

I

*Hegel's Philosophy of Right as a
Theory of Justice*

ALTHOUGH many contemporary philosophers have embraced Hegelian philosophy to a surprising degree—which may even help to bridge the gulf between the Analytic and Continental traditions—Hegel's *Elements of the Philosophy of Right* has so far failed to exert the slightest influence on the current debates in political philosophy. Rather, in recent years—after the abrupt end of the Marxist phase and its reduction of modern right to a mere superstructure—philosophers returned on a broad front to the rationalist paradigm of the Kantian tradition, which essentially dominates the debate from Rawls to Habermas; and however hard these two authors in particular try to embed their Kantian concepts of justice in a realistic, almost social-scientific approach, the theoretical model of Hegel's *Philosophy of Right* plays no decisive part in their thought. Nor has the situation changed much in response to the countermovement in political philosophy that came into being through the somewhat artificial grouping of theoreticians as diverse as Charles Taylor, Michael Walzer, or Alasdair MacIntyre under the heading of “communitarianism.” Despite a strong tendency to award a privileged position to ethics as opposed to a formalistic principle of morality, or to communal values as opposed to arbitrary individual freedom, no real attempt has been made in these circles to render Hegel's *Philosophy of Right* fruitful for the discourse of political philosophy. Indeed, the fact that authors

such as Michael Walzer, Alasdair MacIntyre, or Joseph Raz are trying to keep the greatest possible distance from the political philosophy of Hegel has acquired an almost symptomatic significance by now.¹

At first sight, this general isolation of Hegel's *Philosophy of Right* is difficult to understand since the work has a number of theoretical features that could make it appear particularly suitable for our debates today. Given the widespread awareness of the need for the social contextualisation of formally established principles of justice, Hegel's attempt at setting the abstract principles of modern right and morality within an institutional framework should look extremely attractive; further, in view of the increasing uncertainty about the place formal right should occupy in our practical everyday morals, his efforts to develop an ethical metatheory of right ought to appear uncommonly seductive; and finally, in view of the problems of political philosophy today, there could be a particular appeal in the close connection between the development of his theory of right and his diagnosis of the age, which centers on the alleged threat of individualism. But it appears that all these advantages have been unable so far to regain a legitimate place for Hegel's *Philosophy*

¹One exception, of course, is Charles Taylor, who not only wrote a major monograph on Hegel (*Hegel* [Frankfurt, 1978]) but who, in a summary of that book, also produced a concise interpretation of Hegel's political philosophy (*Hegel and Modern Society* [Cambridge, 1979]); however, even that impressive study can in no way be understood as a resumption of the specific intentions of the *Philosophy of Right*, but rather as an actualization of Hegel's philosophical thought as a whole. The *Philosophy of Right* converges with Walzer's theory of justice in the idea that the separation of certain normative spheres must constitute an essential principle of a modern concept of justice (Michael Walzer, *Sphären der Gerechtigkeit* [Frankfurt, 1983]; *Spheres of Justice* [New York, 1983]); it touches on the ethics of MacIntyre in the idea that a certain internal connection must be established between a diagnosis of the age and a normative theory (Alasdair MacIntyre, *Verlust der Tugend* [Frankfurt, 1987]; *After Virtue* [London, 1981]); and it agrees in certain points with the approach of Joseph Raz in claiming that the starting point of a liberal theory of justice must be a complex ethical concept of individual autonomy (Joseph Raz, *The Morality of Freedom* [Oxford, 1986]). Currently the only exception, i.e., a genuine reactualization of Hegel's *Philosophy of Right*, seems to be Michael O. Hardimon's study, *Hegel's Social Philosophy: The Project of Reconciliation* (Cambridge, 1994).

of Right in today's philosophy. Rather, even in the debates with Rawls or Habermas, where a theoretical recourse to his work would seem most obvious, any attempt at a systematic reactualization is patently avoided.² Thus we are facing a paradoxical situation in which, on the one hand, the reviving interest in Hegel is beginning to produce a growing amount of academic research into his *Philosophy of Right* while, on the other hand, its systematic content still seems to have no significance for the politico-philosophical self-understanding of our time. Hegel's *Philosophy of Right*—which once divided the most talented minds of a whole generation and which made the distinction between Hegelians on the Right and Hegelians on the Left possible until the middle of the previous century—has obviously lost its polarizing force. In contrast to Kant's theory of right or John Stuart Mills's treatise on liberty, which have recently returned into the limelight, Hegel's book plays the unfortunate part of a classic that is widely read but no longer heard.

