Hegel's Political Philosophy

problems and perspectives

A COLLECTION OF NEW ESSAYS

EDITED BY

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Preface

Hegel was born on 27 August 1770, and the present volume was originally planned to appear in 1970 to commemorate the bicentenary of his birth. It appears a year later owing to the unforeseen and probably unavoidable difficulties of collecting and editing original essays by contributors scattered over two continents. Among the many thankless tasks of an editor of such a volume is to have to refuse, on various grounds, many attractive offers of contributions or to solicit contributions from unwilling or very busy authors. I would like once more to apologize to the former and to thank those of the latter who yielded to my entreaties.

I was very fortunate to have had the assistance of Professor John Plamenatz, Mr W. L. Weinstein and Dr Shlomo Avineri in the early stages of the project; the first two gave me valuable editorial help also in its later stages. I am indebted to John Havard for his meticulous editorial assistance, and to Roger Hausheer for translating two of the essays into English, and also helping me with the editorial work. The help of Pembroke College secretarial staff, especially Lady Alison Sinclair and Miss Elizabeth Stokes, must also be gratefully acknowledged. My own contribution benefited greatly from the critical comments of Mr J. R. Torrance, whom I would like to thank cordially.

The essays included in this volume cover all the major political works of Hegel, and the topics chosen by the contributors deal with central or particularly controversial issues in Hegel's political philosophy. A wide spectrum of approaches is combined with a sympathetic, though by no means uncritical, attitude to Hegel's works and ideas. What inspired the editor and the contributors alike was a common belief that Hegel's political philosophy is exciting, significant and impressive, and that its study amply repays the effort needed to understand it. We hope that we have succeeded in communicating this belief to our readers.

Oxford, August 1970 Z. A. PELCZYNSKI

Abbreviations

The titles of Hegel's works most frequently referred to in this volume, published in German or in an English translation, are abbreviated as follows:

Phänomenologie	*Phänomenologie des Geistes*
Phenomenology	*The Phenomenology of Mind*, trans. J. B. Baillie
Philosophie des Rechts	*Grundlinien der Philosophie des Rechts oder Naturrecht und Staatswissenschaft im Grundrisse*
Philosophy of Right	*Hegel's Philosophy of Right*, trans. T. M. Knox
Philosophie der Geschichte	*Vorlesungen über die Philosophie der Geschichte* (The title of G. Lasson's edition (Leipzig, 1917–20) has *Weltgeschichte* instead of *Geschichte*, but is the same work.)
Philosophy of History	*Lectures on the Philosophy of History*, trans. J. Sibree
Political Writings	*Hegel's Political Writings*, trans. T. M. Knox

The German works have had different editions and have been reprinted in various years. The English translations have also been printed more than once. The edition used and/or the year of reprint is stated by each contributor in his essay.

The Hegelian conception of the state

Z. A. PELCZYNSKI

The ideas of Hegel, as of any other political philosopher, can be discussed in a variety of ways. One can approach the ideas genetically, tracing their evolution from the earliest, generally simple, and often rather different formulations in some youthful work through various intermediate works to the author's *chef-d'oeuvre*. One can take an idea or a cluster of ideas of a political philosopher and trace its development in the history of political philosophy. One can compare the ideas of one thinker with those of another or several others. One can look at political ideas as reflections of broad currents of thought or of contemporary controversies; as a thinker's responses to the social processes or political events of his time and place; as expressions of mainly individual factors such as personal prejudices or escapist flights from the unpleasant realities of the historical situation. Or one can look at ideas simply as they are stated and developed in one particular work, especially a work that is the most authoritative or mature expression of a political philosopher's position, without asking how or why it was that he came to have them. All these approaches are perfectly legitimate; all have their limitations; they are all – as it happens – represented in this volume of essays. They reflect the personal interests and predilections of their authors, and also the intellectual traditions to which they belong.

However, if the study of past political philosophers is, so to speak, to earn its keep in the field of political and social science, rather than history of philosophy or general intellectual history, it must have some relevance to the concerns of political and social theorists of our own time. It need not necessarily influence their theorizing though it sometimes may do so by suggesting concepts, models or approaches. But it should at least illuminate their own activity by showing them the failures and successes of other minds grappling with similar problems. It is probably the last of the approaches just mentioned – the examination of ideas for their own sake, irrespective of their origin and background – which is then the most valuable. But one should not be too dogmatic about procedures; any one which promises results may be fruitfully combined with the narrow analytical approach. One other condition, however, must be satisfied before the full benefit of such an approach can be gained. The concepts, arguments or theories of past political philosophers must be translated into a language which contemporary political and social theorists will understand. In the case of Hegel this is a particularly difficult task: both because his political philosophy is a part of a general philosophical system, and because modern political and social theory is committed to logical and empirical thinking, while Hegel, at least at first sight, appears to have nothing but contempt for empiricism and non-

dialectical logic. That such a reinterpretative approach to Hegel is nonetheless possible has been shown by at least one political theorist, and one can only wish that more would follow a similar path.[1]

I

In this essay I wish to examine one of the most important, and at the same time most obscure and controversial of Hegel's political ideas – his concept of the state. There is little need to stress its importance. The fundamental concept of any political philosophy is the concept of the body politic. There are few, if any, problems in political philosophy which do not, sooner or later, raise the question what sort of thing the body politic is. Problems of political obligation, of the rights of subjects against the government, of citizens' rights to political participation, and of the proper end or scope of governmental action necessarily involve some conception of the political entity within which they arise. But although Hegel's concept of the state has all these ramifications, my primary purpose is to discover what Hegel actually means by ' the state ', to express its meaning and to discuss the use he makes of it in terms which should be intelligible to social and political theorists, and to suggest the reasons which may have prompted him to adopt the concept of the state as we find it in the *Philosophy of Right*. It is my belief that by his concept of the state Hegel hoped to convey something about social and political reality which was original and important, and that his concept is obscure because he tried to put more meaning into it than it is safe for any single concept to carry. It is only when one ' decomposes ' it (to use a term which Max Weber employed) into its constituent elements that one does justice to it, and also removes a large part of the obscurity which surrounds it.

Clarity and simplicity are obviously great virtues in political philosophy, and one might venture to guess that a large part of the current and almost obsessive preoccupation with Hobbes' political philosophy, despite its numerous and patent defects,[2] is due to the clarity of Hobbes' concept of the ' commonwealth ', and in fact to the clarity of his argument as a whole. But the price of clarity may be shallowness, and this is something which Hegel certainly escapes.

It is noteworthy that the concept of the state as Hegel first elaborated it has all the clarity and simplicity of Hobbes' ' commonwealth ' without several of its defects. In his unpublished essay on the German constitution,[3] he was concerned

[1] See J. Plamenatz's essay in this collection and his *Man and Society* (2 vols., London, 1963).

[2] A brief list would include Hobbes' untenable materialistic philosophy, the belief that Gallilean geometry can be usefully applied to politics, the notion of the contract, the ambiguity about the basis of political obligation (force, prudence, natural law or the command of God), the thoroughly ahistorical and asocial conception of political life, and the long argument (occupying half of *The Leviathan*) that the conclusions of his political philosophy coincide with the Christian Bible.

[3] Written at the turn of the eighteenth and nineteenth centuries, but first published by G. Mollat in 1893. Translated into English by T. M. Knox and published in *Hegel's Political Writings*, with an introductory essay by Z. A. Pelczynski (Oxford, 1964).

to show that, contrary to the contention of many learned jurists and widespread illusions of ordinary Germans, the Holy Roman Empire of the German Nation was no longer a state.

> A multitude of human beings can only call itself a state if it be united for the common defence of the entirety of its property. What is self-explanatory in this proposition must nonetheless be stated, namely that this union has not merely the intention of defending itself; the point is that it defends itself by actual arms, be its power and its success what they may . . . If a multitude is to form a state, then it must form a common military and public authority.[4]

What distinguishes a people which is a state from one which is part of a state or forms a collection of separate states – the latter, Hegel maintains, is virtually the position of the German nation – is its subjection to a common supreme public authority or state power (*Staatsgewalt* or *Staatsmacht* in the original). This authority is organized according to a constitution, and exercised through rules or orders possessing a universally binding character. Hegel insists in his essay that the commands of the public authority must be enforceable, must actually produce the intended results, and hence must be backed by all sorts of organized power (military, fiscal, legislative, etc.). Only then do the commands deserve the name of laws, the organization of the public authority the name of constitution, and the people united in allegiance the name of the state.

Although Hegel stresses force or power (*Macht* or *Gewalt*) as the necessary prerequisite of a state, there is nothing in the essay to substantiate the view that for Hegel force rather than law is the essence of the state (in German terminology that he subscribes to a *Machtstaat* rather than a *Rechtsstaat* conception of the state).[5] The supreme state power acts through universal laws within its territory. It is organized into separate bodies or authorities according to constitutional laws, and in contemporary Europe typically consists of a limited, constitutional monarchy and a representative body voting taxes and sharing in the monarch's legislative power.[6] What Hegel advocates (while doubting whether it can be achieved without forcible reunification) is precisely the replacement of power politics by the rule of law between the various parts of the disintegrating German Empire.

Although Hegel defines the state as merely a union of men for communal self-defence, even at this early stage of his political thinking he is quite clear that

[4] *Ibid.* pp. 153, 154.

[5] The charge was first made in H. Haller, *Hegel und der nationale Machtstaatsgedanke in Deutschland* (Leipzig-Berlin, 1921) and repeated in F. Meinecke, *Machiavellism : The Doctrine of Raison d'Etat and Its Place in Modern History* (London, 1957). It is true, however, that Hegel's views on international affairs in that early work are already marked by a thoroughgoing realism. He denies that there is any system of law or morality which effectively regulates relations between states and can achieve the Kantian ideal of ' perpetual peace '. (Cf. *Political Writings*, p. 208 and footnote.) The subject is discussed in D. P. Verene's essay, pp. 168–80.

[6] Cf. *Political Writings*, pp. 150, 160, 201, 202, 206, 217, 234, 235, 241.

such political union is not a contract of previously independent individuals motivated by fear or enlightened self-interest. It is the result of an evolution of generations of individuals forming a historical community; it is the product of their communal life, developed gradually in response to changing circumstances, and bearing the stamp of past crises.[7] A people or a nation, in the course of history, develops and perfects a machinery for common defence and for the regulation of its internal affairs. The state power is thus the creation of a nation, and the nation, through its subjection to that power and through common historical experience, is welded into a political community. The misfortune of Germany, Italy and Poland (Hegel points out), in contrast to England, France and Spain, was to fail to adapt their feudal public authorities to the needs of the modern world. As a result the first two disintegrated into separate states, and the third was partitioned by neighbouring powers. Hegel does not share Burke's optimism that a nation can find in its political tradition the necessary answers to all its pressing political problems. But he fully shares Burke's scepticism about the possibility of building a stable state on *a priori* principles, divorced from the historical experiences and traditional values of a people.[8]

What is nonetheless striking is that Hegel prefers to conceive the state in the narrowest possible way, as the legal and political framework of a community (which he generally called *Volk*, occasionally *Nation*). The specific characteristics of the community – its social structure, ethnic divisions, religious beliefs, customs and morals – while they may and do influence the constitution of the central public authority and the nature and degree of popular participation in government – fall outside his concept of the state. On the one hand there is the people, nation or community with all its manifold characteristics and ' internal social arrangements . . . made by the free action of the citizens '.[9] On the other hand there is its political organization – the supreme public authority with its specialized component bodies, and the laws and institutions emanating from it, by virtue of which the people, nation or community constitute a political union or a state. The two are conceptually separate and distinct, although socially and historically intertwined and interdependent. This way of looking at the state the Hegel of *The German Constitution*, unlike the Hegel of the *Philosophy of*

[7] Nowhere in the work is this better expressed than in the following passage (*ibid.* p. 146):

' The organisation of this body called the German constitution was built up in a life totally different from the life it had later and has now. The justice and power, the wisdom and courage of times past; the honour and blood, the well-being and distress of generations long dead; and the relationships and manners which have perished with them; all these are expressed in the form of that body.'

[8] See *ibid.* pp. 161–4. A detailed comparison of Hegel's and Burke's ideas on revolution and tradition will be found in J.-F. Suter's essay, pp. 52–72.

[9] *Political Writings*, p. 161. This and some other passages in the work anticipate Hegel's later concept of ' civil society '.

Right, shares with most subsequent political theorists, including contemporary ones.[10]

II

Why then did Hegel later abandon this conception of the state? Why did he find the concept of the people so thoroughly unsatisfactory that in the *Philosophy of Right* he treats it with the utmost contempt? [11] Why did he replace it with the concepts of ' civil society ' and ' the state ', and give to the latter a meaning different from that it had in the early essay? It is beyond the scope of this essay to trace in any detail the development of his thinking about the state between *The German Constitution* and the *Philosophy of Right*. This much, however, may be said. Soon after writing the draft of the essay Hegel went to teach at Jena University, and it was during the so-called Jena period of his life that he both rethought his political ideas and formulated his own philosophical system in conscious opposition to his previous philosophical masters: Kant, Fichte and Schelling.[12] Hegel became deeply dissatisfied with the individualistic conceptions of natural law and morality, and with the corresponding views about human nature, of his philosophical predecessors, who seemed to him unable to do justice to important aspects of ethical, social and political life, and he turned again to the philosophy of Plato and Aristotle and the examination of the Greek polis and its culture.[13] The insight which he gained from the analysis of ancient Greek

[10] Compare, for example, the definitions of ' state ', ' nation ', ' community ' and ' society ' in Ernest Barker, *Reflections on Government* (Oxford, 1942), pp. xv, xvi.

[11] Cf. Hegel's *Philosophy of Right*, trans. T. M. Knox (Oxford, 1942), pp. 182–3, 195–6, 198.

[12] The various stages of the development of his political thought are reflected in an essay on natural law (published as an article in 1802–3), a roughly contemporary draft of ethical theory published posthumously under the title *System der Sittlichkeit*, two courses of university lectures delivered in 1803–4 and 1805–6 and published posthumously under the title *Jenenser Realphilosophie* I and II, and Hegel's first published book, *The Phenomenology of Mind* (1807). The development was completed in the *Science of Logic* published 1812–16 and in *The Encyclopaedia of the Philosophical Sciences* published in 1817. The *Philosophy of Right* (published in 1821) was an expanded version of the part of the *Encyclopaedia* dealing with ' Objective Spirit '. M. Riedel's and J.-F. Suter's essays deal with some aspects of Hegel's philosophical development during those years. A fuller treatment of its ethical, political and social aspects can be found in M. Riedel's collection of essays, *Studien zu Hegels Rechtsphilosophie* (Frankfurt am Main, 1969). For the most recent English study of Hegel's philosophical development, see Walter Kaufmann, *Hegel : Reinterpretation, Texts and Commentary* (Garden City, New York, 1965; London, 1966), which includes an excellent chronology and bibliography of Hegel's works. A shorter account of the development of the Hegelian system up to the *Logic* is in I. Soll, *An Introduction to Hegel's Metaphysics* (Chicago-London, 1969). Some aspects of Hegel's philosophy which bear on his political thought are explored in G. A. Kelly, *Idealism, Politics and History : Sources of Hegelian Thought* (Camb. 1969).

[13] His interest in ancient Greece was even earlier than the Jena period as is shown by his so-called early theological writings. But only in Jena did Hegel achieve a synthesis of the ancient and modern philosophical traditions, which was the hallmark of his own mature philosophy.

For the powerful impact of Greek thought on him at the time of the *Phenomenology*, see J. N. Shklar's essay; for the analysis of the final synthesis in Hegel's *Philosophy of Right*, see K.-H. Ilting's essay.

philosophy, history and literature was that men form genuine communities only when they share the same conceptions of the good life, and identify themselves wholeheartedly with the basic moral ideals of their country or culture. These shared and universally accepted conceptions and values, which are alive and operative in actions and attitudes of community members, and (so to say) incapsulated in the customs, laws and institutions which regulate their relations, Hegel calls *Sittlichkeit* (usually translated into English as 'ethical life', 'social ethics', 'concrete ethics' or 'social morality').[14] Hence a people or a nation form a genuine community when and in so far as their interrelations are animated and pervaded by *Sittlichkeit*. Greek political institutions were not something apart from the ethos of the polis, but part and parcel of its ethical life, indeed almost its most important part. A polis was an ethical community which had a political aspect, not a community on which political institutions were so to speak superimposed from outside. Laws and government were only some of the many bonds linking a people into a community. This idea of polis as an ethical community Hegel applied to the modern state during the Jena period.

Although Hegel's conception of ethical life and the model of the state as an ethical and not merely political community were derived from Greek antiquity, he is well aware of some fundamental differences between the ancient Greek and the modern European cultures.[15] Indeed he takes great care to emphasize the differences in his writings, and always insists that the modern state cannot be conceived simply in terms of the polis, whose specific ethical ideas and social and political institutions are simply inapplicable to the modern world. One obvious difference, which he noted early, is the vastly increased size of modern nation-states and their vastly more complex system of economic and social relations. These factors necessitate the existence of a permanent, specialized and highly organized system of governmental bodies – the supreme public authority or state power (*Staatsgewalt*). Unlike the amateurish and direct involvement of the citizens of ancient Greece in the public life of the polis, the government of the modern state permits popular participation only through representative institutions, and requires that a large part of its work is carried on by full-time politicians and professional administrators.[16]

But an even more important difference lay in the nature of the ethical bond between the individual and the community which is typical of the two cultures. The Greek polis absorbed its members so completely and its ethos was so sacro-

[14] The French translations of *Sittlichkeit*, some of which stress another aspect of the concept, are *ethique*, *morale vivante*, and *morale realisée*. The word *Sittlichkeit* comes from *Sitte* (custom, ethos).

[15] A culture, called 'realm' or 'empire' (*Reich*) by Hegel, was a collection of communities which, though distinct, shared the same basic values. There was thus a family resemblance between the ethical life of all communities within a culture although historical influences gave each community a characteristic configuration of ethical concepts and values.

[16] See *Political Writings*, pp. 158, 160, 202–3, 206.

sanct that it was inconceivable to them to question the fundamental principles of the polis or to assert any claims to the satisfaction of their own particular interests when they participated in politics. Moreover, the citizens' identification with the community was unconscious and spontaneous. It was brought about by customs, traditions and civic education, and reinforced by art, literature, philosophy and religion, which were all integral parts of the Greek way of life or 'the spirit of the people'.[17]

The peculiarity of modern European culture, on the other hand, largely due to Roman law and modern natural law doctrines, is that men conceive themselves not just as members of communities but also – and sometimes primarily – as bearers of private rights against the state and possessors of legitimate particular and group interests. In Hegel's view Christianity had an equally profound effect on European culture, especially after it had been developed by the Reformation and secularized by the Enlightenment. Under its influence men came to regard themselves as moral agents, acknowledging no higher authority than their own conscience or reason. Hegel calls the first tendency 'particularity' and the second 'subjectivity'; the two together constitute the peculiarly modern and European phenomenon of individualism. While individualism had very deep roots, it was only since the French Revolution that it has taken on the form of a dominant cultural force and begun reshaping social and political reality. Hegel was convinced that the influence of the Revolution was inescapable although he recognized that there were parts of Europe where its effects were still rather slight in the early nineteenth century. Even in the three most advanced countries – France, England and Germany – some sections of the population were far more affected by the spirit of individualism than others. Long before Tocqueville and Marx, Hegel perceived that it was the bourgeoisie which formed the chief social base of individualism and through whom the traditional, community-conscious Europe of the Middle Ages had been undermined.[18]

What Hegel in the *Philosophy of Right* calls 'civil society' is the positive creation of individualism, and he specifically calls it the achievement of the modern world.[19] It represents the growing recognition by the community that its members have legitimate rights and interests also as particular, private

[17] Hegel more than once acknowledged his debt to Montesquieu for making him see laws and political institutions as something intimately bound up with and expressive of the spiritual life of a people. Cf. *Philosophy of Right*, pp. 16, 161, 177–8.

[18] In *The German Constitution* Hegel speaks of 'the *bourgeois* sense, which cares only for an individual and not self-subsistent end and has no regard for the whole'. When the bourgeoisie became a political power through the growth of imperial cities its spirit became one of the main causes of the decline of the German Empire. Cf. *Political Writings*, pp. 190, 191.

[19] Cf. *Philosophy of Right*, § 182 Addition. In § 185 and Addition Hegel contrasts the recognition of particularity in the modern world with its denial by Plato (whose *Republic* he regards as an interpretation of Greek ethical life; *Philosophy of Right*, p. 10). In the same paragraph Hegel mentions Roman law and Christianity as the ultimate causes of individualism.

individuals and not merely as members of one of the traditional groupings of the community. It also represents the recognition that individuals have personal opinions on a wide range of issues which are entitled to respect and to free expression even when they are different from the established beliefs and values. Indeed to be acceptable to the modern man those traditional principles must take the form of a rational but subjective conviction, just as ethical life must appear to the individual not as something alien and hostile to his particular interest, but as something which is inextricably bound up with it, and on which indeed his private interest in the last resort depends. Indeed it is a moral as well as a prudential duty of the supreme public authority, in whosever hands it is placed, to further the satisfaction of particular interests and to permit the expression of subjective opinions and wishes.[20]

In his writings after the Jena period Hegel sharply differentiates ethical life and relations from other kinds of normative principles and rules which regulate human conduct in modern society. In particular he distinguishes *Sittlichkeit* from *Recht* and *Moralität*. By *abstraktes Recht* he means the general principles of law concerning such personal rights as the right to life and property, and various personal liberties. Derived from Roman law and developed and rationalized by generations of later jurists and exponents of natural law it forms, Hegel believes, a body of abstract principles which necessarily underlies all positive legal systems of civilized countries in so far as the systems were rational.[21] By *Moralität* Hegel means the Kantian type of morality in which the value of a man's action depends on the goodness of his motive, and the conscience of the individual in the last resort determines how he should treat other individuals.[22] While the sphere of right is objective and concerned with the conformity of external conduct to the letter of the law, irrespective of motive, morality is a sphere where the personal judgement of a moral subject has primacy over the requirements of the kind of rules with which the individual is faced in his social life (conventional morality, customary law or state legislation). Hegel recognizes the validity of both kinds of normative orders in certain limited spheres, but he is convinced that by themselves they are unable to bind individuals into a cohesive and lasting community. The law-abiding citizen can legitimately contract out of civil society when the principle of reciprocity is violated or his interest unreasonably neglected or sacrificed. The moralistic individual (like an extreme type of contemporary conscientious objector) can question all of society's or the state's

[20] For an anticipation of this point of view in *The German Constitution*, see *Political Writings*, pp. 159–64.

[21] The Hegelian concept of *Recht* (usually translated as 'right' rather than 'law', as in the *Philosophy of Right*) is discussed in the essays of G. Heiman, K.-H. Ilting and M. Riedel.

[22] K.-H. Ilting's essay deals also with Hegel's concept of 'morality' and some of its political consequences. For a recent analysis of Hegel's ethical views and especially his critique of Kantian morality, see W. H. Walsh, *Hegelian Ethics* (London-New York, 1969).

rules.[23] The ethical man, the member of a true community, can and will do neither since he recognizes no other values than those of his community and culture which have passed the test of rational scrutiny. Only ethical as opposed to juristic and moralistic ties are capable of forming the basis of a true community. Neither a society of reasonable men restricting their selfish actions for the sake of peaceful coexistence, nor a society of moral agents guided by their individual consciences, but only a society of men sharing in, and guided by, a common ethical life can therefore properly speaking be considered a community. Hegel in fact believes that ethical life, although not always in its fully conscious form, is the actual, operative mode of human conduct, and that abstract right and morality are merely one-sided abstractions into which the critical philosophy of the Enlightenment has dissolved the concrete social ethics.

Corresponding to the three types of normative order Hegel distinguishes three types of freedom. In fact the problem of freedom was in the forefront of his mind when he was formulating his ethical, social and political theory. In the sphere of right a man is free when he can do what he wants provided he respects the same right in other men, that is, acts within the limits of reciprocity. In the sphere of morality freedom consists in the autonomy of the individual conscience *vis-à-vis* all the external rules and standards which demand conformity. The highest type of freedom – freedom in the ethical sphere – is the guidance of one's actions by the living, actual principles of one's community, clearly understood and deliberately accepted, and in secure confidence that other community members will act in the same way.[24]

III

Hegel's political and social concepts are obscure and difficult to grasp because they are immensely complex. This complexity is the result of his conception of the true philosophical method, which ought to conceptualize various forms of human experience and relate them to each other as necessarily connected. A concept (*Begriff*) in Hegel's own, special sense is necessarily complex because it is a dialectical synthesis of contrary forms of experience.[25] His concept of the state, therefore, as we find it in its mature form in the *Philosophy of Right*, con-

[23] A striking example of such extreme non-conformity, produced by a reaction against Hegel's own ideas, is discussed in E. Fleischmann's essay on Stirner, Marx and Hegel.

[24] J. Plamenatz in his essay explores fully the Hegelian concept of freedom and its relation to the social and historical context of ethical action. The connection between freedom and rational law in Hegel's thought it discussed by M. Riedel.

[25] For a brief exposition of the nature of Hegel's philosophical concepts, see the essays of D. P. Verene, pp. 173–5 and R. N. Berki, pp. 200–1. A brief explanation of Hegel's philosophical methodology is to be found in the translator's foreword to T. M. Knox's translation of the *Philosophy of Right*. A more detailed recent account is J. N. Findley, *Hegel : A Re-examination* (London, 1958). Unfortunately, Findley's views on Hegel's political philosophy are remarkably superficial and show a lack of proper appreciation of Hegel's passionate interest in, and wide-ranging knowledge of, man's political experience.

tains, in a highly condensed way, diverse experiences, observations, intellectual influences and so on, some of which have been already outlined. It is this mature and highly complex concept of the state which I now wish to analyse and then use to illuminate certain features of Hegel's political theory. The subject will be approached by considering two concepts which Hegel explicitly distinguishes, and then subdividing the second further into two distinct concepts, which Hegel distinguishes only incidentally and often not at all.

In the *Philosophy of Right* Hegel makes a basic distinction between ' civil society '[26] and ' the state '. The former is also a kind of state or rather an aspect of the state; in Hegel's own words, it ' may be prima facie regarded as the external state, the state based on need, the state as the Understanding envisages it '.[27] Civil society is the modern state conceived as a system of public authorities and autonomous bodies existing to further the private interests of individuals or their more or less organized groups, to protect their legal rights of person, property, contract, and so on, and to enforce their mutual obligations. But it is also a network of spontaneous, private relations established within the framework of the law by individuals pursuing their particular ends (' the system of needs '), which Hegel considers to be an essential aspect of ' civil society '.

To say that ' civil society ' is ' the state as the Understanding envisages it ' is a Hegelian way of saying that there is another, more adequate mode of conceiving the state. The complex of activities, attitudes, rules and institutions which make up ' civil society ' is only one aspect of political and social life ' abstracted ' from a wider, richer or more ' concrete ' system by a process of formal, abstract thinking which Hegel calls the understanding.[28] The ' abstract ' character of ' civil society ' can be appreciated without a thorough grasp of Hegel's terminology. The laws guaranteeing individual rights to life, liberty and property, which are the normative basis of ' civil society ', presuppose a person or body of persons who enact them – a legislator or a legislative assembly. The regulatory and welfare functions of the public authority active in ' civil society ' presuppose a superior public authority which determines the scope of these functions, lays down structures and procedures, appoints and supervises their personnel, and so on. The associations of individuals formed in ' civil society ' (' corporations ' and ' estates ') likewise presuppose at least the recognition of their autonomy or privileges by some higher body. Finally there are certain vital political activities, such as foreign relations, defence and the maintenance of colonies, which ' civil

[26] The term ' civil society ' had been used by writers such as Locke, Hume, Smith and Ferguson, as well as by some of their contemporaries in France, whom Hegel had read. Ultimately it is traceable to Aristotle's *koinonia politike* and Cicero's *societas civilis*. See ' Der Begriff der " Bürgerlichen Gesellschaft " und das Problem seines geschichtlichen Ursprungs ' in Riedel, *Studien zu Hegels Rechtsphilosophie*.

[27] *Philosophy of Right*, § 183.

[28] See *ibid.* translator's foreword, pp. vii, viii, x, xi, for the technical difference between ' understanding ' and ' reason ' in Hegel's philosophy.

society ' is not organized to perform, and which therefore fall outside its scope. All those activities and institutions which transcend ' civil society ' come within the scope of ' the state ' or rather (as Hegel puts it in § 267 of the *Philosophy of Right*) within ' the strictly political state and its constitution '.

The chief organs of this ' political state ' are the ' crown ' (hereditary monarchy), a collective executive (cabinet) appointed by and responsible to the monarch, and a representative body (' the Assembly of Estates ') which shares the monarch's legislative, fiscal and supervisory powers. Together they form the supreme public authority (*Staatsgewalt*) which Hegel had already distinguished in his essay on the constitution of the German Empire. But an essential part of the ' political state ' is also public opinion, that is, the ensemble of views and beliefs about the state, its organization, functioning, policies, and so on, which are held and expressed by the subjects of the public authority. Political opinion represents what Hegel calls the ' moment of subjectivity ' in the ' political state ', and is guaranteed by laws permitting free speech, freedom of the press and publishing, and freedom of assembly for purposes of political discussion.[29]

In two respects Hegel's distinction between ' civil society ' and the ' political state ' is open to criticism. It involves splitting up the public authority, which forms a highly integrated system of bodies and individuals acting in an official capacity, into two separate spheres: the supreme public authority of the ' political state ', and the law courts and the ' police ' (subordinate public authorities) of ' civil society '. It could have been possible, indeed it would be more natural, to view the two sets of authorities as just two parts of one and the same system of public authority, just as their activities could be viewed as phases or stages of the same governmental process. (Thus, for example, laws enacted by the monarch and the Estates in the ' political state ' are enforced by law courts and various administrative authorities, which are organs of ' civil society '.) Hegel in fact admits that in practice the two sets of institutions are ' organically connected ', that is, interacting and interdependent. But ' organism ' implies also differentiation or ' articulation ', and it is because the purposes which they serve seem so different to him that the two kinds of authorities, and the two areas of activity, are so sharply distinguished by Hegel. Civil authorities serve primarily individual or group purposes; political authorities primarily those of the people as a whole. This difference determines differences not just on the institutional level, but also differences in outlook, qualifications, the character of rights and duties, their universality, and so on, of the men who act in both spheres. The membership of 'civil society ' is equally open to all sane adults; that of the ' political state ' (as Hegel conceives it) selective and hierarchical. A property owner is free to dispose of his property as he thinks fit, at least within wide limits; the law allows him to be silly or capricious in his action. Those who participate in the political process

[29] *Ibid.* §§ 315–20 and Additions.

are on the contrary expected to show a sense of responsibility and a devotion to public good.

