides the “basis” (§265) of the political state.

The substantive reason for the difficulty apparent here lies in the fact that in the introductory paragraph to §256 Hegel was not yet speaking directly of the state *as* the political state, that is, as a constitutionally organized system of political powers, but merely of the state in its initially "abstract character," as Hegel puts it (§270). What does Hegel mean by this? The "state" in §256 (and also in the first two paragraphs of the section entitled "The State") in the first instance signifies the state above all as the ethical spirit of a people considered according to its merely *subjective* aspect.⁸ In §267 Hegel expressly distinguishes the merely "*subjective* substantiality" of the will from the "*objective*" substantiality of the same. Whereas this objective substantiality is first explicitly introduced here as "the *organism* of the state," the substantiality of the political will is contrasted as merely subjective "political *disposition*" precisely with this objective organism.⁹

Now Hegel certainly believes that political disposition, as a form of "willing that has become habitual" (§268), cannot actually exist unless it is able to rely on a somehow already actualized objective organism of political powers. To that extent, political disposition is "only a result of the institutions subsisting within the state" (*ibid.*). Even in its "particularly determined *content*," political disposition is sustained by the various aspects of "the organism of the state" (§269).

But it is equally true, on the other hand, that this organism cannot *develop* at all without the spirit of a people the individuals of which have effectively brought about a more or less explicit political disposition for which the universal purpose of the state is the very end that defines and determines their own willing and acting. For at least those individuals on whose activity the existence and effectiveness of the political powers immediately depend must possess a certain minimum of such a subjective disposition. In §270 Hegel speaks about precisely this subjective disposition as the condition of the possibility for the development of the organism of the state: "The fact that the end and purpose of the state is both the universal interest as such and the conservation of particular interests within the universal interest as the substance of these constitutes (1) the *abstract actuality* or substantiality of the state. But this substantiality is (2) the *necessity* of the state, for it divides itself up into the conceptual *differences* within the state's functions; and these differences, by virtue of this substantiality, are likewise actual and *fixed* determinations or powers. (3) But this very substantiality is the spirit that knows and wills itself as having *passed through the form of education* [*Bildung*]. The state therefore *knows* what it wills, and knows it in its *universality* as something *thought*."

Consequently, it acts and functions in accordance with known ends and recognized principles, and with laws that are laws not only *in themselves* but also for the consciousness; and it likewise acts in determinate knowledge of existing circumstances and relations insofar as its actions have relevance to these.”

4. This distinction between the “objective aspect” of the organism of the state and a “subjective aspect” of the political will thus reveals that there is also a third form of the relationship between ground and consequent, or means and end, and one that can clearly be distinguished from the second. For it is not merely that the universal interest of the state must be realized in the subjective medium of political disposition if the particular interests of the individuals of civil society are to be safeguarded over against the forces of social disorganization (i.e., more than P-U-S is required). We must also recognize the necessity of U-S-P (the second figure of the Hegelian syllogism). This implies that the political disposition, or the subjective disposition of the members of civil society, is not already sufficient in itself to ground the actual existence of the state. But neither is the state some intangible power that simply hovers over and above its members. On the contrary, the state is objectively actualized only in the shape of those who bear the political powers, who are in turn only singular individuals, though not *the* singular individuals characteristic of civil society. It must always be specific individuals, if not these or those particular individuals, who serve to mediate particular social interests with the universal interest of the state. It must always and necessarily be an individual will that serves to mediate the particular will with the universal will. The political powers therefore only ever exist in the shape of individual functionaries who, as members of civil society, bring particular interests along with them on the basis of their particular social functions and who are already ethically socialized in a particular way in each case. And this holds for the entire structure of political powers, and thus also for what Hegel calls the “organism of the state.”

How, then, can we resolve the difficulty implied in the fact that Hegel properly describes the political powers only considered in their entirety as an organism, although he already employs organistic vocabulary precisely in relation to “the state as envisaged by the understanding” and already speaks at the very least of the “disorganization” of the latter? Are the expressions “organism” and “organization/disorganization” merely metaphors that can be relatively freely applied to the state in various functional contexts? Or does the “organism of the state,” as developed

in paragraphs §§257 and the following pages actually represent a strictly defined concept for Hegel?

The relevant difficulty is only increased when we consider that Hegel also predicates an "organic" character of the second form of mediation that we have described. Thus in the Remark of §256, already cited above, we read that "spirit" as "*conceptualized* will," namely, through "education" and the "form of *thought*," is already "objective and actual as an *organic* totality." (Here one should compare the Addition to §261 where Hegel speaks of the "organization of the concept of freedom.") Consequently, all three forms of mediation appear in a certain sense as "organic," and we must therefore ask whether or not this sense is the same in all three cases.

5. The problem can be resolved, *first*, if we consider that the terms "organic," "organization/disorganization," and "organism" can take different referential objects. For it is only the word "organism" that can be applied to a *system*, and indeed a system to which we can ascribe certain predicates: one that can be described, for example, as capable of self-organization, self-preservation, and development. According to Kant (whose theory of organism in Part II of the *Critique of Judgment* probably represented Hegel's paradigm from a terminological point of view), we can describe something as an organism only if the following condition is fulfilled: "that the parts of the same are connected into a unified whole by virtue of the fact that they are reciprocally cause and effect of one another with regard to their form. For only in such a fashion is it possible that, on the other hand (reciprocally), the idea of the whole may in turn determine the form and connection of the parts."¹⁰ It is obvious, as we can show easily, that Hegel regards the political constitution in the broad sense, that is, the structure of the political powers in their totality, as just such a system.

In the *second* place, we must also consider the structure that mediates and conditions the three forms of mediation discussed above:

- (1) S-P-U (the constitution in the particular sense),
- (2) P-U-S (the state considered in its abstract actuality), and
- (3) U-S-P (the political constitution).

According to Hegel's construction, we can see immediately that neither (1) nor (2) can be regarded as parts of an organism or themselves as organisms in the sense of a *self-organizing* whole. The "state as envisaged by the understanding" (the constitution in the particular sense) (1) is not a

self-organizing, but rather an *organized* whole, one that for that very reason also can become disorganized, and indeed even can disorganize *itself*. We also can see, on Hegel's construction, that the state as abstract actuality (2), constituted as it is within civil society in the form of "education" and "thought," is not an organism, either, although it at least already must contain the "Idea" of a system that is capable of (re)organizing a disorganized or self-disorganizing civil society. Insofar as this Idea is explicitly that of a self-organizing whole, the Idea, or the spirit that grasps it as such, can be described as "organic" or as an "organic totality" (precisely in accordance with Kant's terminology).

