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### **Hegel's Liberal, Social, and 'Ethical' State**

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### **Abstract and Keywords**

Hegel's philosophy of the state has been tied to liberal and conservative— and even totalitarian—traditions. In dealing with the state's reaction to economic crises, it contains elements of the social welfare state as well. This chapter tries to assess to which degree and extent Hegel's conception of the state can be called "liberal" and "social"—and in which sense it is "ethical." It tries to elucidate its relation to German constitutional history as well as to the "classicism" of the French revolution. At the same time, the book of 1820–1821 must be integrated into the development of Hegel's ("pre-Berlin") political philosophy and read against the background of his mature dialectical logic and ontology. Hegel's way of reconciling the "principle of particularity" with the "idealization" of the particular moments within the ethical whole separates this conception from modern forms of liberalism as well as from state absolutism.

Keywords: Hegel, absolutism, liberalism, political philosophy, Germany, French revolution

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MANY historians claim that the 'state' is something that belongs to the European modern age, and that it may come to an end with the end of that age.<sup>1</sup> With the first thesis Hegel agrees, although by distinguishing the 'modern' state (cf. PR §260) from the ancient he implicitly includes the latter in the concept of 'state'.<sup>2</sup> But he would consider the end of this state as a lapse into irrationality. He supports the modern state, yet he wants to correct modern, especially contractarian, concepts in political philosophy by drawing on the Aristotelian concept of 'polis'.<sup>3</sup> In PR §256 of the "Grundlinien" he certainly alludes to Aristotle's thesis that the state is '*physei proteron*', by nature prior to the individual and the family. He calls the state the 'true ground' and the 'first', both in reality and in the philosophical development of family, civil society, and the state in 'ethical life', the last part of the *Philosophy of Right*. This has a double meaning: 'in reality' here refers to the real historical life, where the state is the condition and guarantee of the normally peaceful existence of families and civil society. Even in the course of history itself, Hegel seems to assume that the state was prior to any sort of institutionalized family and civil—or market—society. But the second sense is even more important: the state is—like the Aristotelian polis—the 'telos', or 'destiny [*Bestimmung*]' of the less perfect unions or societies (*societates minores*) of family and civil society—or in the Aristotelian case of family (*oikos*) and village (*kome*). In Hegel's *Philosophy of Right* this has the sense of the state's being the fulfillment or 'realization' of the key concept of human society, namely freedom. The meaning of this thesis, however, remains controversial up to the present time. Is Hegel's state modern or traditional, liberal or authoritarian, or even (p. 516) totalitarian? How does the state relate to the market economy and religion, its main rivals in modern times?

In the following, I will try to answer these questions by discussing the degree to which Hegel's state can be called liberal and social, and in which sense it is 'ethical'. The first attribute relates to the importance of individual rights and liberties—among them the market-liberties—in Hegel's state. The second concerns the way in which Hegel's state, particularly what he calls the state of 'necessity and understanding', has to care for the well-being of its citizens. Regarding this task, the state rivals and in some respects opposes the market society. The third attribute of the state, namely 'ethical', is a special term into which Hegel merges different meanings of 'custom', 'morality', and communal life. In that respect, the state has to come to terms with both the individual's social identity and her ultimate convictions. In this respect the state competes with religious institutions, especially churches, as sources of individual and social meaningfulness and as promoters of individual and common morality.

### 23.1. The State and the Rights of the Individual

In order to explain why and in what sense the state is the 'reality' or 'actuality' [*Wirklichkeit*] of 'concrete freedom', Hegel in PR §260 of the *Philosophy of Right*

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formulates a long and winding sentence of more than thirteen lines. I will draw on this sentence (three sentences in the English translation) in all parts of this chapter. Hegel writes,

The state is the actuality of concrete freedom. But *concrete freedom* requires that personal individuality [*Einzelheit*] and its particular interests should reach their full *development* and gain *recognition of their right* for itself (within the system of the family and of civil society), and also that they should, on the one hand, *pass over* by their own activity into the interest of the universal, and on the other, knowingly and willingly acknowledge this universal interest even as their own *substantial spirit*, and *actively pursue it* as their *ultimate end*. The effect of this is that the universal does not attain validity or fulfilment without the interest, knowledge, and volition of the particular, and that individuals do not live as private persons merely for these particular interests without at the same time directing their will to a universal end [*in und für das Allgemeine wollen*] and acting in conscious awareness of this end.

(PR §260)

For the first section I emphasize the first lines, namely the statement that concrete freedom consists in the complete development and recognition of the right of the personal individuality “within the system of the family and of civil society.” To this right belongs the whole content of the first section of the *Philosophy of Right*, namely “Abstract Right,” (p. 517) as well as the second, “Morality.” In this latter section Hegel attempts a synthesis of two subjects that Kant had taken pains to distinguish and keep apart, namely right and well-being (*Wohl*). The furthering of both without an illiberal paternalism is the task of family, civil society, and the state, which are analyzed in the third section of the book under the title “Ethical Life [*Sittlichkeit*]”.

Abstract right, as is well known, deals with the claim—both a right and a duty—of an individual to be treated as a ‘person’. ‘Person’ in this context is an individual embodied actor, equally free as all other persons to act and use physical means according to his decisions. The freedom to ‘lay one’s will’ in external objects is the core of the property rights that are mutually and by common institutions granted to every person.<sup>4</sup> These rights are independent of the actual use of the objects owned and of other limitations stemming from the owner’s intentions. They include voluntary exchange (contract), but also the destruction of one’s private property—following Roman law, Hegel regards the right of a person regarding her own property as limitless. Different from Roman law, however, there are no property rights regarding other persons (for instance, children and servants), not even relations “akin to right to Things” (Kant, MM, §§22 ff.).

The whole sphere of abstract right is developed, realized, and institutionalized within civil society. This is the subject of Hegel’s chapter on the administration of justice [*Rechtspflege*] in the second section of “Civil Society.” The freedom of trade within a market society, as well as the self-administration of professional estates, presupposes the general functioning of law in social life. ‘General’ here has to be distinguished from

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'mechanical' in the sense in which Fichte or Schelling proposed the system of law to work—according to which the perfect sanctioning and preventing of violations of the law would in the end make them disappear altogether. Free spiritual life includes those violations and their 'reversals' by punishment and the reintegration of the criminal.<sup>5</sup> The way the administration of justice works, especially the judicial system, has to account for the personal and historical circumstances of a culprit (PR §§218, 223).