The other questionable feature of Hegel's distinction is that it is not just a distinction between two kinds of public authorities and relations regulated by law. ' Civil society ' and ' political state ' are areas of activity which include the private actions and subjective attitudes of their respective members, as well as objective laws and institutions. They are thus both manifestations of ethical life, and although Hegel tries to contrast the two spheres sharply, the distinction becomes rather blurred in the end. For instance, Hegel speaks of ' civil society ' as the antithesis of ethical life; but at other times he admits that it produces and encourages at least some ethical attitudes.[30] Similarly the ' political state ' is not an exclusive preserve of ethical attitudes since, as we have seen, public opinion is essentially subjective and capricious. At least one class of ' civil society ', the ' universal estate ' of civil servants, finds in public service the satisfaction of their particular needs and interests in the sense that they derive their income and social prestige from public service. Hence in the non-institutional respect there is also no clear-cut separation of the two spheres.

Hegel stresses heavily one other difference between the ' political state ' and ' civil society ', but again fails to draw a logically tight distinction. Both are systems or orders of activity which produce, on the one hand, specific results (for example, security of property or national independence), and on the other, a certain kind of unity or cohesion or (in the language of modern sociology) social integration. As Hegel points out the unity of ' civil society ' is of a rather low kind because of the individualism dominant in it. ' Individuals in their capacity of burghers in this " civil state " are private persons whose end is their own interest.' [31] Moreover, such unity as ' civil society ' possesses comes about largely unconsciously and automatically. Men are linked together by the production and exchange of goods and services, by taking part in the social process of the division of labour. Although they aim directly at their own interest, they indirectly promote the interest of other members of ' civil society '. Hegel accepts the ' invisible hand ' theory of Adam Smith only partially because he sees that public authorities must intervene into the operation of the market and into social life in general, when automatic processes fail to produce the expected results. Unlike civil (or social) order, political order is brought about largely consciously and deliberately, by rules and institutions adopted for this end, manipulated by men whose interest and duty lie in promoting national unity and cohesion.[32]

[30] Cf. *Philosophy of Right*, § 184: ' it is the system of ethical order, split into its extremes and lost ' and in which ' particularity . . . [has] the right to develop and launch forth in all directions '. Yet in § 254 Hegel calls the corporation ' the second ethical root of the state ', and compares its influence to that of the first root, the family.

[31] *Ibid.* § 187.

[32] ' The state knows . . . what it wills and knows it in its universality. Hence it works and acts by reference to consciously adopted ends, known principles and laws which are not merely implicit but are actually present to consciousness; and further it acts with precise knowledge of existing

The effect of these rules and institutions, Hegel adds, is reinforced by spontaneous patriotism or ' political sentiment ' (*politische Gesinnung*), which may vary from mere ' trust ' to ' educated insight '. These feelings, ideas and attitudes make the ordinary citizens, and especially those with a significant share of ' state power ', identify their private interest with the public good.[33] In both spheres, therefore, integration is promoted by a mixture of conscious and deliberate actions of the public authorities, and of spontaneous feelings and activities of private individuals, although the proportion of both elements is different in each sphere.

It is in the same § 267 of the *Philosophy of Right*, in which Hegel distinguishes the subjective nature of patriotism and the ' objective world ' of laws and institutions as two complementary aspects of the state, that he uses the expression ' the strictly political state and its constitution '. The original German phrase ' *der politische Staat* ' is also used by Hegel in §§ 273 and 276 of the book, but is rendered as ' the state as a political entity ' in Knox's translation. The seemingly odd phrase ' political state ' is of the utmost importance in understanding the Hegelian conception of the state. It suggests that apart from ' civil society ' (' the state as the Understanding envisages it ') and ' the strictly political state ' (which, though more adequate, is still an abstract concept) Hegel has yet another, even more complex concept of the state, ' state ' *sans phrase*, ' state ' without any qualification, ' state ' properly so called. It is this state which Hegel calls ' the actuality of the ethical Idea ' [34] or ' the actuality of concrete freedom ', and on which he heaps all the seemingly exaggerated superlatives for which the *Philosophy of Right* is notorious. The state in this sense means the whole population of an independent, politically and ' civilly ' organized country in so far as it is permeated by ' ethical life ' and forms an ' ethical order ' or ' ethical community '. Within this wide (' universal ') community to which all inhabitants *qua* ethical beings belong, there are what Hegel calls in § 145 of the *Philosophy of Right* separate ' moments ', aspects or spheres of ' ethical life '. These ' moments are the ethical powers which regulate the life of individuals '; they are the family, ' civil society ' and the state by which Hegel presumably means the state in the strictly political sense (' political state '). Through the framework of rules and authorities of the ' political state ' the nation-wide ethical community acquires a stable, structured political form, an orderly system acting on the historical world within and outside its borders, and an individuality *vis-à-vis* other national communities. In § 267 Hegel calls ' the strictly political state and its constitution ' ' the organism of the state '. But this organism or organization [35]

conditions and circumstances, inasmuch as its actions have a bearing on these.' *Ibid.* § 270. But this can also be said of the activities of law courts and the ' police '.

[33] *Ibid.* §§ 267–8 and Additions.

[34] In § 257 and 260 of the *Philosophy of Right* respectively.

[35] Hegel largely equates the two. *See* Knox's note 9 to § 267, *ibid.* p. 364, where Knox also stresses the distinction just made and defines ' state proper ' as ' the totality of human life so far as it is the life of moral beings united in a community by tradition, religion, moral convictions, etc.'

must not be confused with the ' state ' as such; a part or aspect of a whole, however vital, is still just a part. Hegel has been so frequently misunderstood because he fails to make a clear and explicit distinction between ' the state ' in the comprehensive sense and ' the strictly political state ', and because he uses the single term ' state ' both when he has only the political aspect in mind, and when he thinks of the political together with the ethical aspect. While it is true, as Knox writes,[36] that ' failure to realise this [distinction] has been responsible for numerous misrepresentations of Hegel's position and his attitude to " the state " ', surely a large part of the blame must rest on the shoulders of Hegel himself.

IV

It is possible to express the various ideas that make up Hegel's conception of the state in the following way. Men form communities of various kinds in which they find – or rather achieve by more or less conscious endeavour – the satisfaction of their physical needs and the needs of their spiritual nature, that is, their nature as creatures capable of thinking and willing. Among these communities, one in particular, the state, is of paramount importance to them. Looked at in one way a state is merely a certain population settled within a definite territory and subject to the rules and commands of men in authority, who themselves acknowledge no superior authority within or outside the borders of the state. Thus one essential bond between members of the state is their common subjection to a supreme and independent public authority. This authority generally acts through statutes, but sometimes through prerogative orders which, like statutes, have universal legal validity within the confines of the state. It may also possess various subordinate authorities for carrying out its orders or applying its laws in various special – local or functional – spheres. In other words, legal rules and commands enforced by authorities are one way in which the population of the state is integrated into a community.

But though this is a very important bond, it is not the only one. Members of the state establish and maintain by their own free activity a nexus of relations, which though regulated by law, is in no way a direct product of the legal order. These relations are the result of individual decisions motivated by self-interest or at least some private conception of what is good for men. They may be once-for-all exchanges or repeated transactions or more or less permanent institutions such as marriage or the corporation.[37] In contrast to the first or political bond Hegel would call this bond ' civil ', but we would prefer to call it social.

There is finally a third kind of bond, the ethical one. In so far as the members of the state share the same concepts, principles or ideals of the good life, which

[36] In his note to § 267 quoted above.

[37] The social relations also give rise to classes, but Hegel is not concerned with them unless they have acquired an official status in the eyes of the public authority, in which case they become estates '.

have been handed down from generation to generation (though not necessarily in an unchanged way), they form a community in a third sense, an ethical community.[38] In addition to ethical concepts there are other ' spiritual ' factors such as common language, culture, religion or national consciousness, which may bind the members of the state when all of them share them, but also divide them when they do not. And these same forces may bring all or some members of different states together into a wider, more diffuse kind of community. But whatever their effect Hegel does not attach as much importance to them as to the other types of integration. This ought perhaps to be qualified in the case of religion for Hegel sees the Christian religion as closely connected with ethical life, strengthening it when it is protestant and militating against it when it is Roman catholic.

The three kinds of communal bond Hegel takes into account, although conceptually distinct, do not operate independently of each other. He believes that they are interdependent and organically connected. Laws further the interests of society members and they express ethical convictions of community members. The bonds as they exist in practice can also work against each other, and produce social disharmony, political instability, as well as confusion and uncertainty in individual minds. This state of affairs is something of which men as rational beings strongly disapprove and seek to avoid. They try to adjust ethical attitudes, social relations, and legal and political institutions in such a way that the maximum of harmony is achieved in the national community. But the only form of integration which is subject to deliberate and direct manipulation is the legal or political order. It is laws and the authorities which issue and enforce them which are under the direct control of men, who of course may vary from a small minority to the majority of the population according to the character of the public authority. ' Civil ' activities of state members, although regulated by law, depend in the last resort on their own subjective opinions and desires, and cannot be directly influenced. The ethical order changes slowly and its change depends on wider cultural developments, which proceed according to their own laws of development; in the short run it has to be taken for granted and may only be made more explicit and effective through deliberate action. The political order is thus the most controllable form of social integration; the community which possesses a supreme public authority with all its necessary powers will be in a better position to maintain the harmony and the stability of its communal life, and to rationalize ethical and social relations, than a community which is either wider or narrower than the state, and hence deprived of such advantages. It is

[38] Within this state-wide community there are many narrower ones like families, corporations and churches. There may also be wider and looser ethical ' families ' consisting of members of independent countries who belong to the same culture or civilization and accept similar ethical values. Also the social and economic relations typical of ' civil society ' sometimes transcend state boundaries and connect members of different states into a loosely textured network of relations. Hegel ignores this aspect, which has become increasingly important since his time.

therefore reasonable for men to want to form politically organized communities, to accept the sacrifices and restrictions which membership of the state involves, and to strive to the utmost to improve its organization and to preserve its independence and integrity. This, I believe, is the gist of the Hegelian conception of the state. It is not expressed in the way Hegel expresses it in his major political work, but it remains faithful to the spirit of his political theory and it enables us to see more clearly some of the things which are obscured by Hegel's use of two rather than three basic concepts.

V

In § 260 of the *Philosophy of Right* Hegel states his view that the modern state is a synthesis of two opposing tendencies within modern society and concludes as follows:

> The modern state has prodigious strength and depth because it allows the principle of subjectivity to progress to its culmination in the extreme of self-subsistent personal particularity, and yet at the same time brings it back to the substantive unity and so maintains this unity in the principle of subjectivity itself.

In this passage Hegel makes a point that is both original and important. The modern state as an ethical, civil and political community draws strength from two separate and incompatible sources. One is the universal and objective ethical life (an ' ethical substance ') which faces the individual as something given and inescapable, the world of historically evolved values and ideals into which he is incorporated whether he wants it or not through the operation of ethical institutions such as the family, corporations, estates, and so on. In so far as the supreme authorities of the ' political state ' express this ethical life in their rules and activities, and are seen as its preservers and defenders, they enjoy far more support than they would if, for instance, they were thought to be merely the product of a natural lust for power by some men over others or just an instrument of domination over the mass of the people by some privileged and powerful minority. The second source of strength are the twin tendencies of ' subjectivity ' and ' particularity ', which nowadays we would describe simply as individualism. This is the tendency of men in modern times to look at all social values, rules and institutions as derived from the agreement of individuals, and existing for the sake of purely individual self-satisfaction and self-assertion. These two separate and antithetical tendencies are balanced, harmonized and integrated into a social synthesis by and within the ' political state '. Thus the Hegelian conception of the state combines the liberal conception of the state as the servant of individuals with the very different conception of the state as the guardian of the community. The ' ethical community ' and ' civil society ' may be conceived as dialectical opposites which are reconciled by the institutions, laws and actions of the state power – the supreme public authority of the ' political state '.[39]

[39] Cf. K.-H. Ilting's essay for a similar conclusion reached by a somewhat different route.

For cultural and historical reasons which have already been mentioned modern man finds repugnant the total and blind surrender to the community which in Hegel's view was typical of earlier ages and civilizations. Nor does modern man accept values, however ancient and hallowed by tradition, without question. His conscience refuses to abdicate moral judgement, and his ego rejects the idea of one-sided self-sacrifice. Man's relation to the ' ethical whole ' is now or rather tends increasingly to become self-conscious, it is mediated by his reason and will. Hence a compromise – or in Hegel's language a dialectical solution – is reached. Through the organs of ' civil society ' the state recognizes and promotes private interests, but in the process individuals learn to recognize public interests as their own basic interests and acquire the will to promote ' the universal ' even when it negates ' the particular '. The process of political education (*Bildung*) begins in ' civil society ' and continues in the ' political state '. Its organs and the methods of their operation – especially the Assembly of Estates, and its elections, publicity of debates, freedom of the press and public opinion, rationalization (that is, codification) of laws, and so on – offer citizens the chance of gaining insight into the ethical basis of policies and legislation and thus of voluntary submission to what the citizens now perceive as right and necessary. The result will be a widespread conviction of their righteousness and necessity, and a willing acceptance of sacrifices or restrictions. But it is also possible that the opposite will result. The people, their representatives, and the journalists, pamphleteers, writers and so on, who express and articulate public opinion, might disapprove of some measures, reject them as unjustified and actually resist them in practice. In an extreme case (as happened in France in 1789) the whole fabric of society and government might be condemned and overthrown.

The words ' strength and depth ' in the passage from the *Philosophy of Right* quoted above give us a clue to a major, perhaps the fundamental, political concern of Hegel. Living in an age in which states and empires rose and fell, some disintegrated while others were welded successfully together, and when some governments embarked on ' tremendous political experiments '[40] while others stubbornly clung to traditional institutions, Hegel sought to work out a political theory which would reveal the secret of the strength and stability of the modern state. The particular structure of the modern state – ' the strictly political state and its constitution ' mentioned in § 267 of the *Philosophy of Right* – must be understood as Hegel's attempt to do justice to the two tendencies inherent in modern society: the mainly integrating one of shared ethical life, and the mainly disintegrating one of ' subjectivity ' and ' particularity '.[41] It is worth while

[40] *Political Writings*, p. 159.

[41] It would be misleading and oversimplified to characterize the two tendencies in too sweeping a manner. Ethical life integrates in so far as men are conscious of shared ideals and assent to them. But it may also divide and separate when the community (like the France of the *ancien régime* analysed in Tocqueville's masterpiece) is ridden with ancient laws, traditional privileges, out-of-date social hierarchies and so on, which are felt to have lost their validity. The individualism

looking briefly at some of the features of the constitutional structure of the ' political state ' from this point of view, and emphasizing those of its elements which are shaped by the one or the other tendency.

VI

There are, Hegel maintains, three dangers which can threaten the ' ethical community ' and which it is the function of the supreme public authority – the organized state power – to repel. The first is its disintegration into a number of separate and independent communities as happened in the case of the Holy Roman Empire of the German Nation. It collapsed and dissolved because the bulk of politically conscious Germans had ceased in practice to regard themselves as belonging to one German nation, one German community, and the supreme public authority, despite an ancient and elaborate constitutional framework, was powerless to prevent it. Hegel believed that the process had become irreversible, but he nevertheless sketched out a constitutional plan for the empire consisting of an effective supreme public authority combined with a federal structure, which would allow the provinces to enjoy far-reaching autonomy in matters not of universal concern.[42] The preservation of the ' ethical community ' within the framework of one state, therefore, does not in the least exclude the existence of particular communities with far-reaching autonomy, provided they do not have the power to press their particular interests and viewpoints to the point of endangering the political unity of the wider community.

The second danger is the loss of political independence, and therefore of the ethical individuality of a nation. As a collection of private individuals the people may have nothing to lose if their country is conquered and forcibly annexed by another state, provided their civil liberties are respected and continue to be protected by the new central government. But its basic ethical values, moulded and developed by diverse historical influences peculiar to itself, might well be imperilled by incorporation into another ethical community. This, however, need not necessarily happen. If the conquering country belongs to the same culture and shares broadly similar ethical values, and if it also provides a large measure of autonomy for the newly acquired territory, it is difficult to see why the loss of independence must be ethically disastrous.

It is in the context of independence that Hegel propounds his view that wars are a test of the ethical soundness of a people. The supreme public authority presumably might be able to defend the country in wars of some kind or in the

underlying ' civil society ', on the other hand, turns into its dialectical opposite by bringing about a network of relations, a system of interdependence, created by men who have to cooperate to satisfy their needs. This network forces them to pursue trades and professions for which there is a social demand; it transforms particular individuals into actors of social roles, and educates them to recognize that they are members of society and not merely individuals.

[42] *Political Writings*, pp. 238–42.

early stages of any war even when the nation was apathetic or unpatriotic, but Hegel doubts whether in the long run, and in conditions of international anarchy, a state can survive as an independent political entity unless it has the inner strength which comes from being an ethical community as well.[43]

Hegel's concern with the strength of the state power as a guardian of national independence explains the peculiar status of the military in his political theory. Not only are the armed forces placed under the command of the monarch and insulated from the political influence of particular interests entrenched in the representative body. Military service itself is treated by Hegel as a particularly lofty occupation, loftier even than that of the ' universal class ' of professional civil servants. For in wartime, while ordinary citizens normally have to forego only some of their liberty and property, the military are called upon to risk and sacrifice life itself.[44] By doing so voluntarily and showing courage in the face of death they do more than set an example of patriotism to their fellow-citizens. They confirm in deeds (' actualize ') the superiority of the ethical values of their community over the private and mainly material concerns of its members.[45]

The third danger to the ethical community is that the objective side of ethical life stagnates and ossifies in customs, laws and institutions, which get out of tune with new ethical demands and ideals. The function of the supreme public authority is to adjust the old external structure to the new subjective attitudes. If they fail to do so, as the *ancien régime* did in France, the new ideals will become formulated by ideologues and demagogues without practical political knowledge, and will tend to assume the form of abstract, *a priori* ideas. The more they are opposed by the established public authority, the more they will tend to develop into the criticism or rejection of the whole political and social *status quo*, together with the traditional ethical life embodied in old customs, laws and institutions.[46] This aspect of the interaction between the ethical community and the system of political power deserves special attention.

[43] In his early years Hegel had doubts about the viability of Prussia as a state, and viewed it as an artificial creation of a monarch of genius, and devoid of an ethical basis. (Cf. *ibid.* pp. 163, 164.) His view was at first confirmed by the shattering defeat of the Prussians at Jena by Napoleon, backed by the ethically regenerated French people. The thoroughgoing reforms introduced in Prussia by the Stein ministry after the defeat, and the subsequent military recovery of Prussia, made Hegel change his mind after 1815. Hegel explained the collapse of the Napoleonic system in France and other Latin countries by the incompatibility of the rational principles of the French Revolution with catholicism; in his view political and ethical emancipation presupposed religious emancipation. (See *Lectures on the Philosophy of History*, trans. J. Sibree (New York, 1944), pp. 452–3.) For Hegel's protestant prejudice in his philosophy of history, see the essay by W. H. Walsh.

[44] Cf. *Philosophy of Right*, Addition to § 327.

[45] Hegel's views on war and the military are discussed at length in D. P. Verene's essay.

[46] Cf. Hegel's fragment on Wurtemberg where the cleavage between the established, ' positive ' constitution and popular attitudes is particularly well expressed (*Political Writings*, pp. 242–5). Cf. further his comments on France and England, *ibid.* pp. 325, 328–30; on the French 1789 and 1830 revolutions in *Philosophy of History*, pp. 446 ff., 449–52; and on the former in *Philosophy of Right*, p. 157.

VII

It will be remembered that ethical life in Hegel's conception is a complex of concepts, rules and principles which, as it were, pervade the minds of community members. Those who share a common ethical life are related to each other rather like members of a linguistic community who have been born into it, and taught to use its language in order to communicate with each other. Ethical life, like language, is not the product or property of single individuals, but of the community as a whole. Like language, ethical life may develop and be transmitted in an almost unconscious way, as something customary, traditional or 'positive' (to use Hegel's favourite expression). Nevertheless it has a peculiar logic and structure of which men, as rational beings, sooner or later become conscious. In the process of becoming conscious of the concepts, rules or principles of their ethical community, men also become aware of contradictions, incongruities and ambiguities within the structure, and since reason abhors contradiction and obscurity they strive to remove them, to refine or formulate ideas, and to give unity and clarity to the whole. This is the peculiar task of intellectuals: journalists and pamphleteers, authors of historical, scientific and literary works, and above all philosophers, whose proper vocation is to express the ethical and other ideas of their age and culture in a systematic and intellectually satisfying way.[47] It is most important that their activities should influence and shape public opinion at large and for this reason Hegel advocates freedom of speech and publication.[48] But the impact of intellectuals is naturally greatest and most direct on the educated sections of the community, which include among them the men who exercise authority in the 'political state' – the monarch, ministers, civil servants and Estates deputies.

The organization of the state power and the functioning of public authorities plays a crucial role in the process of communication, clarification and systematization of ethical life. Bills prepared by the executive and the civil service, and submitted to the legislature for approval, frequently raise ethical issues; debates in representative institutions help to make them explicit and thus perform important educative functions. Public debates of government policies may also give rise to new ethical claims, and they generally involve the justification (or condemnation) of measures in terms of generally accepted values. Hence the Estates Assembly is a vital part of the modern state power since 'it is through "the Estates" that the state enters the subjective consciousness of the people; and . . . the people begins to participate in the state'.[49] By becoming more fully

[47] Hegal clearly believes that his *Philosophy of Right* is a significant theoretical contribution to the task: see the preface. But he nowhere states that a perfect harmony of ethical principles has been achieved in practice anywhere or that it will be achieved anywhere in the future. As rational beings men can, and indeed must, strive for unity of their ethical life; whether they succeed or how far they succeed only history can show *ex post facto*.

[48] Cf. *ibid.* §§ 314–20 and Additions.

[49] *Ibid.* Addition to § 301. See also Addition to § 315.

aware of the ethical principles of their community men become more conscious and involved members of it.

The organs of the 'political state' perform a perhaps even more important function with regard to what Hegel calls the 'objective side of ethical life', that is, laws and institutions. Ethical life is never wholly static. It changes and develops as circumstances change; traditional values become extended to new situations or categories of people; new ethical principles become appreciated and gradually accepted. Some of the established customs, laws and institutions are now seen as untenable and requiring reform. But they seldom, if ever, just wither away to make room for new ones, which are more in accord with the changed demands of ethical life. Their resistance to reform is all the greater when they are buttressed by vested interests of privileged classes, religious bigotry, national pride in ancient institutions ('the wisdom of forefathers') or simply prejudices of an ignorant, uneducated multitude, sometimes economically or socially dominated by the privileged minorities. In such circumstances the resort to state power is the only satisfactory way to get rid of the ballast of the past, and to give actuality to new ethical concepts or principles. This can be done either by the exercise of royal prerogative, say, issuing a decree abolishing serfdom or authorizing a new civil or criminal code, or by the enactment of the measure by a representative body acting in the name of the people.[50] By bringing laws and institutions into line with concepts and attitudes the public authority plays a crucial role in making the ethical life of the community more coherent and systematic, and hence more rational.

It is, then, in Hegel's view, a part of man's rational nature, at least at some stage of mankind's development, to strive to grasp ethical principles theoretically, to be guided by them rather than simply by tradition or fiats of political authorities, and to make external circumstances correspond to those principles. Hegel believes that after the outbreak of the French Revolution European countries entered a new stage of development in their laws and institutions. Instead of the occasional intervention of the public authority to remove some glaring injustice or abuse, the continental states led by France embarked on a policy of transforming their constitutional and legal structure into intelligible and internally consistent systems of rules derived from fundamental principles. Although it was the French Estates General which initiated the change by its declaration of the rights of man and citizen and the adoption of a new constitution, the lead in France and elsewhere soon passed into the hands of the executive, which was dependent on more or less authoritarian monarchs. In 1831 Hegel

[50] The second alternative would seem preferable since it was nearer the ideal of a conscious and deliberate act of the ethical community as a whole. But as Professor Ilting points out in his essay, while the logic of Hegel's conception of the ethical community, and the ancient Greek source from which he derived it, would seem to lead to that conclusion, Hegel argues instead that in this, as in various other public matters, the community acts through the monarch as the apex of the constitutional structure of the 'political state'.

attributed the backwardness of Britain in respect of constitutional and legal reform primarily to the weakness of the monarchical element *vis-à-vis* Parliament, in which a privileged landed class was strongly entrenched. A secondary factor was the lack of a class of professional administrators marked by ' theoretical study, scientific education, practice and experience in affairs '.[51] Hegel regards a professional civil service as an absolutely necessary institution of the modern state. Only where a class of public administrators exists, does the community possess a body of its most educated members who are specially trained and maintained at public expense to serve the community as their primary social function. Hegel stresses that ' knowledge and proof of ability ', are ' the sole condition of appointment ' and ' [guarantee] to every citizen the chance of joining the class of civil servants '.[52] The higher educational background of the civil servants enables them to grasp the fundamental principles of ethical life which they combine with practical experience of legislative and administrative requirements. They are thus well equipped for the task of constant re-examination and revision of laws and institutions in the post-revolutionary age.

VIII

As has already been mentioned, the ' ethical life ' affects not only the ' political state ' but also ' civil society '. It does so at first without men's knowledge and consent, by forcing them, on penalty of legal and moral sanctions, to play social roles prescribed by the system of needs and their satisfaction. In the process they learn the value of co-operation and recognize their mutual interdependence. This process of education is also carried on by other means. The publicity of judicial proceedings and the jury system enable members of ' civil society ', including those who are found guilty of crimes and punished, to uphold the majesty of law and of the ethical life of which it is an expression.[53] In the agricultural estate individuals learn to submit to a higher (although merely natural) necessity, while as administrators, local officials or officers of corporations they acquire ' political consciousness '.[54] As ordinary members of corporations men learn the concept of a limited common good, and of the need to make sacrifices on its behalf.[55] And yet Hegel believes that all those influences are insufficient and have to be supplemented by the deliberate intervention of the public authority

51 *Political Writings*, p. 310. See also *ibid.* pp. 300, 330. Hegel has in mind Napoleon's reforms and German practice.

52 *Philosophy of Right*, § 291. Cf. also *ibid.* § 205 and Addition to § 297 where Hegel admits that in practice the bulk of the civil service will be recruited from the middle class.

53 For an analysis of Hegel's theory of punishment, see the essay by D. E. Cooper.

54 For a narrow definition of ' political consciousness ', see *Political Writings*, p. 257. A rather wider conception is put forward in *Philosophy of Right*, § 268.

55 The ethical influence of the corporation membership is dealt with at length in G. Heiman's essay, pp. 124–9.

to solve problems which ' civil society ' is incapable of solving or which it tries to solve by methods that contradict the principles of ethical life.[56]

The task of keeping ' civil society ' within its proper bounds as one ' moment ' of the ethical whole thus ultimately devolves on the political organization of the ' ethical community '. This organization has to be responsive to the legitimate claims of ' particularity ' and ' subjectivity ', yet independent and strong enough to resist their excessive pressure and escape the danger of being dominated by them. At first Hegel was chiefly pre-occupied with the strength of particular interests as they had developed over the ages and had acquired a host of traditional, outdated privileges.[57] While he remained aware of this to the end of his life, Hegel seems to have become increasingly sensitive to a different danger that ' civil society ' entails. He views its development in the contemporary European countries as a dynamic historical process which not only transforms legal relations of a traditional, sometimes feudal, kind in the social and economic sphere (which he wholeheartedly welcomes), but which also so to speak invades the political sphere and affects men's political relations. This is dangerous because if the individualistic point of view characteristic of ' civil society ' gains too strong a foothold in the ' political state ', the state power may cease functioning as the guardian of the community, ethical life may become subordinated to the free play of particular interests and subjective opinions of individual citizens, and the state-wide ' ethical community ' may eventually dissolve into the much looser kind typical of ' civil society '.

Hegel's fears can be illustrated by a passage in his *Proceedings of the Estates Assembly in Wurtemberg 1815–1816* (published in 1817). Virtually the only thing which he criticizes in the constitutional charter submitted by the king to the Estates for approval is the voting qualifications for election to the Wurtemberg Diet, which consisted simply of a minimum age and income qualifications. The most striking thing about it is that, according to such dry, abstract provisions as both of those cited, the electors appear otherwise in no bond or connection with the civil order and the organisation of the state as a whole. The citizens come on the stage as isolated atoms, and the electoral assemblies as unordered inorganic aggregates; the people as a whole is dissolved into a heap. *This is a form in which the community should never have appeared at all in undertaking any enterprise; it is a form most unworthy of the community and most in contradiction with its concept of a spiritual order.* Age and property are qualities affecting only the individual himself, not characteristics constituting his worth in the civil order . . . Atomistic principles of that sort spell, in science as in politics, death to every rational concept, organisation and life.[58]

56 Cf. especially the section on ' Police ' in *Philosophy of Right*, §§ 231–48; also *Political Writings*, pp. 160–1, 261–3, and ' The English Reform Bill ', *ibid. passim*.

57 This aspect is pronounced in the minor political works. Cf. passages in *Political Writings* mentioned in the previous note.

58 *Ibid.* pp. 262–3 (my italics).