If we try to discover the reasons why Hegel's *Philosophy of Right* has so conspicuously lost its appeal to the present, we are immediately struck by two reservations about the treatise that have in the course of time become commonplace in the discourse of political philosophy; these two stereotypes, added together, explain to a certain extent why doubts about Hegel's political philosophy are so dominant today that they even eclipse its obvious attractions. The first prejudice, whether deliberately or involuntarily, amounts to saying that the *Philosophy of Right* has antidemocratic consequences because it subordinates the freedom of the individual to the ethical authority of the state. It is true that certain details or trains of thought in the book could support such an objection, but in each case the center is held by Hegel's unmistakable refusal to interpret, as Kant does, the autonomy of all the citizens as the principle of

²Exceptions to this rule are *Clio* 10, no. 4 (1981): 407–22; Andrew Buchwalter, "Hegel's Concept of Virtue," *Political Theory* 20 (1992): 548–83; Andrew Buchwalter, "Structure or Sentiment? Habermas, Hegel, and the Conditions of Solidarity," *Philosophy Today* 41 (suppl.): 49–53; Sibyl Schwarzenbach, "Züge der Hegelschen Rechtsphilosophie in der Theorie Rawls," *Hegel-Studien* 27 (1992): 77–110.

the sovereignty of the people; and as this undemocratic feature of the work is foregrounded, it becomes obvious that it cannot productively be understood as a kind of metatheory of the democratic constitutional state.³ The second reservation that bars the road to any attempt at actualizing the *Philosophy of Right* today is of a mainly methodological kind and refers to the structure of the argument in the text as a whole. It is said that the steps in Hegel's reasoning can be correctly followed and judged only in relation to the appropriate parts of his *Logic*, but the *Logic* has become totally incomprehensible to us owing to its ontological conception of spirit. Therefore, it seems advisable to treat the text as a quarry for brilliant individual ideas rather than making a futile attempt to reconstruct the theory as an integral whole.⁴

It was probably these two reservations, one political and the other methodological, that made the most significant contribution to the decline in importance of the *Philosophy of Right* in the last few decades. All the arguments, epistemological as well as normative, that Hegel is able to marshal in support of his own conception of "ethical life" remain hidden behind the contested elements of his methodology and his concept of the state. If this crude characterization bears any resemblance to the reception of the work over the years, then any attempt at reactualization is faced right at the outset with the choice between two alternatives: we must either criticize the two objections directly and show them up as mere misunderstandings through a new interpretation of the *Philosophy of Right*, or we must criticize them indirectly by demonstrating their irrelevance to any really productive reappropriation of the treatise. Thus, while the first, "direct" strategy would aim to actualize the *Philosophy of Right* according to its own methodological standards and at

³One of the most even-handed discussions of this problem is still that in Shlomo Avineri, *Hegels Theorie des modernen Staates* (Frankfurt, 1976), published in English as *Hegel's Theory of the Modern State* (London, 1972).

⁴The dependence of the entire argument of the *Philosophy of Right* on the assumed concept of spirit is most convincingly and clearly demonstrated by Rolf-Peter Horstmann, "Hegel, Georg Wilhelm Friedrich," *Routledge Encyclopedia of Philosophy*, ed. Edward Craig, 2:259–80, esp. 273.

the same time to rehabilitate Hegel's concept of the state, the second, "indirect" strategy would pursue a much more modest aim: to demonstrate that a productive understanding of both the intention and the fundamental structure of the text is still possible, even if neither the substantialist concept of the state nor the operative instructions of the *Logic* are given an explanatory role. As can easily be seen, the two forms of reactualization carry opposite risks. While the first suggested method of interpretation runs the risk of salvaging the substance of the *Philosophy of Right* at the cost of falling short of our own post-metaphysical standards of rationality, the second is always at risk of sacrificing the true substance of the work to the objective of a bold cleanup of the text.