The rights of persons in civil society, however, extend much further. They include the development of one's 'particularity' by choosing a profession or establishing one's own enterprise. In this respect Hegel argues against Fichte's 'Closed commercial system' (1800) and his state-organized economy lacking a free market for jobs and commodities. Hegel's economic theory is much more liberal, even at the cost of greater risks of unemployment and crises in the market.<sup>6</sup> His concept of freedom demands this space of (p. 518) choosing and realizing a particular life plan. Although he realizes the necessity of state interference in the market, the individual rights that the state has to protect include economic freedom.

The self-realization of the particular individual in civil society comprises not only the individual's legal personality and the pursuing of her plans. Self-realization refers to the 'moral' personality as well. The moral personality has the right to act according to its own intentions and criteria of the good. As a rational being, these criteria are not 'solipsistic' but contain conceptions of the general good, including the well-being of everybody (PR §134). The pursuit of one's personal well-being and that of society are not mutually exclusive. Hegel agrees with the 'classical' economic theory that a market system within the framework of law and of some 'steering capacities' both by professional organizations and the state combines the pursuit of private interests and the common 'wealth'. This is *one* meaning of the claim in PR §260 that the individual and particular should "*pass over* by their own activity into the interest of the universal" (PR §260). Hegel refers not only to the invisible hand of market processes but also to the accommodation to customs of behavior and fashion and to the needs and demands of market participants.

However, this is only one side of the transformation of the self-realization of the particular person into a universal interest and will. The other side has to be carried out with her conscious will—or her moral personality. 'Becoming real' demands the acquisition of competences and virtue in order to be recognized in a group. The most basic type is the family, and the more developed type, requiring education and special skills, is the professional estate. Only as such a member can the moral concepts of the good be 'sustainably' realized and mutually recognized (cf. PR §207). On a higher level, the citizens of a state, and especially the members of its administration, actively and consciously pursue the common interest of an institutionalized community. Here the 'substantial spirit' of the community is recognized as the common goal. However, 'recognized' signifies that this is not a relation of obedience, but rather one of conscious agreement and support.

The two elements—namely the pursuit of one's own interests and conceptions of the good within the 'system' of a society organized by division of labor and market relations on the one hand, and the conscious and voluntary sustainment of the common tasks and spirit on the other—constitute what Hegel calls the 'enormous strength and depth' of the 'modern state'. It is modern in contrast to the ancient and feudal societies in which one's status is determined by birth (*Geburtsstand*) and in which one's roles and tasks are justified with reference to tradition. In this complex sense the Hegelian state is liberal: granting personal rights, the leeway to pursue one's interests and life plans, to realize one's conceptions of the good, and to give assent to required duties. All these rights and claims, however, are not without limits and counterparts, some of which, as we will see, are far from what we would call 'liberal' today.

### (p. 519) 23.2. The State and the Well-Being of Individuals and Groups

At the end of the second section of "Morality" (PR §127), Hegel calls the 'totality' of the particular interests of the natural will of a person the 'personal existence as life'. This totality can clash with abstract right in cases where legal requirements of contract partners undermine the means to sustain this life. Hegel argues that it is justified in these cases to allow for an emergency law (as many legal systems do) to secure the debtor's means to sustain his life. In Hegel's interpretation, this shows that both strict private law and well-being are one-sided and 'finite'. Therefore on all higher levels of the *Philosophy of Right* both claims have to be mediated.

In consequence, all three levels of Ethical life—family, civil society, and state—have tasks regarding the welfare of their members. In the family the emphasis lies on the fulfillment of physical needs, and the meeting of emotional and intellectual demands, including the demand for recognition of one's natural properties and inclinations. In civil society, above all its professional estates and organizations, the well-being in question is that of gaining and securing the competences and means to sustain a respected life as a member. Since these means depend on physical well-being (especially health) and on some degree of independence from private and public catastrophes, professional security institutions—such as insurances, savings banks, chambers of commerce, and so on—are needed (cf. PR §§251–252). Without these means and securities, all legal claims remain 'on paper'.

However, as a follower of liberal economic theories, Hegel holds—for reasons explained earlier—that these institutions and organizations have to keep intact the basic rights of free choice of professions and enterprises. There is no way back to a strict limitation of the labor market by guilds, or forward to an illiberal future of state-directed economies. Only prudent advice from the oversight of the labor market is compatible with the freedom of the particularity (PR §§252, 254). In addition, the professional organizations get some influence in the state legislation—on the level of the constitutional state (PR

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§308). But the “monopoly of legal physical force” (Max Weber) remains with the state. Therefore a clash between property rights and the demands of the needy on this level can only be solved by the state.

Since Hegel is aware of the instability of the market society, its crises of overproduction and insufficient demand, which were elaborated for instance by Sismondi, it is clear to him that neither the family nor the professional organizations are able to deal with the ‘social’ tasks of liberal states. However, his solution is not simply a sort of liberal welfare state. Although his conception of the rational constitutional order of the state arises from a sort of synthesis and transformation of the family and civil society (cf. PR §256), this transformation has at least two aspects. The first is the stabilizing involvement of the (p. 520) state administration in the market society. In this respect, the state functions remain that of a—as he calls it—state of necessity and understanding (Not- und Verstandesstaat, PR §183). The second, and for Hegel higher, form of transformation is that of ethical life itself, including the mentality and ‘identity’ of its members, into that of the true life and mentality of an ‘ethical’ state. As will be seen later, from a contemporary view the former aspect is much more modern than the latter. But this was not the case in the age of the French Revolution and all its constitutional, social, and (civil) religious implications.