Hegel thus saw post-Napeolonic France as the hotbed of individualism, which in this respect had spread to his native country. By the time the July 1830 French Revolution occurred, and another one seemed to threaten in Britain over the parliamentary reform bill, Hegel became convinced that 'the French abstractions' and 'atomistic principles' had become a militant bourgeois ideology, which undermined the stability and strength of the state power, and threatened the cohesion of the community itself. The overcoming of the influence of that ideology in theory and practice seemed to him the chief historical problem of his own time and the future.[59]

In the light of these quotations it is easy to understand Hegel's views on the rational organization of the supreme authority, and his determination, on the one hand, to insulate it from too much influence of 'civil society', and on the other, to strengthen the communal elements in its structure. One may begin with the Assembly of Estates, which is the main link between 'civil society' and the 'political state'. The agricultural estate, by which in the *Philosophy of Right* Hegel seems to mean landed nobility with entailed estates, is exempt from election and given a chamber of its own on the ground that their 'ethical life is natural', that is, that the method of inheritance, the family responsibilities, and the entailed ownership of land curb their 'particularity' and make them more community-minded.[60] The other chamber is the domain of the middle class, in which this most individualistic element in civil society is represented by deputies. But the deputies are not elected by, and do not represent, numerical groups of individuals, but 'circles of associations . . . [which] are already communities'. Since these deputies are the deputies of civil society, it follows as a direct consequence that their appointment is made by society as a society. That is to say . . . articulated into associations, communities and corporations, which although constituted already for other purposes, acquire in this way a connection with politics.[61]

[59] Cf. *ibid.* pp. 313, 315, 324–6, 329–30, 299–300. In his *Philosophy of History* (p. 452), Hegel equates the bourgeois ideology with liberalism: 'Not satisfied with the establishment of rational rights, with freedom of person and property, with the existence of a political organisation in which are to be found various circles of civil life each having its own functions to perform, and with that influence over the people which is exercised by the intelligent members of the community, and the confidence that is felt in them, "*Liberalism*" sets up in opposition to all this the atomic principle, that which insists upon the sway of individual wills; maintaining that all government should emanate from their express power and have their express sanction. Asserting this formal side of freedom – this abstraction – the party in question allows no political organisation to be firmly established . . . Thus agitation and unrest are perpetuated. This collision, this nodus, this problem is that with which history is now occupied, and whose solution it has to work out in the future.'

Cp. with this passage the end of the 'English Reform Bill', *Political Writings*, pp. 328–30, which was also written under the impact of the July Revolution.

[60] See §§ 305–7. In his other works he recognizes that peasant farmers may also deserve representation. Cf. *Political Writings*, pp. 313–14.

[61] *Philosophy of Right*, § 308. The phrase just before that comes from § 303. Cf. also *Political Writings*, pp. 262–3.

Moreover, the lower chamber's 'political consciousness' is increased by the presence of corporation officials, town councillors and civil servants whom Hegel expects to form a significant proportion of deputies.[62]

The hereditary character of the monarchy and the power of the crown in the constitution of the supreme public authority also become more intelligible now. Hegel's metaphysical deduction of the necessity of hereditary succession is both obscure and implausible.[63] What seems to lie behind it, however, is the desire to anchor one element of the public authority to something independent of choice, and therefore make it immune to arbitrary subjective opinions and the influence of 'particularity'. By leaving the designation of the person of the monarch to the natural phenomenon of birth, the constitution guarantees an indispensable minimum of stability and security within the public authority. Hegel regards elective monarchy as 'the worst of institutions' because 'the nature of the relation between king and people implies that the ultimate decision is left with the particular will, and hence the constitution becomes a Compact of Election, *i.e.* a surrender of the power of the state at the discretion of the particular will'.[64] Hegel justifies in a similar way his vesting of the ultimate constitutional authority in the monarch rather than in a representative assembly or the whole citizen body. The constitution – the organization of the 'political state' – is thus taken out of the arena in which particular interests can play their dangerous games and weaken the state power at its source. It also apparently acquires sanctity by being lifted out of the category of things which can be manufactured at will.[65] The monarch's exclusive prerogatives over the executive, the civil service and the armed forces, and his right to veto the Estates' legislative proposals, are all explicable by Hegel's eagerness to prevent their domination by the forces of 'particularity' and 'subjectivity', and by his belief that only the monarch's ultimate personal control can guarantee that they all remain first and foremost organs of the 'ethical community'.[66]

[62] Cf. *Political Writings*, pp. 255–62, where Hegel discusses the subject at length. Although civil servants come from the middle class, their recruitment, training, organization and *esprit de corps* all bias them towards 'the state's' rather than 'civil society's' point of view. Their main sphere of influence is, of course, the executive. Cf. *Philosophy of Right*, §§ 290–7.

[63] On this subject, see Marx's scathing critique, discussed in R. N. Berki's essay, p. 218.

[64] *Philosophy of Right*, § 281. Hegel was profoundly influenced by the demise of two great political entities with elective monarchs, which he witnessed during his early years, viz. the Kingdom of Poland and Lithuania and the Holy Roman Empire of the German Nation.

[65] Cf. *ibid.* §§ 273, 274 Addition. This is inconsistent with Hegel's general position that laws and institutions should not be seen as 'natural', but as creations of the human spirit.

[66] The connection between the authoritarian character of the political system outlined in the *Philosophy of Right* and the antagonistic features of Hegel's 'civil society' was pointed out by Herbert Marcuse in his *Reason and Revolution : Hegel and the Rise of Social Theory* (London, 1941; 2nd ed., London, 1955): cf. 2nd ed., ch. 6, especially pp. 202 ff. However, Marcuse seems to me to exaggerate the conservative role of the Hegelian state towards 'civil society', and fails to distinguish the two senses of 'the state' in Hegel.

IX

Because Hegel patently does not mean by ' the state ' what ordinary men as well as social and political theorists normally mean by this term,[67] he is immune from many of the criticisms which are traditionally levied against him. It is worth considering three of them. The target of one of the major criticisms has been the Hegelian notion of freedom as obedience to the state. If the ' state ' in the proper or main sense of the word means for him not just a ' political entity ', but a peculiar kind of ' ethical community ' a great deal of what Hegel says about the ' state ' makes perfectly good sense. ' The individual finds his liberation in duty [to the state] ' because ' in an *ethical* community, it is easy to say what man must do, what are the duties he has to fulfill in order to be virtuous: he has simply to follow the well-known and explicit rules of his own situation '.[68] It is a truism that ' the state in and by itself is the ethical whole, the actualization of freedom '.[69] Hegel of course conceives ' freedom ' in a special sense, different from mere absence of restraints, and there may be good arguments against his usage.[70] That true freedom is to be found in ' the state ' (conceived as a kind of ' ethical community ') is a completely different proposition from one that equates freedom with subjection to the ' political state ', its supreme authority and laws or the lesser public authorities and their orders. Hegel's concept of ' freedom '

[67] C. J. Friedrich is one of the few interpreters of Hegel who have clearly seen and emphatically stressed the point:

' Hegel's view on law and ethics, involving as it does also his view on politics and history, is basically at variance with prevailing views, the concept of the state being that of the community rather than of an institution (*Anstalt*). The failure to grasp this divergence of the concept of the state, as Hegel uses it, has been the source of most of the misunderstandings. For if the prevailing modern concept of the state as primarily a government, an institutional manifold comprising those who exercise command functions *in* the community is substituted for Hegel's essentially Aristotelian conception of the state as the highest community, there arise immediately authoritarian, not to say totalitarian implications which are far removed from the essential liberalism of Hegel's conceptions.'

See the Introduction to *The Philosophy of Hegel* (New York, 1953), p. xliv. The communal character of the Hegelian state is also recognized by J. Plamenatz. Cf. his essay in this book, and *Man and Society*, vol. II. The Aristotelian influence on Hegel's concept of the state is discussed by K.-H. Ilting, pp. 99–102.

[68] *Philosophy of Right*, §§ 149, 150.

[69] *Ibid.* Addition to § 258.

[70] Cf. I. Berlin, ' Two concepts of liberty ' in his *Four Essays on Liberty* (Oxford, 1969) and W. L. Weinstein's discussion of the Hegelian concept of freedom with reference to T. H. Green in ' The concept of liberty in nineteenth century English political thought ', *Political Studies*, XII (1965). A defence of the Hegelian concept of freedom from a non-Hegelian viewpoint may be found also in H. J. McCloskey, ' A critique of the ideals of liberty ', *Mind*, LXXIV (1965); G. C. MacCallum Jr, ' Negative and positive freedom ', *The Philosophical Review*, LXXVI (1967); and S. I. Benn and W. L. Weinstein, ' Being free to act and being a free man ', *Mind*, LXXX (1971). For a discussion of Hegel's concept of freedom from the standpoint of his philosophy, see R. N. Berki, ' Political freedom and Hegelian metaphysics ', *Political Studies*, XVI (1968). J. Plamenatz's essay in this book is an exposition and a qualified defence of the Hegelian notion of freedom from a non-Hegelian point of view.

is as complex and rich in meaning as his concept of ' the state ', and it includes one idea which is more frequently associated with Marx than with Hegel. This is the idea that to be really free a community of men must have the means of so ordering their relations that they correspond to their rationally held conceptions of ethical life. This power men acquire by having a properly organized public authority, which can further their ethical ideals as well as particular interests, that is, by being not merely an ' ethical community ' or ' civil society ' but also a ' political state '. But this authority (the ' political state ') must not only exist, but it must also act in a certain way. To be compatible with freedom, or rather to constitute freedom in another Hegelian sense, the laws, customs and institutions of the ' political state ' and the actions of those acting on its behalf must correspond, and must be seen to correspond, to the principles of ethical life. This is precisely the ground on which Hegel denies that the British of his day are truly free while admitting that they enjoy wider freedom of political speech, writing and action, and more freedom from the central government's intervention in social and local affairs than any other nation in Europe.[71]

It is another misconception that Hegel's view of the state involves an unconditional duty to obey whatever the government commands. The ' political state ', its ruling bodies and laws, of course possess legal, ' positive ' authority; whether they also possess authority in some other, moral, sense is open to question. People do often obey on the assumption that ' positive ' laws correspond to ' rational ' laws, that is, such as would be seen to be compatible with ethical life when examined, but Hegel frequently stresses that the rationality of positive laws should never be taken for granted, and may in fact be often lacking.[72] Hence while Hegel admits that law abiding, like patriotism, is in many cases a matter of ' sentiment ' or ' trust ' rather than ' educated insight ', it is the latter which produces firm conviction that, say, a governmental action actualizes ethical values or serves the interest of the ' ethical community ' in a specific way.[73] The fact that the supreme public authority possesses a capital of trust and sentiment does not mean that it will or should always be obeyed. When it becomes self-interested, corrupt and generally unethical, it loses its moral legitimacy. Hegel is no more able to specify when precisely it is right to rebel than other political philosophers, but he quite clearly recognizes the right to rebel in certain circumstances: reputedly to the end of his life he drank a toast on the anniversary of the storming of the Bastille.[74] Men have definite moral rights against the ' political state ' and ' civil society ', first and foremost to be treated as members of the ethical com-

[71] Cf. *Political Writings*, ' The English Reform Bill ', pp. 300, 310–12, 324–5, 330.

[72] Cf. *ibid.* ' The Wurtemberg Estates ', pp. 281–3.

[73] Cf. *Philosophy of Right*, § 268. Interestingly Hegel denies that patriotism means only ' readiness for exceptional sacrifices and actions '. ' Essentially . . . it is the sentiment which, in the relationships of our ordinary life and under ordinary conditions, habitually recognizes that the community is one's substantive groundwork and end.'

[74] Cf. *Philosophy of History*, p. 447 on his eulogy of the outbreak of the French Revolution.

munity. It is the duty of those exercising public authority, supreme or subordinate, to treat subjects in that way and themselves to behave as ethical men. Men's obligation to the ' political state ' and ' civil society ' is conditional, not absolute – as indeed most other political philosophers have maintained.

Within the terms of reference of the Hegelian concept of ethical life the question whether an individual has any right to disobey or question the fundamental ethical principles of the state (' the ethical order ') is far more difficult to answer. One can certainly question particular principles on the ground that they are incompatible with others, which are universally held valid in a community. Thus slavery in the southern states of the United States could have been said to contradict the preamble of the Constitution that all men were created equal. But only an ethical genius, such as Socrates or Jesus, can question all the basic values of a community and thus transcend its ethical life.[75]

A third, and as far as this essay is concerned, final misconception should be cleared. Hegel's conception of the state as the highest form of human community has sometimes been criticized for having the effect of arresting the moral progress of humanity at the level of the nation-state, and for being incompatible with a supra-national conception of morality. But it has already been pointed out that Hegel does recognize a wider, if rather looser, ethical community of countries belonging to the same culture.[76] The fact that he frequently compares Germany, France and Britain, and criticizes their practices, laws and institutions, implies that he has an ethical yardstick which he believes can be applied to all of them. He sees these countries as belonging to an ethical family, and although such relationship does not eliminate armed conflicts between sovereign political communities, it does in his view modify their severity and impose certain standards of behaviour in war. Hegel's conception of the nation-state as the highest community does not exclude the possibility of a federation of states belonging to the same civilization and sharing similar interests. It only excludes the union of states at different stages of civilization or embodying radically different ethical ideals. Hegel would not deny that such a union was intrinsically impossible since it could be achieved by force. But he would argue that it was undesirable and probably could not endure for long without collapsing or damaging the ethical life of some of the states.[77]

What Hegel insists on is that ethical communities must be states if they are to protect and perfect their ethical life; he does not say that they must coincide with nations as one normally understands the term. Hegel's *Sittlichkeit* may have some resemblance to national consciousness or nationalism, but in fact is quite

[75] For a discussion of this problem, see Walsh, *Hegelian Ethics*.

[76] Cf. *Philosophy of Right*, Addition to § 339: ' The European peoples form a family in accordance with the universal principles underlying their legal codes, their customs, and their civilisation.'

[77] The possession of colonies could be justified on Hegelian principles when the dominant country thereby raised the subject ones to a higher level of civilization and ethical life.

different from it. Nationalism presupposes a linguistic, ethnic or cultural unity or at least a fervent belief that a given people has or constitutes such a unity. Being a belief it is liable to be justified or supported by irrational myths, and in general it tries to appeal to various deep-seated emotional forces. Hegel's ethical life may start as something not fully rational, as a mere trust or sentiment in favour of concepts, values or ideals which are traditional in a given nation, coupled with a spontaneous sympathy and preference for those men who happen to share them. But it is capable of becoming a rational insight, and indeed only when it has become such an insight does it cease to be a mere custom or ethos (*Sitte*) and become true ethical life (*Sittlichkeit*). What welds an ethical community into a strong and stable unity is political life and political institutions, the experience of belonging to the same state and sharing its historical fortunes. But this experience is quite different from the experience of belonging to a nation. The experience of ethical life is possible in a multi-national state or in a state that is only a part of a nation; it is thus quite independent of national consciousness. Hegel was very familiar with the strident nationalism which swept through Germany at the end of the Napoleonic period. Privately, in his correspondence, as well as publicly, in the preface to the *Philosophy of Right*, he expressed the deepest contempt for it. Although a Swabian by birth Hegel became a Prussian patriot by conviction; he was never, however, a German nationalist.[78] One can question the extent to which contemporary modern states are in fact ethical communities, just as one can question the extent to which individuals – consciously or unconsciously – share an ethical life. What one cannot do, in my opinion, is to read a sinister, nationalist meaning into the concept of *Sittlichkeit*.

[78] Cf. S. Avineri, ' Hegel and Nationalism ', *The Review of Politics*, XXIV (1962), reprinted in W. Kaufman (ed.), *Hegel's Political Philosophy* (New York, 1970).

The structure of Hegel's 'Philosophy of Right'

K.-H. ILTING

It is surely strange that until now the discussion of Hegel's political philosophy has concentrated on the question whether we may recommend Hegel's political views, or ought rather to warn our contemporaries against them.[1] For it can easily be shown that Hegel's main endeavour as a political thinker was to develop and to formulate a theory of the modern state. To determine what place he gave to liberalism in his theory should therefore be more important than to decide to what extent he was a liberal. As long as we are clear about *that*, we can ignore Hegel's views on contemporary politics. They would be of merely historical interest. And as he lived in an eventful time which was entirely different from ours, it would indeed be very remarkable if we could share them all, calmly considering them from the distance of our present times.

It is true that Hegel's theory of the modern state, probably the deepest and the most comprehensive in the history of political philosophy, is extremely involved.[2] Its author intended it to form a part of his encyclopaedic system of philosophy, the structure of which is very opaque. It is also, more or less explicitly, an attempt at an exhaustive critique of ancient and modern political philosophy. Finally, in constructing his theory of the modern state, Hegel constantly refers to the politics of the period of the Continental restoration. In doing so he takes up a position on some of the burning political questions of his times.

We are, therefore, not only faced with the difficult task of interpreting the text of the *Philosophy of Right*, and so making it intelligible to the contemporary reader. We have also to analyse the theoretical foundations of Hegel's political philosophy, and to decide how far Hegel succeeds in solving the basic problems of a theory of the modern state. In this essay I shall try to analyse the composition and structure of the *Philosophy of Right* at some points of his argument which seem to me to be of special importance. It will be shown that the structure of

1 See Rudolf Haym, *Hegel und seine Zeit* (Berlin, 1857); Franz Rosenzweig, *Hegel und der Staat* (Munich-Berlin, 1920); Hermann Heller, *Hegel und der nationale Machtstaatsgedanke in Deutschland* (Leipzig-Berlin, 1921); Herbert Marcuse, *Reason and Revolution* (London, 1941); Karl R. Popper, *The Open Society and Its Enemies* (London, 1945); Georg Lukács, *Der junge Hegel und die Probleme der kapitalistischen Gesellschaft* (Vienna, 1947); Eric Weil, *Hegel et l'état* (Paris, 1950); Joachim Ritter, *Hegel und die französische Revolution* (Cologne, 1957).

2 For comprehensive interpretations of Hegel's *Philosophy of Right* see Hugh A. Reyburn, *The Ethical Theory of Hegel* (Oxford, 1921); Eugène Fleischmann, *La philosophie politique de Hegel* (Paris, 1964); and the translator's notes to *Hegel's Philosophy of Right*, trans. T. M. Knox (Oxford, 1942).

this work not only belies the greatness of the task which Hegel set himself, but also that it clearly indicates the limits which he was not able to transcend. Surprisingly, Karl Popper will be found to be quite right in his criticism of Hegel, although not with the outcome Popper intended: Hegel's critique of liberalism will prove itself to be well-founded and fatal to Popper's own presuppositions.

I

The first part of the *Philosophy of Right* treats of the same subject which Kant discussed in his *Metaphysics of Morals* under the heading of private law (*Privatrecht*). As a subject of political philosophy it goes back to Thomas Hobbes' theory of natural law.* Like Kant and Hobbes, Hegel assumes that man initially has rights, and only one duty: to acknowledge that other men, as well as he, have rights. In order to develop this fundamental thesis and to make its consequences as clear as possible, Hegel makes use of the same method as all his predecessors since Hobbes. He abstracts from all conditions of social life which are created by human activity itself. The background of his arguments, then, is the fiction of a state of nature without any form of established society and, above all, without the coercive power of the state. As this fiction only serves the purpose of bringing out more clearly the consequences of his approach, Hegel need not refrain from treating in this first part of his theory of the state some of the legal questions the importance of which may only be understood by reference to modern conditions. Nevertheless, in order to make it clear to the reader that this methodological fiction underlies the whole section, Hegel has given the heading '*Abstraktes Recht*' (Abstract Right) to the first part of the *Philosophy of Right*.

As we are concerned with a theory of natural law, it is not beside the point to stress what is *not* intended by this kind of theory of law. The expression 'natural law' originally meant nothing else than a law the foundations of which were to be sought in nature rather than in arbitrary actions of men. Thomas Hobbes, the originator of modern natural law, had already turned his back upon this kind of theory of law. Unfortunately, however, he did not abandon the expression 'natural law' and substitute for it another term, such as 'law of reason'. The modern theory of law attempts to derive all legal norms from the one fundamental norm that man must be recognized primarily as having rights, and it does not look for the ground of their validity in a supposed order of nature or of creation or in the decisions of public authorities.

Man who has such primary rights is (and nothing else is meant by the expression 'right') at liberty to do whatever he pleases, if only he is prepared to recognize that all men who are affected by his actions have the same rights as he

* *Editor's note* – The development of the concept of natural law from Hobbes to Hegel forms the principal subject of M. Riedel's essay.

claims for himself.[3] His liberty never refers directly to the freedom of other men, but only to his own capability of action and to objects which do not themselves have rights, to ' things '. Indirectly, it is true, the liberty of one man can relate to the liberty of another, if both have agreed by equally free decisions upon a certain performance. Consequently the two main parts in Hegel's doctrine of Abstract Right treat of property and of contract.

Professor Macpherson has labelled the conception of man that is presupposed in this theory of law ' possessive individualism '.[4] He has admirably shown that this conception lies at the heart of the liberal theory of civil society, which we find presented in the writings of Hobbes and Locke or of Kant and Hegel in fundamentally the same way, though with varying degrees of precision and conceptual discipline. But it would be wrong to deduce from this observation of Professor Macpherson that the modern theory of rational law is nothing more than an ideology of the possessing class. Such an interpretation fails to do justice to the claims of this theory. Nor does it offer conclusive arguments why the doctrine that all men ought to be recognized as having equal rights and liberties should be nothing but the ideology of some class of society which arose under determinate historical conditions. The contrary thesis that modern rational law can serve as a safe foundation of all legal theory may be supported by strong arguments. In so far as this legal theory may be called liberal, liberalism itself will be absolved from the suspicion of being only the ideology of one class in society. It is therefore strange that one of the most prominent advocates of this kind of legal theory, Hegel, has been emphatically charged with not being a liberal.

II

Hegel's treatment of modern rational law is original not because it adds to the subject important propositions which had never before been considered or because it surpasses the acuteness of argumentation which had been reached by Kant. His aim is not so much to deduce rational law as a system of normative propositions and to recommend its acceptance, but rather to show how the exercise of these rights is a realization of human freedom. Having shown this, Hegel claims to have delivered a ' proof ' of rational law.

Of course principles, especially fundamental norms, are not open to the same kind of proof as the propositions which can be deduced from them. This was quite clear to Hegel. It would be false, therefore, to suppose that Hegel was trying to give a kind of proof which he knew could not be given. What he really

[3] This notion of right was laid down by Thomas Hobbes: ' The right of nature, which writers commonly call *jus naturale*, is the liberty each man hath, to use his own power, as he will himself, for the preservation of his own nature; that is to say, of his own life; and consequently, of doing any thing, which in his own judgment, and reason, he shall conceive to be the aptest means thereunto ' (*Leviathan*, ch. 15. In M. Oakeshott's edition (Oxford, 1946), see p. 84).

[4] C. B. Macpherson, *The Political Theory of Possessive Individualism* (Oxford, 1962).

had in mind was something not very different from the confirmation of a hypothesis. If it could be shown that the consequences of rational law implied the presuppositions of the realization of human freedom, then Hegel would have regarded this as a kind of confirmation of his fundamental norm. On the assumption that human freedom is worth striving for we may readily follow him.

Part of this context of argumentation is Hegel's thesis that man has ' an absolute right of appropriation with regard to all things '.[5] Hegel denies that this right may be derived from the fact that all things may serve to satisfy human needs. He insists that it may be derived only by showing that man creates the conditions of his free actions in the external world by declaring something to be his property.* The appropriation of extra-terrestrial space by man would certainly have been praised by Hegel as an enlargement of the possibilities of human freedom. Just as certainly he would have denounced the abolition of all private property in a community as an act in which injustice against the human personality has been raised to a universal principle.[6] In both respects Hegel shows himself to be an advocate of the freedom of property. This does not prevent him from emphasizing that, according to the fundamental norm of this rational law, only the *possibility* of private property is granted to all. It is an entirely open question what, or how much, an individual may possess as his private property. According to Hegel's analysis, the equality of the right of all to freedom and consequently to private property necessarily leads to inequality in their abilities and in their possessions under the conditions of competition in the civil society.[7]

Already at this point Hegel makes clear a fundamental limitation of the theory of modern rational law. By preserving a residue of *bellum omnium contra omnes* from Hobbes' state of nature in its individualistic premisses, it did not succeed in ' positing the sphere of abstract personality as identical with liberty '. As a matter of principle Hegel admits that ' the provisions concerning private property must be subordinated to higher spheres of law, a community, the state '.[8]

Hegel does not trace these consequences of the theory of rational law any further in the first part of his *Philosophy of Right*. This is due to the structure of argumentation characteristic of his philosophical system. Before he enters into

[5] *Grundlinien der Philosophie des Rechts*, ed. J. Hoffmeister, 4th ed. (Hamburg, 1955), § 44, to be compared with Kant, *Metaphysic of Morals*, pt 1 (*Metaphysical Foundations of Jurisprudence*), § 2, A57.

* *Editor's note* – Cf. J. Plamenatz, pp. 40–1.

[6] *Philosophie des Rechts*, § 46.

[7] *Ibid.* § 49. For a similar view, see Macpherson, *Possessive Individualism*, pp. 55, 251.

[8] See *Philosophie des Rechts*, §§ 46, 49, 200, 289. In these remarks may be found the point of departure of a legal theory which stresses the social obligations of property. Hegel himself sought to overcome the ' contradictions ' of the liberal civil society in the organization of corporations (see §§ 201, 249, 255, 303).

a discussion of the problems of social life in a state, Hegel sets himself the task of defining the range of this fundamental norm, that every human individual is first and foremost a subject of rights. In this respect he is more thorough than his predecessors, who had taken for granted that this principle was universally applicable.

In his analysis Hegel resorts to the method of reconstructing the scope of free actions of an individual who regards himself exclusively as having rights and is prepared to recognize other individuals as having rights in the same way. The results of this theoretical method are entirely different from Kant's. Kant tried to deduce a complete system of normative propositions from the fundamental norm of modern rational law. In so doing, he proved to be a faithful disciple of Hobbes. Like him he presupposed the unlimited validity of the individualistic approach to modern rational law. In opposition to them, Hegel insists that this approach applies only when individuals face each other as autonomous persons. In Hegel's theory this condition is only fulfilled if human individuals grant to each other the basic liberty of acting on their own arbitrary decisions or if they determine their respective rights to an external thing by an essentially arbitrary agreement. Kant's attempt to construe the legal relations between the members of a family, and especially marriage itself, as a contract entered into by autonomous persons is therefore rejected by Hegel as an ' outrage '. If one sees where Kant lets himself be led by his individualistic rational law in defining marriage as a sexual community,[9] one is likely to assent to Hegel's thesis that the construction of marriage as a contract entered into by autonomous persons cannot do justice to the concept of marriage as a social institution. Hegel excludes the treatment of the family from the first part of the *Philosophy of Right*. This implies an important limitation of applicability of modern rational law: a theoretical interpretation of the family must make use of other principles than those which are the basis of that law.

For the same reason, according to Hegel, it is not possible rationally to interpret the state as a contract of autonomous individuals. The doctrine of the social contract is an attempt to conceive the state as an association which, although necessary under the conditions of human nature, is ultimately based on the arbitrary decisions of individuals. This is as mistaken as the juristic theory of the family derived from the individualistic rational law. All these interpretations of rational law make the state something ' external, formal, and universal '. The state is regarded as a sphere in which decisions are made about the common

[9] *Philosophie des Rechts*, § 75. See Kant, *Metaphysic*, § 24, A106: Marriage is ' the union of two persons of different sex to possess mutually each other's sexual properties for all life '. Essentially on the same lines though, as usual, more moderate than Kant, Locke defines conjugal society as ' a voluntary compact between man and woman ' which consists ' chiefly in such a communion and right in one another's bodies as is necessary to its chief end, procreation ' (*Second Treatise of Civil Government*, § 78).

interests of citizens, but these common interests are discernible only by an impartial observer. On this theory the state confronts the citizens as something alien to them in which they do not really participate.[10] It is not because he wants to revert to earlier forms of political organization that Hegel rejects the doctrine of the social contract. Rather, he criticizes this doctrine because it retains, in some way, the theoretical basis of older, medieval legal doctrines. Hegel's theory of the state, as well as the theory of the family, is, therefore, separated from his discussion of rational law. It is treated in a later section of the *Philosophy of Right*, where Hegel has developed principles which he needs for his theory of the modern state. The structure of the *Philosophy of Right* thus allows us to see the outline of Hegel's theory. Although he starts from the liberal principle of the autonomy of the individual, Hegel (unlike Kant) is not a theoretician of the liberal state which guarantees and respects the rights and liberties of the individual. Like most contemporary theoreticians of the liberal–democratic state, he does not think that liberal principles alone are sufficient for a comprehensive theory of the modern state. So far, at least, Hegel should be praised for his clearsightedness, rather than accused of error.

III

The limitations imposed by Hegel upon the liberalistic principle in the theory of the state come out most clearly when, like all theoreticians after Hobbes, he discusses the state of anarchy. This discussion continues his treatment of rational law in the third section of the first part of the *Philosophy of Right*. More faithfully than most of his predecessors he follows Hobbes in his hypothesis that a *bellum omnium contra omnes* would break out ' if there be no power erected, or great enough for our security '.[11] Nevertheless Hegel does not accept this hypothesis as a sufficient ground for the construction of a theory of the state.

Vengeance, which in the state of nature descends ' from generations to generations, infinitely ', does not in Hegel's theory lead to the erection of a political power to enforce the individualistic rational law, as it did in the liberal theory. The outcome of vengeance is, first of all, ' the postulate of a punishing justice ', that is, the wish that there should exist some person who although an individual, no longer intends to carry out vengeance, but to inflict justice by punishment.* Such a person would no longer act as an autonomous individual pursuing his own arbitrary interests; he would make the realization of universal norms the very aim of his actions. Hence it would be impossible to derive his actions from the fundamental norm of the individualistic rational law.[12] The wish thus becomes realized in the person who has the will to realize justice instead of

[10] For Hegel's criticisms of the social contract theory, see *Philosophie des Rechts*, §§ 29, 75, 100, 258.

[11] *Leviathan*, ch. 17 (Oakeshott's ed., p. 109).

* *Editor's note* – For further elucidation of the distinction in Hegel between vengeance and punishment, see D. E. Cooper's essay, pp. 151–67.

[12] *Philosophie des Rechts*, §§ 102–4.

pursuing his own arbitrary aims and seeking vengeance. The boundaries of the individualistic rational law are transcended. The system of norms which is now recognized as valid is treated by Hegel in the second part of his theory of the modern state under the heading of ' Morality '.