Despite the extreme brevity of these remarks it should by now be clear enough which of the two strategies I regard as the more promising, given the theoretical and normative conditions of the present. As I do not believe that either Hegel's concept of the state or his ontological concept of spirit can in any way be rehabilitated today, I must be satisfied with the indirect reactualization of the *Philosophy of Right*. Therefore, what I want to attempt here is to sketch, step by step, a proposal as to how the basic intention and the structure of the text as a whole can and must be understood without using either the methodological instructions of the *Logic* or the underlying conception of the state; the goal of this "indirect" procedure is to demonstrate the current relevance of *The Philosophy of Right* by proving that it can be understood as a draft of a normative theory of those spheres of reciprocal recognition that must be preserved intact because they constitute the moral identity of modern societies.

In proposing such an interpretation I am fully aware of the danger of losing sight of the true substance of the work as I try to reactualize it; nothing would be worse than presenting a substantial normative social theory under the title of *Philosophy of Right* and finally discovering that I could have done that more easily without the laborious discussion of Hegel's text. In order to avoid this embarrassing risk I will immediately describe the two theoretical elements that I believe must be considered in any appropriate and fair reconstruction of the work, even if

this entails considerable difficulties in interpretation: one being the far-reaching intuitions Hegel attached to his concept of “objective spirit,” the other the manifold reasons that led him to introduce his concept of “ethical life.” The first concept, neglecting its interconnection with the whole of the Hegelian system, seems to me to contain the thesis that all social reality has a rational structure and any breach of that structure by using false or inadequate concepts to try to understand it will necessarily have negative effects on social life as soon as those concepts come to be applied in practice. In short, by his idea of society as “objective spirit,” Hegel wishes to claim that an offence against those rational grounds with which our social practices are interlinked at any given moment will cause damage or injury in social reality. In contrast, the second central concept, that of “ethical life,” seems to me to contain the thesis that in social reality, at least in that of modernity, we come across some spheres of action in which inclinations and moral norms, interests, and values are already fused in the form of institutionalized interactions. To that extent Hegel is being consistent in asserting that those moral spheres of action themselves deserve the normative designation of “ethical life”; this is his philosophical alternative to the search for abstract moral principles as the conceptual means for orienting human subjects normatively. In what follows, these two theses, for all my vagueness in introducing them, will be regarded as belonging to the core of even an indirect reactualization of Hegel’s *Philosophy of Right*; I maintain that those who dispense with the rational reconstruction of the concepts of “objective spirit” and “morality” have sacrificed the substantial content of the text to a superficial plausibility.

In particular, in my attempt at reactualization, I will first reproduce the basic intention of Hegel’s *Philosophy of Right* in a form in which the text will appear as eminently meaningful even under the theoretical premises of the current debate in political philosophy; here I will be mainly concerned to provide a modern elucidation of the reflection behind Hegel’s obscure formulation that the “idea” of the “general free will” determines the total extent of what we should call “right”; I

try to interpret this assertion as the nucleus of a theory of justice, which aims at assuring the intersubjective conditions of individual self-realization to all (see chapter 1). Then, in a second step, I will demonstrate the immanent way in which Hegel links his draft of a theory of justice to a diagnosis of social pathologies; for I believe that the truly original nucleus of the *Philosophy of Right* is the suggestion that we regard the concepts “abstract right” and “morality” as two inadequate descriptions of individual freedom, which are reflected in the lifeworld as a “suffering from indeterminacy”; in this context I will also have to define the extent to which Hegel attributes to his draft of a theory of justice the therapeutic significance of a liberation from suffering (see chapter 2). In my third and last step I will examine Hegel’s concept of “ethical life” by demonstrating the complex conditions that, in his opinion, must be fulfilled in modernity by those social spheres that make the realization of individual freedom possible; here the limitations of Hegel’s approach should also become clear: in short, I believe that he has an overly institutionalist idea of the conditions of individual freedom (see chapter 3).