6. If we now examine more closely the conditioning structure of the three forms of mediation – the constitution in the particular sense (1), the state as abstract actuality (2), and the political constitution (3) – we can summarize the argument as follows. First, we saw from §265 that Hegel regards the constitution in the particular sense as the "the firm basis of the state," and we can also claim, if we examine this paragraph more closely, that it is also supposed to provide the "firm basis" of (2) and (3) as well. For Hegel writes that the constitution is the firm basis of the state as well as of the trust and disposition of individuals with respect to the former, and constitutes the central pillars of public freedom since particular freedom is rationally realized within them. We also saw, further, that the political constitution as a system of political powers and the state in its abstract actuality as political disposition, and so on, condition one another reciprocally.

On consideration of this last reciprocally conditioning relationship between (1) and (2), we can easily see that (2) is neither an organism nor a part of an organism in relation to (3). For the state in its abstract actuality cannot as such be regarded as part of the state in its concrete actuality as political organism, and nor can it be regarded as an independent political organism in its own right. The second form of mediation (2) relates to the third form (3) more like a plan that awaits its execution and fulfilment.

But even (1), considered as the "firm basis" of (2) and (3), is neither an organism nor a part of an organism. It is quite true that whenever we consider something as a basis, we are also already considering it teleologically: a basis is always a basis *for* something, is that on which something can depend for some purpose or other. And organisms also stand in a teleological relationship to their respective parts and members. But in the case of organisms, the parts relate to the whole *reciprocally* as at once means and end. But Hegel's constitution in the particular sense,

taken on its own, can be regarded only as a means, and not as an end, in relation to the political constitution and to the state in its abstract actuality. The constitution in the particular sense is, as we saw above, the entirety of the institutions that have the special interests of civil society (the "particular freedom" of §265) as their end and purpose and whose function is to actualize those interests. But these institutions also serve to ensure that these special interests are not actualized in such a way as to lead to the "disorganization" of civil society. If civil society were simply to be left to itself, this disorganization would inevitably result from the realization of special interests. The institutional measures for countering the disorganization that the constitution in the particular sense already harbors are political arrangements on the part of the state. To this extent the state also *seems* to present itself as a means for the realization of special interests. But, according to Hegel, this is itself a mere *semblance* [*Schein*]. Hegel is referring to this semblance when he says in §263 that objective universality "shines through" the sphere of civil society. And he is also referring to the same thing in the *Science of Logic* when he writes: "The third syllogism (S-P-U) is the formal syllogism, the syllogism of semblance in which the singular individuals are connected to this universal absolute individuality through their needs and their external existence; a syllogism that, as the purely subjective one, passes over into the others and finds in them its truth" (GW XII, 145). In truth, on Hegel's view of the matter, the state employs not only the institutions of civil society as a means to its own end and purpose, but also the very *semblance* that this purpose is the realization of the particular interests of the citizens (§263). Hegel's perspective here is based on a quite simple thought: if it is true that the realization of the special interests of civil society produces a disorganizing effect, that the state and the institutions expressly established for this purpose produce a reorganizing effect, then the realization of such special interests cannot be the true end and purpose of the state and its institutional arrangements. In truth there is only the following teleological sequence of conditions leading progressively from (1) to (3): the institutions of the constitution in the particular sense *and* their apparent purpose are merely means for the state's purpose in ensuring that subjective dispositions arise, or at least are not prevented, among the citizens; these dispositions are articulated under (2) as the "spirit of the people" or "political disposition" and provide the conditions for a living political constitution (3), and one that under favorable conditions is also capable of further development.¹¹ The particular interests themselves are precisely not the end and purpose of the state, but rather are "sublated" within the universal interest.

The state indeed must preserve these interests, but only for the sake of the state itself.

7. This conception, according to which the interpretation of the state as merely a means in relation to the particular interests of the citizens is a consequence of an objective “semblance,” constitutes one of the central theses of Hegel’s theory of the state. It is essentially equivalent to his claim that the state, as the “actuality of the substantial will” (i.e., as a rational state), is an *absolute end in itself* [*Selbstzweck*]. To this extent, this conception is intrinsically connected with Hegel’s critique of all those theories of natural law that, as he charges, have “confused the state with civil society” (§258 Remark). Hegel apparently traces this confusion back to the fact that such theories of natural law have allowed themselves to be deceived by the existing “semblance” we have discussed. Such theories include all those that have attempted to explain the union of citizens in a state by recourse to a (real or ideal) “contract,” and thus to some purely common feature of their individual interests or individual wills. From Hegel’s perspective, such confusions concerning the character of the state inevitably result in the paradoxical fact that they actually do far less justice to the existing special interests of civil society than Hegel’s own doctrine of the state as an ultimate end is capable of doing. In this respect, Hegel’s criticisms are directed principally at Rousseau, whose “notions concerning the innocence of the state of nature, and the simplicity of manners belonging to undeveloped peoples” he explicitly rejects. According to Hegel, it was precisely these notions that allowed Rousseau to regard “the needs and their satisfaction, the pleasures and conveniences of particular existence and so on, as *absolute ends and purposes*” (§187 Remark). Hegel’s state, on the other hand, which precisely does not take particular and private interests and needs, and so on, as its absolute purpose, nonetheless leaves far greater leeway for them. For Hegel, by contrast, sees the realization of such interests and needs as an appropriate means of disposing private persons or individuals positively as members of the rational state. For in the process of this realization individuals must “determine their knowing, their willing and their acting in universal fashion and thereby make themselves into a linking *member* in the chain of this [social] *continuum*” (§187). In other words, private persons or individuals come to discipline, to cultivate, to “form and educate” themselves in this manner and “work away,” as Hegel puts it, their “natural simplicity” (*ibid.*). In a certain sense, Hegel is here following the critique of Rousseau that Kant developed in §83 of the *Critique of Teleological Judgment*. For Hegel, as for Kant, the technical, economic, and cultural development of civil society with *all*