Hegel's position differs from that of all theoreticians of the modern state before him: he explicitly recognizes the acceptance of moral norms by the citizens as one of the necessary conditions for the existence of the modern state. Hobbes conceives the state as a system of rules which, according to his basic distinction between external and internal duties, exclusively refer to external actions. Kant goes so far as to claim that ' the problem of the erection of the state, hard as it may seem, may be solved even for a people of devils, if only they be endowed with reason '. He even claims that the state resulting from this construction is precisely the liberal state which guarantees and respects the rights and liberties of the individual.[13] Legal theory and ethical theory, the systems of legality and of morality, are strictly separated from each other in Kant's practical philosophy.

Hegel's treatment of *Rechtslehre* and *Pflichtenlehre* in his Nuremberg Gymnasium lectures [14] is formally equivalent to Kant's, though his leading ideas are in direct opposition to those of Kant. Already in his Nuremberg Encyclopaedia [15] he inserts the doctrine of morality between his treatment of the individualistic rational law and his theory of the state. In this he has made explicit his recognition of morality as one of the necessary conditions of social and political life. There is an apparent analogy between the *Philosophy of Right* and Kant's *Metaphysic of Morals*, in that both philosophers treat of legal theory and ethical theory one after the other; this analogy, however, on closer analysis proves to be an expression of a fundamental difference.

Hegel's conception of morality does, of course, differ from the ordinary, or the ordinary philosophical, use of the word. This conception is the result of his criticism of Kantian ethical theory. Hegel completed his critique of the basic tenets of Kant's ethics as early as his Frankfurt period, although he repeatedly returned to it. The essential result of this criticism was that Hegel distinguished two fundamentally different notions in the conception of morality: *Moralität*, the virtue of the individual conceived in isolation from social relations and primarily responsible to himself, and *Sittlichkeit*, the righteousness of which man is capable only as a member of a community to which he belongs and in the communal affairs of which he participates.[16] The object of this distinction in

[13] Kant, *Perpetual Peace*, first supplement, sect. 1.

[14] *Hegels Werke* (Berlin 1832–45), vol. XVIII, pp. 3–96 (hereafter quoted as *WW* XVIII, 3–96).

[15] *WW* XVIII, 215–23.

[16] *Hegels theologische Jugendschriften*, ed. H. Nohl (Tübingen, 1907), pp. 264–7, 388. (For an English translation of pp. 264–7, see *Hegel's Early Theological Writings*, trans. T. M. Knox (Chicago, 1948), pp. 208–12.) See also *WW* I, 396; *The Phenomenology of Mind*, trans. J. B. Baillie, 2nd ed. (London, 1931), ch. V, sect. Cc, ch. VI, sect. Ca.

Hegel's philosophy is to make clear that the problems of morality which Kant discusses in his ethics presuppose a determinate relation of the moral subject to other moral subjects, just as the questions of rational law dealt with in the first part of the *Philosophy of Right* refer to man as an autonomous person, organizing his legal relations freely and arbitrarily. It is obvious that both systems of norms correspond to each other. They both presuppose Riesman's ' inner-directed type ' and complement each other; the individualistic rational law contains the norms which govern external actions, and the theory of morality supplies the principles according to which the moral subject decides on his actions.

The position Hegel assigns to morality in the structure of his *Philosophy of Right* is meant to show that the individualistic rational law of the modern era needs as its complement the morality of the moral subject who is conscious of being responsible to himself, and that both systems of norms form the necessary preconditions of the modern state. It follows from this that the liberal thesis which confines the task of the state to providing protection and security of life and property for individuals, unduly limits the scope of political theory and ought to be rejected in this respect. This is not to say, of course, that the state ought not to provide protection and security. But it should be seen that the function of the state is not exhaustively described on the basis of this liberal thesis. Hegel maintains that the state ought to guarantee the right of the moral subject ' to find himself satisfied in his aims '. One can easily recognize this thesis as the starting point of Hegel's theory of the rights of man, which in itself is an important inheritance from the liberal tradition.[17]

Hegel explicitly professes to be a follower of this tradition when he declares the proclamation of subjective liberty at the centre of rational law and morality to be the ' turning and crucial point in the difference between ancient and modern times '. He asserts that this principle has been given to the world by Christianity and has gradually been made ' the universal active (*wirklich*) principle of a new form of the world '.[18]

Hegel's acknowledgement of the principles of individualistic law and morals and his giving them a prominent place in his philosophy of history do not imply that he accepts their validity without reservations. Quite the contrary is true. Rational law and morality are confined by him to the consideration of the individual existence of man. It turns out to be necessary to overcome the individualistic basis of the modern juristic and moral philosophy in order to arrive at a theoretical foundation of the modern state: that is, at a theory of the state as a political community in which individuals no longer separately pursue their private aims, but achieve their public interests in common. The insight into this

[17] See *Philosophie des Rechts*, §§ 124, 132, with the important limitation in § 137.

[18] See *ibid.* §§ 124, 162, 185, 206, 299, 358–60.

task Hegel finds missing in the entire discourse of modern political philosophy. So he thinks it necessary to go beyond its boundaries and to return to the tradition originated by Plato and Aristotle.

IV

The intricate structure of argumentation of the *Philosophy of Right*, which differs from all earlier presentations of political philosophy, is a reflection of Hegel's implicit criticisms of the political philosophies advanced by ancient and modern thinkers. This thesis will be corroborated when it is shown that the composition of the third part of the *Philosophy of Right*, to which Hegel gives the heading *Sittlichkeit*, corresponds in all essential points to the structure of the political theory of Plato and Aristotle.

Hobbes and all his followers based their political theory on the principle that human individuals must be conceived primarily as having rights, and must unite into a political body in order to secure their respective spheres of right. Plato and Aristotle, on the contrary, had conceived man as a being which is primarily in need of community with other men. From this standpoint the communal order cannot be understood as something essentially opposed to the claims of the individuals. Following their principle, Plato and Aristotle sought the origin of the state in the simplest forms of human community, and then traced the gradual development of the political community out of these elementary forms. This structure of political theory is reproduced by Hegel in the third part of the *Philosophy of Right*, where he dialectically develops civil society out of the family and proceeds from civil society to the state. In the construction of this part of his political theory, moreover, he makes use of essentially the same principles as Plato and Aristotle. This correspondence is so marked that it has always been seen and stressed that the third part of Hegel's *Philosophy of Right* is ' antique ' in character.[19] It is therefore remarkable that Hegel patently tries not to make the historical affiliations of his political theory too obvious, although ordinarily he tends to define his own position by explicit references to other theories.

Our analysis has yielded the following result as far as the structure of the *Philosophy of Right* is concerned. In its first two parts Hegel presents the outline of a *philosophia practica* which rests on the modern distinction of legality and morality. The theory of the state which Hegel leaves out of the first two parts of the *Philosophy of Right* appears in the third part as a doctrine of the political

[19] Eduard Gans in his preface to the *Philosophy of Right*, *WW* VIII, viii; Karl Rosenkranz, *Hegels Leben, Supplement zu Hegels Werken* (Berlin, 1844), pp. 124, 129; Haym, *Hegel und seine Zeit*, p. 377; Rosenzweig, *Hegel und der Staat*, vol. II, p. 85; Ritter, *Hegel und die französische Revolution*, p. 25; M. Riedel, *Studien zu Hegels Rechtsphilosophie* (Frankfurt am Main, 1969), pp. 19–22, 118; K.-H. Ilting, *Philosophische Jahrbücher*, LXXI (1963/64), 38–58, and *Hegel-Studien*, III (1965), 389.

community modelled on antique patterns. The *Philosophy of Right*, then, consists of two different systems of practical philosophy. This means that any interpretation of the framework of Hegel's theory of the modern state has to answer the question how the legal and moral theory of the first two parts is related to the theory of communities and social institutions of the third part. The answer is that the juristic and moral theory is meant to be understood as a methodological fiction; man abstractly conceived as an autonomous person and as a moral subject lives, in reality, in a situation of manifold social interrelations. In so far as the realization of individualistic rational law and of individual morality presupposes these interrelations, which are not created by free decisions of individuals, Hegel maintains that juristic and ethical theory achieve their true meaning and validity only in the context of the theory of institutions and communities. In this sense, the characteristics of Hegel's legal and moral theory are *aufgehoben* (negated, preserved and elevated) in his ' *System der Sittlichkeit* '.[20] This establishes the precedence of ancient political theory over the modern theory of the state in Hegel's system of practical philosophy.

V

It is not only on the fundamental idea, that being a member of institutions and communities is more elementary than exercising one's rights and fulfilling one's duties as an individual, that Hegel agrees with Plato and Aristotle. Other fundamental concepts and patterns of thought of his theory of the state are also derived from Platonic and Aristotelian philosophy.

This may be seen most clearly at the decisive junctures in the structure of the *Philsophy of Right* where Hegel prepares a transition or starts a new argument. The beginning of the third section in the second part of the work is such a decisive juncture. There Hegel writes:

> The good is the Idea as the unity of the concept of the will and the particular will. Abstract right as well as happiness, subjectivity of thought, and contingency of external existence are negated in it as separate, self-sufficient spheres, and, by the same act, are contained and preserved in it in their essence: it is freedom realised, the absolute and ultimate aim of the world.[21]

In the context of Hegel's theory the idea of the good, the key concept of the Platonic philosophy, is given the function of overcoming the opposition of

[20] *Philosophie des Rechts*, §§ 208–10, 256.

[21] *Philosophie des Rechts*, § 129. By the ' concept of will ' Hegel means that manifestation of the will which is relevant in his treatment of abstract right, viz. the ' person ' (*ibid.* §§ 34, 35). The ' particular will ' is meant to denote the moral ' subject ' which underlies his treatment of morality (*ibid.* § 106). In Hegel's dialectical representation of political philosophy abstract, right figures as ' thesis ', morality as ' antithesis ' (see *ibid.* §§ 5, 6; *Wissenschaft der Logik*, *WW* V, 35: *Encyklopädie der philosophischen Wissenschaften im Grundrisse*, paras. 112, 163). The ' Idea of the good ' consequently stands for the ' synthesis ' of right and morality.

legality and morality, manifested in the possible conflict between moral and legal claims. According to Hegel, individuals may seek to realize their legitimate striving for happiness and welfare only on condition that they take the common good into account. In the case of conflict one's legal claims, derived from the individualistic rational law, must be foregone in favour of the welfare of all or of someone else. The idea of the good Hegel talks about in this context may therefore be defined as the fundamental norm that all claims of individuals to their right and to their welfare ought to be balanced against each other. Whenever this fundamental norm is recognized and adopted as the maxim on which we act, the individualistic approach has been given up and the community of men declared the ultimate aim of action.

A group of men who had submitted to this fundamental norm could all be called free at least in this sense, that their possibilities of action were no longer dependent on an alien will. By realizing their claim to freedom in this way, they would have achieved an aim of their conduct which could no longer be conceived as a means to the realization of other aims, and was thus an ' absolute ' aim. This conception of an ultimate aim of action common to all men recaptures the essential meaning of the Platonic–Aristotelian doctrine of the idea of the good.[22]

At the beginning of the third part of the *Philosophy of Right*, Hegel returns to this conception.

Ethical life (*Sittlichkeit*) is the Idea of freedom, as the *living good*. The living good has its thought and will in *self-consciousness* and its actuality through the actions of self-consciousness, just as self-consciousness finds in *ethical reality* its basis, which is in and for itself, and its aim, which sets it in motion. It is the concept of freedom developed into the existing world and into the nature of self-consciousness.[23]

The idea of ethical life, the subject of the third part of Hegel's theory of the modern state, is nothing else but the idea of the good which lies at the basis of Plato's theory of the political community. While in the second part it was conceived as a fundamental norm or as a ' still abstract idea ', it is now introduced as the ' living good ', that is to say as the principle, by which a real community of men is organized.[24]

Hegel's idea of *Sittlichkeit*, then, is a pattern of thought borrowed from ancient

22 See Plato, *Lysis*, 219 c 5–220 b 3; *Gorgias*, 468 b 1–8, 499 c 6–9; *Republic*, 505 d 5–506 a 2; Aristotle, *Nicomachean Ethics*, 1094 a 18–b 11.

23 *Philosophie des Rechts*, § 142. In this paragraph Hegel distinguishes two aspects (or ' moments ') of the Idea of the good: the aspect of self-consciousness and the aspect of ethical reality. In the political self-consciousness of the citizens the idea of the good (that is, the idea of a political community) is actually existent; the citizens, on the other hand, conceive the idea of their political community as the basis of their political activity. In so far as it appears to them as something given and independent of their own arbitrary decisions, Hegel calls this aspect of the idea of the political community its ' ethical reality ' (*sittliches Sein*).

24 See *Philosophie des Rechts*, § 131, to be compared with § 144.

political philosophy. Its content, too, is derived from the model of the ancient city-state. This is most easily proved from his early writings. In April 1796 Hegel wrote of the citizen of the ancient city-state: ' The idea of his country, of his state, was the invisible principle, the higher aim he worked for, which impelled him to act. This was his ultimate aim in the world or the ultimate aim of his world. He found it expressed in reality or helped, by his own actions, to express it and keep it alive.' [25] *

Hegel's antique conception of the state is, therefore, thoroughly republican. It is based on the model of a political community which is ' easy to survey ' (εὐσύνοπτος),[26] in which all free citizens take a direct part in political affairs and pursue the common aim of maintaining their political community. This common aim is for them not an abstract scheme which they have still to realize. It is already realized in their political community and has become their ' existing world '. The final end, therefore, presents itself to each individual as a ' being ', as ' something objective ', or as ' concrete substance '.[27] This final end, considered as the motive for political action of each citizen, is described by Hegel as the aim which sets them in motion; or even, in an expression borrowed from Aristotle's theology, as the end which moves, but which itself is absolutely unmoved.[28]

This interpretation of the ancient city-state lies at the heart of one of Hegel's well-known formulae. In order to understand it, one should first of all see this interpretation as the result of an idealization of ancient political life. Although Plato and Aristotle would not have fully agreed to it, it is not quite without foundation in the perspective of Greek metaphysics. I have in mind Hegel's interpretation of the state as ' the divine which is in and for itself '.[29]

25 *Hegels theologische Jugendschriften*, p. 222 (*Hegel's Early Theological Writings*, p. 154).

* *Editor's note* – Hegel also discusses this in the *Phenomenology*. See J. N. Shklar's essay, esp. pp. 80 ff.

26 Aristotle, *Politics*, 1326b 24.

27 See *Philosophies des Rechts*, §§ 130, 142, 144. In representing the political community as ' substance ' Hegel incurs the risk of conceiving the citizens merely as accidents or as qualities of substance (see *ibid.* §§ 146, 156 Addition). In this he was less cautious than Aristotle, who was anxious not to call the political community a ' substance ' (see *Politics*, 1253a 19–23). In his Jena lectures on the *System der Sittlichkeit* Hegel himself maintained that ethical life must completely destroy any particularity (*Schriften zur Politik und Rechtsphilosophie*, ed. G. P. Lasson (Hamburg, 1952), p. 464), but in *Philosophie des Rechts* this idea was given up.

28 See *Philosophie des Rechts*, §§ 142, 152, 258. In Aristotle's theology God is the final cause which, being unmoved itself, moves the world (*Metaphysics*, 1072a 21–b 14). Hegel himself refers to this concept in the preface to *Phänomenologie des Geistes* (ed. J. Hoffmeister (Hamburg, 1952), p. 22. In Baillie's translation of the *Phenomenology*, see p. 83). As Aristotle's concept had grown up out of Plato's idea of the good, Hegel had no trouble in giving it a political interpretation.

29 *Philosophie des Rechts*, § 258. The antique origin of Hegel's expression is evident when Hegel, alluding to Athene as the goddess of her city-state Athens, describes the spirit of a people (*Volkgeist*) as ' the divine which knows and wills itself ' (*ibid.* § 257). In his early *System der Sittlichkeit* this deification of the people is quite frequent. (See Lasson's ed. of *Schriften zur*

VI

Hegel's deification of the state is justifiably notorious. It was bound to provoke both the abhorrence of those who object to any profanation of God's name, and the hostility of all militant atheists. This conception of the state is not objectionable solely because Hegel attempted to interpret the political community in terms of the fundamental concepts of ancient metaphysics and theology. What is really questionable is that he tried to extend this interpretation explicitly to the modern state.[30] By doing this he exposed himself to easy attacks: an opportunity which, as is well known, has been energetically utilized.[31] What is more, he ran the risk of losing sight of those realities which he sought to explain in terms of the humanistic ideal of his youth. Above all, by his antique interpretation of the modern state, Hegel was induced to assume that peoples or nations are, as it were, historical personalities to which the individual man, in his historical existence, belonged unconditionally. The possibilities of enlisting Hegel's republican ideal of the state in the service of some stupid ideology of the national state are immense.

We shall misunderstand the importance of the Hegelian conception of the state as long as we are not clear that in his theory it has the function of remedying a patent defect of the liberal conception. As long as the state has but to protect and to secure the freedom and property of the individual, the exercise of power within the state remains something evil even if unavoidable. Viewed from the standpoint of the interests of the individual it is, then, ' something arbitrary to be a member of a state ' or, as Hobbes put it, men come together ' not because

Politik und Rechtsphilosophie, pp. 465, 467, 469, 475, 487, 488, 503. See also *WW* 1, 400.) Hegel's very notion of the divine as something ' which is in and for itself ' recalls the notion of Absolute Being in Greek metaphysics. See Parmenides, in H. Diels and W. Kranz, *Die Fragmente der Vorsokratiker* (Berlin, 1934–8, and later eds. Cited as ' DK '), B 8, 29; Xenophanes DK B 29, 1. Plato looked upon the immortality of the species as something divine (*Symposium*, 207d 1–208b 6). Alluding to this conception, Hegel expounds his notion of the divinity of the people in the *System der Sittlichkeit* (Lasson's ed., p. 449, to be compared with p. 464). Even in Aristotle's notion of the self-sufficient political community Hegel might have found some hint on its divine character, in so far as self-sufficiency was considered something divine (see Aristotle, *Politics*, 1252b 31–1253a 1 and *Metaphysics* 1091b 15–20, to be compared with *Philosophie des Rechts*, § 270 Addition).

30 Hegel's attitude to the ' people ' is rather ambiguous, and the relation of the ' people ' of the ancient city-state to the ' people ' within the modern monarchical state not very clear in his thought. On the whole he seems to have regarded it as a concept appropriate only to conditions where a highly organized public authority did not exist. In discussing modern democratic ideas he speaks of the people with the utmost contempt (see *Philosophie des Rechts*, §§ 279, 301, 317, 318). On the other hand there are passages in the *Philosophy of Right* where he seems to equate the modern state with the people (§§ 331, 347) or with the ' spirit of the people ' (§§ 156, 274, 352).

31 J. Ritter has admirably discussed the meaning of Hegel's deification of the ' ethical world ' in his philosophy of history, yet he has not dispelled the doubts which arise from Hegel's deification of authoritarian monarchy.

naturally it could happen no otherwise ', but ' by accident ', a statement Hegel is likely to have had in mind, when he discussed the deficiencies of liberalism.[32]

To this view Hegel opposes his conviction that individuals may overcome the limitation of their particular and private interests in only learning to take part in the political decisions of their community: ' It is the destiny of individuals to lead a public (*allgemeines*) life.' Hegel's antique ideal of the state, then, serves the purpose of overcoming the liberal conception of the state. In about the same way in almost all modern states since his time, the idea of democracy has made it a right and a task of all citizens to take part in the exercise of political power. (Here I take it for granted that a liberal state is not necessarily democratic, nor a democracy liberal.)

Why, then, did Hegel persistently refuse in the *Philosophy of Right* to join Rousseau in his method of overcoming the liberal conception of the state and in his democratic ideals? This is all the more remarkable since he had been sympathetic to Rousseau's ideas from his earliest years and especially shared Rousseau's dislike of ' the particular ' (private existence) and his admiration for ' the general life ' (public affairs). The explanation might be that this was due to political opportunism, which Hegel by no means ignored in writing his major political work.

Hegel's explicit objection to Rousseau's conception of the state concerns Rousseau's radicalism in deriving all social and political relations in his democratical state from political decisions.* Indeed, Rousseau's social contract creates ' un corps moral et collectif, lequel reçoit de ce même acte son unité, son moi commun, sa vie et sa volonté.' 'To begin all over again and to start out from thought ' means, according to Hegel, that the historical traditions out of which social institutions and political communities have developed are not just to be reformed (as Hegel would have agreed), but declared in principle invalid and abolished. This concedes more to the ' subjectivity of freedom ' than it is capable of accomplishing and is to conceive the idea of a rational state in a one-sided way.[33] So far Hegel's criticism of radical democracy is not so very different from the considerations which all over the world, a century later, gave rise to the conception of a constitutional democracy which enjoyed historical continuity.

Something that is not made explicit by Hegel in his criticism of radical democracy, but which is presupposed in it, may be even more important for a just estimate of his theory of the modern state: his fidelity to liberal principles. He did, it is true, find them insufficient as the basis of a theory of the modern state.

32 *Philosophie des Rechts*, § 258; Hobbes, *De Cive* I 2 (*Opera Latina*, vol. II, p. 159). Similarly Hume admits: ' Society must be esteemed in a manner accidental, and the effect of many ages.' (*Treatise of Human Nature*, ed. L. A. Selby-Bigge (Oxford, 1888), p. 493.)

* *Editor's note* – Hegel's critique of Rousseau is also discussed by J.-F. Suter, pp. 54–5; and by M. Riedel, pp. 138–41.

33 Rousseau, *Du Contrat Social*, bk 1, ch. 6; *Philosophie des Rechts*, § 258.

Nevertheless he attached the greatest importance to preserving them in his political theory. In Rousseau's democratic state they were on principle eliminated: 'Dans une législature parfaite, la volonté particulière ou individuelle doit être nulle.' To this annihilation of the individual in radical democracy Hegel opposes the postulate of uniting the liberty of the individual with the force of the community: 'The principle of modern states has this enormous strength and depth because it lets the principle of subjectivity develop into the autonomous extreme of personal particularity and at the same time to lead it back into the substantial unity and preserve this unity in it.'[34] The state, it is true, may impose limitations on the spheres of private rights and welfare, of the family, and of civil society; but in principle it ought not to interfere with these spheres and should leave them to be organized by the autonomous individuals through their own free decisions. Hegel's state, then, is not meant to be totalitarian, while Rousseau's radical democracy has often been charged with this character.[35]

The same reasons which make Hegel reject a state which proclaims an unrestricted liberty of subjecting all social and political relations to political decisions also induce him to reject its ancient counterpart, the state of Plato, which in its way is quite as totalitarian; the liberties of the individual are also completely extinguished in it. Compared with Rousseau's democracy, which acknowledges only the principle of 'subjective' liberty, Plato's *Republic* is the other extreme of one-sidedness in the idea of the state to have been overcome in modern history. Plato's conception of a state is one in which the principle of 'subjectivity' is suppressed in favour of 'substantiality' (the idea of the community).[36]

So we arrive at the conclusion that the core of the Hegelian conception of the state lies in the peculiarly Hegelian union of the general with the particular, of substantiality with subjectivity.[37] This union is to be achieved in such a way that both principles are fully developed and yet complement each other. In Hegel's state, then, the claim of individuals to their free development and self-determination is fully satisfied; on the other hand the political community is also recognized as something which may not be reduced to individual and private interests alone. The state so conceived is a 'substantial unity, in which liberty is granted its highest right'.[38]

[34] Rousseau, *Contrat Social*, bk III, ch. 2; *Philosophie des Rechts*, § 260.

[35] This difference may well be seen in the role Rousseau and Hegel attribute to religion in their states. While Rousseau tries to establish a civil religion the profession of which is, under the penalty of death, obligatory (bk IV, ch. 8), Hegel's main endeavour is to secure the independence of the state from religious influences (*Philosophie des Rechts*, § 270).

[36] See *Philosophie des Rechts*, preface, p. 14 and §§ 46, 185, 206, 299.

[37] Hegel's idea of the union of substantiality with subjectivity is expressed in the well-known passage of *Phenomenology* (p. 80). It has been excellently analysed by Andrew J. Reck (*Studies in Hegel*, Tulane Studies in Philosophy, IX (New Orleans–The Hague, 1960), pp. 109–33). See *Philosophie des Rechts*, §§ 257, 258, 278.

[38] *Philosophie des Rechts*, § 258.

VII

Hegel was not content to conceive the modern state as a union of public-spiritedness with civil liberty, and thus to achieve a synthesis of the basic ideas of ancient and modern political philosophy. He had to define clearly his position with reference to the key concept of the modern theory of the state, the concept of sovereignty. His treatment of the problem of sovereignty, then, must show whether the synthesis of political ideas he was striving for has been successfully accomplished.*

In all modern theories of the state, the doctrine of the social contract occurs at the point in the structure of argument where it must be stated who has the right of the final decision and who is the source of all political and legal authority. This doctrine Hegel explicity rejected, and replaced by the idea of a historically continuous political community which the individual finds already in existence. Precisely at the point where all older theories proceeded from the state of nature to 'civil society' (the state), Hegel inserted his doctrine of morality as a necessary condition of the state. In the third part of the *Philosophy of Right*, where he introduces the fundamental and most important distinction between civil society and the state, one might have expected him to pose the problem of sovereignty: and then to expound his theory of it at the point of transition from civil society to the state. But he postpones the discussion of this problem and comes to deal with it only when he treats of the different powers of the state.

The division of the three powers of the state proposed by Hegel follows (as it is often, but not always the case in the *Philosophy of Right*) a 'dialectical' order taken over from his *Logic*.[39] The legislative power has the office of 'determining the universal'; the executive power is given the task of subsuming 'the *particular* spheres and individual cases' under 'the universal'; the 'princely power' is given by Hegel the '*subjectivity* of the last decision of the will'. According to Hegel's dialectical scheme 'subjectivity' or 'individuality' is to be understood as the synthesis of universality and particularity.[40] It would follow from this that the

* *Editor's note* – R. N. Berki, pp. 208–10, also discusses Hegel's conception of sovereignty, and Marx's critique of it. Cf. also Z. A. Pelczynski's essay, pp. 230-2.

[39] It may well be maintained, against Hegel, that the dialectical procedure in political philosophy has no real advantages. Some inconsistencies in Hegel's dialectical treatment of political philosophy have been pointed out by J. Plamenatz, *Man and Society* (London, 1963), vol. II, pp. 227, 232, 235. Other inconsistencies may be added, for example, the third section of the first paragraph on crime and punishment does not fit the dialectical scheme, and neither does any of the second part. The dialectic of the *Philosophy of Right* implies the idea of different stages of a fictitious journey through which the human will passes in pursuit of its final end. The dialectic is the arrangement of the stages in the sequence of 'immediacy' (= thesis), 'difference' (= antithesis), and 'unity' (= synthesis), as well as the necessity which urges the will to pass from one stage to the following till it reaches the final end (see *Philosophie des Rechts*, § 31). Grand as it is in itself, this programme is hardly adequate in political philosophy, as will presently be seen in Hegel's exposition of the powers of the state.

[40] *Philosophie des Rechts*, § 273. For the dialectical division of this paragraph, see *ibid.* §§ 5–7.

princely power was meant to comprehend legislation and government. It might then be given the function of representing the state as a whole and of embodying the sovereignty of the state. Whether this representative of the sovereignty of the state was a monarch who possessed the trust of the citizens, or an elected head of the state, would have had no special importance in the framework of Hegel's political philosophy.

A similar interpretation of his own doctrine of sovereignty was indeed proposed by Hegel in his Berlin lectures. There he described the monarch as the state authority whose task consists in ' putting the dot on the i '.[41] Unfortunately this interpretation in no way agrees with the presentation of his doctrine in the *Philosophy of Right*. There he allows himself to make an unintelligible exception to the ' dialectical ' order of presenting his theories. In carrying out the plan of his exposition he proceeds in inverted order: he begins with the dialectical synthesis, goes on to the dialectical antithesis, and presents the thesis last. This contradiction of the rules of the dialectic, which is unique in Hegel's system, has its parallel in the prominence which is given to the princely power in Hegel's argument. The king is presented as a ruler, who needs no democratic legitimation; hereditary monarchy is ' deduced ' by dialectical logic; and the two other powers of the state, government and legislature, although dependent on the king, are assigned the task of mediating between his solitary majesty and the people.[42]

Faced after the Congress of Vienna by the hereditary monarchy of the Prussian state, and the Karlsbad Decrees on the suppression of ' demagogic ' activities, Hegel sacrificed his own conception of the modern state and allowed his theory to fall into two irreconcilable parts. It is presumably because of the obscurity of his argumentation that this decisive break in his theory – one is almost tempted to call it a betrayal of his own principles – has not yet been given the attention it deserves.[43]

[41] *Ibid.* § 280 Addition.

[42] *Ibid.* §§ 275 (with Addition), 279–80, 281, 287, 302. Hegel's ' deduction ' of hereditary monarchy, as Rosenzweig justly observes, is unparalleled in the history of political philosophy (Rosenzweig, *Hegel und der Staat*, vol. II, p. 139).

[43] Haym pointed out merely that Hegel (apparently, so he maintained) gave unusual importance to the subjectivity of the monarch (Haym, *Hegel und seine Zeit*, p. 382). Rosenzweig, too, failed to notice what happened when Hegel made the monarch the dialectical synthesis of the powers of the state (Rosenzweig, *Hegel und der Staat*, vol. II, pp. 139–42). Only Reyburn (*Hegel's Ethical Theory*, pp. 240 ff.) saw the problem in question, and tried to solve it, assuming that Hegel treats monarchy in §§ 275 ff. as the ' abstract ' thesis of the dialectical triad. But he failed to corroborate his interpretation by an analysis of Hegel's text.

Hegel explicitly rejected the concept of popular sovereignty in the *Philosophy of Right* (see the long discussion of the subject in § 279). But the grounds he gave for the rejection were largely of the ' empirical ' character he frequently dismissed as unworthy of philosophy, viz. that the state would be at the mercy of individual whims and caprices, etc., and no stable rational legal order would be possible. If the people is conceived as a constitutional organ through which the political community decides some of its most important affairs then the people would seem a more appropriate bearer of the sovereignty of the state than a single individual.