THE IDEA OF INDIVIDUAL FREEDOM: INTERSUBJECTIVE CONDITIONS OF AUTONOMY

After taking up his position at the University of Berlin, Hegel continued the series of lectures on the philosophy of right that he had begun to give at the University of Heidelberg. In 1820 they were finally published in book form entitled *Elements of the Philosophy of Right*. Although in the meantime Hegel had erected his architectonic system, he had by no means abandoned the essential intuitions of the practical philosophy of his youth.⁵ Under the heading of “objective spirit,” as he now

⁵On the genesis and context of Hegel’s *Philosophy of Right* see the excellent article by Ludwig Siep, “Vernunftrecht und Rechtsgeschichte. Kontext und Konzept der ‘Grundlinie im Blick auf die Vorrede,’” *Grundlinien der Philosophie des Rechts (Klassiker Auslegen, vol. 9)* (Berlin, 1997), 5–30.

called that part of his philosophy which dealt with the normative principles of a just social order in modern conditions, he intended to follow a line of reasoning that was very different from the deductions of rational right in Kant or Fichte. First, he argued, since subjects were connected from the start by intersubjective relations, a justification of general principles of justice could not arise from the atomistic idea that the freedom of the individual essentially consisted in the arbitrary exercise of a subject's own will, undisturbed and uninfluenced by others. This led, second, to his equally unchanged objective of devising general principles of justice that would legitimize those social conditions under which each subject is able to perceive the liberty of the other as the prerequisite of his own self-realization. Third, he had not discarded the quasi-Aristotelian idea of his youth that the normative principles of communicative freedom in modern society must not be anchored in rules of external behavior or mere coercive laws but needed to be internalized by practical training in habitualized patterns of action and custom if they were to lose the last remnants of heteronomy. And fourth, he remained equally, or even more firmly, convinced that in such a culture of communicative freedom, called "ethical life," a significant space must be provided for that social sphere of action in which all the subjects in their turn could pursue their selfish interests according to the conditions of the capitalist market.⁶ When Hegel was planning the publication of the *Philosophy of Right* in Berlin, he did not wish to part with any one of these four premises, all of which hailed back to the creative initial phase of his time in Jena, but his philosophical system had meanwhile developed in such an independent way that it was not easy to see how his original intuitions could be shown to their best advantage and without any damage in the new framework. The solution Hegel found for this task in his treatise not only clarifies the central intention of his practical philosophy; it explains both the extent of the underlying con-

⁶For these four premises of the practical philosophy of the young Hegel, cf. Axel Honneth, *Kampf um Anerkennung* (Frankfurt, 1994); *The Struggle for Recognition* (Cambridge, MA, 1996), chap. 1, sect. 2.

cept of right and the structure of the text as a whole, which seems confusing at first sight.

Since his farewell to Jena, the development of Hegel's system had been accompanied by the idea that the discipline devoted to morality and right must fall into that part of his philosophy that was to contain the explanation of the "objective spirit"; this meant, roughly, that portion of his philosophical undertaking that was to reconstruct the process of self-reflection undergone by reason during the stage in which it manifests itself in the external phenomena of social institutions and practices.⁷ The distance between this formulation and the tasks we usually associate with disciplines such as ethics or moral philosophy is significantly reduced if we take into account a further definition Hegel provides for the sphere of the "objective spirit"; but in so doing we must ignore the difficulty that arises from this additional characterization, which introduces into the system an element that has evolved historically and yet is intended to represent the self-reflection of reason. In fact, Hegel holds that reason realizes itself as a specific form of spirit in the objective world of social institutions; under modern conditions objective spirit takes the form of a "will that is generally free"; thus his philosophy of "objective spirit," in its most general definition, has to reconstruct systematically those steps that are necessary for the free will of every human being to realize itself in the present.⁸ Now it is no longer difficult to see that it is precisely this part of Hegel's system that contains the foundations of the philosophical discipline usually described as the "philosophy of right" or "ethics," and if we remove the theory from the system as a whole, we can even interpret it in such a way as to make it

⁷For a more precise definition of the place of the *Philosophy of Right* within Hegel's system, cf. Horstmann, "Hegel," 274.

⁸To elucidate the general intention of Hegel's *Philosophy of Right*, cf. Kenneth Westphal, "The Basic Context and Structure of Hegel's *Philosophy of Right*," in *The Cambridge Companion to Hegel*, ed. Frederick C. Beiser, (Cambridge, 1994), 234–69; Siep, "Vernunftrecht und Rechtsgeschichte"; Karl-Heinz Ilting, "Die Struktur der Hegelschen Rechtsphilosophie," in *Materialien zur Hegelschen Rechtsphilosophie*, ed. Manfred Riedel (Frankfurt, 1974), 2:52–78.

comparable not only to the philosophies of morality and right in Hegel's time but also to concepts of justice in our own.