As to the first aspect, Hegel analyzes different forms of crises within civil society. The outcome may be that “a large mass of people sinks below the level of a certain standard of living” (PR §244). This process “makes it much easier for disproportionate wealth to be concentrated in a few hands” (PR §244). In addition to a lot of indirect measures supporting the market system—from the illumination of roads and the establishment of public hospitals (PR §242) through supporting foreign commerce (PR §§236, 247)—the social state has to protect the masses against<sup>7</sup> the ‘particular interests and purposes’ (PR §249). To this end it may interfere in private property by taxation (‘poor rates’ PR §245) or the fixation of prices for vital food (PR §236). However, the principal right of private property and the requirement to earn one’s life by personal effort (PR §245) has to be maintained. In modern terms, we might classify this role of the state as ‘social-democratic’, even if in some respects the state as a second family transcends modern non-paternalistic measures and institutions (cf. PR §§241, 245): The state’s public almshouses have the task of curing the ‘rabble’ of their laziness and other vices.

The more important ethical transformation, however, refers to the general mentality of self-interest that governs civil society. The implicit awareness of the common good and even the intentional activity of the professional associations and the state administration toward the common good are not sufficient in this respect. The view of the state as a means to secure one’s long-term interest in self-preservation and the pursuit of happiness, the rationale of every contract theory of the state, is insufficient. It misses the true nature of humans as spiritual beings and their ethical ‘destiny’. It confuses, in Hegel’s famous words, the state with civil society (PR §258R). A state fulfilling the ‘political nature’, to put it in Aristotelian terms (or ethical freedom, as Hegel calls it), is one in which the “*union* as such is itself the true content and end, and the destiny

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[*Bestimmung*] of individuals [*Individuen*] is to lead a universal life" (PR §258R). In his Jena writings Hegel translated the Greek 'politeuein' as 'leading a life devoted to the public affairs'<sup>8</sup>—thus 'universal' is not to be taken as 'cosmopolitan', but rather as a particular polis or state.

That the 'true' state is not merely the social 'stabilization' of civil society does not mean, however, that it is external to civil society or even a different organization from the liberal and social state. In one sense, the state belongs to civil society and is incorporated in (p. 521) it—in another, civil society is itself part of the state, not only a part of its order and sovereign power, but also a part of its 'idea'. There is no doubt that the administration that is necessary to make civil society work is the same which is from another point of view treated in the 'ethical' state as 'government [*Regierung*]'. This new point of view on the same institution and legal structure refers to its belonging to, and functioning within, the 'organism' of the state's constitution. At the same time, civil society and its 'inherent' state functions are a necessary 'moment' of the idea of the state (PR §256 R).

To clarify this relation, it is necessary to take a closer look at Hegel's remark to the final paragraph of civil society (PR §256 R). It contains some very fundamental and intricate formulations regarding the transition from civil society to the ethical state, or 'the state' as the full-blown result of its own teleological development.

In a piece of true Hegel terminology, this text claims that the idea of the state 'divides [*dirimiert*]' itself into family and civil society. To explain this statement one would have to go deeply into the 'science of logic', the method of which structures the argument of the *Philosophy of Right* (cf. PR §§2, 31, 141) as well as that of all other parts of the system. For my purposes I have to abbreviate this explanation. Just as 'the idea' within the logic is the self-reflection of the complete development of all fundamental categories of being and thinking, the idea of the state is the same self-reflection within the field of the 'determinations of freedom' (PR §§29–32). Determination here means at the same time (1) the unfolding of the implications of this concept, (2) its institutional realization (since 'social' freedom is possible only within institutions), and (3) its awareness in freely acting persons.

In all three senses, Hegel claims, family and civil society are themselves essential moments of the idea of the state, but at the same time their shortcomings as insufficient realizations of this idea prove the necessity to proceed to the true instantiation of the idea. They are both institutions mediating between the particular needs, interests, and rights of their members and the requirements of a lasting existence and function of the respective institution (or in the case of civil society, different interacting institutions). To devote themselves to the stability and 'flourishing' of the institution is an essential part of their members' destiny and fulfillment. But since the family—which in its modern sense<sup>9</sup> dissolves itself with the legal independence or the death of its members (PR §§177–180)—and civil society with its crises both are in need of an institution guaranteeing their stable functioning, this proves the necessity of the state. This necessity refers not only to the

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functional necessity but even more to the realization of the meaning of freedom. For the individuals and their 'political nature', freedom requires their 'public life' within an autonomous institution; for the all-encompassing institution of the state, freedom means a rational will directed at itself as its goal.

(p. 522) Hegel calls the demonstration of this necessity the 'scientific proof' (PR §256) of the concept of state. Here he does not refer to the development of the logical categories 'behind' the presentation of the evolving forms of ethical life. However, the mutual presupposition of family, civil society, and state, and the latter's emergence as the 'true ground' and the overcoming of the diremption (*Entzweiung*) within civil society certainly follow a logical structure as well. It is important not to understand this overcoming as an institutional solution for the economic, social, and mental bifurcation of civil society—that is, the division between common property and private interests, the classes of the rich and the poor, the mentality of righteousness versus that of vicissitude and disloyalty, and so on. The 'ethical' state does not provide a more rational economy or some miraculous harmony between a capitalist economy and the 'family spirit' of social solidarity. Nor does Hegel envisage such a solution in his philosophy of history. The conflicts of civil society and its market relations persist within the ethical state and its rational constitution—as a "modern" state he has to grant the development of the principle of subjectivity and "personal particularity" (PR §260) in a stabilized but still fragile market economy. However, the impact of its crises on the citizens is considerably weakened. Their utmost concern—and for Hegel the overcoming of their petty self-interest—consists in the upholding of the constitution and the support for the strength, (international) influence, and flourishing of the ethical state. For this flourishing the material wealth of a state—including its 'human capital' (cf. PR §199)—is but the condition for the cultural and scientific life. The criteria for cultural life, however, are not just creativity and innovation, but common and individual self-reflection, culminating in philosophy. As we shall see, this cultural life is 'absolute spirit' and an end in itself, but the ethical state is not only the condition, but also a manifestation of this absolute and therefore an end in itself as well.