VIII

The inevitable consequence of Hegel's conception of the monarchical state was the destruction of the internal coherence of the ' system of ethical life '. For, after introducing the monarch as the ' top *and the beginning* of the whole ',[44] Hegel could no longer describe the state as that organization of a political community where the citizens examined and decided the general problems of the family and especially of civil society. The connection between civil society and the state is lost for some forty paragraphs. Then, after he has finished his treatment of the princely power and the government, Hegel tries to re-establish it without real success in the context of his discussion of the legislature. This deprives him of the fruits of his most worthy endeavour. The significance of his theory of civil society has become almost indiscernible.

In the history of political philosophy Hegel was the first to introduce a distinction between civil society and the state as two different spheres of public life, and to attempt to give a theoretical foundation to this distinction. Civil society, in Hegel's theory, is conceived as a context of individual activities. It is created by a multitude of individuals who primarily pursue their own aims. By entering into manifold relations with each other, they ultimately become wholly dependent on the very conditions of this network of their actions, which they themselves helped to produce. It is first and foremost a ' system of needs and wants ' (*System der Bedürfnisse*), in which one is dependent on the others: the conditions of production in modern industrial society. As this system cannot exist without some regulating influence, civil society in Hegel's doctrine also contains the spheres of the administration of justice, of social welfare and of social institutions (the ' corporations ').

Hegel could include this whole sphere in his political philosophy, only because he had discovered the productive power of labour as the foundation of civil society. This insight, which lies already at the basis of Hegel's famous dialectic of master and slave in the *Phenomenology of Mind*,* is perhaps Hegel's most original contribution to philosophy. In the *Philosophy of Right* his theory of civil society enables him to analyse some problems of the modern state which would be of central importance in the history of the nineteenth and twentieth centuries.

The liberal tradition in political philosophy before Hegel contains no more than the rudiments of a theory of labour and of civil society.[45] It is so much pre-

[44] *Philosophie des Rechts*, § 273. In his Berlin lectures Hegel tried to explain, not very convincingly, why he began his treatment of the powers of the state with the princely power (see *ibid.* § 275 Addition).

* *Editor's note* – Cf. J. N. Shklar, pp. 77–9.

[45] John Locke's famous chapter on property and labour (*Second Treatise*, ch. 5), so congenial to Hegel, is of little consequence in Locke's political philosophy. On Hegel's reception of British national economy, see Paul Chamley, *Economie politique et philosophie chez Steuart et Hegel* (Paris, 1963).

occupied with the theory of individual rights and liberties that, when private property is discussed, the questions of the origin of property out of labour and of the social consequences of the division of labour are never raised. In this way, the theory of the state is reduced to a theory of the limits of rights in the state.

Human labour and the division of labour in society play an important part in ancient political theory. Plato's state develops out of the division of labour and has its basis in it. In the political community, according to Plato, men realize their common good by the work each of them contributes as his part to the preservation of their common life. But neither Plato nor Aristotle deduced from these principles of their political philosophy that human labour as such ought to have a decisive influence on the organization of the state. Even less in Plato and Aristotle than in liberal theory does human labour give direct rise to political claims and rights.

Hegel is on the way to remedying the shortcomings of those two theories when he inserts the theory of civil society between the theory of the family as the elementary human community and the theory of the state as the self-sufficient and perfect community, and when he connects it with the liberal rational law as well as with the theory of the state. This is why he is so concerned to carry over the formations of society which rest on the division of labour into the structure of the state. His odd rejection of universal and equal suffrage in favour of estate representation is due to this endeavour.[46] The relationship between civil society and the state was bound to become the crucial problem of his political philosophy.

Moreover, Hegel could really have achieved his aim of overcoming the individualistic approach of the liberal conception of the state, and applied plausibly his older republican ideals to the modern state, in only one way: by making the social character of human labour the foundation of his political philosophy. Plato and Aristotle could have taught Hegel that man is a social animal for this very reason, that he is dependent for the production of the means of life on the division of labour in society. The social or welfare functions of the state are stressed by him very clearly in the *Philosophy of Right*,[47] and the political problems which would result from the growth of the industrial proletariat are anticipated in an almost prophetic phrase: 'civil society, by its own dialectic, is driven beyond its own limits'.[48]

Hegel's political philosophy, then, was almost destined to be developed into a liberal socialism. Karl Marx saw this very early when, laying the foundation of his socialist theory, he wrote of Hegel: 'The greatness of Hegel's *Phenomenology* . . . lies in the fact that Hegel conceives the creation of man by man as a process . . . therefore, that he perceives the essence of labour.'[49]

[46] *Philosophie des Rechts*, §§ 300–8. Hegel argues that universal and equal suffrage takes away the possibility of representing the structure of civil society in the legislative assembly and 'separates social (civil) from political life' (§ 303).

[47] Under the old-fashioned title 'Police' (*Philosophie des Rechts*, §§ 231–48).

[48] *Ibid.* § 246.

Hegel failed to draw the consequences implied in his approach to political philosophy. Instead, he irremediably disturbed the structure of his theory of the modern state by treating sovereignty as the problem not of a social and democratic state, but of a monarchical ruler. The main work of his political philosophy, which could have been the basis of a really forward-looking policy if Hegel had not abandoned his own principles, was soon known as 'a servile book from the principles and doctrines of which any liberty-loving man ought to keep away'.[50]

Hegel seems to have been conscious of the fact that he had not been able, under the conditions of the Continental restoration, to accomplish a theory of the modern state which satisfied his own standards. The preface of the *Philosophy of Right* concludes on a note of resignation: 'When philosophy paints its grey in grey, some shape of life has grown old, and by grey in grey it may be perceived but not rejuvenated. The owl of Minerva begins to fly only when the dusk sets in.'

IX

K. R. Popper was not the first to make against Hegel the charge that his state is simply not a liberal state. We may suppose that Hegel would have promptly replied that his problem was exactly whether the modern state can be nothing more than liberal. Popper's attack on Hegel was, after all, understandable in a time when the defence of the liberal state against totalitarian fascism and communism was at stake. One generation later, however, it has become clear that the problems of the Third World can no longer be solved by means of liberal politics. This confirms Hegel's insight into the limitations of the liberal principle.

Nevertheless, 150 years after the first publication of the *Philosophy of Right* we cannot avoid stating that Hegel's theory of the modern state has been a failure. In some sense this must be said of all great political thinkers of modern times. None of them has developed a theory which nowadays is satisfactory, even in outline.

But Hegel, unlike his predecessors, did not fail because he had not sufficiently realized the greatness of his task. He realized it as nobody before him and, after all, nobody after him. His failure is due to his refusal to recognize the contradiction between the rational that was already actual, and the irrational which did still exist.

In a way, his political philosophy has thereby become a picture of his historical epoch, in a manner not very different from the way in which Plato's political

[49] So-called 'Paris Manuscripts', fol. xxiii.

[50] Gans, *WW*, VIII, ix.

philosophy, in Hegel's own interpretation, was a picture of its time. In a deep sense, then, Hegel is ultimately right, and what he said of Plato may also be said of him: 'He has proved a great mind in that the principle on which his distinctive idea turns is just the pivot on which the imminent revolution of the world was turning in those days.' [51]

[51] *Philosophie des Rechts*, preface (Hoffmeister's ed., p. 14; Knox's trans., p. 10). The author wishes to thank Dr F. O. Wolf and the editor for their help in translating the essay into English.

The sources and significance of Hegel's corporate doctrine

G. HEIMAN

'*Omnis multitudo derivatur ab uno – ad unum reducitur.*' [1] In these words Otto Gierke summarizes the publicist and civilist doctrines of the late Middle Ages. These were the doctrines which were designed to establish the legitimacy and eventual supremacy of the political over the theological realm, the supremacy of the law of the *regnum* over that of the *sacerdotium*. In a different context but succinctly nevertheless, Gierke's sentence also serves to describe one of Hegel's fundamental postulates of politics and law. The whole, the completed state, is ultimately derived from the one, the singular, the monad. It depends for its existence and verification upon the singular just as the singular, in turn, is unavoidably dependent upon the many, the whole. The mutual recognition on the part of these polarities is the only method by which a rational and ethical (*sittlich*) community can hope to attain that unification which is the major purpose of Hegel's *Staatslehre*. Paramount to this process of recognition and mediation is Hegel's doctrine of corporatism. As will be shown, corporatism, in turn, belongs not only to the realm of right (*ius*, *Recht*) but more specifically its place is in the realm of law (*lex*, *Gesetz*), of positive legal and political action as Hegel perceived it.

The first part of this essay will deal with Hegel's attitude towards some of the intellectual trends and schools of legal and political thought in his time. The same section will also touch on the concept of corporatism as it emerged from the Roman system of law. Without taking note of these and their influence, Hegel's espousal of corporatism becomes rather meaningless. The rest of the essay will examine Hegel's own doctrine of corporatism, his use of that concept as a means of mediation and, ultimately, of the politicization of his countrymen.

I

Hegel looked upon his work as an *ex post facto* explanation, for 'a work of philosophy . . . must be poles apart from an attempt to construct a state as it ought to be'.[2] Yet despite this it can be argued that perhaps too much has been made of the owl of Minerva and its flight at dusk at the cost of disregarding the

[1] Otto Gierke, *Das deutsche Genossenschaftsrecht* (Berlin, 1881), vol. III, p. 515.

[2] *Hegel's Philosophy of Right*, trans. T. M. Knox (Oxford, 1942), p. 11. Wherever the German text is consulted and deviations from the Knox translation occur, the text used is Hegel's *Grundlinien der Philosophie des Rechts*, ed. J. Hoffmeister, 4th ed. (Hamburg, 1955).

Nature and freedom in Hegel's 'Philosophy of Right'

MANFRED RIEDEL

In the preface to the *Philosophy of Right*, Hegel contrasts the theory of the ethical world developed in that work with the philosophy of nature. Everyone is prepared to agree that philosophy has to understand nature as it is; that nature is inherently rational, and that science has to explore and grasp the actual reason present in nature as her immanent law. On the other hand the ethical–historical world created by man, in so far as it is brought forth by his will and is subject to chance and caprice, is supposed to be devoid of law and reason.[1] In the second edition of the *Philosophy of Right* (1833) prepared by Eduard Gans, there is a lengthy footnote taking up this contradistinction, which is a very old one in the history of philosophy: it concerns the difference between natural and normative laws, a topic which Hegel did not deal with in the text of the work itself but only in his introductory lectures given during his time in Berlin.[2]

According to the distinction drawn in this addition, there are 'two kinds of laws, laws of nature and laws of right'. The laws of nature simply exist; their existence renders them valid, and we naturally think of the whole of nature as being determined by laws. In the sphere of laws of nature, being and validity are identical: 'These laws are true, only our view of them can be false. The measure of these laws lies outside us, and our knowledge adds nothing to them, does not modify their existence in any way; only our knowledge of them can be extended.'[3] So far they are not distinguishable from normative laws, which we likewise come to know from without as something given; and the jurist necessarily maintains this objective standpoint according to which the laws are valid precisely because they are laws. But it becomes apparent from the variety and mutability of normative laws that they are not as absolute as the laws of nature, that in their case being and validity diverge. Normative laws are laid down

[1] G. W. F. Hegel, *Grundlinien der Philosophie des Rechts*, in *Sämtliche Werke*, ed. H. Glockner (Stuttgart, 1927–30), vol. VII, pp. 23 ff. [The paragraphs of this edition are the same as in Knox's translation. Gans' footnote mentioned below is printed as Addition 1 in Knox's translation – *Editor*.]

[2] The basis of this remark, which Gans edited, is a passage from the lecture notes of H. G. Hotho taken in the winter term 1822/23. The notes are among the Hegel documents in the Staatsbibliothek der Stiftung Preussischer Kulturbesitz, Berlin (referred to afterwards as 'Hegel documents' . . .). They are catalogued as 'Philosophie des Rechts. Nach dem Vortrage des H. Prof. Hegel, im Winter 1822/23, Berlin', Ms. 2, pp. 1–4. Cf. also 'Vorlesungen über Philosophie des Rechts WS 1824/25, Nachschrift von Griesheim', Ms. germ. quart. 545, pp. 13 ff.

[3] Cf. *ibid.* p. 1 and *Philosophie des Rechts*, preface, p. 24.

('posited', *gesetzt*), they originate with man and depend upon his will and consciousness. Thus, while laws of nature directly determine the essence of things and are essentially immutable, positive laws, because of their dependence on man, are in a state of constant change. They have a history and for this reason man does not automatically recognize and accept them as valid, but mediates their existence and validity through himself, through the subjectivity of his will and consciousness. We cannot submit to power and authority stemming from laws issued by a law-giver in the way in which we bow to the necessity of natural laws which regulate the course of non-human things, for the measure of these human laws no longer lies outside ourselves but within our own breasts. A law of nature receives its highest confirmation from the simple fact of its existence, while in the sphere of right a law does not derive its justification from its mere existence but from the fact that it is known and willed. And for this reason it is only with laws of this latter kind that the conflict between being and obligation (*Sein und Sollen*) is possible.

The most important viewpoint which emerges from this contrast between laws of nature and normative laws is not, however, this dualism in the fundamental concept of natural law, which has been apparent since the time of Hobbes and Kant. What interests Hegel is a dualism that goes far deeper, the contrast between nature and spirit, which resolves the conflict between being and obligation by penetrating to its very root. Hegel's juxtaposition is sharpened into the following contrast: 'If we contemplate the difference between these two kinds of laws, and ask what is the basis of laws of right (*Gesetze des Rechts*, that is, normative laws), we will conclude: right proceeds solely from the Spirit, for nature has no laws of right. And so there is a world of existing nature, and a spiritual world of nature, each opposed to the other.'[4] With this in mind, Hegel says in § 4 of the *Philosophy of Right* that the basis of right is 'spirit' and that its starting point is the 'free will' that wills itself and possesses in the system of right the 'realm of realized freedom' – 'the world of spirit brought forth out of itself as a second nature'.[5]

I

The world of spirit as a second nature is not the δεύτερα φύσις of Aristotle, the native custom and morality of the polis based on law (νόμος) and tradition (ἦθος), but rather a nature produced and set to work by man, and therefore closer to Hobbes' *Leviathan* than to Aristotle's *Nichomachean Ethics* or his *Politics*. In fact, almost all the adjectives used by Hegel to distinguish laws of nature from normative laws are to be found in the classical contrast between 'natural' and 'artificial' societies, which Hobbes, at the beginning of modern natural law theory, insinuated into both the Aristotelian theory of the natural character of the polis and the traditional sophist alternative between law and

[4] *Ibid.* p. 2.

[5] *Philosophie des Rechts*, introduction, § 4.

nature (*nomos* and *physis*). Concord in 'natural' societies – according to both Hobbes and Hegel the concord of animals – is 'the work of God by way of nature'. On the other hand, 'concord amongst men is artificial, and by way of covenant'.[6] And Hobbes too, in agreement with Hegel, regards the things of nature as permanent and necessary while the artificial structure of laws and contracts created by men, precisely because of its dependence on human will, is held to be arbitrary and inconstant. In the background the old conceptual problem of law and nature (*nomos* and *physis*) still stands out quite clearly: what is natural is independent of contracts and deeds (in Hegel, of will and consciousness), while what is artificial *is* thus dependent. But Hobbes draws from this contrast a conclusion which diverges from the sophist alternative and its solution in Plato and Aristotle. He no longer wishes to show that only a natural society, that is, a society ordered according to nature's yardstick, can impose obligations on individuals while an artificial society leaves them free. On the contrary, he wants to demonstrate that only a society which is in the strict sense 'artificial' can place an obligation of obedience on its citizens, for in connection with nature the concept of obligation can no longer be used meaningfully. And so as between the alternatives of *nomos* and *physis*, the idea of obligation attaching to the concepts of 'natural' and 'artificial' has shifted from the one to the other.[7]

What this shift means for the theory of modern natural law may be seen from the function of the biblical God of the Creation who, in reducing nature to the merely created, empties her of autonomy, and bases her existence in the divine will. This has the following consequences for the concept of obligation: if the natural is still to have some binding power on men, then the basis of this obligation can no longer reside in nature, but, separated from her, in the will of God. This model allows of a further transformation: an entirely new basis of obligation is now opposed to the binding power of nature, and in the process its derivation from the will of God is renounced.[8] In Hegel's view, this new step was taken not by Hobbes but by Rousseau, whom he commends in § 258 of the *Philosophy of Right*: 'by adducing the will as the principle of the state, he is adducing a principle which has thought both for its form and its content, a principle indeed which is thinking itself, not a principle, like gregarious instinct, for instance, or divine authority, which has thought as its form only'.[9] Rousseau made the 'innermost part of man', freedom as 'oneness with oneself', the foundation of right, thereby conferring on it an infinite strength *vis-à-vis* nature

[6] *Elements of Law*, pt I, ch. 19, sect. 5; *De cive*, pt II, ch. 5, sect. 5; *Leviathan*, pt II, ch. 17.

[7] Cf. F. O. Wolf, *Die Neue Wissenschaft des Thomas Hobbes. Zu den Grundlagen der politischen Philosophie der Neuzeit* (Stuttgart-Bad Cannstatt, 1969), pp. 82 ff.

[8] *Ibid.* p. 84, where this viewpoint is explicitly developed.

[9] *Philosophie des Rechts*, § 258 Addition.

or the will of God working through nature.[10] All the same, the contrast between nature, freedom, and right already occurs in the work of Thomas Hobbes, with whom, in Hegel's view, the real history of modern natural law begins. For he was the first to try to 'trace the framework of the state and the nature of its supreme power back to principles within ourselves, which we recognize as our own'.[11] Hobbes breaks with the assumption of a teleological law of nature (*lex naturalis*) which stands above the human will and rules over the world of natural things, a law which reason need simply reflect or copy if it is to be 'right' (*recta ratio*) and lead to 'righteous' action. With Hobbes the theory of right and of society still depends on the concept of nature, only in so far as the 'law of nature' contains conditions which necessitate the abandonment of natural law. Through Hobbes an 'ambiguity' arises in the traditional expression 'natural law' which is of the greatest importance to Hegel, and he draws attention to it in his lecture on Hobbes: 'The expression "nature" is ambiguous in the sense that the nature of man is his spirituality and rationality; but his natural state is that quite other condition wherein he behaves in accordance with his brute naturalness.'[12]

According to Hegel, this ambiguity is sharpened in Rousseau, who widens Hobbes's initial breach with traditional natural law theory. Rousseau conceives of the 'spirituality' and 'rationality' of man as his freedom, which removes him from nature and is the essential mark of distinction between man and beast. While Hobbes allows the 'natural' bond of authority of the master–slave relationship to subsist side by side with the institutional or 'artificial' bond of authority which rests on the contract, Rousseau inquires into the ultimate justification of authority itself. And he makes neither positive law nor the fundamental natural laws of Hobbes the ultimate principle of justification – but freedom. Without regard for his predecessors of the seventeenth century – whom he places on a footing with Aristotle the apologist of human oppression and servitude, and Caligula its practitioner–and without regard for the current laws of contemporary European states, 'he replies to the above question as follows: That man possesses free will, and freedom is what is qualitatively unique in man. To renounce freedom is to renounce being human. Not to be free is to renounce all duties and rights'.[13] Rousseau's principle that man is free, and that the state built on the foundation of the 'general will' is the realization of freedom, must, so Hegel says, be 'deemed correct'. 'Ambiguity' occurs in Rousseau only when he allows the general will to be 'composed' of the separate wills of individual men, their

[10] *Vorlesungen über die Geschichte der Philosophie*, *Sämtliche Werke*, ed. Glockner, vol. XIX, p. 527.

[11] Cf. *ibid.* p. 442.

[12] *Ibid.* p. 443.

[13] *Ibid.* p. 527. Hegel quotes the well-known section of the *Contrat Social*, bk I, ch. 4. Cf. also *ibid.* chs I, 8, II; bk III, ch. 9. Cf. *Discours sur l'origine de l'inegalité parmi les hommes*, ed. K. Weigand (Hamburg, 1955), pp. 106 ff. Cf. also *Vorlesungen über die Philosophie der Weltgeschichte*, ed. G. Lasson (Leipzig, 1917–20), vol. IV, pp. 920 ff.

natural inclination towards freedom. The ' freedom of nature ' – the spontaneity of the individual will – cancels ' thereby freedom as the utterly absolute ' as it is conceived by Rousseau in his concept of the general will.[14] Yet for all that, he makes us fully aware that freedom is the utterly absolute, the very ' concept of man ': ' Thinking itself is freedom; whoever rejects thinking and speaks of freedom knows not what he says. The unity of thought with itself is freedom, the free will . . . Only the thinking will is free. The principle of freedom arose and has conferred on man, who conceived of himself as infinite, this infinite strength.' [15] What the will is in itself can be grasped neither by analogy with nature and her ' laws ' nor through its simple contrast with nature or naturally determined caprice. The will – and Rousseau's appeal to the ' general will ' as the fundamental principle of the state reminds us of this – must break out of these opposites. It is only free when it ' wills nothing else, nothing external and nothing foreign – for then it would be dependent – but only itself; when it wills the will. To will to be free is the absolute will '. With this notion of the free will Rousseau completes the inversion begun by Hobbes of the teleology of nature – which is the basis of the *lex naturalis* of traditional natural law – into the subjectivity of the individual who thinks and wills himself. In place of the binding power of nature and the ambiguous recourse to the will of God, we are given the binding power of the will become absolute. This transformation of the Hobbesian model by Rousseau was recognized by Hegel as the most important presupposition of his own concept of right.

The absolute will consists in the will to be free. The will that wills itself is the basis of all right and of all obligation, hence of all positive laws, moral duties, and imposed obligations. Freedom of the will itself, as such, is the principle and substantial foundation of all right, is indeed itself absolute, eternal right, and the very highest, insofar as other, specific rights may be placed beside it; it is indeed even the essence of what makes man truly man, that is, the fundamental principle of spirit.[16]

It is from this point that Hegel deduces the transition to the Kantian philosophy. Kant puts an end to the ' ambiguity ' still present in Rousseau's concept of natural law by making a radical distinction between the laws of nature and those of freedom, between the ' empirical ' and the ' free and pure will '.[17] From the viewpoint of transcendental philosophy the ' concept ' of the will attains to an understanding of itself. The ' simple unity of self-consciousness ', the ' ego ' dissolved from all preceding natural causes, is the

[14] *Ibid.* p. 528. ' These principles, expressed in this abstract way, must be deemed right; yet ambiguity soon arises. Man is free, and indeed this is the substantial nature of man. Not only is freedom not surrendered in the state, but in fact it is established there for the first time. The freedom of nature, the propensity for freedom, is not yet true freedom, for only the state is the actualization of freedom.' Cf. further *Enzyklopädie*, § 163; *Philosophie des Rechts*, § 258.

[15] *Ibid.* pp. 528 ff.

[16] *Vorlesungen über die Philosophie der Weltgeschichte*, pp. 921 ff.

[17] *Ibid.* pp. 529 ff., 552, 590.

unassailable, utterly independent freedom and source of all general determinations of thought – theoretical reason; and likewise the highest factor in all practical determinations – practical reason as free and pure will; and the reason belonging to the will aims simply to maintain itself in a state of pure freedom, to will nothing but this in all specific instances, to will right only for the sake of right, duty only for the sake of duty.[18]

' Consciousness of the spirit ' thereby becomes the foundation of the philosophy of right. It discovers ' a principle of thought for the state . . . which is now no longer some principle derived merely from opinion, like the social instinct, the need for security of property etc., nor of piety, like the divine institution of authority, but the principle of *certainty*, which is identity with my self-consciousness . . .' [19]

II

This characterization of the principle of right as it occurs in Hobbes, Rousseau, and Kant must be kept in mind if one wishes to grasp the relationship between nature and freedom in Hegel's *Philosophy of Right*, and to understand the peculiarly ambivalent position of this work at the close of modern natural law theory. Hegel stands on the ground of natural law theory prepared by Hobbes, and does so in two ways: on the one hand he adopts the concept of nature which constitutes this theory, and on the other the presupposition of a will emancipated from given natural and historical forces, a will which, through its own movement, must first come into relations with things and then adjust them to itself. The *Philosophy of Right* shares with the natural law theories of the seventeenth and eighteenth centuries an essentially restricted definition of nature from which is absent the notion of ' natural ' ends and their organization towards the realization of an ' ultimate ' end. As a part of the philosophy of spirit, the *Philosophy of Right* knows of no graduated scale of nature each of whose members occupies a natural position on it, and which, according to the scholastic notion, has its continuation in the ' realm of grace ' (*regnum gratiae*). It further knows nothing of the doctrine of pre-established harmony between the ' kingdom of nature ' and the ' kingdom of ends ', which both obey various causal laws and in which, by virtue of this harmony, the paths of nature lead automatically to the state of grace.[20] The realm of the spirit, whose realization this work presents, presupposes a teleology which is immanent in the free will itself and constitutes that movement of the ' concept ' which pervades all reality and therein wins its freedom. The graduated scale of the spirit does not fall into the category of natural

[18] *Ibid.* p. 922.

[19] *Ibid.* p. 924. Cf. in this connection my essay ' Hegels Kritik des Naturrechts ' in *Hegel-Studien*, IV (1967), 178 ff., now also to be found in *Studien zu Hegels Rechtsphilosophie* (Frankfurt am Main, 1969), pp. 42 ff.

[20] Leibniz, *Monadologie* (1714), § 88.

concepts; it rests upon its own essence, and for Hegel this means: on freedom which only exists as a continuing liberation from nature and the production of a 'second nature', of the world of spirit. The realm of spirit is the realm of freedom, and as such no natural hierarchy or otherworldly kingdom of spirits, but the 'world of the spirit brought forth from within itself'.[21] Within this world – this 'second nature' – nature and freedom stand to each other as does spirit to nature – in an antagonistic relationship. 'The nature of spirit may be understood from its most perfect opposite. We oppose spirit to matter. Just as weight is the substance of matter, so we are moved to say that freedom is the substance of spirit.'[22]

It is the same antagonism which affects the concept of nature as it occurs in natural law theory. This concept, which in the doctrine of the state of nature plays both a fundamental and fateful role, contains for Hegel an

important ambiguity which can lead to absolute error. On the one hand nature means our natural existence, us as we directly know ourselves in our various facets, the immediate aspect of our being. But over against this determination, and different from it, nature is also the concept. The nature of a thing is the concept of a thing, what it is from the point of view of reason, and this can be something quite other than merely natural.[23]

If nature designates the concept of a thing, then right in the state of nature must be conceived of as that form of right 'that is fitting for man according to his concept, the concept of spirit'. But this must not be confused with what the spirit is in its natural state, the state of servitude and dependence on nature. For this reason Hegel says with Hobbes and Spinoza: *Exeundum est e statu naturae.*

The a-teleological character of this utterance, seen against the backcloth of modern natural science, takes on a curious sharpness and pointedness. When nature was defined as an order moved by final ends, freedom could be related to it, and human action thought of as its continuation or imitation.* With the transformation of nature into a mathematically describable and mechanically conceived causal system, this reference back to nature becomes impossible. The idea of freedom – and Kant's *Critique of Pure Reason* makes this abundantly clear for the whole modern era – can no longer find in nature the analogy of natural ends, and therefore turns in upon itself. This is also of decisive importance for Hegel's *Philosophy of Right*. It is true that Hegel finds in the concept of gravity a kind of natural analogy for the basic concept of freedom, but here we have a category which itself has only made its mark on the conception of nature since the advent of Newtonian physics. Freedom of the will is best understood, so we are told in

[21] *Philosophie des Rechts*, § 4; *Enzyklopädie*, para. 387.

[22] *Die Vernunft in der Geschichte*, ed. J. Hoffmeister, 5th ed. (Hamburg, 1955), p. 55; *Enzyklopädie*, para. 381 Addition.

[23] *Die Vernunft in der Geschichte*, p. 117.

* *Editor's note* – This was Burke's position: see J.-F. Suter, pp. 52, 68, 71.

the Addition to § 4 of the *Philosophy of Right*, by 'reference' to physical nature. Freedom and gravity are 'fundamental properties' of the will and of bodies, that is, properties which are not contingent but necessary and essential, conditions of their very existence:

When one says that matter is heavy, one might suppose that this predicate is only incidental: yet it is not incidental, for it is not as though there were something about material which is heavy: material is rather gravity itself. Gravity constitutes a body and is the body itself. And the same goes for freedom and the will, for what is free is will. Will without freedom is an empty word, just as freedom is only real as will, as thinking subject.[24]

In the case of weight, natural bodies strive towards a central point, the centre of gravity of the system formed by the relative position of these bodies in space. But this centre remains permanently outside them. In the case of freedom as the fundamental determination of the will, the will refers permanently to itself. Indeed, such self-reference is precisely the essence or substance of will, which likewise strives towards a centre, but a centre which it already possesses in itself: 'It does not have unity outside itself; it finds it constantly within itself, it is in and with itself (*in und bei Sichselbst*). Matter has its substance outside itself; spirit on the other hand is self-contained being (*Beisichselbstsein*), and this precisely is freedom.'[25]

The second presupposition which Hegel shares with modern natural law theory concerns the movement of the will. It is on this that the *Philosophy of Right* rests, rather than on the teleological structure of social and political institutions arranged in complex tiers one above the other, as we know it from Aristotelian–scholastic natural law theory. Although Hegel expressly distances himself from the theoretical extremes of Hobbes, Rousseau, and Kant, the overall position of the *Philosophy of Right* remains in an important respect one of natural law: its conceptual development begins with the 'individual will of the subject' in its relations with the things of nature (property) and with other individual wills (contract).[26] It begins with a form of 'abstract' right which reproduces the pre-political condition of natural law theory. The impulse issuing from the individual will – and this is often overlooked – permeates the whole system, stretching even to the derivation of the will concentrated in the 'state' which, according to Hegel, must likewise be an 'individual' will, that of the monarch.[27] Admittedly this individual will is not 'free' in the sense of natural

[24] *Philosophie des Rechts*, § 4 Addition.

[25] *Die Vernunft in der Geschichte*, p. 55.

[26] Cf. *Enzyklopädie*, §§ 400 ff.; *Philosophie des Rechts*, §§ 34 ff. Hegel repeatedly emphasized the moment of individuality which belongs to the immediacy of the free will, as for example in §§ 13, 39, 43, 46, 52.