Hegel, then, sees the idea of the "free general will" as the basic principle of his *Philosophy of Right*. Like Rousseau, Kant, and Fichte, he sets out from the premise that under the conditions of modern enlightenment any definition of morality or right can be considered as justified only to the extent that it expresses the individual autonomy or self-determination of the human being. However, the comparison becomes more difficult as soon as Hegel tries to integrate this discussion into his system by describing the perspective from which that "free will" is to be viewed in the *Philosophy of Right*. In the famous wording of § 29 of the Introduction we are told that the task of the treatise is to represent the "existence of the free will," which will at the same time define the sphere of "right" as a whole. In comparison with the approaches mentioned before, everything about this characterization is unclear. Our understanding of the concept of "existence" is assisted to some extent by the suggestion that in accordance with the definition of "objective spirit" we must be dealing with the social conditions for the realization of free will, but even the simple question of how far this can provide any kind of normative justification is left unanswered. Thus the only way to obtain any further clarification is through a closer examination of Hegel's use of the term *free will*; for right at the beginning he builds into this key category of his *Philosophy of Right* a set of intuitions he has preserved from his early phase, which distance him from Kant or Fichte.

In his elucidation of the term *free will*, which takes up the largest part of his Introduction to the *Philosophy of Right*, Hegel reflects on the modern idea of individual autonomy or self-determination.⁹ In his view, only two, equally incomplete ideas have so far had an effect on the philosophical treatment of this normative ideal: on the one hand, individual self-determination has been understood as the ability of human beings to distance

⁹An excellent survey of the development of the modern idea of autonomy is now provided by J. B. Schneewind, *The Invention of Autonomy* (Cambridge, 1998); however, the historical reconstruction of the theory ends with Kant.

themselves, by a decision of the will, from all those “needs, desires, and drives” that might be experienced as a restriction of the independence of the self; Hegel is convinced that this definition has captured an elementary component of individual freedom, as is shown, for example, by the human capacity for suicide, but in effect it leads to total inactivity because action of any kind is tied to the positing of restrictive purposes (§ 5). On the other hand, merely as the counterpart of the first, solely negative version of free will, Hegel sees a definition that offers the possibility of understanding individual self-determination as the ability to make an informed choice between “given contents”; as § 6 of the *Philosophy of Right* indicates, this category contains, among other things, the approaches to the moral philosophy of Kant and Fichte, who can think of freedom of the will only in terms of a moral deliberation about impulses or inclinations over which the individual has no control. Hegel’s objections to what we might call an “optional” model of “free will” leads to his own characterization of the autonomy of the individual, which to a certain extent provides the pivotal point of the entire construction of the *Philosophy of Right*; for what it means to explain a just or “good” social order by a “representation” of the “existence of free will” is measured above all else by the way the concept of “free will” is understood in detail.¹⁰

Basically, Hegel is able to sum up his objections to the optional model of self-determination in the single formula that here the material of a reflective decision of the will must continue to be regarded as contingent and in that sense as “heteronomous”: as he puts it in his own terminology, “the content of this self-determination” therefore remains something essentially “finite” (§ 15). Thus, while the limitation of the negativistic model of “free will,” in Hegel’s view, consisted in its ability to describe self-determination only as the exclusion of all specific inclinations or purposes, the shortcoming of the optional model was

¹⁰An outstanding interpretation, albeit one that deviates from the reflections that follow, is offered by Robert B. Pippin, “Hegel, Freedom, the Will: The Philosophy of Right (§ 1–33),” in Siep, *Grundlinien der Philosophie des Rechts*, 31–54.

the compulsion to represent the act of self-determination as a reflective choice between inclinations or impulses that are themselves beyond the subject's control—and, as Hegel never tires of repeating, a consequence of such an incomplete definition of freedom is the Kantian dualism of duty and inclination, of ideal moral law and mere instinct-driven nature. In contrast, not surprisingly, the author of the *Philosophy of Right* aims at a more complex model of “free will” in which even the material of individual self-determination loses every trace of heteronomy because it can in its turn be imagined as a product of freedom. Such a demanding concept is supposed to be possible if the will is imagined as an internally reflective relationship, whereby it is able to have an effect on itself as will.