of its harsh social consequences not merely is a source of corruption, but also serves a meaningful purpose. For both thinkers, the ultimate purpose of this development is a supra-individual one that actually realizes itself without the active knowledge of the individual members of society, that is, without that purpose also simultaneously presenting itself as their own purpose as well. Now the distinction between Kant and Hegel lies in the fact that Kant regards this supra-individual purpose as an "end of nature": social development for Kant is not something contrary to nature, but rather corresponds to the final end of gradually "developing in full" all of the natural potentialities of the human species (something that the single individual cannot accomplish alone). Human beings are distinguished from the individuals of other species in accordance with their nature by the fact that they cannot properly unfold their natural capacities in a purely individual fashion. In contrast to Kant here, Hegel still concurs with Rousseau in holding that social development in a sense runs counter to nature, although for Hegel this development corresponds to a *higher* purpose that is *not* an end of nature. "The interest of the Idea, which is not present in the consciousness of these members of civil society as such, is the *process* whereby their individuality and naturalness are raised, both by natural necessity and by their arbitrary needs, to *formal freedom* and *formal universality of knowledge and volition*, and subjectivity is *educated* in its particularity" (§187). This distinction between Kant and Hegel is also reflected in their different conceptions of the political state and its characteristic constitution. For Kant even the most perfect political constitution is still merely a means for the realization of a natural purpose, or more precisely is "only a formal condition under which alone nature can attain this its final intention"; "for it is only here [i.e., under a political constitution] that the greatest possible development of our natural capacities can transpire."¹² This constitution is not the final purpose itself, but merely an appropriate purposive arrangement where "lawful power within a whole known as civil society is opposed to infringement in cases of mutually conflicting freedom." For Hegel, on the other hand, the constitution of the state is itself the "final purpose" (§258) and sublates the "interest of the Idea" within itself. This general distinction between Kant and Hegel is lastly reflected in their quite different conceptions of the content and value of any philosophical theory of political history. For Kant, any such theory must ultimately fall within the framework of a teleological perspective on nature in general. And insofar as the idea of a natural end or purpose can possess only a regulative rather than a constitutive value for our theoretical knowledge, then the teleological picture of

political history for Kant can only further the organization of our empirical historical knowledge from the theoretical perspective, and can only further the comprehension of ourselves not simply as moral subjects, but also as citizens of the world, as cosmopolitan subjects, from the practical perspective. For Hegel, on the other hand, the philosophy of world history must fall within the framework of a philosophical theory of the state. And for him the philosophy of world history is possible as “science,” as *theoretical knowledge*, to the degree that world history can be understood as the history of states and these states can be understood as organisms. For once they are understood in these terms, states represent purposive ends in themselves just as much as natural organisms do. And here, in contrast to natural organisms, the teleological idea is not “external” to these political organisms and not merely, as Kant says in relation to natural organisms, “the ground for cognizing the systematic unity” of the organic whole in question.¹³ And indeed, precisely insofar as the state is not merely a natural product, but rather a product of human will, the teleological idea here is constitutive for the organism of the state, that is, is not merely the ground of cognition for the same, but the ground of its existence as well.

8. But what is it that ultimately *justifies* Hegel in regarding the state or, more precisely, the political constitution, as an organism, that is, as a whole that possesses its end and purpose solely within itself? That the state is a purposive end in itself follows for Hegel, in the first place, directly from the fact that although, as we have seen, it can be a purpose, it never can be simply a means for the realization of particular ends in civil society. The fact that something is a purposive end in itself, however, is only a necessary but not sufficient condition for the fact that it is an *organism*. Not every purposive end in itself is already as such an organism. Why, then, does Hegel think that the purposive character of the state as an end in itself effectively makes it into an organic system?

The reason for Hegel’s view lies in the fact that the state is not only an end in itself, but also an organized whole of various functions that make the state into a system of powers. These functions arise from the connections we already have examined in the following manner.

First, we saw that the state, as regards its political constitution, must possess a reorganizing function in relation to civil society. This cannot mean, as we also saw, that it should represent merely a means for the realization of the particular ends and interests of civil society. It does mean, however, that the state must concern itself with these particular ends and interests *insofar* as these can be *harmonized* with a *universal*

purpose. This universal purpose ultimately cannot consist in anything else than the "*union*" of the members of civil society that tend to disintegrate into a plurality of classes (§258). The final end and purpose of the state is consequently the union of the various social classes with one another.

This in turn explains the emergence of the two functions (or "powers") of the state: *first*, the state (the individuals united therein) must *cognize* what the desired harmonization of particular interests properly signifies *in concreto*; *second*, this harmonious purpose must also be practically *executed*. The process of cognition, the first of the two functions, proceeds inductively as it were from the particular to the universal: the particular interests are already given, while the universal, that is, the way in which the particular interests are to be harmonized, has yet to be determined. The execution of this purpose, the second function, can be described as the subsumption of the particular under the now determined universal. The execution of the purpose thus proceeds in the opposite direction, as it were, to the cognition of the purpose: starting from a given universal purpose, its task is to specify the latter. Hegel distinguishes the legislative power and the executive power in accordance with the two functions of cognizing and executing the universal purpose (cf. §273). The function of the legislative power is therefore not the enactment of legislation as a purely voluntaristic expression of will, but rather is essentially cognitive in character, is a proper *knowledge* of what law is. That is why the legislative power is also charged, as Hegel emphasizes, with certain tasks that do not substantively belong to the content of the universal will (the annually required fixing of the budget, for example). The legislative power, through its knowledge of particular ends and purposes, must itself "determine" the universal purpose (§273), that is, must cognize and define (decide) that purpose. In a differentiated society that is organized according to the various estates, this function can be performed appropriately only by some representative assembly or organization. But this cannot be a purely representative organization because the tasks and functions of government as such also involve particular purposes that must themselves be defined and determined in relation to the universal purpose. Thus, although the executive power is indeed functionally distinct from the legislative power, it cannot simply be divorced from the latter (as it is on the doctrine of "the separation of powers").