[27] Cf. *Philosophie des Rechts*, § 279 with the Remark to § 381; in addition, cf. § 190, and *Enzyklopädie*, 2nd. ed., § 514.

law, it is not the chance individual whim and impulse of each and all from whose reciprocal restriction right, the concept of the general will, arises. It is because Hegel first introduces the will as the object of the *Philosophy of Right* only after he has, in his doctrine of subjective spirit, purged it of all incidental causal determinations, that the movement of the work stems from the ' general ' will already contained in the individual will. And so the free will for Hegel is the ' unity of the rational will with the individual will, which latter is the immediate and peculiar element of the activity of the former '.[28]

Yet this does not mean any retraction of the idea of natural law; on the contrary, it means in reality an enormous intensification of it.[29] For it is no longer the individual as such, in his naturalness, who is the object and point of departure of the doctrine of right, but the individual as a rational being.* While Kant and Fichte restrict the concept of freedom revealed by them to the field of ethics, and take as a basis for natural law the naturally determined free whim and impulse of each and all, Hegel makes use of this concept in his doctrine of right as well. Right is not the restriction of the free will but its very ' being ' – ' freedom as Idea '. This new twist means for Hegel that freedom is no longer a postulate (an ' idea ' in the Kantian sense), but reality, something actually given in the historical–social world, and not just something yet to be achieved. The dialectic is necessary in order to grasp this reality, and in the introduction to the *Philosophy of Right* Hegel applies it to the natural law ' concept ' of the will. According to Hegel, Kant does discover in the principle of the transcendental ego the fundamental basis of the self-determination of the will, the moment of ' pure indeterminacy or of the pure reflection of the I into itself ', in which all limitation and every content ' given ' by nature is dissolved. But freedom of the will, considered in itself, would be merely negative. In the political sphere it would lead – as did indeed happen during the French Revolution in accordance with Rousseau's theory – to the ' destruction of all existing social order ' and the ' annihilation of all organisation striving to re-emerge '.[30] The ego as the pure concept of the will thus necessarily contains a second moment, the ' determining and positing of something definite as content and object ', whereby it posits itself as determined, that is, comes into existence. This something specific which determines and limits the will is not a given external limitation, but – according to Hegel, this is a point overlooked by Kant and Fichte – is immanent in the very act of self-determination. In the unity of these two moments, the undetermined universality and the determined particularity of the will, freedom is realized as the third moment. ' It is the *self*-determination of the ego, which means that at

[28] Cf. *Enzyklopädie*, 2nd ed., para. 485; also *Philosophie des Rechts*, §§ 2, 4.

[29] Cf. F. Rosenzweig, *Hegel und der Staat* (Munich-Berlin, 1920), vol. II, pp. 106 ff.

* *Editor's note* – The sense in which, according to Hegel, the individual as a rational being is free, is further discussed by J. Plamenatz. See especially, pp. 34–9.

[30] *Philosophie des Rechts*, § 5.

one and the same time the ego posits itself as its own negative, that is, as restricted and determinate, and yet remains by itself, that is, in its self-identity and universality. It determines itself and yet at the same time binds itself together with itself.' [31]

III

This dialectical movement of the free will which combines the moment of the universal and the particular, and reconciles both with itself into ' concrete ' individuality, into the ' existence of the free will ' (§ 29), is that ' nature of the thing ' which we encounter in Hegel's *Philosophy of Right* as the ' concept '. The concept contains within itself the full sense of nature; it designates nothing other than that form of right which, along with all its determinations, is based on the ' free personality ', on ' self-determination which is the very opposite of natural determination '.[32] The dialectical movement of the concept begins with the self-determination of the individual ' person ' who is free from all ' natural ' determinations. It begins with the infinite ' concept ' of the free will unlimited by anything external to itself as the sole principle of right.

This connection between concept (= nature), freedom and right was repeatedly discussed by Hegel in the Berlin lectures on the philosophy of right. The first lecture given in the year 1818–19 – before the appearance of the work itself – goes into this question in § 3:

> The principle of right does not reside in nature, at any rate not in external nature, nor indeed in the subjective nature of man insofar as his will is naturally determined, i.e. is the sphere of needs, impulses, and inclinations. The sphere of right is the sphere of freedom in which nature, insofar as freedom externalizes itself and gives itself existence, does indeed appear, but only as something dependent.[33]

Manifestations of freedom are all aspects of the objective, historical–social reality of man as they are represented by the *Philosophy of Right*, beginning with the outward forms of abstract right and leading to the family, civil society, and the state. It need scarcely be said that, in all of these, ' natural ' relations and forms of existence play a part. The question is whether they produce out of themselves a law which rules over those forms. The necessity ascribed, for example, to the existence of the state in relation to the being of the individual, no longer means in Hegel that for the individual it is a law of nature to have to live in the state. The necessity of the state rests much more upon that law which freedom prescribes to itself. On this point Hegel's elucidation of § 3 is unambiguous:

[31] *Ibid.* § 7.

[32] *Ibid.* Cf. also the *Nürnberger Propädeutik*, *Sämtliche Werke*, ed. Glockner, vol. III, pp. 55, 71, and especially *Propädeutik*, pt III, sect. II; *Enzyklopädie*, pt III, § 181: ' The spirit as a free, self-conscious being is the self-identical I, *i.e.* that I that is first of all utterly exclusive in its absolutely negative relations, a single free being or *person*.'

[33] ' Hegel documents . . .', Ms. germ. quart. 1155, p. 9; ' Natur und Staatsrecht nach d. Vortrag des Professors Hegel im Winterhalbjahr 1818/19 von G. Homeyer.'

This paragraph is prompted by the term natural law. The unification of freedom and necessity has been brought about not by nature, but by freedom. Natural things remain as they are and have not freed themselves from law in order to make laws for themselves. But spirit breaks away from nature and produces for itself its own nature and its own laws. Thus nature is not the basis of right.

As for Kant and Fichte,[34] so too for Hegel, the term ' natural right ' is ' merely traditional '. Indeed, it is even wrong from the point of view of the ' concept ' of right itself, because ' by nature ' is to be understood (1) the essence, the concept; (2) unconscious nature (the proper meaning). The ' proper ' name of the subject should be ' philosophical jurisprudence '.[35]

Thus at the time when he was working out the system of the philosophy of right, the development of Hegel's thought leads straight back to that philosophy of freedom which the early essay on natural law (*Über die wissenschaftlichen Behandlungsarten des Naturrechts*) sought to overcome by the construction of a law of ' ethical nature '. But at the end of a long process of coming to understand the basic concepts of ' philosophical jurisprudence ' – a process which at the same time clarifies its historical relationship to traditional natural law theory – there can be no question of resort to this solution. Nature and freedom, the law of nature and the law of right, have parted company in Hegel too. He thus emphatically rejects the traditional view that the ' law of nature ', in so far as man is willing to recognize and follow it, might serve him as a ' model ' of law. The only law which governs the historical existence of man is the law of freedom, which is not given by ' nature ' but by the ' concept ' itself.[36] The concept becoming its own legislator means for Hegel the eighteenth-century idea of man's universal eligibility for rights,[37] with which philosophy rose against the existing state of affairs and broke down the façade of naturalness behind which the idea of law, that is, freedom, had until then been hidden. Positive law now becomes inseparable from the knowledge of this idea.

Admittedly, as is pointed out in the introductory lecture of 1824–5, in ' conventional natural law ', which has nature, natural needs, goals, etc., as its basis, the idea of freedom is not consciously excluded, but ' in effect it is neglected, for both principles are taken up without due assessment of their characteristic features '. Freedom cannot be thought in the form of nature but must be thought in the form of the ' concept ', which reconciles freedom with itself and nature. And if freedom comes forward with the claims of the ' concept ', which assert

[34] Cf. Kant, *Reflexionen zur Moralphilosophie* 7084, *Kant's gesammelte Schriften*, ed. Preussische Akademie der Wissenschaften, vol. XIX (Berlin-Leipzig, 1934), p. 245; Fichte, *Grundlagen des Naturrechts*, *Sämtliche Werke*, vol. III, p. 148.

[35] ' Hegel documents . . .', as in footnote 33.

[36] *Ibid.* p. 3; ' The concept of the thing does not come to us from nature.'

[37] *Ibid.* p. 5; ' We must find something lofty in the fact that now man, because he is man, must be regarded as possessing rights, so that his human essence is higher than his status.'

that it is only freedom ' that is at stake in matters of law and ethics, then the term natural law begins to totter '.[38] One could only retain it by conceding that freedom is the ' nature of the thing ' postulated by natural law, i.e. the ' concept '. But the expression is nevertheless ' inappropriate ', for nature, in contrast to freedom, is ' basic, not opposed to anything else. Freedom on the other hand appears to be polemical, it has opposites, and the first of these is nature itself '.[39]

IV

This opposition of nature and freedom decisively shapes the system and concepts of Hegel's *Philosophy of Right*. It determines not only the demarcation of ' philosophical jurisprudence ' and ' natural law ' in the double title of the work,[40] but also the doubling which the last and most important section of the system undergoes with the introduction of the concept of ' civil society ' beside family and state. For the difference between civil society and state has its basis in the separation of the concepts of nature and freedom, a separation which historically is thought through to an end in Hegel. True, in the course of the development of modern natural law the identity of state (*civitas*, *res publica*) and civil society (*societas civilis*) is dissolved. This identity of state and civil society was the characteristic hallmark of the traditional (' feudal ') theory of state and society, and received philosophical legitimation from the teleology of the *lex naturalis*, which made the natural ends (impulses, needs, etc.) of separate individuals coincide with the ethical end of the whole. But the dissolution of this identity does not lead to a permanent distinction; it is overcome time and time again.

Paradoxically, the cause of this lies in the natural law doctrine of contract, which is the catalyst both of this separation and of its overcoming. The view that the teleological order of nature transcends the individual and civil society is abandoned, but nature nevertheless enters the construction of the contract, at the point of departure of natural law theory, as the caprice (*Willkür*) of the many. It is the needs, instincts and inclinations which, contained in the category of ' free caprice ', must be restrained by the concept of law so that the capricious will of each can harmonize with the will of all under a universal law, which replaces the now discarded natural law. Here is to be sought the real motive for the polemical separation of the principles of law and freedom as against Kant and Rousseau, on which Hegel sets great store in his philosophy of right. At the same time he is also fully aware in this context of the differences between

[38] ' Hegel documents . . .', ' Nachschrift von Griesheim ', pp. 9 ff. (see footnote 2 on p. 136).

[39] *Ibid.* p. 10.

[40] Hegel expressly refers to this in his lectures of 1824/25. Cf. Griesheim as above, p. 3; and my essay: ' Tradition und Revolution in Hegels " Philosophie des Rechts " ' in *Zeitschrift für philosophische Forschung*, XVI (1962), 206 ff. (Reprinted in my *Studien zu Hegels Rechtsphilosophie*.)

Rousseau's and Kant's conception of nature, and that of the older natural law theories. The traditional mode of treatment in which 'the two meanings' of the concept of nature are still unseparated takes as its basis the 'natural being' of man, his inclinations, needs, impulses: first, his physical needs and the necessity of their satisfaction, but then also the 'impulse towards sociability and society which is connected on the one hand with relations between the sexes, and on the other is extended into universal civil society' which in turn 'develops into the state'.[41] But it is precisely at this point that for Hegel the 'unsatisfactory nature of this connection' appears. There is no teleology of nature to reconcile the instincts and needs of individuals with the ethical–historical existence of the 'state'. All determinations deduced from the instinctual nature of man remain 'abstract' in comparison with what the state and civil society are according to the 'concept':

> If we are to say that civil society and the state arise out of instinctual impulse, then at once the unsatisfactory nature of this connection, of the state arising from impulse, is apparent. The impulse towards sociability which philosophy formerly accepted as the basis of the state is something indefinite and abstract which can only furnish some of the necessary conditions for the vast and highly structured state, and which appears excessively thin beside the phenomenon it is meant to explain.[42]

To this natural principle which was first abandoned by Hobbes, Rousseau, and after him Kant and Fichte, oppose the principle of freedom. But, as Hegel says in the lectures of 1824–25, this is done 'in a manner which is not ours, and which did not permit jurisprudence to develop into a complete and coherent system'.[43] Hegel agrees with Kant that freedom under the laws of nature is impossible since nature and freedom are opposed to one another. For this reason he rejects, like Kant, the question posed by the traditional teleological conception of nature concerning the 'historical origins of the state',[44] or, to use the traditional terminology of politics and natural law, the question of the 'beginning of civil society'. For the philosophy of right is only concerned with the 'Idea of the state', with the 'thought as concept' (*gedachten Begriff*). But in Kant and Fichte, and in Rousseau before them, the principle which they make the basis of jurisprudence contradicts their exposition of it. On the one hand the principle of the state – that principle 'which is not just thought in its form, like the social instinct or divine authority, but thought in its content' because 'thinking itself' is will – excludes nature from itself. And yet on the other hand, Rousseau, Kant and Fichte reintroduce nature by placing, in the forefront of their theories, will in its specific form as the 'individual will',[45] the 'particular individual'. As a

[41] Cf. Griesheim as above, pp. 5–8. Cf. *Philosophie des Rechts*, introduction, § 19.
[42] Cf. Griesheim, p. 8.
[43] *Ibid.* p. 11. Cf. 'Hegel documents . . .', Hotho, pp. 7 ff. (see footnote 2 on p. 136).
[44] Cf. *Philosophie des Rechts*, § 258.
[45] Cf. *ibid.* §§ 258, 29, 182 Addition; *Vernunft in der Geschichte*, pp. 111 ff.

result of this they conceive of the 'general will' of the 'concept' of the state, not as the 'absolutely rational part of the will, but only as the common good (*das Gemeinschaftliche*) which emerges from this individual will'. And hence the more recent natural law theory, and with it the classical liberalism of the nineteenth century, retreat to the viewpoint of older natural law theory, in their attitude to the 'concept' of state and civil society. The construction of the contract, which in Hobbes, Rousseau and Kant presupposes the dissolution of the classical identity of *civitas* and *societas civilis*, repeats that confusion of two separate conceptual spheres which Hegel uses in § 182 of the *Philosophy of Right* as an objection to the natural law view of the state.[46]

The fact of such an objection presupposes that Hegel had drawn for himself the conclusions that follow from the approach of modern natural law theory. By radicalizing the contrast between laws of nature and laws of freedom, Hegel relinquishes, along with the traditional term 'natural law', the term 'civil society' (*societas civilis*). The abandonment of the latter was to prove incomparably the richer in results. With Hegel's separation of state and civil society, a whole new perspective of problems concerning human life and will was opened up. The relations of individuals with one another and with nature were given theoretical independence and set in relative isolation, and could now be conceived of and studied as 'social' relations. The naturally determined individual will, the 'particular individual' and his needs, impulses and inclinations, is no longer directly and fundamentally related to the universal will manifest in the state. Precisely because of this it becomes possible for Hegel to discern in that 'system of needs' the economic basis of modern society which had been concealed from the liberal followers of the natural law theory by the model of the social contract and its political implications. It is therefore apparent that the problem of the relationship between nature and freedom finds no satisfactory solution in the philosophy of right; on the contrary, it re-emerges on a new level. The 'freedom as Idea', which demands the conceptual liberation of civil society from the state, descends, on this new level, from reality to appearance – 'the world of ethical appearance', in which ethical identity cannot be thought of as freedom but only as necessity.[47] The cluster of concepts centred on the sphere of the free will is here on the verge of being transformed into the law of development of society, a law which has as its basis nature, instead of the freedom presupposed by the concept. This is the 'element of inequality' which gives expression to the objective right of particularity of mind, and not only fails to cancel the inequality

[46] *Philosophie des Rechts*, § 182 Addition: 'If the state is represented as a unity of different persons, as a unity which is only partnership, then what is really meant is only civil society. Many modern constitutional lawyers have been able to bring within their purview no theory of the state but this.'
[47] *Ibid.* § 186. Cf. §§ 184–5.

given by nature, but indeed ' produces it out of spirit '.[48] Here lies one of the seminal points in Hegel's philosophy of right against which the dialectic of the concept of will strikes as against a barrier – a barrier which Hegel's most important and historically most influential pupil, Marx, sought to surmount by the ' materialist inversion ' of this dialectic into the development of relations of production.*

[48] *Ibid.* § 200. A minimum reference to nature which is indispensable to the concept is further to be found in the deduction of hereditary monarchy (§§ 280 ff.) and in the justification of war (§ 324).

* *Editor's note* – Translated from the German by Roger Hausheer.

Hegel's theory of punishment[1]

DAVID E. COOPER

In this essay I discuss Hegel's theory of punishment for its own sake. I am not concerned with its relation to the rest of the *Philosophy of Right*, and even less with its place in the dialectic as a whole. For example, I shall not consider how the concept of punishment is meant to forge a link between the stages of Abstract Right and Morality. Detailed discussions of Hegel's theory for its own sake are, in fact, fairly rare – which is one good reason for my essay taking the limited form it does. The essay is divided into three unequal sections. In section I I consider those anti-utilitarian arguments of Hegel's that can be understood independently of his positive theory. In section II I consider his criticisms of views that might be confused with an acceptable retributivist approach – the ' revenge ' view of punishment, for example. Finally, in section III I discuss Hegel's positive theory: a theory most neatly encapsulated in the claim that punishment ' annuls ' crime. The last section is the longest and most important, for a number of reasons. First, there are less exegetical difficulties in stating those of Hegel's ideas which are discussed in the first two sections. Second, most of his points discussed in the first two sections are not novel. Kant had made similar points – so it is not in these directions that Hegel's originality lies. Finally, his most important arguments against utilitarian accounts come by way of inference from his positive theory. Those which can be stated in isolation from that theory are not the most effective.

I

A large part of Hegel's discussion of punishment is devoted to showing that utilitarian justifications are inadequate. Such accounts, he says at various points, are ' superficial ', ' irrelevant ', and ' confused '. Four points need to be made concerning his arguments considered in this section: (a) they are not his most effective; (b) they are not original; (c) they do score against some commonly held views; (d) they do not score at all against a utilitarian who confines himself to regarding utility as the General Justifying Aim of punishment – to use Professor H. L. A. Hart's terminology.[2] These arguments may be loosely divided into the ' Conceptual ' and the ' Moral '.

[1] Except when otherwise stated, all references to Hegel will be to *Hegel's Philosophy of Right*, trans. T. M. Knox (Oxford, 1942).

[2] See ' Prologomenon to the Principles of Punishment ' in *Punishment and Responsibility* (Oxford, 1968). By a General Justifying Aim, Hart means that which justifies the practice of punishment in general, as opposed to some particular aspect of it, such as mitigation.

The Conceptual Argument. This underlies the following passage:

> The various considerations which are relevant to punishment as a phenomenon and to the bearing it has on the particular consciousness, and which concern its effects (deterrent, reformative, &c.) on the imagination, are an essential topic for examination in their place, especially in connection with modes of punishment, but all these considerations presuppose as their foundation the fact that punishment is inherently and actually just.[3]

We can ignore, until section III, what is meant by saying that punishment is 'inherently and actually just'. However, it is clear what Hegel's point is. Before any question can arise as to reforming a man through punishment, or to deterring others through it, it must be established that he did commit a crime, and in a manner deserving of punishment. (For example, he must not have been asleep when he did it.) More exactly: the reason why a given person is punished is that he has committed a crime in a certain manner – and not that he stands in need of reform or that others need deterring. The corollary of this point is that, were reform and deterrence the reasons for punishing an individual, there would be no need to require his guilt. But this is required – so reform and deterrence cannot be the reasons.

This seems perfectly correct, as far as it goes. It is not an original point. Kant had said that a man 'must first of all be found to be punishable before there is even a thought of deriving from the punishment any advantage for himself or his fellow citizens'.[4] Also, it is difficult to see what weight the point has against someone who regards utility only as the General Justifying Aim. The utilitarian could say: 'Certainly it is true that the reason given for punishing a man is that he has committed a crime. But why should this be counted as a reason? Why, that is, should the fact that men commit crimes be a reason for punishing people? Surely the answer must be in terms of utility.' Concerning the fact that we only punish the guilty, he could add: 'Either we can explain that on utilitarian principles, or we can accept it as a separate principle of justice. Either way, it is irrelevant to the claim that the practice of punishing people in general is justified in terms of utility.' To counter this reply, Hegel would have to say more about punishment's being 'inherently and actually just'. So far then he has not shown that utilitarianism involves a 'superficial attitude towards punishment'.[5]

The Moral Arguments. Hegel argues that utilitarians must take certain unethical attitudes towards punishment. This is an interesting charge, since typically it has been the utilitarian who has accused his opponents of taking a barbaric, brutal attitude. This latter accusation is unfair with regard to Hegel, who is

[3] § 99, p. 70.
[4] *Metaphysic of Morals*, quoted in Bradley's *Ethical Studies* (Oxford, 1962), p. 28.
[5] § 99, p. 70.

certainly aware of the importance of reform and deterrence. That is clear from the passage quoted above, where he says it is 'essential' to consider these, especially in connection with the 'modes of punishment'.

Hegel, in fact, brings two charges against the utilitarian – that the latter takes an immoral attitude (1) towards the convicted criminal; and (2) towards those who might commit crimes. The first charge involves Hegel's (in)famous claim that punishment is the 'right' of the criminal: that the criminal 'wills' his punishment. This claim appears in the following passage:

> The injury (the penalty) which falls on the criminal is . . . his implicit will, an embodiment of his freedom, his right . . . it is also a right established within the criminal himself, i.e. his objectively embodied will, in his action. The reason for this is that his action is the action of a rational being and this implies that it is something universal and that by doing it the criminal has laid down a law which he has explicitly recognized in his action and under which he should be brought as under his right.[6]

One thing Hegel seems to mean here is false, if taken at all literally. He says that when a man commits a crime, he is thereby adopting a principle to the effect that men may be coerced: that violation of rights is permissible. Consequently, since his punishment is a form of coercion, involving loss of rights, the criminal is simply being treated under the principle he has adopted. So really he wills his own punishment. Now I think there is a sense in which we might speak of the criminal implicitly denying rights – but it is not that sense (see section III). The average criminal does not deny that his victim has rights, nor probably, does he think that coercion in the form of crime is permissible. He may well assert that it is wrong. Again, a criminal might think himself justified in coercing a victim, but deny that the authorities have a right to coerce him – Robin Hood, for example. In neither case does the criminal adopt a principle under which his own punishment falls. In the first case he acts against a principle he probably adopts. In the second case, only *his* action is justified by his principle.

Hegel's point, however, can be made in another way. If a man acts as a free, rational agent, and is aware of himself as such, then he must, in general, wish to be held responsible for the intended results of such actions. He has a right, indeed, to have his actions looked upon in this light. To treat him otherwise is to treat him like an animal or a maniac.

> Since that is so, [says Hegel] punishment is regarded as containing the criminal's right and hence by being punished he is honoured as a rational being. He does not receive this due of honour unless the concept and measure of his punishment are derived from his own act. Still less does he receive it if he is treated either as a harmful animal who has to be made harmless, or with a view to deterring and reforming him.[7]

To speak to the criminal as Hegel thinks the utilitarian must speak to him would deny him the status of a rational being. The utilitarian would have to say: 'You

[6] § 100, p. 70.
[7] § 100, p. 71.

must not think we are making you suffer because of any rational decisions you have made. Any such decisions count for us only as symptoms suggesting how we should treat you. We are doing this to you simply to alter the decisions that you, and others, will take in the future.' This, Hegel would claim, is the way to talk to a typhus-carrier, and not to a rational criminal.

The point may be reinforced in the following way: consider how implausible a utilitarian account of rewards would be, which treated rewards merely as stimuli to future effort. If such an account of rewards is unacceptable, then the corresponding account of punishment is hard to accept. For it is absurd to say: 'We will only treat you as rational and deserving when you do well.' To be rational and deserving only when one does well is not to be rational and deserving at all – for there must be the possibility of choosing the wrong course if one can choose the right course. As Hegel says in an earlier work 'this possibility of making a clear-cut opposition between virtue and vice is freedom, is the " or " in " virtue or vice " . . . the one is not unless the other is '.[8]

Hegel's argument is persuasive, though it is not new. Kant had said 'a man can never be treated simply as a means for realizing the views of another man, and so confused with the objects of the law of property '.[9] Partly, of course, Hegel is repeating the earlier conceptual point that the reason for punishing an individual is that he has committed a crime in a more or less responsible manner. But he is also urging that it is wrong to encourage the criminal to think of himself as anything but a person who deserves what is happening to him as the result, solely, of a free, rational choice he has made. Many criminals would agree with him here. Mabbott quotes a prisoner as writing 'to punish a man is to treat him as an equal: to be punished for an offense against rules is a sane man's right '.[10] However, while I would myself go along with Hegel and Mabbott's prisoner, I do not know what to say against someone who insists that, on the contrary, criminals should prefer to be regarded simply as means towards social betterment. Such an attitude is common in, for example, Soviet Russia. During the Great Purge trials, those convicted were encouraged to say how consoling they found the fact that their punishment would act as a lesson to others. At the same time, the stress upon punishment as being deserved by responsible actions was played down – for the 'guilty' usually claimed, with official approval, to have been 'dupes' of some pernicious, foreign agency.

Whichever attitude we prefer, however, it is difficult to see how Hegel's point has any effect against the claim that utility is the General Justifying Aim of punishment. The utilitarian might agree that it is wrong to encourage the criminal to think of himself as anything but a rational agent deserving what

[8] 'The Spirit of Christianity', in *Early Theological Writings*, trans. T. M. Knox (Chicago, 1948), p. 225.

[9] *Metaphysic of Morals*, quoted in Bradley's *Critical Studies*, p. 28.

[10] 'Punishment', *Mind*, XLVIII (1939), 158.

happens to him – but he can deny that his justification of punishment entails thinking of the criminal in any other light. He can simply ask: why should the fact that we punish, in general, only for utility's sake entail treating the criminal like a typhus-carrier? It is clear, he might say, that criminals often freely and rationally choose to commit crimes, and because of this they are punished. Were they like typhus-carriers we would not punish them at all. No doubt men are punished in general, and typhus-carriers isolated, for similar reasons – but that does not mean treating criminals and typhus-carriers similarly. We saw earlier that a utilitarian answer to 'Why do we have the practice of punishing?' did not involve a utilitarian answer to 'Why do we punish just those that we do?'. It can now be seen that a utilitarian answer to 'Why do we punish and treat men *in the manner* that we do?' is not entailed by a General Justifying Aim utilitarianism. Non-utilitarian considerations of degrees of responsibility and mitigation can be allowed to enter into the answer to that question. Precisely because of that, to point out that we should treat criminals as responsible agents does not force us to reject utility as the general justification of punishment.

Hegel's second, and lesser known, charge is that utilitarians must take an immoral attitude towards those who might commit crimes. Specifically, he attacks Feuerbach's contention that punishment is justified as a threat against those who would otherwise commit crimes. However, we might regard the following passage as a criticism of anyone who regards punishment justified as a form of deterrent.

> A threat presupposes than a man is not free, and its aim is to coerce him by the idea of evil. But right and justice must have their seat in freedom and the will, not in the lack of freedom on which a threat turns. To base a justification of punishment on threat is to liken it to the act of a man who lifts his stick to a dog. It is to treat a man like a dog instead of with the freedom and respect due to him.[11]

Hegel, here, sees two things wrong with regarding punishment as a threat. First, he suggests that to threaten people is to diminish their freedom, which is not justifiable. I fail to see this point. Whether we *use* the prospect of punishment *as* a threat, or merely mention it, a person is equally apprised of its existence. If his freedom of action is at all curtailed, it is done so equally by the threat and the mere mention of punishment. The second, better, point he is making is this: there is a wrong and a right way to advise a person against committing a crime. The wrong way is to say to him: 'Don't do it, because you'll be made to suffer if you do.' The right way is to say: 'Don't do it, because it's wrong – and because it's wrong, you'll be made to suffer.' It is important, that is, for men to avoid crime for the right reasons, such as thinking that crime is wrong. When Hegel speaks of treating a man like a dog, instead of with 'the freedom and respect due to him', the important word is 'respect'. It does not respect a man to assume

[11] § 99 Addition, p. 246.

that he will only avoid crime for fear of punishment. To respect him is to suppose that he regards punishment not as that which prevents him committing a crime, but as that which he will deserve if he does commit it.

It is worth quoting Kant's similar, and more full, account:

> Just as rewards ought not to be grounds for doing good deeds, so punishments ought not to be the grounds for avoiding evil deeds. If they are, a mean condition of mind tends to be set up . . . the ground for not doing an evil action should not lie in the punishment but the action should not be done because it is evil. Reward and punishment are merely subjective incentives, to be used only when the objective ones are no longer effective, and they serve merely to make up for the lack of morality.[12]

It is difficult to disagree with Kant and Hegel here – and what they say holds against certain common attitudes often associated with utilitarianism. First, clearly, they oppose the psychological egoism often underlying utilitarianism – according to which punishment would be as good a way as any other to encourage obedience to the law. Helvétius, for example, says 'tout l'art du legislateur consiste donc à forcer les hommes, par le sentiment de l'amour d'eux-mêmes, d'être toujours justes les uns vers les autres'.[13] The legislator's means, for Helvétius, is a system of rewards and punishments. Kant and Hegel insist, however, that to act rightly, to be just, is *inter alia* to act for the right reasons – and selfish hopes and fears are not amongst these. Second, what they say holds against the way some people might use the threat of punishment. It would be quite wrong for the authorities – or for a father, say – to encourage the young to keep the law simply by threatening them. Advice, reasoning, and education should come first: and threats only when all else has failed.

However, their arguments do not apply against a careful utilitarian. He need not be a psychological egoist, and he can agree that advice and education should come before carrots and sticks. All he need insist – as Kant admits – is that punishment is justified once these 'objective' incentives fail. (Strictly speaking, it is the *threat* of punishment that deters – but then actual punishment is no doubt a precondition of that threat being effective.)