At this difficult point Harry Frankfurt's famous suggestion to distinguish between “first” and “second-order volitions” is much less helpful than it might appear at first sight.¹¹ The distinction may explain what Hegel means by talking about the will that “has itself as its object” (§ 10); in accordance with Frankfurt's suggestion, this must refer to the idea that we can understand our impulses or inclinations as expressions of the will (“volitions”) of the first order, which we are able to assess from the perspective of a second order. Based on such a model, it makes sense to regard the human will as a relationship on two or more levels, in which we are able to will or not to will our elementary, subordinate volitions again. But all this proves less than helpful as soon as we turn to Hegel's more comprehensive formulation that the “free” will must will itself “as free,” that is, as able in its turn to transform into the stuff of freedom the material composed of its impulses and inclinations; for, given this definition, the obvious question will be how to represent impulses in such a way that they can be imagined as “free” and nonfinite.

Here we are offered two alternative interpretations, distinguished by the degree to which they understand Hegel as involved in the project of *radically* sublating contingency in the

¹¹Harry G. Frankfurt, “Freedom of the Will and the Concept of a Person,” *The Importance of What We Care About* (Cambridge, 1988), 11–25.

system of human motivation. On the one hand, Hegel can be interpreted as essentially adopting the Kantian idea of self-determination, but adding the premise that every subject must possess the appropriate inclinations in order to be able to convert the freely chosen decisions into motives.¹² On the other hand, this rather conventional interpretation is countered by the claim that Hegel wanted to draw the idea of individual self-determination so deeply into the structure of human motivation that every subject, and correspondingly every social community, as it were, “naturally” and “spontaneously” sets itself the task of developing and cultivating within itself inclinations and impulses that were consistent with, and in fact an integral part of, true human freedom. In this second case the idea of free will includes the far-reaching demand for a deliberate “working through” of the whole system of human impulses. The key for the choice between the two alternatives, in my view, is supplied by an apparently insignificant passage in the Addition to § 7, in which friendship is described as the paradigmatic pattern for experiencing such a freedom:

But we already possess this freedom in the form of feeling, for example in friendship and love. Here, we are not one-sidedly within ourselves, but willingly limit ourselves with reference to an other, even while knowing ourselves in this limitation as ourselves. In this determinacy, the human being should not feel; on the contrary, he attains his self-awareness only by regarding the other as other. Thus, freedom lies neither in indeterminacy nor in determinacy, but is both at once . . . the will is not tied to something limited; on the contrary, it must proceed further, for the nature of the will is not this one-sidedness and restriction. Freedom is to will something determinate, yes to be with oneself in this determinacy and to return once more to the universal.

At this point we are suddenly faced once more by the first of the four motives Hegel tries to salvage from his early, pre-systematic period in his complete system despite all the new

¹²See, e.g., Allan Patten, *Hegel's Idea of Freedom* (Oxford, 1999), 53.

constructional constraints; for the passage I have just quoted amounts precisely to the concept of freedom that he had previously advanced against the atomism of the various theories of natural right. Here, in contrast to the two defective definitions, Hegel answers the question how “free will” is really to be understood by, roughly, this train of thought: in order to be able to will itself as free, the will must restrict itself to those “needs, desires, and drives,” in short its “first-order volitions,” the realization of which can again be experienced as an expression, or confirmation, of its own freedom. But that is possible only if the object of the desire or inclination itself has the quality of being free, because only such an “other” can really enable the will to experience freedom. It is easy to see why Hegel can present this construction as a synthesis of the two models that were earlier described as defective: from the second, “optional” model he adopts the idea that individual self-determination must consist in a reflective restriction to a specific aim, and from the first the notion that autonomy must always have the form of an unrestricted experience of self, so that, adding the two together, “free will” can be described as “being with oneself in the other.”¹³ Naturally, this proposed solution contains a number of unclaritys, which are resolved in later passages of the *Philosophy of Right*; for example, the concept of “education” in the Introduction provides only a vague indication of how the reflective restriction to a specific aim can be presented as anything other than a “choice” or an “arbitrary act.” But, on the other hand, this model of a “free will,” which clearly reveals the contours of a communicative model of individual freedom, allows us to describe somewhat more precisely the program of the *Philosophy of Right* as intended by Hegel.