### 23.3. The Ethical State

The development of Hegel's political philosophy shows a continual effort at reaching a view of the state unifying the protection of individual freedom with a strong identity of the spirit of the people (*Volksgeist*). This is in accordance with the impetus of the contemporary revolutions and their 'renaissance' of ancient Greek and Roman ideas of polis and imperium. Since his Berne years (1793–1796) Hegel followed both the Enlightenment's program of establishing the neutral state as sole source of civil rights—still partly held by the church and its sacraments<sup>10</sup>—as well as the 'classicist' idealization of the ancient republic.<sup>11</sup> This concerns less the 'constitutional form' of the Greek

(p. 523) polis—although he tried to modernize it in his essay on natural law (1802)—but rather its 'quasi-religious' form as source of social identity and meaningful life. As in the



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French Revolution, the sacralization of the state as the embodiment of 'divine' reason justifies at the same time its secularization or the emancipation from the churches. This extends to all functions of the churches as institutions dominating individual life and controlling important civil rights, as well as teaching the highest truths and mediating the final salvation. Unlike Fichte, Hegel did not remain true to the republican ideas of the French Revolution. Yet Hegel did transfer to his conception of a constitutional monarchy, developed in the Jena period (especially 1803–1806), the almost 'sacral' meaning of the state founded on reason in Rousseau, the French Revolution, and its German followers.<sup>12</sup>

In his mature philosophy Hegel developed a theory of the absolute as 'idea', that is, as all-encompassing, self-realizing, and self-reflecting thought. The rational state, then, has to be understood as a manifestation of this idea. As such, it is not subordinated to religion and its highest content, namely God. As a sovereign source of norms and their enforcement, it is above any religious authority. As the aim of all public activities, it is on an equal level with religious denominations, and the denominations themselves must remain within the legal norms of the state. In its constitutional 'architectonic' the state can be called a 'temple of reason'<sup>13</sup>—but not of a transcendent 'deity' of reason, as in some of the cults of the early French Revolution. In contrast, the state itself is absolute reason realized within the world of 'embodied' human beings and their natural needs. But since its essence is neither its physical power nor the human beings representing it, but its rational order and constitution, the state itself is a spiritual and 'immortal' being—in this respect transcending even Hobbes's 'mortal' god. One of the points to be clarified, however, concerns the relation of the particular historical nation states to the 'idea' (in a non-Hegelian sense) or concept of a state and its rational constitution.

Before tackling this question, however, I will support the preceding theses with reference to some key paragraphs of the section 'state'. To begin with, I (1) take a look at PR §§257–260; then I briefly discuss (2) Hegel's conception of 'constitutional' monarchy, (3) its concept of sovereignty (PR §§323–326), and finally (4) the relation of the ethical state to absolute spirit.

(1) According to PR §257, the state is a form of conscious 'substantial' will. It is conscious *within* the self-consciousness of individuals, but only insofar as this reflects the customs and the constitution such as the legislation, the jurisdiction of the courts, and so on. The constitution is generated within the development of the spirit of a people; its written fixation is important as an act of clarification, but not as the 'founding act' originating from the people's sovereignty, as for instance in the US tradition.<sup>14</sup> As we (p. 524) shall see, Hegel is a defender of state sovereignty over the sovereignty of the people (PR §§278–279). As for Kant, there is no sovereign people or nation before and above its functions *within* the constitution (PR §279)—and in this framework no legal functions of the people as a whole, but only of its particular estates ('corporations') and state powers, exist. As a lasting institutional will, the state is the 'substance' and 'essence' of the self-conscious individual wills, even if legal actions are taken by individuals conforming to their rights, duties, and functions. Acting according to these functions realizes the 'substantial freedom' of the citizens. This freedom is, to put it in the terms of classical

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political philosophy, their 'political virtue', the 'feeling [*Empfindung*]' and willing of the state as "that thought end which has being in and for itself" (PR §257R). In his remark to this paragraph, Hegel explicitly compares the state as the "reality of the ethical idea" with the Greek conception of the deified 'people's spirit [*Volksgeist*]', that is, as the "divine knowing and willing itself."

Since his early Jena writings, Hegel combined Aristotle's politics and metaphysics. In this vein he uses the concepts of the divine 'unmoved mover' to which as an end every movement strives by 'love' or imitation, and the 'thinking of thinking' (*noesis noeseos*) for the rational state: according to PR §258 it is the "absolute unmoved end in itself" and the "in and for itself rational." This end has the "supreme right against the individual," and to be a member of such a state is the 'supreme duty' of the individual human being. However, since the fulfilling of this duty is, as we have seen, the highest degree of self-liberation, it is at the same time the supreme right of the individual. As in Kant and Aristotle, no human being can fulfill its rational nature without living in a state organized by reason. The sections preceding the 'ethical state' have proved that for this organization the protection of personal rights, well-being, group-interest, and so on, are essential. But as we will see, the highest manifestation of the state's sovereignty is just the 'annihilation' of all particular rights and interests.

Hegel defends this conception in PR §258 and the following paragraphs against two opposite theories of state, namely the contract theory and the theory of the right of the natural and traditional authorities, be they private (paternal), political, or religious. Contract theory, in his view, confuses the state with civil society whose members seek to realize their personal rights and private interests. In this view, to be a member of a state is just one among other possible means ('something optional', transl. Knox, 156). In transcending both Aristotle's thesis of the political nature of man and Kant's categorical duty to become a member of a state securing everybody's rights, Hegel claims that the individual gains "objectivity, truth, and ethical life" (PR §258 R) only within the state as objective spirit. Behind this conception of the state is not only the republican idea of identification with a free nation,<sup>15</sup> its autonomy and self-government, but also the 'ontological' thesis of the higher reality of the unification of individuals over their separate existence. As we will see, in participating in the objective spirit of the state, the individual even gains a form of ethical immortality. To be sure, this is not a totalitarian form of nationalism since the protection of personal rights and well-being remains a necessary task of the state—as long as it is compatible with the latter's 'honor' as an independent entity among other states (PR §322).