When pressed into a corner, there is a question the utilitarian will always ask: 'If punishment were utterly ineffective in preventing crime, would it not be better to abolish it, since by doing so the area of suffering would be reduced at no loss whatsoever?' Nothing Kant and Hegel have said so far provides sufficient reason for answering this question in the negative – and it is the difficulty of answering this simple, but effective question in the negative that makes the utilitarian position strong. Hegel, unlike Kant, does not want to answer a straightforward 'No', I believe. His position is a more subtle one, and preferable, I think, to the more straightforward utilitarian and Kantian ones. But more of this in section III.

[12] *Lectures in Ethics*, trans. L. Infield (London, 1930), p. 56.
[13] *De L'Esprit* (Paris, 1795), p. 394.

II

Two objections often brought against retributivist theories in the past have been that retributivism (a) entails the absurd 'eye-for-an-eye' doctrine of punishment; and (b) treats punishment as a form of revenge. Hegel spends some time showing that his view of punishment contains no such elements. He himself is eager to stress the absurdity of the 'eye-for-an-eye' doctrine – the logical absurdity, that is. 'It is easy enough to exhibit the retributive character of punishment as an absurdity (theft for theft, robbery for robbery, an eye for an eye, a tooth for a tooth – and then you can go on to suppose the criminal has only one eye or no teeth).'[14] Here he is pointing out that some crimes rule out the possibility of the punishment taking the form of the crime – for example, treason or attempted suicide. More important, though, is to show up the falsity of the principle of which the 'eye-for-an-eye' doctrine is only an especially silly instance. The false principle is that there is some natural scale according to which each crime has its naturally fitting punishment, which can be read off from the scale quite independently of any actual legal system. Hegel is quite adamant that this principle is false: 'How any crime is to be punished cannot be settled by mere thinking: positive laws are necessary.'[15]

While the principle is plainly false, Hegel shows how easy it is to reach such a principle from acceptable, but misunderstood, premises. It is perfectly reasonable, he says, to describe punishment as an 'injury of an injury', or to say 'punishment should equal the crime', or that punishment 'repays' the crime. We move from these premises to the false conclusion, according to Hegel, only if we fail to distinguish between crime and punishment as external phenomena and as concepts. More precisely, we must distinguish between 'specific equality' and 'value'. The specific equality of two things is their likeness in external, empirically observable respects. Value, on the other hand, is 'the inner equality of things which in their outward existence are specifically different from one another in every way'.[16] What is wrong with the false principle is that it demands specific equality of crime and punishment – but this is absurd, since no scale informs us, independently of a legal system, what prison sentence is equivalent to the harm done by the thief. However, crimes and punishments are comparable in value. Hegel remarks: 'it is only in respect of that form [i.e. specific] that there is a plain inequality between theft and robbery on the one hand, and fines and imprisonment on the other. In respect of their "value" however, i.e. in respect of their universal properties of being injuries, they are comparable'.[17] So, when punishment 'equals' or 'repays' the crime, it does so by sharing a certain conceptual similarity to it – and not by possessing some physical, empirical aspect which is somehow similar to a physical, empirical aspect of the crime.

[14] § 101, p. 72.
[15] § 96 Addition, p. 246.
[16] § 101, p. 72.
[17] *Ibid.*

Once we consider the values of certain crimes, says Hegel, we are in a position to decide that some crimes deserve stiffer penalties than others – though we cannot by mere reflection decide what any given penalty should be. Because of this there is no merely ' arbitrary ' connection between crimes and their relative punishments.[18] We are able to do this because crimes differ in value, according to the extent to which rights are infringed.

> It makes a difference to the objective aspect of crime whether the will so objectified and its specific quality is injured throughout its entire extent, and so in the infinity which is equivalent to its concept (as in murder, slavery, enforced religious observance) or whether it is only injured in a single part or in one of its qualitative characteristics, and if so, in which of these.[19]

That is, when we enslave a person, say, we infringe more of his rights than when we steal from him. This difference should be reflected in the punishments meted out by a rational legal system. Difference in values of crimes is logically independent of differences in physical harm. There can only be a contingent connection between the ' objective value ' of a crime and its external harmfulness.[20]

Hegel, then, manages to preserve what is reasonable in such claims as ' punishment should equal the crime ', while avoiding the absurdities of the ' natural scale ' principle, and the implausible suggestion that there is merely an arbitrary, conventional connection between certain crimes and their relative punishments.

Faced by the second charge, that retributivism makes punishment a form of revenge, Hegel first shows that he is at liberty to make important conceptual distinctions between the two; and then shows that what makes revenge undesirable does not also make punishment undesirable.* While he does make clear conceptual distinctions, Hegel admits that there are marginal cases. For example, when the heroes and knights-errant of old set out to redress wrong, they were neither pure avengers, nor pure instruments of punishment. In general, though, there are clear differences. In the first place, revenge is paradigmatically ' the act of a subjective will ',[21] whereas the will of those who punish is ' the universal will of the law '.[22] That is, revenge can only be sought by the injured party, or by one closely related to him in some manner. Those who punish, however, are not the injured parties, and not specially related to the injured parties. On the contrary, if a judge is personally involved in a crime, he must not sit in judgment upon the case. Second, punishment is ' the business of a public authority ',[23] whereas an act of revenge is not the act of anyone with legally constituted authority. So punishment is not merely not administered by injured parties, it is administered by persons possessing authority. Authority does not belong to the

[18] § 101, p. 73.
[19] § 96, p. 68.
[20] *Ibid.*
* *Editor's note* – Cf. K.-H. Ilting, pp. 95–6.
[21] § 102, p. 73.
[22] § 102 Addition, p. 247.
[23] § 219, p. 140.

avenger. Third, there is a necessary distinction between the motives involved in revenge and punishment. An act of revenge is necessarily motivated by feelings resulting from an injury to oneself or to a person related to oneself in some way. I cannot be seeking revenge if I search for the killer of a man quite unknown to me, and whose life and death I have simply read about in the newspaper. The motive behind punishing a man, however, is not the ' subjective and contingent retribution of revenge ', but the ' genuine reconciliation of right with itself '.[24] The authorities, that is, seek right for its own sake, quite independently of any emotional considerations. This is not so in the case of revenge.

Apart from pointing to these conceptual distinctions, Hegel is also able to show that some of the demerits of revenge do not belong to punishment. First, he argues, the victim of an act of revenge is likely to regard the act as a ' new transgression ', since it was not the act of any authority. Consequently he is likely to seek revenge upon the avenger. Revenge, consequently, is ' contradictory in character, it falls into an infinite progression, and descends from one generation to another ad infinitum '.[25] No doubt Hegel has vendetta in mind here. Punishment, though, since it is not carried out by individuals *qua* individuals with personal motives, will not set up such an attitude in the criminal – except in those rare cases where a released prisoner seeks out the judge or prosecutor in order to terrorize him. A second problem with revenge is this: since it is motivated by strong feelings, the avenger may not be concerned to decide just how serious the wrong done to him was, and so may carry his revenge to quite inordinate lengths. As Hegel puts it: ' the person wronged . . . views the wrong not as something qualitatively and quantitatively limited but only as wrong pure and simple, and in requiting the injury he may go too far, and this would lead to a new wrong '.[26] Since legal authorities are not similarly motivated – since they are able to assess the seriousness of a crime objectively – they will not, with any frequency, ' go too far '.

Hegel is able to show, then, that the question of whether punishment is justified is quite separate from the question of whether revenge is justified. He is also able to show that what makes revenge undesirable does not similarly make punishment undesirable. Authorities and individuals are to be judged in different ways. This, taken together with his rejection of the first charge, shows that Hegel is quite able to resist attempts to foist upon retributivism patently unwelcome implications. If a non-utilitarian view is unacceptable, it is not because it has such implications.

III

It is, of course, uninteresting to describe Hegel or anyone else as a retributivist, since that title tends to be given to anyone who rejects a utilitarian justification of

[24] § 220, p. 141.
[25] § 102, p. 73.
[26] § 102 Addition, p. 247.

punishment. As such, the onus is on Hegel to refute the charge that he, like other retributivists, has no theory at all beyond a denial of utilitarianism, together with a bald assertion that punishment is justifiable. Such a charge would be a just one to bring against Kant, I think – but not against Hegel. So far, however, his arguments do not operate against a person who treats utility solely as the General Justifying Aim of punishment. Any effective arguments must come from the positive theory that Hegel has.

The crux of this positive theory is contained in the claim that punishment ' annuls ' crime. Hegel says, for example, that when crime is punished ' coercion is annulled by coercion '[27]: or that to punish the criminal is ' to annul the crime '.[28] He also speaks of punishment as the ' negation of the negation '.[29] Properly interpreted, these remarks form the basis of a plausible justification of punishment. Most writers on Hegel, however, have either repeated what he says in his own terms – which is unhelpful: or they have confessed to not understanding him. Benn and Peters, for example, say ' it is not easy to see how a wrong can be annulled: what is done cannot, in a literal sense, be undone '.[30] Certainly, if one does not look very closely at what Hegel says, it is possible to discover apparent nonsense. He says that crime is an ' infringement of right ', which, in turn, we are told is ' only an injury to a possession or to something which exists externally '.[31] Clearly it is absurd to speak of annulling damage to a person's body – which is part of property in Hegel's sense of ' property '. One has to look closer then.

There is one interpretation of how punishment is justified as annulment that will not do. According to H. A. Reyburn, in crime ' the negation and subordination of right by the will is intrinsically a failure: it is a self-contradiction which demands to be sublated '.[32] The ' self-contradiction ' is meant to be that between (1) the crime as an act of a free man; and (2) the crime as an attack upon free men. That there is such a contradiction is supported by this sentence in Hegel: ' force or coercion is in its very conception directly self-destructive because it is an expression of a will which annuls the expression or determinate existence of a will '.[33] So, according to Reyburn, it is because a crime is by nature ' self-contradictory ' that it requires to be ' sublated ' by punishment: that is, punishment shows the crime up for what it is, ' self-contradictory '. Frankly, I do not understand this. It seems to mean that since a crime is a piece of inconsistent behaviour, it must be punished. But even if it is inconsistent, why should it be punished? No doubt inconsistent behaviour should be brought to the attention

[27] § 93, p. 67.
[28] § 99, p. 69.
[29] § 82, p. 64.
[30] *Social Principles and the Democratic State* (London, 1959), p. 177.
[31] § 98, p. 69.
[32] *The Ethical Theory of Hegel* (Oxford, 1921), p. 144.
[33] § 92, p. 67.

of the agent – this might be the job of a psychoanalyst – but I do not see how inconsistency *per se* merits punishment. I think there is a sense in which we can speak of crime being a ' contradiction ', but it is not the sense Reyburn has picked upon. Perhaps Hegel does think that crime is ' self-contradictory ' in that sense, but I do not think that this is the important sense that Hegel operates with.

My account of Hegel's theory will take the following form: first, I shall sketch a justification of punishment in non-Hegelian terms. Then I shall argue that this is essentially Hegel's own justification. Finally, I shall see what replies can be given to objections against Hegel on this interpretation.

First, then, the sketch. The existence of the tree in my garden is logically independent of any person's having gone through some rule-governed, conventional (including verbal) behaviour. The existence of the vast majority of things is independent in this way. However, there are some existents of which this is not true. For example, whether or not there exists a promise on *A*'s part to do something depends upon *A*'s having gone through some rule-governed procedure. (He may have said ' I promise . . .', or nodded his head in reply to ' Do you promise . . .? ', etc.) I shall refer to such existents as ' performatees '. This is to bring out (a) the fact that they depend upon rule-governed performances or procedures for their existence; and (b) the relation of what I am saying to certain well-known theses of J. L. Austin concerning ' performative utterances '. Austin points out that for certain performances to ' come off ', such as promising, ' there must exist an accepted conventional procedure having a certain conventional effect '.[34] Similarly, there must be such procedures for certain things, performatees, to exist. Examples of performatees would be promises, marriages, guarantees, gifts, contracts, bets, names. An interesting one, also, would be sovereignty, on Professor Hart's account. Sovereignty only belongs to a person or body in virtue of certain ' secondary rules ' – rules, that is, which ' confer powers, public or private . . . which lead . . . to the creation of . . . duties or obligations '.[35] At some point, in other words, rules must be stated or implicitly govern behaviour, if someone is to be counted as the sovereign.

Often the absence of a certain conventional procedure does not entail the non-existence of the relevant performatee. The position may be less clear than that. Has the person who says ' I promise . . .', with his fingers crossed, promised or not? We might say ' No ', but more likely we shall say ' Yes, in a way ', or ' Yes, but it doesn't count ', or ' Yes and no – not *really* '. Austin gives the name ' infelicitous ' to performances which fail to be paradigmatic in some way or another. A further example: the drunken vicar who ' christens ' the child ' Satan ' has christened ' infelicitously '. Correspondingly, we may speak of ' infelicitous performatees ' – for example, the insincere promise, the vicar's christening. One way in which a performance may be infelicitous, according to

[34] *How to do Things with Words* (Oxford, 1963), p. 14.
[35] *The Concept of Law* (Oxford, 1961), p. 79.

Austin, is if certain subsequent behaviour does not take place. If I hand my friend a parcel at Christmas, and demand it back a few days later, did I make him a gift or not? Well, a very funny sort of gift. We will be particularly concerned with this type of infelicity.

Legal rights are performatees. Whether or not a person has the right to do x is logically dependent upon some rule or convention by reference to which such a right may be ascribed. The rule may exist in the form of a written statute, or implicitly in the form of judicial decisions, and other ways. Now such rules, whilst necessary for the existence of rights, are not sufficient – not sufficient, at least, for the ' felicitous ' existence of rights. A story is told of an Oxford student who insisted upon his ' right ' to a pint of ale during a recent examination, on the basis of an unrepealed medieval statute. Clearly, though, there is a good sense in which the student had no such right. Again, it is not clear that people during wartime have the rights that the law states they have, even before special promulgations expressly deny them these rights.

There is one very important question to ask if we are trying to decide whether persons have rights or have them, at least, in any straightforward, paradigmatic manner. The question is: what happens to those who try to prevent these persons from doing what they have a supposed right to do? If nothing happens to them – if no attempt is made to apprehend and punish them – there is very strong reason to suppose that the persons had no such right at all. One reason for saying that people do not have their usual rights in wartime is that there is not even the presumption that the military authorities should be charged with the commission of certain crimes – as in cases of requisition, for example. Again, the fact that no one would dream of censuring the examiner who refused the student his pint of ale is a good reason for saying the student had no such right, or had it only in some jokish sense. The point is this: attempting to apprehend and punish men is a form of procedure necessary to establish that rights of a certain kind exist in any paradigmatic manner. If a man is not liable to punishment for an action, that is strong reason for supposing he committed no crime, that he infringed no rights.[36] Of course, we require a type-token distinction here. It is only failure to attempt to punish a class of actions which is strong reason for supposing that these actions are not criminal infringements of rights.

This seems to be plausible, and if it is, new light is cast upon the justification of punishment. Most people, and certainly utilitarians, regard punishment as a useful means towards the preservation of rights. But if the above view is correct, the connection between rights and punishment is not an empirical ' means–ends ' one, but is logical. Unless people are generally apprehended and punished for preventing others doing x, there is reason to suppose that the latter do not have

[36] This seems to me to be the element of truth in Kelsen's claim that ' Law is the primary norm, which stipulates the sanction . . .' *General Theory of Law and State* (Cambridge, Mass., 1945), p. 61.

the right to do x – certainly not a ' felicitous ' right. At the very least, a charge of gross insincerity could be levelled against legal authorities who stated that men did have certain rights, but made no attempt to protect those rights against violators. (Think of the ' rights ' of Jews in Nazi Germany *before* the Nuremberg laws explicitly took them away.)

If all of this is so, then the justification of punishment is very simple. It is the same as the justification of the rights which crimes violate. If it is important that men have legal rights, it is important that there be punishment – for without the latter, there could not, logically, be the former. Analogously, the justification of marriage ceremonies is one with the justification of marriage. Unless there is some form of ceremony there is no marriage. The ceremony, it should be noted, is not a means towards getting married in the way the initial courting might have been. Failure to grasp such a point might be due to the fact that one says ' We should punish him *because* he has infringed a right ', with the apparent implication that there is a complete distinction between punishment and rights. But we also say ' He's putting on the ring because he's getting married ', and we also say ' you ought to pay him because he's earned it '. And in these cases, getting married is not something distinct from putting on rings and the like: nor is one's obligation to pay a man logically distinct from his having earned it.

As I say, I find such an account plausible. Clearly, though, it would have to be expanded at much greater length to command acceptance. I have no time for that. My task is to show that Hegel had some such account in mind, and to rebut certain predictable objections. I believe we can treat Hegel as claiming, albeit in quite different terms, that rights are performatees which logically depend for their felicitous existence upon the punishment of those who infringe them. How can we superimpose Hegel's talk of ' annulment ' on to the above account?

Hegel uses ' annul ' in two senses, corresponding to the two ways in which crime may be regarded. From one point of view, a crime is an ' injury to a possession or to something which exists externally '. Annulment of the crime in this sense can only be ' the satisfaction given in a civil suit, i.e. compensation . . . so far as any compensation can be found '.[37] This is clearly a metaphorical sense of ' annul ', since compensation does not make the damage actually disappear. Also, as Hegel sees, only certain crimes can be ' annulled ' in this sense – those, namely, where compensation is possible.

Crime, however, can be looked at from a quite different point of view. The criminal is implicitly denying that his victim has certain rights. This follows from Hegel's claim that a crime is ' an injury which has befallen the implicit will ', and from his claim that to talk of the ' implicit will ' is to talk of ' the right or law implicit ' within it.[38] Rights, that is, belong to persons as free agents – in

[37] § 98, p. 69.
[38] § 99, p. 69.

virtue of their ' wills '. Any attack upon a person's property is an implicit denial of that person's rights as a free agent.

How is it that crime, regarded as an ' injury which has befallen the implicit will ', can be annulled? Hegel, let us be clear, is quite definite that crime is *annulled* – literally made nothing at all. He says that an injury to the will is ' inherently . . . nothing at all '[39]: that it is ' only something negative '[40]: that it has no ' positive existence '.[41] What he means here is *not* that an injury to the will did occur, and is later spirited out of existence. He means that there never was such a thing as an injury to the implicit will. The crime was, in intention, a demonstration that the victim had no rights. But the victim did have these rights, and so there never was such a thing as the demonstration that he did not have them. So, to speak of annulling the crime is to speak of whatever it is that establishes that the victim did have those rights which were implicitly denied by the criminal. What establishes this, of course, is punishment. But before going on to that, it is worth pointing out the parallel between annulment in this context, and annulment of verdicts given at trials. When the verdict of Guilty is annulled, we do not spirit away the judge's having given that verdict. Like damage to property, the verdict is part of history, and cannot be erased from it. What we do is to run through a procedure establishing that there never was such a thing as the defendant's guilt. Similarly, to establish that there never was an absence of rights on the victim's part is to annul the crime.

But how does punishment succeed in annulling the crime? According to Hegel, we must punish the crime, for ' otherwise [it] would have been held valid '.[42] In an earlier passage, he states that right, via punishment, ' makes itself actual and valid, while at the start it was only something implicit and something immediate '.[43] I can only interpret these remarks as making the same point outlined in the account given above. Only if we punish a certain class of actions is there sufficient reason to suppose that these were actual infringements of rights. To establish the felicitous existence of rights we must punish the relevant actions. Hegel, of course, does not speak of infelicitous rights: he speaks of them as ' only . . . implicit and . . . immediate ', as opposed to ' actual and valid '. Punishment serves to demonstrate that the victim did have rights, despite the criminal's implicit denial of them – a denial, therefore, which is not ' valid '. Punishment, Hegel says, serves ' to restore the right '[44] – that is, to establish with certainty that the right exists.

It is now fairly easy to interpret some of Hegel's other well-known remarks. When a crime is punished, he says, ' right reasserts itself by negating this negation of itself '.[45] This can be interpreted quite literally. A crime involves the

[39] § 97, p. 67.
[40] § 99, p. 69.
[41] *Ibid.*
[42] § 99, p. 69.
[43] § 82, p. 64.
[44] § 99, p. 69.
[45] § 82, p. 64.

implicit assertion that the victim lacks rights. Punishment establishes the claim that he had such rights. Punishment, then, is a denial of a denial: a negation of a negation.

Hegel also remarks that punishment is ' not only right under certain conditions but necessary '.[46] This cannot mean physical necessity: nor can it mean moral necessity, since Hegel explicitly contrasts being right, and being necessary. The only plausible interpretation is that Hegel means logical necessity. Punishment must logically follow crime if we are to speak of there being rights and crimes at all.

My interpretation can be supported by glancing at some of Hegel's earlier writings. In his much earlier work, ' The Spirit of Christianity ', Hegel discusses both legal and divine punishment. At one point he states fairly explicitly what I take to be the essence of his account. ' The law cannot forgo the punishment, cannot be merciful, or it would cancel itself.'[47] While this is false if applied to a particular (token) punishment, it makes the point that, in general, rights without punishment are no rights at all, or at best infelicitous ones. Second, there is a passage in *Phenomenology of Mind* where Hegel makes the point, albeit in obscure fashion, that rights depend for their existence upon far more than the mere assertion by authorities to that effect. Supposedly he is talking of the system of rights in Antonine Rome. In this system, the official assertion of men's rights was not, apparently, backed by appropriate procedures and practices. In this state of affairs, says Hegel, ' Consciousness of Right . . . experiences the loss of its own reality: discovers its complete lack of inherent substantiality: and to describe individual as a " person " is to use an expression of contempt.'[48] J. N. Findlay interprets this passage, and subsequent ones, as making the point that ' the mere abstract assertion of personal rights pass[es] over into the doubt over the question as to whether persons have any rights at all '.[49] If so, Hegel was aware at this stage of the logical connection between rights and practices, including no doubt the practice of punishing.

Finally, before considering some objections, I shall quote a passage from Hegel without comment – for it should now be clear how this difficult passage should be interpreted. I consider it as the fullest, although one of the most obscure, statements of his view:

> The nullity [of crime] is that crime has set aside right as such. That is to say, right as something absolute cannot be set aside, and so committing a crime is in principle a nullity: and this nullity is the essence of what a crime effects. A nullity, however, must reveal itself to be such: i.e. manifest itself as vulnerable. A crime, as an act, is not something positive, not a first thing on which punishment would supervene as a

[46] § 93, p. 67.
[47] In *Early Theological Writings*, p. 226.
[48] Trans. J. B. Baillie, 2nd ed. (London, 1949), p. 505.
[49] *Hegel: A Re-examination* (London, 1958), p. 119.

negation. It is something negative, so that its punishment is only a negation of the negation. Right in its actuality, then, annuls what infringes it and therein displays its validity, and proves itself to be a necessary, mediated reality.[50]

At least two objections might be raised against Hegel on my interpretation of him. The first is this: Hegel talks of crime as containing a denial by the criminal of his victim's rights. It is this aspect of the crime that is supposedly annulled. However, is it not simply false to suppose that the average criminal – as opposed to an intellectual anarchist – is denying that his victim has rights? I have already dealt with this question partially in section 1, where I agreed that the criminal need not, at any level of consciousness, be denying rights. Now it is not completely clear that Hegel did think that the criminal was doing this at any conscious level. That he did is suggested by such a sentence as '[the] sole positive existence which the injury [to the implicit will] possesses is that it is the particular will of the criminal'.[51] But whatever he meant, it is possible to lend good sense to the claim that the crime involves a denial of rights, without making reference to the criminal's actual intentions. What we can say is this: the crime is a denial of rights in that, were it to go unpunished, there would be good reason to suppose the victim did not have the rights. It would then be *as if* an explicit denial of rights had been made, and had gone unchallenged. An analogy might help. A pupil may ask his teacher a series of difficult questions with the sole intention of gaining enlightenment. But we might describe him as 'putting the teacher to the test'. It is a test in that, were the teacher unable to answer the questions, he would have displayed a lack of competence. It would be *as if* he had taken a test and had failed it. In my discussion of Hegel, I spoke as if the denial of rights involved in crime was purposive and intentional. But there is no need to speak in this way. The denial of rights exists as an aspect of crime in so far as failure to punish it would be tantamount to admitting that an explicit denial would have been correct.

The second objection is this: let us admit that the existence of rights is only established if some action is taken against those who infringe putative rights. But why should this action take the form of punishment? Why should it not take the form of public denunciation, for example? If not, there must be further explanation of why the form should be that of punishment. The first point to note is that Hegel does distinguish between punishment and annulment. He says 'if crime and its annulment (which later will acquire the specific character of punishment) . . .'[52] Thus he does not think that punishment is necessarily the sole means of annulment. Indeed, as we have seen, he does admit of cruder, less satisfactory forms – such as those employed by the heroes and knights-errant of

[50] § 97 Addition, p. 246.
[51] § 99, p. 69.
[52] § 99, p. 69.

old. However, he clearly thinks that punishment is the form that annulment must take in our society. And here we might surely defend him. The action taken against criminals must, according to our previous argument, be at least as strong as is required to establish the paradigmatic existence of rights. Now it seems, as a matter of empirical fact, that only punishment possesses the required strength. If the authorities merely denounced crimes against, say, a racial minority, there would be good reason to suppose the authorities did not take these rights seriously. Certainly members of this minority could complain: 'You say we have rights and you denounce those who violate them. But such rights are a mockery. What sort of rights are they which men can violate and then remain free to violate again and again?' Of course, it is imaginable that there should exist a society in which denunciation was regarded as the ultimate disgrace one could suffer, and was as feared and as effective as punishment is today. I do not think Hegel need deny that possibility. But he could insist, quite rightly, that such an alternative procedure is highly unlikely to gain the strength that punishment has. Alternatively, he could say that if denunciation did become as unwelcome, generally, as punishment, then we simply have a new form of punishment. We used to speak of our headmaster, for example, as punishing us by exposing us before the rest of the school and giving us a dressing-down.

It should now be clear how Hegel can reply to a utilitarian. At the end of section 1 I mentioned a nagging question the utilitarian is wont to ask – a question it is very difficult to answer in the negative. Would not a society in which punishment was quite ineffective in preserving rights be better off without it? Hegel does not answer this question in the negative. He shows the question is faulty. To ask that question is like asking 'Wouldn't it be better to get married without going through any form of ceremony?' Just as one cannot get married without going through a ceremony, there cannot be rights, felicitous ones at least, unless we punish violators. To justify rights is *ipso facto* to justify punishment, with the qualifications I have made. What justifies rights, if anything, is another question.

Hegel's account of war

D. P. VERENE

Hegel's account of war, although primarily given in a few statements in the *Phenomenology of Mind* and the *Philosophy of Right*, has been the subject of some of the most divergent interpretations of his thought and has engendered some of the strongest feelings regarding it. It has been a point on which the interpretation of Hegel's theory of the state has often turned. Opinion has varied from the view that Hegel advocates a nationalistic, totalitarian state and regards war as a fundamental and glorious activity [1]; to the view that Hegel is a conservative, reflecting the political situation of his time and acknowledging the fact that war plays a role in the actual life of nations [2]; to the view that Hegel's political philosophy is essentially compatible with the liberal constitutional model of the state and hence is not an enemy of the pursuit for peace.[3] These interpretations of Hegel's statements on war involve the scholarly interest in developing a consistent reading of a major figure but they have behind them a larger need, dictated by the conditions of our own time, to understand the problem of war itself.

My intention is: (1) to assess the views that can be taken of Hegel's statements on war; and (2) to decide what they indicate for the problem of war in general. Questions concerning Hegel's account of war cannot be answered apart from an assessment of their place within Hegel's philosophy as a whole. Hegel's statements on war, if approached primarily within the context of his political philosophy, can lend themselves to either a militaristic or a non-militaristic inter-

[1] For example, Karl R. Popper, *The Open Society and Its Enemies*, vol. II, *The High Tide of Prophecy : Hegel, Marx and the Aftermath* (London, 1945), ch. 12. See also Hans Kohn, ' Political Theory and the History of Ideas ', *Journal of the History of Ideas*, XXV (1964), 305. Kohn's criticism is directed against the defense of Hegel's views on war in John Plamenatz, *Man and Society*, vol. II (New York, 1963).

[2] I take this to be the standard or most frequently held view. See, for example, F. S. Northedge, ' Peace, War, and Philosophy ', *The Encyclopedia of Philosophy*, vol. VI (New York, 1967), 63–4; George H. Sabine, *A History of Political Theory* (New York, 1937), pp. 664–7, 753; J. N. Findlay, *Hegel : A Re-examination* (New York, 1962), p. 331.

[3] See Shlomo Avineri, ' The Problem of War in Hegel's Thought ', *Journal of the History of Ideas*, XXII (1961), 463–74. That Hegel's political thought is part of the mainstream of Western European political theory not incompatible with that of Hobbes, Locke, Montesquieu, and Rousseau is argued by Z. A. Pelczynski in his introductory essay to *Hegel's Political Writings*, trans. T. M. Knox (Oxford, 1964). See the exchange over Pelczynski's interpretation between Hook and Avineri: Sidney Hook, ' Hegel Rehabilitated? ', *Encounter*, XXIV (Jan. 1965), 53–8; Shlomo Avineri, ' Hook's Hegel ', *Encounter*, XXV (Nov. 1965), 63–6. Reprinted in W. Kaufmann (ed.), *Hegel's Political Philosophy* (New York, 1970).

pretation. The commentators have approached Hegel's views on war primarily within this context and have engendered a dispute that in principle can have no resolution. Beyond the textual question is the larger question of what Hegel has shown or not shown about the problem of war itself. Has Hegel shown war to be a necessary part of the relations between nations or is his view in some way compatible with the concept of permanent peace? The answer to this question depends upon a decision regarding what Hegel's political philosophy is fundamentally about. It is my intention to deal first with the question of the interpretation of Hegel's statements on war and then, using this as a base, to inquire into what Hegel offers for the understanding of the nature of war itself.