The precise manner in which Hegel distinguishes the political powers in respect of their specific functions clearly shows that he also articulates the inner structure of the political constitution on the basis of the three syllogistic forms of mediation. In accordance with this structure, the

executive power corresponds to the constitution in the particular sense (S-U-P): here the required middle term is the particular purpose in terms of which the individual government functionaries strive to realize the universal end and purpose of the state. The given *conclusio*, or the given outer terms of the syllogism, are, first, the singular individuals (or singular wills) as bearers of the executive power (the officials or the individual members of the so-called universal estate) and, second, the given universal end and purpose of the state (to which this body of state-employed officials, functionaries, and civil servants owes its name as the universal estate). The legislative power corresponds to the state in its abstract actuality (P-U-S): the required middle term here is the universal end and purpose of the state in its concrete form as the interest of the state at a particular time. The *conclusio*, or more precisely the outer terms of the *conclusio*, are given here, on the one hand, as the singular wills qua bearers of the legislative power, on the one hand, and, on the other hand, as the particular interests that these individuals bring with them as representatives of the various estates.

These two relations of correspondence, considered substantively, are not contingent ones. For the function of the executive power is none other than that of (re)organizing the institution in the particular sense. The executive power is supposed to actualize the constitution in the particular sense, precisely as a politically organized constitution harmonious with the end and purpose of the state. And this holds correspondingly for the legislative power. The state in its abstract actuality was the spirit of the people as “Idea,” the *volonté générale* “in the form of thought” (as “education,” as “political disposition,” as “conceptualized will”). But the function of the legislative power is none other than that of actually developing the universal will in the form of thought (the state in its abstract actuality).

9. However, the question that inevitably arises now is much more difficult to resolve: *what is it that corresponds to the political constitution in terms of its own inner structure (U-S-P)?* Can any such relation of correspondence be meaningfully construed at all in this connection?

The syllogistic form of mediation for the political constitution resulted, as we have seen, from the fact that it can be understood not as a kind of free-floating power hovering over and above the individual members of civil society, but only as something that expressly requires these individual members as its bearers and functionaries. It is always singular individuals who have the task of mediating the particular interests of an estate or class with the universal interest of the state. These individuals are identical with the bearers of the political powers, and thus with the government

functionaries and officials and the individual members of the legislative body (or bodies).

Now in explaining the functions of the legislative and executive powers, I have assumed that these individuals, as bearers of both powers, were already "given" as such, that they constituted one of the two outer terms of the given *conclusio*. But in truth they still remain to be "given" as such. It is quite impossible for *all* the individual members of civil society to be the immediate bearers of political power (as with those who have not attained their legal majority, for example). The question inevitably arises, therefore, of how the immediate bearers of political power as such are to be determined. But this question, on what is obviously Hegel's view, can be interpreted precisely as the question concerning the middle term of a specific syllogism. The individual bearers of the political powers are therefore still to be determined, like the two outer terms of the particular and universal interest of the state, as the middle term of a syllogism where the *conclusio* U-P is already given. But the outer terms U and P are already, and indeed only, given in the sense that, first, there are no individuals who do not already bring particular interests with them by virtue of their place in the "system of needs" (i.e., in the system of estates and in the class structure of civil society), and that, second, the universal end and purpose of the state is already established in terms of the harmonious unification of social classes. In fact, the problem that *every* political constitution faces (and specifically in respect to all the political powers) is precisely *how* the relevant individuals are properly selected, or *which* individuals are properly fitted to mediate existing social needs and interests with the universal end and purpose of the state. This problem is equivalent to the question concerning *who* should be the immediate holder of political power.

In Hegel's understanding, the implications of this are twofold: *first*, that the essence of the political constitution as such (the essence of all political powers in general) lies precisely in mediating the universal with the particular through singular individuals (U-S-P); and *second*, that it also belongs to the *functions* of the political constitution to determine the singular individuals who are themselves the bearers of political power. (The organism of the state has to ensure, as it were, a metabolic relation with civil society.)

But this "metabolic" function also requires a bearer. And insofar as Hegel determines the inner structure of the political constitution in terms of specific functions, we can see that a third political power is required here. The function of this third power lies in determining the singular will

as such insofar as the latter is properly capable of mediating the universal with the particular. This produces a correspondence between the structure of the political constitution as a *whole* and the structure of one specific *part* of the constitution, of a particular (third) political power with regard to its appropriate syllogistic form of mediation (U-S-P).¹⁴

10. The question as to *who* should be the holder of this third power seems to lead to an infinite regress. There are only two logically possible solutions in relation to such a regress. Both claim that it is the task of the legislative power to know and determine who is appropriate to hold and exercise the third power. This means that the legislative power, as a part of the political constitution, thus also would be competent to determine the structure of the political constitution directly. Or, alternatively, one removes such competence from *any* exercise of the universal will and claims that civil society contains certain members who are the appropriate holders of the third power by virtue of their own nature or particular position. This alternative between the two possible solutions marks the exact point from which the young Marx's critique of Hegel arises. The young Marx charged Hegel with actually deciding among alternatives in a purely voluntaristic fashion without recourse to any compelling argumentation. Marx, in contrast to Hegel, opted emphatically for the first solution. In Marx's view the state can properly be regarded as an organism capable of further development only if the legislative power is also competent to act as a constitution-giving power. This is the thought that underlies Marx's reference to those "organic revolutions" that are always essentially a matter for the legislative power.¹⁵

Hegel, of course, decides for the other solution. He explicitly denies the legislative power (in §298) any competence, as one part of the constitution, directly to determine the constitution itself. He further claims (in §281, Remark) that philosophy alone has the exclusive right "reflectively" to "consider" whether, or to what extent, "natural birth" should or can decide who should hold and exercise the third power within the state. Hegel thus effectively decides for the monarchical principle and determines the third power precisely as princely power. Hegel believes that a complete organism of the state can be constituted only where specific patriarchal relations of power, specific property relations governed by the principle of primogeniture, and finally a princely ruler of some kind all obtain. For it is only under relations such as these that the allocation and distribution of specific offices and positions, and especially the holder of princely power, can be "left to the devices of nature" (§281). (Hegel does not even really consider the potential objection, eventually raised in fact

by Marx, that relegating the decision to "nature" in this way is ultimately itself a matter of arbitrary will.)