If Hegel uses 'divine' attributes in his conception of the state, such as the Aristotelian unmoved mover and absolute end in itself, or neo-platonic concepts of unification,<sup>16</sup> this does not mean a simple deification of the state or its sources of authority. This he makes clear in his bitter irony against C. L. von Haller and his 'romantic' theory of 'natural authority' as the will of God. Against this theory he defends the rule of law, the 'national rights [*Nationalfreiheiten*]' and conventions like the Magna Carta, the bills and declarations of rights—American and French—and the 'Prussian general legal code

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[*Allgemeines Landrecht*] with its Kantian basis. The architecture and 'organism' of the 'inner constitution' of the state which Hegel develops in PR §§260–320 seek to harmonize the personal and group rights, the division of powers,<sup>17</sup> and the rule of law with the independence of the state's will from particular interests and rights. Hegel's constitutionalism, however, is far from the republicanism of the American or the revolutionary French constitutions—leaving aside their differences for the moment—and even from a constitutional monarchy like the British or the French after 1815. In the years after 1821, Hegel became even more critical of all forms of parliamentarianism based on general elections. Instead of going into the details of his chapter on constitutional law (both in its 'inner' perspective and the institutions concerning external affairs), international law, and world history, I try to sketch Hegel's ideal of a constitutional monarchy.

(2) Many forms of constitutional monarchy developed in the eighteenth and nineteenth centuries in different parts of the world. Usually the British form, originating in the Glorious Revolution of 1688, and the French versions since 1815 come to the mind of the political philosopher. Germany, however, in the nineteenth century developed its own form of constitutional monarchy<sup>18</sup> to which Hegel seems much closer than to the 'West European' type. The conceptual difference lies mainly in the absence of the theory of 'people's sovereignty' as the ultimate principle of legislation and obligation. Instead, legislation is shared between the king and his administration on one side and the representatives of estates or classes of the people on the other. Historically, this goes back to contracts between the estates and the king regarding special rights and competencies. State sovereignty, however, remains with the monarchy as the representation or (p. 526) manifestation of the whole nation-state. And the administration (civil and military) is subordinated to the crown and not responsible to a parliament (PR §§289, 329).

There has been a long debate about Hegel's concept of the monarchy or 'power of the prince [*fürstliche Gewalt*]' in relation to the legislative power and the 'executive power [*Regierungsgewalt*]'. In Hegel's writings, especially between 1816 and 1820, there are subtle differences regarding this relation. Historically he seems to side with the 'Prussian Reformers' around Hardenberg, Stein, Altenstein, and others, who for some time demanded a national assembly and a constitution to be accepted by the assembly. In 1821 this policy failed and the reformers concentrated on the development of a civil society to overcome the dominance of the old Prussian aristocracy as a condition of any national representation. In addition, the result of the Vienna Conference in 1819 strengthened the 'monarchical principle' in all European countries.

Hegel's emphasis on the constitutional role of the princely power and the hereditary monarchy has been interpreted as a 'double writing' concealing his republican sympathies from Prussian censure. However, there is little evidence for this hypothesis.<sup>19</sup> The strength of the monarchy in Hegel's concept of constitution has both deeply philosophical—or as he calls it, 'speculative'—reasons as well as a historical affinity to the

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development of a 'German' type of constitutional monarchy. Both suggestions can only briefly be sketched here.

There are two main 'speculative' reasons for the strong position of the monarchy in Hegel's thought. One is the concept of unfolding an undifferentiated whole in its internal determinations and reintegrating them in a simple, self-reflected unity. The latter process Hegel terms 'idealization', meaning the negation of any independence of these determinations from each other and from the whole. In terms of political philosophy, this idealization is the core of sovereignty. Since the structure of subjectivity central for Hegel's concept of 'spirit' is characterized by this 'idealized' unity of moments, sovereignty not limited by particular rights or guarantees is central for his political philosophy.

The second deeply philosophical reason for his conception of constitutional monarchy is the conception of an immediate, even natural individuality, in which the whole of the unfolded and idealized determinations is concentrated and made 'manifest'. In analogy with the ontological proof of God's existence and the Christian theology of God's incarnation in an individual human being, Hegel conceives of the 'natural' monarch and the hereditary monarchy as manifestations of the whole constitution. The 'personality' of a state has to be represented in the natural (not simply 'juridical') 'person' of the monarch (PR §279).

In opposition to theological voluntarism and legal absolutism, however, this is no justification of absolute monarchy in the sense of the monarch being completely beyond the law (*lege absolutus*).<sup>20</sup> Hegel calls any form of government 'despotism' which remains (p. 527) outside of "lawful and constitutional conditions" (PR §278R). Both the existence of such a state order and the "ideality of the particular spheres and functions" Hegel calls sovereignty. The sovereignty of the monarch is therefore the representation and manifestation of 'state sovereignty'—another concept from a special German tradition of constitutional law.<sup>21</sup>

In this representation of state sovereignty, however, the monarch is in most respects independent from any other representation—except from a joint legislation with the two legislative chambers, the first of the landed aristocracy and the second composed of delegations of the corporations from the commercial estates. In this legislation, which is restricted to the inner affairs of the state, the king and his administration have an equal share. Anything related to the external sovereignty, namely the decisions on war and peace, but also the diplomatic service and the military in peacetime, is reserved for the king (PR §329; compare Enz. 1830, PR §544). Since a great part of the budget in his time was related to the military, this limits the legislative control of the budget—which in Hegel's view is no exclusive right of the legislative chambers anyway (cf. PR § 299). And reserving the decision on war and peace, of course, runs counter to a key element of republican theory, even in Kant's sense.

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It cannot be further discussed that Hegel's concept of constitutional monarchy lacks other aspects of the limited sovereignty of 'western' constitutions, namely regarding the control and check of administrative power and its possible abuse. The main instrument of such control, in his view, lies in the 'vertical' division of power, namely the self-administration of local and regional communities (PR §§287-289). The strengthening of these competences, which Hegel justifies against French centralism, was a result of the reforms initiated by one of the most important Prussian reformers, the Baron von Stein. The communal authorities and the corporations are the first to detect the abuse of power by the central administration (PR §295). They can appeal to the higher authorities up to the monarch and probably discuss them "when the Estates are in session" (PR §301). However, Hegel does not follow the tradition of a definite limitation of state sovereignty by human and civil rights. And this not for contingent historical reasons but on the basis of his fundamental conception of the 'idealized unity' of objective spirit.