Hegel's statements on war range from remarks in his early writings such as *The German Constitution*, written and revised between 1799 and 1802,[4] to the *Philosophy of Right* (1821) and his lectures on philosophy of religion, philosophy of history and philosophy of fine art during the latter part of his career.[5] Hegel's fullest statements on war are contained in his treatment of the initial stage of spirit (BB. *Der Geist*) in the *Phenomenology of Mind* and his theory of the state in the final section of the *Philosophy of Right*.[6] Hegel's views on war do not appear to have undergone any substantial change from his first to his last writings. In fact, in explaining his view on war in the *Philosophy of Right*, Hegel quotes from his essay ' On the Methods of Scientific Treatment of Natural Law ' (*Über die wissenschaftlichen Behandlungsarten des Naturrechts*), from the same early period as *The German Constitution*.[7] Two themes are evident in Hegel's statements on war: (1) the relevance of war to the relationship of individuals to the state; and (2) the role of war in defining the state as a distinct political entity or a politically organized nation and its relations with other nations. These two themes run side by side throughout Hegel's statements on war and appear as essential parts of his discussion of the state.

Hegel regards war as something to be explained. It is, for him, one of the phenomena of human affairs, having a particular content and structure comprehensible by human reason. Hegel states:

> War is not to be regarded as an absolute evil and as a purely external accident, which itself therefore has some accidental cause, be it injustices, the passions of nations or

[4] *Political Writings*, pp. 143–4, 208–10. See also the quotations from ' The System of Ethics ' (*System der Sittlichkeit*) and ' On the Methods of Scientific Treatment of Natural Law ' (*Über die wissenschaftlichen Behandlungsarten des Naturrechts*) in Avineri, ' Problem of War in Hegel's Thought ', pp. 463–4.

[5] For a compilation of quotations on war from Hegel's lectures, see H. G. ten Bruggencate, ' Hegel's Views on War ', *Philosophical Quarterly*, I (1950); and Constance I. Smith, ' Hegel on War ', *Journal of the History of Ideas*, XXVI (1965), 284–5.

[6] Hegel's views on war in the *Philosophy of Right* are also stated in the third part of the *Encyclopaedia*. See William Wallace, *Hegel's Philosophy of Mind* (Oxford, 1894), §§ 545–7.

[7] *Hegel's Philosophy of Right*, trans. T. M. Knox (Oxford, 1942), § 324. See also Herbert Marcuse, *Reason and Revolution : Hegel and the Rise of Social Theory* (Boston, 1960), p. 55.

the holders of power, &c., or in short, something or other which ought not to be. It is to what is by nature accidental that accidents happen, and the fate whereby they happen is thus a necessity. Here as elsewhere, the point of view from which things seem pure accidents vanishes if we look at them in the light of the concept and philosophy, because philosophy knows accident for a show and sees in it its essence, necessity.[8]

For Hegel the task of philosophy in general is to explain that which has occurred. Philosophical explanations involve the analysis of particular forms of experience and the showing of how they are interrelated with each other such that experience itself can be viewed as a whole.[9] For Hegel the task of political philosophy is to analyze and relate together those forms of experience through which ethical and political life occurs.[10] War, being one of the forms of political life, must have a place in the philosophical account of the political. War can no more be regarded as accidental to the activity of the state than can peace. War and peace are both modes of activity in the actual life of states and are to be part of the philosophical analysis of the state. The state along with the forms of the family and civil society comprises the general structure of the ethical–political world.

(1) Hegel regards war as an important factor in the relation of the individual to the state. War makes the individual citizen realize that his existence is bound up with a larger whole. War, by having within it the possibility of the destruction of the existing social order, forces the individual citizen to realize that his private world of family, marriage and property ultimately exists because of the public world of the state. Through war or its threat each citizen is made to realize in concrete terms that the future of his private world is inexorably tied to the future of his state. Hegel asserts:

> While, on the one hand, war makes the particular spheres of property and personal independence, as well as the personality of the individual himself, feel the force of negation and destruction, on the other hand this engine of negation and destruction stands out as that which preserves the whole in security.[11]

War is the security of the state in that it forces its citizens to experience the state as a particular entity. In order to defend his state the citizen must experience his state as something more than the general context in which he pursues his private goals and holds property. In order to defend his state the citizen must internalize the general character of his state and see it as a particular state set off against other states. War also makes the individual experience himself in a new way. War makes individuals feel the finitude of their own existence; they 'feel the

[8] *Philosophy of Right*, § 324.

[9] See the concluding comments to the preface to the *Philosophy of Right*, especially the owl of Minerva metaphor, pp. 12–13, and also Hegel's description of the purpose of philosophy in *The Phenomenology of Mind*, trans. J. B. Baillie, 2nd ed. (London, 1949), pp. 80–91.

[10] *Philosophy of Right*, §§ 1–2.

[11] *Phenomenology of Mind*, p. 497.

power of their lord and master, death'.[12] War makes the individual realize not only the nature of his citizenship in the state, it also makes him realize the temporal character of his own existence.[13]

(2) Hegel regards war as an important factor also in the relation of state to state. War is an activity that originates in the clash of wills and interests of individual states: 'It is as particular entities that states enter into relations with one another.'[14] States relate to each other not in terms of a common context but in terms of their own customs, peculiarities, and passions. Thus the realm of international relations is one of abiding contingency in which war is always in the background, residing as the means for ultimately settling any dispute. War can occur as the result of any incident, for a state may regard its honor and interests at stake in any of its activities no matter how small.[15] War, once resorted to by states, however, does not entail the abandonment of their recognition of each other as states. War is undertaken as a limited action with peace as its end.

> Hence in war [Hegel states], war itself is characterized as something which ought to pass away. It implies therefore the proviso of the *jus gentium* that the possibility of peace be retained (and so, for example, that envoys must be respected), and, in general, that war be not waged against domestic institutions, against the peace of family and private life, or against persons in their private capacity.[16]

War in Hegel's account is not an act of total destruction undertaken by one nation against another. War arises from the fact that politically organized nations act as individuals without a common superior; thus no treaty or agreement is ultimately binding. Any treaty may be broken when it is not in the interest of one of the parties. The relation of each nation to others is contingent on the advancement of its own interests. Thus the world of nation-states is characterized by the cycle of war and peace and the return to war.

How are we to understand Hegel's views on war? The alternatives presented by Hegel's commentators noted at the beginning of this essay – that Hegel can be taken as either a totalitarian, conservative, or liberal – can be viewed as responses to the question of whether Hegel in his statements on war is *prescribing* or *describing*.[17] The totalitarian view takes Hegel's statements as prescriptive.

[12] *Ibid.* p. 474. See also *The German Constitution* in *Political Writings*, pp. 143–4.

[13] *Philosophy of Right*, § 324 and Addition. Hegel's discussion of war in the *Phenomenology of Mind* (pp. 466–99) and in the section of the *Philosophy of Right* titled 'Sovereignty *vis-à-vis* foreign States' (§§ 321–9) seems primarily directed to the relation of the individual and the state. His discussion of war as a feature of the relations between states occurs primarily in the section on 'International Law' in the *Philosophy of Right* (§§ 330–40).

[14] *Philosophy of Right*, § 340.

[15] *Ibid.* § 334.

[16] *Ibid.* § 338.

[17] Smith, 'Hegel on War', applies this distinction to Hegel's statements on war to show that at least in his later works Hegel's intent was to describe, not prescribe. I agree with Smith that this

Hegel is regarded as advocating war and nationalism and as providing a theoretical basis for the twentieth-century fascist states. The conservative view takes Hegel's statements as essentially descriptive. Hegel is regarded as reflecting the actual state of affairs between nations; his view is regarded as prescriptive only to the extent that he may have reflected some of the positive attitudes toward war of his own day. It is often said on this view that Hegel's statements on war hold only for a limited or conventional war and would probably not have been made if Hegel could have known of the possibility of a global war or war of total destruction. The liberal view is most frequently cast as a reaction to the view that Hegel is a supporter of totalitarianism. The liberal view finds Hegel's statements on war insufficient to support the claim that Hegel advocates war. Yet it does not hold that his political philosophy contains a plan for peace. The liberal view takes a strong stand on the point that Hegel is not an enemy of the constitutional form of government and the open society, and generally takes no definite stand on the interpretation of Hegel's statements on war.

The difficulties concerning a decision on the meaning of Hegel's statements on war arise from the procedure of approaching them wholly or largely within the confines of Hegel's *political* thought. I contend that no amount of concentration on nor dissection of Hegel's statements on war can solve the problem of their meaning. Such an approach seems to result in nothing better than the current antinomy between a prescriptive and a descriptive reading. The zealous tone and strong phraseology of some of Hegel's statements, particularly in regard to the effect of war on the individual's awareness of the finitude of his own existence and the importance of war in solidifying the citizens of the state, give support to the view that Hegel's statements are prescriptive. The somewhat factual and neutrally cast statements Hegel makes concerning the way war functions in relations between states give support to a descriptive interpretation. The traditional way out of this dilemma – to regard Hegel as a conservative, claiming that his views are the result of the political situation of Germany of his time and the international situation of the Napoleonic era – is too superficial to be satisfactory. It is no more satisfactory to explain away Hegel's political views by an appeal to the historical conditions of their formulation than it would be to explain away his epistemological views by such an appeal. Hegel's political views and especially his views on war are integral parts of his philosophy and must be met on their own terms. The solution to the problem of the oscillation between a prescriptive and a descriptive interpretation rests not on a closer reading of the texts but on a placing of Hegel's statements on war in their proper relation to his philosophy in general. In order to solve the problem of what Hegel's statements on war mean we must ask what philosophical statements themselves are for Hegel.

distinction is useful for structuring approaches to Hegel's views on war, but for the reasons that follow below do not find it, as does Smith, a sufficient mechanism for solving the problem of the logical status of Hegel's statements.

Hegel's account of war

The philosophical proposition, for Hegel, aims at the presentation of actuality (*Wirklichkeit*). Philosophy, Hegel points out in the preface to the *Phenomenology of Mind*, is neither the production of edifying discourses, construction of proofs, nor the formulation of inductive generalizations. Philosophy aims at a dialectical presentation of experience and thus derives its method directly from a reflection on the oppositional process inherent in consciousness's own act of knowing the object.[18] The philosophical proposition is itself internally dialectical as is consciousness. In the proposition the predicate brings forth an aspect of the subject and in so doing alters the subject so as to produce a new subject. The predicate stands to the subject as one of its determinations.[19] The attaching of subjects to predicates in the philosophical or ' speculative proposition ' is a formal expression of the way in which philosophy builds its total account of experience. Such an account is morphogenic. It distinguishes the various forms or frameworks in which the mind (*Geist*) apprehends its object and orders these in a developmental scheme from the least determinate to the most determinate. Mind is shown to be an internally systematic process that forms itself in a manner analogous to the relationship internally expressed in the philosophical proposition.[20]

The presentation of actuality, for Hegel, is accomplished neither by prescribing nor by describing. Philosophy neither formulates imperatives, whereby states of affairs may be judged or actions directed, nor does it generalize from facts. The philosophical proposition fits neither of these modes; instead it portrays the frameworks of mind that are to be presupposed in order that prescribing and describing are possible. Philosophy accomplishes this by taking the most general form of human consciousness and analyzing it into further forms until the entire system of experience is before us. This is as much a process of analyzing one form out of another as it is a process of taking all the forms actually before us and ordering them in a development. Hegel's statements have a descriptive element in that they grow from reflection on actual states of affairs. They have a prescriptive element in that they cause us to consider alternatives. Hegel's statements, unlike descriptions, do not form facts but form the frameworks through which facts can be formed; and, unlike prescriptions, they do not form actions but form the frameworks wherein actions can be formed.*

In order to solve the problem of the status of Hegel's statements on war, the status of his philosophical statements generally must also be considered in relation to the works in which his views on war occur. The *Philosophy of Right*, the basic work of Hegel's political philosophy, comprises a section of the second part

[18] *Phenomenology of Mind*, pp. 139–45.

[19] *Ibid.* pp. 84, 120–1.

[20] *Ibid.* pp. 88–91.

* *Editor's note* – A similar account of Hegel's philosophical method is given by R. N. Berki, p. 200.

of Hegel's total system of spirit.[21] It is thus part of a continuous construction of thought, traceable back to the *Phenomenology of Mind*. The *Phenomenology* presents mind as a series of stages of consciousness wherein the concept is uncritically or un-self-consciously joined with its content. This series terminates in the stage of Absolute Knowledge, or the realization by consciousness of its ability to give itself form wholly in terms of concepts divorced from specific content. The *Science of Logic* retraces the ' schema of movement ' of the *Phenomenology* from the standpoint of Absolute Knowledge, that is, as a conceptual progression.[22] The result is the Absolute Idea or the concept self-consciously joined with content. When this joining occurs in the way of science the Absolute Idea is formed as nature (*Philosophy of Nature*); when this joining occurs in the social world the Absolute Idea is formed as culture (*Philosophy of Spirit*).

The fact that Hegel's political philosophy as presented in the *Philosophy of Right* can be assigned a definite place within his system provides an answer to the question of the status of his statements on war. If Hegel's political philosophy is systematically derived from the rest of his system,[23] his statements regarding the state will have a status consistent with those in the earlier part of his system. Hegel's statements about the state and its functions, like the statements in his philosophy generally, can neither be regarded as prescriptive nor descriptive, neither as imperatives nor as empirical generalizations.[24] It would be as much a mistake to take Hegel's views on war stated in his account of the initial stage of

[21] The first part of the system is presented in the *Phenomenology of Mind* (see pp. 95, 806–8). The second part of the system is presented in the *Science of Logic* (trans. W. H. Johnston and L. G. Struthers (London, 1929), vol. I, p. 37) and the *Encyclopaedia of Philosophical Sciences* (the first book being a restatement of the larger logic and the second and third books being the *Philosophy of Nature* and the *Philosophy of Spirit* or *Culture*). The *Philosophy of Right* is an expanded statement of section II of the *Philosophy of Spirit* and, Hegel states, is intended systematically to present those remarks he would normally present verbally in lecturing on that section of the *Encyclopaedia* (*Philosophy of Right*, p. 1). Hegel regards the *Philosophy of Right* as based on an extension of the principles established in the *Science of Logic*, the foundation work of the second part of the system.

[22] *Science of Logic*, p. 37.

[23] In speaking of Hegel's political philosophy here, I am not including his shorter political writings which are not directly part of his system and are generally empirical in character. As Z. A. Pelczynski argues in his introduction to *Hegel's Political Writings*, these show a different side to Hegel's political thought (see pp. 134–7). However, as mentioned earlier, the content of Hegel's statements on war in these shorter writings does not differ from those made in the works of his system.

[24] The importance of not approaching Hegel's political theory as a set of empirical generalizations is well realized by Irving Louis Horowitz, ' The Hegelian Concept of Political Freedom ', *The Journal of Politics*, XXVIII (1966), 3–28. Horowitz states: ' The Hegelian approach assumes completeness in that all relevant concepts and relations which would be required in empirical undertakings are worked out. This special sense of methodology as ideal typification should be kept in mind when examining Hegel. What we are provided with is a systems approach rather than empirical analysis. Few commentators have viewed the directly political and social writings of Hegel as an extension of his more abstract works ' (p. 3).

spirit[25] in the *Phenomenology* as equivalent to the position of his political philosophy as it would be to take his views on the nature of the thing in the second stage of consciousness as equivalent to his epistemology.[26] In both cases Hegel is portraying a particular form of the mind's relation to its object and it is a principle of his philosophy that no one form of mind is equivalent to the whole of mind nor to his philosophical position. In like manner Hegel's discussion of the state in the *Philosophy of Right* and its relation to war is a portrayal of how the idea of right, determined in the form of the state, is joined in a particular way with its content. The quandary over the status of Hegel's statements on war in the *Philosophy of Right* arises only if we approach it as a kind of independent work. If we regard Hegel as having first written a metaphysics and a theory of knowledge and then having gone on to write a political philosophy, with only a rather broad connection between them, in short, if we approach Hegel's political thought much in the way we approach that of Locke or Hume, then the question arises about the status of Hegel's statements on war. If, however, we see that Hegel's political philosophy proceeds from his philosophy in general with systematic rigor, the status of his statements on war is not a difficulty as such. The question of their status resolves itself into the question of the status of what Hegel calls the philosophical or ' speculative proposition '. One cannot do justice to Hegel's political thought by approaching it as a relatively independent set of ideas having goals apart from the goals of his system.

The question which was stated as the second concern of this essay remains: what light do Hegel's statements on war throw on the problem of war in general? This question is closely tied to Hegel's comments on Kant's *Perpetual Peace*. Kant and Hegel appear at two ends of a spectrum on the question of war. Kant in *Perpetual Peace* proposes a set of principles whereby war may be overcome and a federation of free states or league of nations established. Hegel, in the *Philosophy of Right*, seems to regard war as something necessarily rooted in human existence. Hegel states that Kant's idea

> presupposes an accord between states; this would rest on moral or religious or other grounds and considerations, but in any case would always depend ultimately on a particular sovereign will and for that reason would remain infected with contingency. It follows that if states disagree and their particular wills cannot be harmonized, the matter can only be settled by war.[27]

Hegel maintains that international law as such ' does not go beyond an ought-to-be '[28] and criticizes Kant's statement that perpetual peace is possible because of the working of providence in history.

[25] (BB.), VI, A. ' Objective Spirit: the ethical order.'

[26] (A.), II. ' Perception, Thing, and Deceptiveness.'

[27] *Philosophy of Right*, §§ 333–4. See also §-324 (Remark).

[28] *Ibid.* § 333.

The difficulty in Kant's theory of peace to which Hegel's criticism points is that Kant fails to face the problem of the reasons for the existence of war. The paradox that is posed for ethics by the existence of war is that men can bring themselves together under law as states but seem unable to extend the process beyond the bounds of states to the creation of genuine international law. The response to this problem from the standpoint of Kant's theory is to regard the failure of men to establish international peace as residing in an inability to conceive properly the principles whereby it could be established. The elimination of war from the Kantian view is essentially a conceptual and organizational problem. War is regarded as an unnatural state of affairs that exists because of man's present inability fully to grasp the means for peace. The fact that mankind – although in possession of the idea of peace – seems not to be ready to institute peace does not worry Kant, who optimistically appeals to providence to solve the difficulty. Kant states:

> The guarantee of perpetual peace is nothing less than that great artist, nature (*natura daedala rerum*). In her mechanical course we see that her aim is to produce a harmony among men, against their will and indeed through their discord. As a necessity working according to laws we do not know, we call it destiny. But, considering its design in world history, we call it 'providence', inasmuch as we discern in it the profound wisdom of a higher cause which predetermines the course of nature and directs it to the objective final end of the human race.[29]

On Kant's view war is dealt with in the same way evil is dealt with on the traditional solution to the theodicy problem. War is regarded as nothing in itself, as a privation having no positive content.[30] War becomes a delay in the working of providence rather than a moment of its development in history.

Hegel's criticism of Kant derives from the general principle of his thought affirmed at the beginning of the *Philosophy of Right*, that the rational is actual and in turn the actual is rational.[31] For Hegel: 'History is mind clothing itself with the form of events or the immediate actuality of nature.'[32] War, being actual, cannot be regarded by philosophical reasoning as an unnatural state of affairs or as mere chaos. War must be understood as a form of the state's activity. Kant's view leaves us with a conception of the principles of peace that ought to be followed by men and a hope that the working of providence will soon be fully manifest in the actualities of history. Hegel's view indicates that the possibility of peace must depend not upon a faith in the ultimate order of history, but upon the analysis of the structure of one of its specific moments – war. War, for Hegel, is a moment in the development of social consciousness and action; war is an activity of the state as an independent nation. 'A nation', Hegel asserts, 'does

[29] *Perpetual Peace*, ed. Lewis White Beck (New York, 1957), p. 24.
[30] *Ibid.* pp. 17 and 46.
[31] See Preface, p. 10 and § 29.
[32] *Philosophy of Right*, § 346.

not begin by being a state. The transition from a family, a horde, a clan, a multitude, &c., to political conditions is the realization of the Idea in the form of that nation.'[33] Hegel, following his dictum that every philosopher is a child of his own time,[34] terminates his account of the state with the conception of the state as a politically sovereign nation. The Idea exists in the form of a world of nations related to each other through the contingencies that surround their cycles of war and peace. Kant offers us directly a theory of peace. Hegel offers us directly a theory of war. Kant's theory, although admirable in design, is underpinned by a view of history that in principle forbids a theory of war. War remains a sojourn in the irrational. It asks human consciousness to overcome a mode of its activity without understanding the roots in its own structure from which the activity it is to overcome has stemmed.[35] The question now to be faced is whether Hegel's theory of war and the metaphysics of history from which it derives can engender a theory of peace.

From Hegel's position any theory of peace would need to follow from an understanding of the phenomenon upon which war is based. War must be seen as having its roots somewhere in the very structure of human consciousness. Karl Jaspers in *The Future of Mankind* states:

> Fighting – risking one's life so as either to meet force with force or else to use force to win power and booty – is a primordial phenomenon of human life. The primordial element is the fierce fighting spirit. Unleashed, it engenders the self-transcending lust of flinging one's life away and the savagery that rates other lives no higher, vents itself in pillage and rape after victory, and finally abates in the climactic feeling of power: to spare the conquered and let him serve as a slave. This abatement led Hegel to interpret the productive meaning of life-and-death struggles. *The warrior is a human type, but not everyone is a warrior.*[36]

In the full context of this statement Jaspers regards the warrior as a particular way of engaging in the master–slave relationship which Hegel portrays in the *Phenomenology of Mind*.[37] His statement captures the point that follows from Hegel's treatment of war – that war exists not because of man's inability to conceive the principles whereby to organize for peace, but because the warrior is a specific way in which men relate to their own existence. Any solution to the problem of war must rest on a solution to the problem of warriors; and this is particularly difficult since the style of life of the warrior is rooted in one of the basic structures of consciousness, the master–slave.

[33] *Philosophy of Right*, § 349.
[34] *Ibid.* p. 11.
[35] It is interesting to note that Kant in the *Critique of Judgment* makes comments similar to Hegel's regarding the stagnation of nations during prolonged periods of peace that are quite in contrast to his approach in *Perpetual Peace*. See the *Critique of Judgment*, sect. 22 (83). For remarks on these passages, see Albert William Levi, *Humanism and Politics: Studies in the Relationship of Power and Value in the Western Tradition* (Bloomington, 1969), pp. 268–9.
[36] Chicago, 1951, p. 45 (italics mine).
[37] (B.), IV, A. 'Independence and Dependence of Self-consciousness: Lordship and Bondage.'

In his theory of the warrior Jaspers further draws out a point that illuminates Hegel. Jaspers maintains that the warrior depends upon the phenomenon of self-sacrifice.[38] Hegel points to this in his discussion of the military as a class. The military, Hegel maintains, are men who realize the nature of their own freedom through courage and their courage is manifest in their willingness to sacrifice themselves for the sovereignty of their state. Hegel states: 'The work of courage is to actualize this final end, and the means to this end is the sacrifice of personal actuality. This form of experience thus contains the harshness of extreme contradictions: a self-sacrifice which yet is the real existence of one's freedom . . .'[39] It follows from Hegel's view that war exists not because nations reach an impasse in their relations with each other; war exists because armies exist. The military exists because the warrior is a human type and the warrior is a human type because the act of self-sacrifice, of meeting force with force on behalf of an ideal, is one of the ways men apprehend themselves as free agents. The genuine threat to peace is not that diplomatic relations will break down and the technical problems of such negotiations will be taken up in the physical conflict of war. The genuine threat to peace is the fact that the warrior is a type of life. Wars are the result of the frustrations that peace brings to the warrior in his drive to act out the freedom of his own being. When such frustrations are sufficiently felt by the warriors of two nations, the actual conditions for war are met and the technical, diplomatic justification will soon be found.[40]

If, in the *Phenomenology of Mind*, Hegel has shown the master–slave to be one of the fundamental ways whereby human consciousness structures itself and realizes its own freedom,[41] and if the *Philosophy of Right* has shown that the warrior is the type upon which the state's ability to make war depends, then an end to war lies in a transformation of the warrior's existence. The realization of freedom that the warrior experiences in his act of self-sacrifice, of risking his life by meeting force with force, must be carried to a new form in which the same goal is reached but the violence of its means is overcome. It is not enough to encourage all men to adopt the slave side of the master–slave relation and advocate the realization of their freedom in their work as does the conquered slave.[42] To advocate the replacement of the evil of war with the good of work, to view work as a moral equivalent of war, is to misconstrue the nature of the warrior and view him simply as an energetic man. The warrior must be taken

[38] See *The Future of Mankind*, ch. 4.

[39] *Philosophy of Right*, § 328. See also the Addition to § 327.

[40] As Hegel points out, the honor or interest of the state may be seen by it as at stake in any of its dealings with other states. See *ibid.* § 334.

[41] See *Phenomenology of Mind*, p. 233. For a discussion of some of the perspectives from which Hegel's master–slave relationship can be viewed and some of the difficulties of developing social hypotheses from it, see George Armstrong Kelly, 'Notes on Hegel's "Lordship and Bondage"', *Review of Metaphysics*, XIX (1966), 780–802.

[42] See *Phenomenology of Mind*, p. 238.

more seriously. If he were simply an energetic man we could have expected warriors long ago to have turned to organized sports and dangerous occupations. The courage of the warrior is not simply the courage of risk but the courage of risking one's life for the sake of an ethical ideal.[43] Any attempt to transform the warrior must account for this ethical element.

Given the direction in which Hegel's account of war takes us, it is difficult to believe that peace depends upon the institution of a set of principles for the actions of nations. In the realm of practical political affairs it is difficult to believe that the United Nations can ultimately be more than organized good will unless we come to grips with the roots of the activity it is dedicated to overcome. Once it is seen that war is grounded in one of the ways consciousness structures itself, in a type of life, the problem of peace becomes one of the redirecting of warriors. To formulate prescriptions for peace apart from the realization that war is not a lapse in the natural state of affairs but is an integral part of their structure is to foster illusion. Hegel's theory, by focusing on the analysis of war rather than advancing prescriptions for peace, does in no way glorify war. His philosophy, being in largest terms the portrayal of the self-alterations of consciousness, would allow for the warrior to be superseded. The grounds for him to be superseded lie in Hegel's placement of art, religion, and philosophy as forms of mind that lie beyond the state.[44] The state to which the life of the warrior is tied has above it the forms of art, religion, and philosophy which could, like the state, be said to entail types of lives, the task of which is the apprehension of other human types. Thus from the perspective of Hegel's philosophy it is in the activity of artists, religious men, and philosophers that the possibility of comprehending and transforming the warrior lies. It does not lie with politicians. The solution to the problem of peace, which is properly the solution to the problem of warriors, cannot lie with those whose existence is tied to the form of the state.

In conclusion, I have intended to show that Hegel neither endorses war nor simply reflects the fact of its existence. For Hegel, war, as anything else actual, is something to be understood philosophically and cannot be regarded as something accidental. His approach in the *Phenomenology of Mind* is to show the relationship of war to human consciousness and in the *Philosophy of Right* to show its relationship to the state. Hegel's insistence on showing the role war plays in human affairs reveals the difficulty of regarding the elimination of war as a matter of correctly conceiving the principles of peace and organizing around them. War exists not because of the weakness of our conception of peace nor our slowness to adopt international order. Our inability to carry the process of law

[43] For an analysis of the mode of being of the warrior, see J. Glenn Gray, *The Warriors: Reflections on Men in Battle* (New York, 1959), esp. 'Conclusion'.

[44] See Ernst Cassirer, *The Myth of the State* (New Haven, 1946), p. 274.

beyond the perimeters of nations rests on the existence of warriors. The warrior's style of life constitutes a particular orientation toward the problem of human freedom which has its roots in the master–slave relationship wherein consciousness discovers one of the fundamental ways of structuring itself. Hegel's philosophy offers no specific solution to the problem of how the warrior's act of self-risk that lies at the base of war can be overcome. Hegel's analysis, however, if correct, does show that if war is to be eliminated, efforts must be directed to the development of alternative ways of relating to the state than the warrior's.

Principle and prejudice in Hegel's philosophy of history[1]

W. H. WALSH

In this essay I want to approach Hegel's philosophy of history from a point of view which is different from that of most modern critics: I want to consider it as philosophical history rather than philosophical meditation on history. Hegel began his lectures by distinguishing three ways of writing history (his own manuscript contains the words: 'Ich unterscheide dreierlei Weisen des Geschichtsschreibens'),[2] and one of these is what he calls 'philosophical'. Philosophical history cannot be written without benefit of philosophy, but equally it does not itself belong within philosophy. It is, if I may insist on the obvious, itself a form of history, an attempt to present the history of the world from the philosophical point of view. Hegel's course had the title 'Lectures on the philosophy of world history', but this designation is misleading if it suggests, as a similar title might today, second-order reflection on the activity of *composing* a history of the world. There is in the lectures a certain amount of second-order reflection on what world history *involves*, but the bulk of the course is given over to a first-hand account of the history of the world as Hegel saw it. This account, which despite the generality of the subject often goes into considerable detail, is of interest for its own sake as well as for the light it throws on Hegel's philosophy.

[1] For the purposes of this discussion I shall refer very largely to J. Sibree's translation of Hegel's lectures, published originally in 1857 and made from a reprint of the text of the second German edition, which was produced by the philosopher's son Karl Hegel in 1840. Karl Hegel's text corrects that of the first edition, by Eduard Gans (1837). Sibree translated the prefaces of both the original editors, and each explains the principles on which he composed his text. It seems clear that, as later editors have alleged (see in particular the remarks of Georg Lasson, reproduced in Johannes Hoffmeister's volume *Die Vernunft in der Geschichte* (Hamburg, 1955), pp. 272 ff.), neither Gans nor Karl Hegel was altogether competent or even altogether scrupulous as an editor. Gans by his own admission wrote out the entire volume in his own words, though on the basis of manuscripts of Hegel's own as well as of students' notes; Karl Hegel altered the language and transposed passages arbitrarily in order to put in new material which he thought his predecessor had mistakenly left out. How much they compressed the available matter can be seen if their versions are compared with those in the Philosophische Bibliothek edited by Hoffmeister and Lasson respectively. It seems to me even so that they reproduced the essentials of what Hegel had to say, and that their work can therefore be safely used in a general discussion such as this. As for Sibree's translation, I take it to be free, idiomatic and generally reliable. I shall indicate a few points where I differ from it below.

[2] *Die Vernunft in der Geschichte*, p. 3. Karl Hegel has 'der Arten, die Geschichte zu betrachten, gibt es überhaupt drei' and this is rendered by Sibree by the phrase 'methods of treating history'. Philosophical meditation on history is a method of treating history, but not a way of writing it.