Now as far as the function of princely power is concerned, it is little more than a bare and abstract description to say that it determines the will of state precisely as a singular will. In the first place, Hegel by no means believes that the monarch alone should decide about the participation of specific individuals in the exercise of the political powers of the state. For Hegel not merely excludes the possibility of the individual making himself into the monarch, of determining his own successor, of even justifying himself as the proper bearer of princely power. (The fact that "thinking reflection" concerning princely authority is the exclusive right of philosophy itself thus clearly excludes, for example, the principle of divine right, the idea of the monarch simply "ruling by the grace of God.") For, on the contrary, Hegel also believes that participation in the legislative power should in part be quite independent of any influence on the part of the monarch. The arguments he advances here are partly similar to those he uses to justify the monarchical principle itself. For in Hegel's view (by virtue of the principle of representation by social estate), the legislative power must also contain members qualified simply by the natural result of birth (through the principle of primogeniture). In addition, the principle of delegation, which is supposed to be appropriate to the commercial and professional estate, also serves to reduce the influence of the monarch. It is only where mere "contingency" would otherwise prevail that the monarch has to decide with regard to political participation: if there are a number of possible candidates for political office "amongst whom the best choice cannot absolutely be determined," the monarch ultimately has to "select" certain individuals for the relevant positions (cf. §§283 and 292). In this case, the influence of the monarch thus extends directly only to the executive power, and to that extent only indirectly to the legislative power as well. The actual determination of the singular political will, substantively considered, is therefore very slight. But it is so much the greater if considered in terms of form. For in Hegel's construction, the task of the princely power is not in the first instance to select individuals to occupy political positions at all. Its task is much rather a merely formal one: it is "the final decision of will" that properly belongs to the monarch (§273). The monarch can contribute only relatively little to the *content* of legislation, but without the moment of final decision, without the signature of the monarch, all acts of the legislative power would be invalid. The function of the princely power, in this respect, is thus not to determine which individuals actually participate in the legislature, but

merely to make that which the various participating individuals will into a singular will (into the will of the state). To the extent that the monarch is also the head of the government, we can say that the “various powers [of the state] are here brought together into an individual unity” (§273).

Hegel’s construction of the third power as princely power is certainly ingenious, in my opinion, but it still also represents the weakest part of his overall interpretation of constitutional law and the state. For this construction is not only directly connected with the fact that Hegel effectively demotes the legislative body to an organization whose function is to “mediate” between the “organic state” and the inorganic plurality, the atomistic aggregate of the people as a whole (§302). Although he otherwise never tires of criticizing, and with good reasons, the atomistic perspective that is characteristic of civil society and the people (*populus*), Hegel himself here employs a completely atomistic conception of the “purely massed power” of the many “over against the organic state” (§302). “Considered as a *mediating* organization,” as Hegel writes in the same paragraph, “the estates stand between the government as such, on the one side, and the people, dissolved as it is into particular spheres and individuals, on the other.” The legislative body now suddenly assumes the function of protecting the political constitution of the state against, or mediating it with, the people as atomistically conceived, instead of ensuring the appropriate “metabolic exchange” within an organically conceived state.

But if we now disregard the details of the actual realization of Hegel’s theory of the division of powers, and simply consider the overall functional construction of the political system of powers in this theory, it is quite clear that Hegel’s talk of the “organism of the state” is more than a simple metaphor. For Hegel expressly intends thereby to emphasize that the system of powers is neither a mere aggregate nor a system of forces that reciprocally limit their respective spheres of operation in a purely mechanical fashion. Conceived precisely as an organism, the system of powers is itself a whole that possesses its end within itself, and whose parts or articulated members are themselves not merely means but also an end and purpose in their own right: each individual power presupposes the effective functioning of the other two as already given, and the specific function of each is determined by the idea of the whole.

II. If we grasp Hegel’s theory of the state as organism in this way, we can see that it also links up directly with a conception of the state that can ultimately be traced back to the French Revolution where indeed, as is generally recognized, the rhetoric of expressly political “organization” first arose.¹⁶ One also can find a reflection of this conception of the state

in the footnote to §65 of Kant's *Critique of Teleological Judgment* where he writes, with an indirect reference to the French Revolution, as follows: "Thus in the case of a great transformation, recently undertaken, of a great people into a state, the word organization has frequently, and with much propriety, been used for the constitution of the legal authorities and even of the entire body politic. For in a whole of this kind certainly no member should be a mere means, but also should be an end, and, seeing that he contributes to the possibility of the entire body, should have his position and function in turn defined by the idea of the whole." This Kantian conception of the "organization" of the body politic already anticipates the basic idea behind Hegel's doctrine of the political organism in a fairly precise fashion. But it is interesting to note that Kant himself did not expressly adopt this organic conception of the state. This is directly connected with the fact that Kant regarded this language of the "organization" of the body politic as a purely analogical mode of discourse. Such a way of speaking, as Kant remarks in the same footnote, involves merely an "analogy" with the natural living organisms that Kant conceives as the "immediate ends of nature." It seems to me that Hegel consciously distinguishes his own position from that of Kant here, and not without some justification. Kant could only regard the living organisms of nature as "natural ends" to the extent that he believed we already require a teleological perspective even in order to describe organisms *as* organisms in the first place. To regard organisms as "natural ends" means to regard them *as if* the idea of the relevant whole lay behind them as a cause (as the ground of their existence). It does *not* mean to claim, in addition, that the idea of the whole is also the actual cause (the ground of existence) of the specific form of the organism and of the interconnection of its various parts in and as an organic whole. If we now apply the concept of organism not to plants and animals, but rather to the state that is organized by human beings and itself organizes human beings as citizens of the state, then the concept of organism must also undergo some change in the process. The organism of the state is not a "natural end," but rather, as an organized and self-organizing whole, an "end in and for itself" [*Selbstzweck*]. The question thus naturally arises whether Kant's view that the idea of the organism is merely a ground of cognition, but not the ground of the existence of the organization of the parts into a whole, is applicable to the state or political community. It is not mechanical objects – at least according to Hegel's theory – that are organized within the organization of the state. For Kant, one must always regard the parts of plants and animals as just such mechanical objects if we wish

to explain anything about them in causal terms. On Hegel's view of the matter, what gets organized within the state is, rather, what he calls the "political disposition" or the "spirit of a people," is a will that is itself directed toward an end.

II

For Hegel, therefore, the idea of the political organism is not only the cause of the organization of the state, but also the *ground of cognition* with respect to the essence of the state. This brings us back to my original claim that Hegel's conception of the state as organism already arises from his idea of a philosophical science of the state. It should now be easier, after the foregoing analysis, to understand the full sense of this claim. I merely wish to conclude by limiting myself to a few further suggestions.