As we have already seen, Hegel would like to develop the principles of a just social order by representing the “existence of free will”; as we have also seen, “existence” is supposed to

¹³On the concept of “communicative freedom,” see Michael Theunissen, *Sein und Schein* (Frankfurt, 1978), chap. 1, sect. 1, 2; Dieter Henrich, “Hegel und Hölderlin,” *Hegel im Kontext* (Frankfurt, 1971), 9–40; Hinrich Fink-Eitel, *Dialektik und Sozialethik* (Meisenheim am Glan, 1978), sect. D, E.

mean the totality of external, social, or institutional conditions the “free will” needs in order to realize itself. By clarifying more accurately what Hegel means by the principle of “free will,” this provisional definition of the task can be expanded by an essential ingredient: as the quintessence of a just social order he regards those social or institutional conditions that allow each individual subject to enter into communicative relationships that can be experienced as expressions of their own freedom; for it is only insofar as they can participate in such social relationships that subjects are able without compulsion to realize their freedom in the external world. To put this intention of Hegel in somewhat more general terms, one might perhaps say that he regards communicative relationships as the “basic good” in which all human beings must take an interest for the sake of realizing their freedom; however, we must hasten to add that Hegel, unlike Rawls, does not believe that this basic good can be distributed fairly according to some principles; what he is driving at is rather the idea that the “justice” of modern societies depends on their ability to make it possible for all subjects equally to participate in such communicative relationships.¹⁴

This supposition receives further support if we add the last definition given by Hegel in connection with the basic formula of his *Philosophy of Right*; in § 29 he had written that any “existence” that is the “existence of free will” should be called “right.” An explanation of this rather unclear formulation, which is supposed to determine the range of the concept of right, is found in the subsequent paragraph, which can be regarded as a further key passage of the entire Introduction; here it becomes clear that the term *right* has the double meaning of a “necessary condition” and a “justifiable claim”: “Each stage in the development of the Idea of freedom has its distinctive right, because it is the existence of freedom in one of its own determinations. When we speak of the opposition between morality or

¹⁴Suggestions in this direction can be found in Charles Taylor, “The Nature and Scope of Distributive Justice,” *Philosophy and the Human Sciences (Philosophical Papers 2)* (Cambridge, 1983), 289–317; see also Charles Taylor, “Irreducibly Social Goods,” *Philosophical Arguments* (Cambridge, MA, 1993), 127–45.

ethics and *right*, the right in question is merely the initial and formal right of abstract personality. Morality, ethics, and the interest of the state—each of these is a distinct variety of right, because each of them gives determinate shape and existence to *freedom*” (§ 30). If we disregard the use of terms such as *ethics* and *interest of the state*, the meaning of which is not explained more accurately till later in the text, this passage shows unmistakably that Hegel means something far more comprehensive by “right” than other philosophers of his time: unlike Kant or Fichte, to whom “right” meant human coexistence regulated by the laws of the state and who relied most of all on the coercive power of the state, he understands that term to cover all those social conditions that can be proved to be necessary for the realization of the “free will” of every subject. But, in his view, what must be given in “existence,” or social reality, to enable the individual “free will” to develop and realize itself, is not completely absorbed by the single institution of legal right; rather, as we have already seen, the prerequisites of such a realization must include some essentially communicative relations that will enable the individual subject to be “with oneself in the other.”¹⁵ At first sight, Hegel’s use of the title *Philosophy of Right*, which meant something else then just as it does today, seems mistaken or misleading; while the term is generally understood to mean an attempt to provide a normative justification of the social role of legal rights, Hegel’s intention appears to be to supply a kind of ethical representation of the social conditions for individual self-realization; and because in these conditions the legal right, as suggested by the sense of the above quotation, forms a separate, albeit only “formal” element, one could at best talk about an ethical theory of legal right rather than a *Philosophy of Right*. However, such a manner of speaking would ignore the reason Hegel himself gives in the passage I quoted

¹⁵For this comprehensive concept of Hegel’s notion of right, see Siep, “Ver-nunftrecht und Rechtsgeschichte”; see also Siep, “Philosophische Begründung des Rechts bei Fichte und Hegel,” in *Praktische Philosophie im deutschen Idealismus* (Frankfurt, 1992), 65–80; Allen W. Wood, *Hegel’s Ethical Thought* (Cambridge, 1990), 71.

to justify his specific, comprehensive use of the title *Philosophy of Right*: all forms of social existence, insofar as they can be proved to be necessary conditions for the realization of “free will,” may be called “rights” because they are allocated a specific “right” in each case.