(3) This becomes manifest in Hegel's view that the highest manifestation of sovereignty consists in the 'idealization' of all particular rights in states of emergency. There is a long discussion about Hegel's conception of war, and some myths are rightly criticized.<sup>22</sup> In my view, however, the differences between Hegel and the traditional and modern 'just war' theory are often mistakenly blurred. Although Hegel is no admirer of war for its own sake, he understands war as a necessary means and manifestation of the (p. 528) 'ethical' state and its sovereignty.<sup>23</sup> In this function, war is necessary for the ethical perfection of the citizens, the overcoming of their private 'idiocy' in the Greek sense, and even the transformation of their natural mortality. Since this is the significance of war, it cannot be restricted to defensive wars justified by the protection of the rights of present and future citizens.

It is in line with the previously discussed 'idealization' of all particular moments within a single and simple whole that Hegel affirms in PR §323:

It is that aspect whereby the substance, as the state's absolute power over everything individual and particular, over life, property, and the latter's rights, and over the wider circles within it, gives the nullity of such things an existence [*Dasein*] and makes it present to the consciousness.

(PR §323)<sup>24</sup>

In modern theory the justification of war would certainly not be the manifestation of state power, the demonstration of the ultimate 'nullity' of civil rights and the becoming aware of these spiritual and ethical truths. Rather, war in all its aspects would have to be justified as an ultimate and unavoidable means to protect and defend human and civil rights. It would have to manifest the limitation of sovereignty in light of the 'responsibility to protect'—either against an external intruder or against a state neglecting this responsibility. Any war that is not purely defensive can be justified only by 'humanitarian interventions' to defend a citizenry not able to protect itself by substitutional execution of its right to resistance. For Hegel, the opposite is true: war is necessary to manifest the sovereignty of a state to negate the particular rights of its citizens. This negation is not an

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unavoidable 'side effect' to maintain the state's monopoly of legitimate physical power. War has a necessary 'ethical moment' (PR §324), not only for creating the inner unity and integration of the citizens against their private egoism or particular convictions. For Hegel, the 'idealization' of the particular right is at the same time the realization of the citizens' highest right to be a member of an immortal ethical institution. This is a liberation from the natural necessity to die, which is transformed into a free ethical decision to offer one's life in a war that is voluntarily waged by the state (the 'ethical essence', cf. PR §324R)—however, through a decision made by the king alone.

To be sure, the conscious disposition to such an offer in cases of state-declared emergency is sufficient. For the 'normal' wars, for which states may find many reasons stemming from violations of their honor (PR §334), there is a particular professional estate, the military, which takes over this duty while normal civil life goes on (PR §§278, 325). However, the possibility of wars to become a danger for the existence of the state and therefore a duty for every citizen to participate must remain alive. Hegel explicitly refuses the Kantian idea of a perpetual peace, if only as a legal order for the regulation of (p. 529) international conflicts, because it would endanger the "ethical health of the nations" (PR § 324).

(4) One of the reasons for such a strong theory of a state, a theory even justifying the sacrifice of one's life, may be the 'competition' in which the secular state is involved. Not only is the realm of the persecution of private interests in the market society, as we have seen, such a competitor. A power that traditionally has demanded the voluntary and even enthusiastic offer of one's goods and life is religion. Hegel's long remark regarding the relation between religion and state added to PR §270 of the *Philosophy of Right* proves how important he regards this competitor. The text cannot be explained in detail here. As is well known, Hegel places the churches<sup>25</sup> under the legal control of the state. He also confirms—and repeats in the last paragraph (PR §360) of the book—that the state is an equivalent manifestation of the same absolute which religion 'represents [*vorstellen*]' as God, the holy Spirit, and so on. But at the same time he adheres to the traditional view that the state needs the support of religion, in particular the religious convictions of his citizens, to be sure of a stable loyalty to its laws and requirements. For Hegel, however, it is not the fear of divine punishment after death—a view shared by philosophers from antiquity<sup>26</sup> up to Hobbes and Rousseau—which binds even those who despise the sanctions of the state. Neither does he share Kant's and Fichte's view of the necessity of a moral 'church' to improve the virtues and in consequence also the legal behavior of the citizens. Instead he regards the religious conscience, the 'innermost' theoretical and emotional convictions about absolute truth and unconditioned duty, to be the force that either supports or undermines the rational state.

It is the task of philosophy to demonstrate that the state and the religious ideas of God and his commandments are manifestations of the same absolute spirit. In Hegel's view of the history of religion and of constitutions, philosophy is supported in this task by the progress of reason in both fields. But it needs the philosophical proof—in the sense of the development of the system from objective to absolute spirit—to show<sup>27</sup> that the same idea

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unfolds and reflects itself not only in the state as objective spirit but also in art, religion, and philosophy as absolute spirit. The additional sense of 'absolute' in this latter form of spirit is that the self-reflection in this sphere is now completely independent of the needs and contingencies of human nature, whereas objective spirit is still bound to cope with these factors. But the ascension from objective to absolute spirit does not mean that religious norms are higher and can excuse the individual from the obedience to state laws. Regarding social norms, not only legal but also customary norms and those based on mutual expectations, there is nothing above or beyond the state.

(p. 530) From the fact, however, that religion enlightened by philosophy and reconciled with state norms is a necessary support of state loyalty, Hegel in his *Philosophy of Right* even draws the consequence that the state 'fulfils a duty' to require from all its citizens to "belong to a church [*sich an eine Kirchengemeinde zu halten*]" (PR §270). This cast doubts on the full secularity or impartiality of the Hegelian state—for instance, regarding atheists or other non-believers. Even regarding such a limitation of secularity, however, Hegel scarcely diverges from a tradition of 'enlightened' political philosophy from Hobbes to Kant.<sup>28</sup>

### 23.4. Hegel's State: Within and Beyond the Categories of Modern Political Philosophy

To sum up the discussion of the liberal, social, and ethical meaning of Hegel's state, one might simply claim that his conception is not to be subsumed under the current categories of political philosophy. But this is an easy way out, which tells us nothing of interest for our dealing with such an impressive and influential work of our philosophical tradition. The preceding discussion was intended to shed some light on the sense of 'liberalism', of 'social welfare state', and of the secular 'ethical' state to be found in Hegel—and the limits of his conception in view of the post-Hegelian social and theoretical history.