Hegel was able to derive the concept not merely of the organism, but also of a properly philosophical science from Kant's *Critique of Teleological Judgment*. If we bear this connection in mind, we possess a guiding thread that leads us to the heart of Hegel's concept of a philosophical science of the state. In §79 of the "Doctrine of Method" in the *Critique of Teleological Judgment*, Kant directly raises the problem concerning the proper place of "teleology" within a genuinely philosophical science. In this paragraph, Kant understands "science" as a system, or an organized whole, in which the placement of all the parts is determined by the idea of the whole. Kant then divides philosophical science into a theoretical and a practical part, but, remarkably enough and without providing an argument for this, he discusses only the question concerning the proper place of teleology within the *theoretical* part of philosophical science. His answer is that teleology as science is not a part of scientific "doctrine," but belongs solely to the critical theory of the faculties (and of the faculty of judgment in particular), although it exerts a certain negative influence on the method of theoretical natural science.

Kant's answer is explained by the following considerations. For Kant, the concept of teleology belongs to the critical theory of the faculties to the extent that we recognize the need for the teleological exercise of judgment as a specific characteristic of the human faculty of knowledge. This faculty of knowledge is defined by its receptivity to intuition, on the one hand, and by the spontaneity of discursive understanding, on the other. Our "understanding" is specifically constituted in such a way, as far as knowledge attainable through the understanding is concerned, that

"the particular is not determined by the universal, and the former cannot therefore be derived from the latter."¹⁷ But at the same time, "this particular within the manifold of nature must be concordant with the universal (through concepts and laws) if we are to be able to subsume it under the latter."¹⁸ This "concordance" [*Zusammstimmen*] of the particular and the universal inevitably appears as something contingent and is "conceivable for our understanding solely through the connecting means of ends."¹⁹ In other words, if an organic product is presented to us in empirical intuition, our faculty of understanding finds it impossible to derive or explain from the universal concept of this specific organism how the particular parts of the organism are determined as particular members or organs of the same. On the contrary, our understanding can think "a real whole of nature" only precisely as "an effect of the competing forces of the parts."²⁰ The understanding is unable to think "the whole" as "containing the ground for the possibility of the connection of the parts," but can think only that "the *representation* of a whole contains the ground for the possibility of its form and of the relevant connection of the parts."²¹ To regard an organism in this way means, precisely, to explain it mechanically, on the one hand, and to describe it teleologically, on the other. For this reason, teleology belongs as a characteristic feature to our essentially finite understanding and to the critical examination of the latter. Through his critical analysis of the human understanding, however, Kant also raises the question concerning the possibility of an understanding that is constituted differently from our human understanding. Kant even points out explicitly that insofar as we recognize the finitude of our own understanding, that is, insofar as we grasp the peculiar character of our understanding as its specific essence, we thereby already precisely have framed the idea of an understanding that is constituted in a specifically different way from our own, and the possibility of which we can at least envisage. For such an understanding the finitude of our understanding would be dissolved, that is, for the former it would *not* be impossible to recognize a whole presented in nature (i.e., an organism) as the real ground for the determinate and specific character of its parts. For such an understanding a real whole within nature would *not* appear as a mere effect of the competing forces of the parts. In the intuition of a specifically articulated whole the interconnection and form of the relevant parts would *not* appear as contingent. For such an understanding pure actuality thus would have taken the place of contingency and mere possibility. The ground for the existence of the particular then already would be given along with the universal of the whole (with the nondiscursive concept of the whole). Such an understanding would

require neither the concept of end nor the concept of mechanical effect. Hence Kant calls it a nondiscursive or intuitive understanding.

If we bear this Kantian conception of teleology as part of a philosophical science in mind, then Hegel's conception of a philosophical science of the state appears as both an implicit (and quite deliberate) critique and as a productive appropriation of Kant's theory.

As far as the critique of Kant is concerned, Hegel repudiates, *first*, the Kantian presupposition that teleology as science falls exclusively within the theoretical part of philosophical science. The substance of this objection is not, of course, at all new. According to the conception of many traditional political theories already, from Plato and Aristotle through to Kant himself, the state has always been interpreted in terms of the relation of ends and means or part and whole. Even the individualistic contract theories of the state, which have existed since the beginning of the modern age, regarded the state not merely as a whole composed of parts (of individuals), but also as a means for the realization of the particular and shared ends of individuals. Hegel's criticism of such contract theories consisted in the objection that if the ultimate end and purpose of the state is located solely in the particular interests of the individuals as such (e.g., in individual security, in the protection of property, or in personal freedom), then it inevitably appears as "something arbitrary" (or we can now say: as something contingent) whether individuals come together to form a state or not. One can interpret this criticism as one that corresponds precisely to Kant's critique of the understanding that can grasp the emergence of a natural "whole" only as an effect of the competing forces of the individual parts, and for which the interrelated whole, constituted by the individual parts in virtue of their particular natural forces and properties, must appear as something entirely contingent. Now this is precisely why Hegel describes the state that is exclusively envisaged by the contract theorists as "the state as conceived by the understanding." And Hegel believes that his own critical (and to that extent the only properly "scientific") examination of such a state precisely *as* a "state as conceived by the understanding" necessarily leads to a concept of the state that interprets it as an end in and for itself, and thus ultimately as an "organism." That is the significance of Hegel's remarks concerning the "scientific demonstration of the concept of the state" in §256 of the *Philosophy of Right*.

The second aspect of Hegel's implicit critique of Kant is directed against the Kantian claim that teleology as science properly can belong only to a critical examination of the faculty of knowledge, but not to a body

of "doctrine." The substantive basis for Hegel's criticism lies in the fact that what Kant says does not appear to be consistent with what he actually does. For insofar as Kant subjects the human understanding to critical analysis as a finite understanding, the critique of teleological thought does not merely move directly into a theory of the nature of an "intuitive understanding," but also simultaneously suggests a specific and alternative theory of organisms, one in which the opposition between mechanical and teleological causality is overcome or sublated. Although Kant certainly *says* that such a theory could actually belong not to us, but only to a hypothetically entertained intuitive understanding, the remarkable thing is that he has himself sketched out what a possible theory of an intuitive understanding would involve.

