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

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I

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

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

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

II

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

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

III

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

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

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

IV

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

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

V

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

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

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

VI

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

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

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

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

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

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

VII

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

But civil society also simultaneously represents a force of "diremption" [*Entzweiung*] and "difference" [*Differenz*] (§§33 and 182 Addition)

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

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

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

VIII

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

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

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

IX

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

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

X

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

Notes

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

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

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

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

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

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

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

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

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

the juridical tool for developing them" (cf. "Das Allgemeine Landrecht," in Dilthey 1960, p. 148).

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

9. It is characteristic of Hegel's philosophy as a whole that he seeks not simply to eliminate or replace the theories with which he already finds himself presented but, rather, to "sublate" the latter (in the sense of simultaneously preserving and transcending them). His philosophy thus "prevents the ossification and isolation of individual principles and the systems associated with them" and counters the "tendency" of the isolated parts as such to "constitute themselves as a whole or as something supposedly absolute." Cf. Hegel's essay *Die Wissenschaftliche Behandlungsarten des Naturrechts*, *GW* I, 525ff. (ET: p. 171ff.). Thus the various elements that contribute to his own theory of property include the normative tradition of natural law, the emphasis on labor as the source of property that derives from Locke and has proved decisive for political economy, Montesquieu's theoretical approach to law, and also Fichte's transformation of the labor principle into the idea of property as a fundamental right of the person in accordance with "the fundamental principle of every judgment of right" that all property be grounded on "the union of several wills to form a single will" (Fichte, *Grundlage des Naturrechts*, WW, vol. 2, pp. 133ff., 116, 216ff.). Insofar as Hegel's own standpoint defines philosophy as the thinking comprehension of the Reason embodied within the historical actuality of the present, the various contributions of these other theories are thus combined to articulate a specific *hermeneutic* task: to elucidate the institution of property that has emerged historically and is posited explicitly in civil society and the associated rights of the person precisely as the actual existence of freedom. Hegel thereby develops the theory of property beyond the state in which he inherited it. He abandons all deductive forms of the theory, as well as every attempt to derive the concept of property through some historical and genetic hypothesis "when the world was first peopled by the children of Adam or Noah" (J. Locke, *Second Treatise on Government*, ed. T. H. Peardon (New York, 1952), ch. 5, no. 36, p. 22) or by retracing the story from the condition of "civilized man" back to that of the "savage" as the original "*condition de l'homme naissant*" (J. J. Roussseau, *Discours sur l'origine de l'inegalité parmi les hommes*, French and German edition by K. Weisgand (Hamburg, 1955), pp. 114 and 192).

10. In his early Jena essay on *The Scientific Ways of Treating Natural Law*, Hegel had already criticized the very notion of "man's original and naked state of nature." The latter is simply a "fiction," an "abstraction from man as he is," a "hypothesis" introduced as an "alleged explanation for actual reality." This approach starts by positing an original unity "with the smallest number of determinate features," a unity that is "nothing real at all, a purely imaginary construction of thought." The unity is acquired in the first place only by "thinking away everything that such a confused approach could regard as purely transient and particular." The human state of nature posited here is simply a state of "chaos," since "all the powers of ethical life" have already been subtracted (*GW* I, 449ff.; ET: p. 111ff.). For Hegel we can grasp what man or what spirit is only within the context of his actual ethical and historical realization (*actualitas*) once his cultural development is complete. Culture is not something simply "external" to actual humanity, as it is deemed to be by those enamored of "the innocence of the state of nature" or "of the

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

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

12. In his *Critique of Hegel's Philosophy of Right* MEGA, vol. I, part 1, Marx effectively engaged only with the relationship between private property and the state in Hegel's theory, and particularly with Hegel's position on "primogeniture" (§306). He criticizes the *Philosophy of Right* for according

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

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