Hegel's state is liberal in the sense that the protection of individual rights, including a great part of what belongs to modern human and civil rights, is a necessary task of any legitimate state. These rights are in need of material and institutional conditions for which the state, together with professional organizations and the family, has to provide. In this latter sense and in view of a range of measures and institutions needed for this task, Hegel's state can be called 'social', or social welfare state. But from a contemporary point of view, both attributes have their limits. The state is not liberal in the sense that its sovereignty is restricted in view of human or civil rights. These rights have no basis beyond the states' legislation, neither on an international level nor as constitutional rights that citizens could refer to before a constitutional court. State sovereignty is not dependent on fulfilling the "responsibility to protect" those rights. The 'active rights' of participating in the legislation are only weakly developed in Hegel's constitutional theory.

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He criticizes the concept of people's sovereignty, as well as the contract justification of the state. In the Hobbesian and Kantian tradition—against Locke or Hume—he does not allow for a right of resistance. These and other traces of his political philosophy separate him from the liberal tradition.

As to the 'social' elements of his conception of civil society and the state functions supporting it, he is certainly aware of the dangers of a market society for individual (p. 531) needs, liberties, and social harmony. However, against early socialist conceptions—as for instance in Fichte—he defends the market as a necessary means for the development of individual life-plans and a self-determined 'pursuit of happiness'. Instead of a 'dialectical'<sup>29</sup> or revolutionary overcoming of the crises of the market society, which culminate in the separation of classes and the decrease of loyalty to the legal order, he conceives—or rather justifies—an open system of absorbing or cushioning measures and institutions. This includes the state's interference in private property but not its abolition. In the end, the sense and aims of the 'bourgeois', the private market participant, are superseded—or sublated—by the 'ethos [*Gesinnung*]' of the citizen.

For the citizen of the 'ethical' state, the belonging to a system of rational institutions and to the 'unified' people acting for them—in different degrees of consciousness and intentionality—is the highest 'destiny' and form of freedom. This belonging to a community that transcends any private interest is the ultimate realization of the rational as political being. In normal everyday life, this consciousness is in accordance with private aims and interests that are better served within a state than without it. But this sort of utilitarian patriotism (PR §268) must be complemented, or rather grounded, by the consciousness that in extraordinary situations the state can claim any offer from its citizens, including their rights, goods, and life. By fulfilling this duty, at least by being constantly disposed to it, the citizens realize their highest freedom as liberation from mortality forced on them by nature.

These traits of the ethical state belong to another conception of the state than the one that prevails in our times. It has its roots in the classical republicanism renewed in Hegel's time by the pupils of Rousseau and by some of the protagonists of the American and French Revolution. It was alive in other countries as well, even in their religious traditions.<sup>30</sup> Different from these currents, however, Hegel's mature philosophy of right is neither republican, nor does he conceive of a state cult or political religion in the sense of the French revolution or other forms of civil religion. Since the end of his Jena period, he considers enlightened Protestantism and the rational—regarding its justification and the content of its norms—'secular' state as supporting each other. In this conception, as in his view of the constitutional monarchy, he may belong to a special German tradition.

This ethical or in some sense 'quasi-divine' character of the state—which Karl Marx and other Left-Hegelians rightly identified—separates his conception from the tradition of liberalism and socialism or the 'social-liberal' welfare state. Its 'communitarianism' is



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much stronger than in most contemporary forms. But this does not eliminate the liberal character of the state, especially in normal times (cf. PR § 268, 278).

(p. 532) Nevertheless, his conception of the state is still important for modern political philosophy in several respects. One aspect is his conception of rational right as standing between natural law and historicist traditions;<sup>31</sup> another is his view of the relation between a secular state and its dominant religious traditions. Also still relevant are Hegel's analyses of the pros and cons of market societies—although the contemporary national state has an even weaker position in relation to the globalized economy and companies as 'global players'. Even if the strengthening of state sovereignty and its ethical elevation does not seem plausible any more, the problems of transferring sovereignty to international institutions without producing 'failed' states are as urgent as the strengthening of solidarity without eliminating individual freedom. But the fruitfulness of dealing with these problems informed by Hegelian insights presupposes that we not 'modernize' his premises and consequences by neglecting the historical and theoretical divide. Hegel was aware of the historical limits of a philosophical system. Hegel interpreters should stick to this insight as well.

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### Notes:

(<sup>1</sup>) Reinhard, *Geschichte der Staatsgewalt*, 535.

(<sup>2</sup>) The distinction occurs mostly in the lecture notes, see for instance the additions to PR §§182, 261, 279, 317.

(<sup>3</sup>) Regarding Hegel's reception of Aristotle's Politics, cf. Ilting, "Hegels Auseinandersetzung mit der aristotelischen Politik," 38-58; also Siep, "Hegels Rezeption der aristotelischen Politik," 59-76.

(<sup>4</sup>) In general, every conscious and sane [*zurechnungsfähig*] human being qualifies as a person. However, Hegel distinguishes between human rights and both passive and active civil rights (cf. later discussion in this chapter). Regarding Hegel's conception of property rights, cf. Ritter, "Person und Eigentum," 55-72; Waldron, *The Right to Private Property*; Mohseni, *Abstrakte Freiheit*.

(<sup>5</sup>) As to Hegel's conception of penal law, cf. Mohr, "Unrecht und Strafe (PR §§ 82-104)," 83-110; and Primoratz, *Banquos Geist. Hegels Theorie der Strafe*. In my view, there is a lesson to learn from Hegel's conception of penal law for modern discussions on 'neuro-determinism' and its consequences for criminal law, but I cannot go into that here.