If we now consider the articulated construction of Hegel's theory of the state, and if we pay particular attention to the structure of the transitions that take us first from the state as conceived by the understanding (1) to the concept of the state as an end in itself (2) and then from this to the theory of the state as organism (3) we can make the following claims. The first transition corresponds to the transition of the understanding from an initially quasimechanical to a teleological consideration of the state. The second transition corresponds to the transition of the understanding from a previously discursive to a no longer purely discursive consideration of the state as a "rational state." The consideration of the organic state as a chain of syllogisms returning into themselves is, of course, still discursive with regard to form, but the discursive character is now only a moment within a form of thinking that can be described best as a "synoptic conceptualisation" [*Zusammendenken*].²² Here we expressly think the universal together with the particular in the singular or individual. Hegel's theory of the organism of the state, with its assumption of three reciprocally self-presupposing forms of mediation, makes use of precisely the same conceptual structures that Kant had ascribed to the intuitive understanding. As a form of the actualization of the will, the state is certainly not an object of intuition in the Kantian sense of an empirical or nonintellectual intuition. But precisely insofar as it is not indeed such an object, and yet can still be thought as a singular individual "whole," Hegel was able to ask whether it was not perhaps more appropriate, with regard to the essence of the state, to abandon both the purely teleological and the quasimechanical perspectives as inadequate "finite" modes of conceptualization. Hegel's response to this question was quite unambiguous since, in his eyes, the state could properly be regarded as an organism only to the extent that it is a whole articulated in its parts, one where the

whole and the parts causally determine one another with respect to their form and their interconnection.

Notes

1. K. Marx, *Zur Kritik der Hegelschen Rechtsphilosophie*, in K. Marx and F. Engels, *Gesamtausgabe* 1,2 (Berlin, 1982), p. 12.
2. K. Marx, *Zur leitende Artikel in Nr. 179 der "Kölnischen Zeitung,"* in K. Marx and F. Engels, *MEGA*, vol. 1, p. 1 (Berlin, 1975), p. 189.
3. *Ibid.* In the context of the passage in question, Marx compares the theory of the state with that of the solar system: "Just before and just after the time of the great discovery of Copernicus concerning the solar system the gravitational law of the state was simultaneously discovered, and one now found the gravity of the state within itself" (*ibid.*, p. 188). This particular comparison may well have been suggested by the fact that in the *Science of Logic* (cf. note 6 below), Hegel himself identified the organism of the state, in relation to its inner "logical" structure, with the "free mechanism" of the solar system and also spoke about "gravity" in this connection as the fundamental determination of this system. One can find a similar thought in the "Remark" to §198 of the Berlin edition of the *Encyclopedia* (cf. note 8 below). The idea that Marx partly repudiated and partly ignored the Hegelian theory of the fundamental logical structure of the political organism, as occasionally has been claimed, does not really stand up under close examination.
4. The paragraph references here and in what follows relate, unless specifically indicated otherwise, to those of the 1821 text of *Grundlinien der Philosophie des Rechts*.
5. The three figures of the Hegelian syllogism do not correspond to those of the classical syllogism in every respect. The traditional notion of the syllogism is a concept narrower than Hegel's. In his essay *Logical form and Real Totality: On the Conceptual Form of Hegel's Authentic Concept of the State* (cf. pp. 241–67 above in the present collection), Dieter Henrich has pointed out that how the idea of "*syl-logizesthai*," of synoptic conceptualization, lies at the heart of the Hegelian conception of the syllogism.
6. "Thus the *government*, the *individual citizens* and the *needs* or the *external life* of singular individuals are the three terms, each of which forms the middle term of the other two. The *government* is the absolute center in which the outer term of the singular individuals is brought together with its external subsistence; but the *singular individuals* are equally a middle term insofar as they activate that universal individual in the domain of external existence, and translate its ethical essence into the outer term of actuality. The third syllogism is the formal syllogism, that of semblance, in which the singular individuals are connected through their *needs* and external existence to this universal absolute individuality; a syllogism that, as a purely formal one, passes over into the others and finds its truth in them. This totality, the moments of which themselves exhaust the complete relations of the concept, or as *syllogisms* in which each of the three distinguished objects in turn assume the determination of the middle and the

- outer terms, constitutes the process of *free mechanism*. Here the distinguished objects possess the objective universality, the *pervasive* gravity that maintains itself as *identical* in its *particularization*, as its own fundamental determination."
7. The complete Remark in §198 runs as follows: "In the practical sphere, for instance, the state is a system of three syllogisms just like the solar system. (1) The *singular* (the person) concludes himself through his *particularity* (the physical and spiritual needs, which when further developed on their own account give rise to civil society) with the *universal* (society, right, law, government). (2) The will or the activity of the individuals is the mediating term that gives satisfaction to their needs in the context of society, right, and so on, and provides fulfillment and actualization to society, right, and so on. (3) But it is the universal (state, government, right) that is the substantial middle term within which the individuals and their satisfaction have and preserve their full reality, mediation, and subsistence. Precisely because the mediation concludes each of these determinations with the other extreme, each of them concludes itself with itself in this way or produces itself; and this production is its self-preservation. It is only through the nature of this concluding, or through this triad of syllogisms with the same *terms*, that a whole is truly understood in its organization." Whereas the *Science of Logic* (cf. note 6 above) presents the system of the three syllogisms in the sequence of P-U-S, U-S-P, S-P-U, in the "Remark" to §198 of the *Encyclopedia*, Hegel presents the system of syllogisms in the reverse sequence of S-P-U, U-S-P, P-U-S. Both sequences reflect the systematic structure of the Hegelian theory of the syllogism to the extent that, in accordance with the theory, the "syllogism of reflection" (U-S-P) comes to stand between the "syllogism of quality" (S-P-U) and the "syllogism of necessity" (P-U-S). We shall see that Hegel's exposition in the *Philosophy of Right* is concerned only with the mediating role and position of the syllogism of reflection. The different presentation of the syllogistic triad in the *Science of Logic* and the *Encyclopedia* merely seems to me to show that the position of the outer syllogisms of this triad is a matter of indifference for Hegel – just as the position of the outer terms within the simple syllogisms also seems irrelevant to him and is therefore also arranged differently in the *Science of Logic* as compared with the *Encyclopedia*. The syllogistic triad of the *Encyclopedia* corresponds directly to Hegel's metaphor of the "circle of circles" (on this metaphor for the syllogism made up of syllogisms, cf. the "Addition" to §342 of the *Encyclopedia* in the original edition, the *Freundesausgabe*, of Hegel's complete works, where Hegel also develops his theory of organic nature as a triadic theory of syllogisms). The syllogistic triad of the *Science of Logic* corresponds to Hegel's metaphor of the "triangle of triangles" where the relevant middle term corresponds to the extremities and the relevant conclusion (the pair of outer terms) corresponds to the sides.
8. The state is the ethical spirit as the "substantial will that thinks and knows itself" (§257), not the will "insofar as it realizes what it knows and insofar as it knows it" (*ibid.*). More precisely, this is the state "as the actuality of the substantial *will*, and which it possesses in the particular *self-consciousness* that has been raised to its universality" (§258). Cf. §265, Addition: "It is the individuals' sense of themselves that constitutes its [the state's] actuality."