(<sup>6</sup>) Regarding Hegel's economic theory, cf. Herzog, *Inventing the Market: Smith, Hegel, and Political Theory*. For the development and ethical relevance of Hegel's economic thought, cf. Neschen, *Ethik und Ökonomie in Hegels Philosophie und in modernen wirtschaftsethischen Entwürfen*.

(<sup>7</sup>) The German *von* in this context has the meaning of 'against' (this was mistaken in the Knox translation).

(<sup>8</sup>) In German, *dem öffentlichen ganz gehöriges Leben führen*. In Hegel, "Ueber die wissenschaftlichen Behandlungsarten des Naturrechts," 455.

(<sup>9</sup>) As has often been remarked, Hegel deals with the modern bourgeois 'nuclear family' (*bürgerliche Kleinfamilie*), more or less limited to one or a few generations, not with the aristocratic family lasting for centuries or the large agricultural family whose 'oikos' (house, land, production) may also last for a long period of time. For a modern critical interpretation of Hegel's conception of the family, cf. Brauer, *Natur und Sittlichkeit, Die Familie in Hegels Rechtsphilosophie*.

(<sup>10</sup>) Citizenship depending on baptism or marital status on the sacraments of the churches. For Hegel's Critique in his manuscripts from the Berne period cf. Jaeschke, *Hegel-Handbuch*, 73.

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(<sup>11</sup>) Although deeply influenced by Rousseau, Hegel, like Schiller and Hölderlin, followed the German preference for the Greek polis against the Roman republic.

(<sup>12</sup>) Cf. Siep, "Hegels praktische Philosophie und das 'Projekt der Moderne,'" 23 ff., and *Der Staat als Irdischer Gott*.

(<sup>13</sup>) This expression occurs in the lecture notes of Peter Wannenmann. Cf. *VNS*, 246.

(<sup>14</sup>) Cf. Siep, "Constitution, Fundamental Rights, and Social Welfare in Hegel's *Philosophy of Right*," 268–290, especially 272 ff.

(<sup>15</sup>) In this respect, Hegel is a follower of Rousseau, whose idea of the social contract he mistakes as another version of the instrumental view of the state in contract theory (PR §258R). Regarding Hegel's critique of contract theory, cf. Moyer, "The Political Theory of Kant, Fichte and Hegel."

(<sup>16</sup>) Regarding the influences of the neo-platonic and neo-spinozist 'philosophy of unification' (*Vereinigungsphilosophie*), see Henrich, *Hegel im Kontext*; Kotkavirtta, "Liebe und Vereinigung"; Jens Halfwassen, *Hegel und der spätantike Neuplatonismus*; cf. also Ilting (see note 3).

(<sup>17</sup>) However, in a form far from Locke, Montesquieu, and other conceptions of 'checks and balances'. See Siep, "Hegels Theorie der Gewaltenteilung." However, Hegel's concept of 'organism' is not the romantic one, but rather the Kantian of mutual support between the whole and its parts. It contains important elements of 'subsidiarity' (cf. for instance PR §§289, 297)—however, only during the 'peaceful state' of society and state (PR §278).

(<sup>18</sup>) Cf. Böckenförde, "Der deutsche Typ der konstitutionellen Monarchie im 19. Jahrhundert."

(<sup>19</sup>) Cf. Lucas and Rameil, "Furcht vor der Zensur? Zur Entstehungs- und Druckgeschichte von Hegels Grundlinien der Philosophie des Rechts."

(<sup>20</sup>) This does not preclude, however, that the monarch in special questions—like the right of pardon or the decision on emergencies—acts independently from positive law according to the 'spirit of the constitution'. For Hegel, different from, say, John Locke, the power of the prerogative (or executive privilege) is not even in need of legislative approbation in hindsight.

(<sup>21</sup>) Grimm, *Souveränität. Herkunft und Zukunft eines Schlüsselbegriffs*, 52.

(<sup>22</sup>) Cf. part 3, "The Myth That Hegel Glorified War" in John Stewart (ed.), *The Hegel Myths and Legends*, 131–180.

(<sup>23</sup>) It is important to keep in mind the reversal of the meaning of fighting in a war for the citizens by the French Revolution: "In den Revolutionskriegen kämpften auf französischer Seite zum ersten Male Bürger für ihr Vaterland und nicht mehr Untertanen für ihren

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König." Osterhammel, *Die Verwandlung der Welt. Eine Geschichte des 19. Jahrhunderts*, 883.

(<sup>24</sup>) Hegel seems to have families, corporations, and possibly the legal chambers in mind.

(<sup>25</sup>) It is unclear whether Hegel has more than the traditional Christian confessions in view—which would correspond to the legal reality in most European states of his time (and in the final act of the Vienna Congress, 1819). Cf. Böckenförde, "Bemerkungen zum Verhältnis von Staat und Religion bei Hegel," 134. For a much wider understanding of 'church' in Hegel, see Vieweg, *Das Denken der Freiheit. Hegels Grundlinien der Philosophie des Rechts*, 465–471.

(<sup>26</sup>) Döring, "Antike Theorien über die staatspolitische Notwendigkeit der Götterfurcht," 43–56.

(<sup>27</sup>) In Hegel's methodology, the advancement to the telos as 'true ground' (cf., for instance, PR §256).

(<sup>28</sup>) Cf. Siep, *Der Staat als irdischer Gott. Genese und Relevanz einer Hegelschen Idee*.

(<sup>29</sup>) The 'dialectic' of the civil society which Hegel mentions in PR §246 is not a historical process (as in dialectical historical materialism). It leads to a transition "first" (*zunächst*) beyond the limits of a particular national economy into international exchange (in modern terms: globalization). Second, and more important for Hegel's philosophy of spirit, it requires an "ethical" transition on the level of institutions, habits and mentalities (*Gesinnungen*). But the most 'modern' and rational state still requires a market society (see earlier discussion in this chapter).

(<sup>30</sup>) For German Protestantism, cf. Kaiser, *Pietismus und Patriotismus im literarischen Deutschland. Ein Beitrag zum Problem der Säkularisation*.

(<sup>31</sup>) Regarding this problem, cf. Pippin, *Hegel's Practical Philosophy*, especially chapters 8 and 9. Pinkard, "Reason, Recognition, and Historicity."

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