9. "This disposition," so Hegel says in §268, "is *trust* in general (which can pass over into a more or less educated form of insight) – the consciousness that my substantial and particular interest is preserved and contained within the interest and purpose of something else (here of the state) as in a relationship to myself as a singular individual – whereby precisely it is immediately not an other to me and I am free in this consciousness."
10. *Critique of Teleological Judgment* §65 (B 291).
11. The members of this conditioned sequence are not, it should be noted, the members of the political organism. And the sequence of conditions (1) S-P-U (2) P-U-S (3) U-S-P does not correspond to the sequence of Hegel's triad of syllogisms that ascribes the central position to the syllogism of reflection (U-S-P).
12. *Critique of Teleological Judgment* §83 (B 393). The following quotation is also from §83.
13. *Ibid.* §65 (B 291).
14. It is the correspondence between the structure of the political constitution as a whole and the structure of a single part of the constitution (the third power) that provides the deeper substantive grounding for why Hegel actually interprets the third power as the *first* one. There is a lack of clarity in the secondary literature on Hegel concerning this substantive grounding. Hegel deduces the first power directly from the concept of the political constitution. According to this concept, the essence of every political constitution lies in determining which individual will is charged with harmoniously mediating the given universal end and purpose of the state (that of uniting the social classes) with given particular ends and purposes (those that arise from particular needs and situations, etc.). "Individuality is the first and highest *pervasive determination* within the organization of the state" (*EPW* §541, Remark). (Gravity in the free mechanism of the solar system corresponds to individuality in the organism of the state.) By virtue of this "pervasive determination" of the political organism, which also ultimately constitutes the individuality of the state itself, all three political powers can be interpreted as forms of the executive power. The *Encyclopedia* thus indeed distinguishes these powers from one another as the individual, particular, and universal expression of the executive power. That the *first* power, according to Hegel's exposition, corresponds to the *middle* syllogism of the syllogistic triad finds its deeper substantive grounding in the fact that Hegel understands the "articulation" of the organic domain in general, and in particular the articulation of the political state in terms of its various powers as a "diremption" (§273; cf. *WL* [GW VII], 144ff. and the *EPW* §198 and the Addition to §342; cf., finally, the remarks in Hegel's essay *The Difference between Fichte's and Schelling's System of Philosophy* concerning "the fairest bond" in Plato's *Timaeus* [GW IV, 65] and the passage in the *VPG* to which Henrich draws particular attention in the essay mentioned above). The syllogism of reflection forms the starting point for understanding this diremption since it already can be grasped itself as a diremption of the individual into the moments of the universal and the particular. The diremption of these

moments gives rise in turn to the syllogisms of quality and necessity that, resulting from diremptions as they do, form the outer syllogisms of the syllogistic triad. The often discussed question, also raised by Henrich, as to how the construction of the state as a system of three syllogisms that is undertaken in *WL* and in §198 of the *EPW* can be brought into a consistent relationship with the exposition of the political organism in the *Rpb* is capable of a solution only if we recognize the essentially "diaretic" character of the syllogistic triad. It is unnecessary to endorse Henrich's view that "the syllogistic triad of the *Encyclopedia* is not related at all to the three formal aspects of constitutional law" and that this syllogistic triad should be interpreted as the proper conceptual form of Hegel's "authentic" concept of the state, that is, as a "conceptual determination of the state that still precedes the logic of constitutional law and the speculative articulation of the institutions of its constitution and that yet internally underlies the systematic structure of these institutions."

15. Marx, *Zur Kritik der Hegelschen Rechtsphilosophie*, p. 61.
16. Cf. E. W. Böckenförde, "Organ, Organismus," in *Geschichtliche Grundbegriffe: Historisches Lexicon zur politisch-sozialen Sprache in Deutschland*, vol. 4 (Stuttgart, 1978), pp. 519–622, and in particular 566ff.
17. Kant, *Critique of Judgment* §77 (B 348).
18. *Ibid.*
19. *Ibid.*
20. *Ibid.* (B 349)
21. *Ibid.* (B 349ff.)
22. See Henrich, Chapter 10 in this collection. On the same question, cf. also Josef König, *Der Begriff der Intuition* (Halle/Saale, 1926), p. 89f. According to Hegel, such "synoptic conceptualization" not merely is concerned with discursive concepts, but rather expresses "the self-reintegrating concept" itself. Once again, Kant's political philosophy can be seen as a model for the theory of the syllogistic form of the rational state. In the *Metaphysic of Morals* (§45), Kant had identified the three powers of the state with "the three terms in a practical syllogism of reason": the major term that contains the *law* of that will, the minor term that contains the *demand* that we proceed according to the law, that is, the principle of subsumption under the latter, and the concluding term that contains the *legal judgment* (sentence) as to what is right in the present case. Without mentioning Kant directly, Hegel refers to this in the "Remark" to §541 of the *EPW*: "As the most obvious categories of the concept are those of *universality* and *singularity*, and their relationship that of the *subsumption* of the singular under the universal, it has come about that in the state the *legislative* and *executive* power have been so distinguished as to make the former *exist on its own* as the absolutely superior element, and to subdivide the latter again into administrative or *government* power and *judicial* power, according as the laws are applied to public or private affairs. The *division* of these powers has been treated as the essential thing, in the sense of their *independence* of one another in reality, subject always, however, to the aforementioned subsumption of the powers of the singular under the

power of the universal. We cannot fail to recognize the elements of the concept in these determinations, but they are here connected by the understanding in terms of an entirely irrational relationship rather than in terms of the self-reintegrating process of living spirit[. . .] It is essentially thus, everywhere and only thus, that the rational relationship of the logical perspective stands opposed in its truth to the external relationship of the understanding that never gets beyond the subsumption of the singular and the particular under the universal. What disorganizes the unity of the logically rational, equally disorganizes actuality.”

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