Hegel owes this conceptual proposition to a transference of the modern concept of “right”—the normative idea that subjects have some claims that are generally justified and sanctioned by the state—from the sphere of the individual to social conditions or structures as a whole. In his usage of the concept of right in the *Philosophy of Right*, universal rights initially are not attributed to individuals but to those forms of social existence that can be proved to be social “basic goods” serving the realization of “free will.” This usage of the term becomes even clearer when we try to answer the further question about what the justifiable claims of the various spheres might be; what Hegel means is apparently that such spheres, in proportion to the degree of their irreplaceability in making individual self-determination socially possible, have the right to occupy a legitimate place in the institutional order of modern societies. Thus the bearers of the “rights” that the *Philosophy of Right* is concerned with in the first instance are those social spheres and practices that have a justifiable claim to be maintained and carried on by society as a whole; and the purported guarantors of such “rights” of spheres, institutions, or systems of practices must be all the members of those societies who are characterized by the normative principle of individual self-determination.

It is this extremely idiosyncratic usage of the concept that led Hegel to entitle his own attempted theory of social justice *Philosophy of Right*; in so doing he did not merely want to underline, through the choice of a name, the challenge that his own enterprise was bound to represent to Kant’s or Fichte’s approach to the philosophy of right in spite of the many features they all had in common; rather, through the choice of that title, he consciously gave his theory a turn toward the normative, because his usage of the category of right required him to supply rational reasons for the legitimacy or validity of the “existential claims” made by the different social spheres. It should be clear

by now that these reasons were to be justified by a “presentation” of the necessary conditions of individual self-realization; and it should also be clear that the yardstick for such a “descriptive” justification is provided by the principle of irreplaceability in the social enabling of self-determination.¹⁶ To that extent Hegel’s *Philosophy of Right* represents a normative theory of social justice that, by reconstructing the necessary conditions of individual autonomy, tries to determine what social spheres a society must comprise or make available in order to give all its members a chance to realize their self-determination. In this program it is also easy to recognize the second intention that Hegel has kept alive since his youthful phase in Jena and revived in the mature shape of his practical philosophy: if we add what we have so far discovered about the basic good of communicative relations, the central intention of the *Philosophy of Right* is seen to be the development of universal principles of justice in terms of a justification of those social conditions under which each subject is able to perceive the liberty of the other as the prerequisite of his own self-realization. With this interim result in mind, it no longer seems too difficult to assess the basic structure and organization of the text in detail.

“RIGHT” IN THE *PHILOSOPHY OF RIGHT*: NECESSARY SPHERES OF SELF-REALIZATION

The title and intention of Hegel’s *Philosophy of Right* must have struck its original readers as surprising and bizarre, but its structure and division into chapters and sections will also have

¹⁶An interesting discussion of how far Hegel’s *Philosophy of Right* should be understood as a normative theory is found in Vittorio Hösle, *Hegels System* (Hamburg, 1987), 2:417–23. My own suggestion differs from Hösle’s proposed interpretation, in that I regard the concept of “objective spirit” or “rational reality” as such as normative insofar as we can speak here of rationality only with regard to the moral principle of “free will”: what can be called “rational” in relation to social reality is measured by the fulfillment of not only cognitive but moral demands.

seemed unfamiliar. The clarification of the intention behind the programmatic formulations of the Introduction may have created the reasonable expectation that the subsequent implementation of the theory would essentially consist in the straightforward reconstruction of the communicative conditions of individual self-realization; but if we assumed that such a simple pattern of argument really represented the structural principle of the text we would be underestimating not only the pressure exerted by the system on the *Philosophy of Right* but also Hegel's far more complex intentions. In developing his theory of justice, Hegel's aim was not only to reconstruct precisely those spheres of intersubjective action that are indispensable for the realization of "free will," given the communicative structure of freedom; rather, he also wanted to allocate a legitimate place in the institutional order of modern societies to those conceptions of freedom that are necessary, but not sufficient—and therefore incomplete—conditions for individual self-realization. Thus the binary division Hegel introduces into his theory of justice arises first from the distinction between incomplete and complete conditions for the realization of "free will": while he is convinced that only communicative relationships based on the pattern of friendship actually allow the individual subject to realize his freedom, he nevertheless concedes that other, incomplete concepts of freedom are a necessary prerequisite for the emergence of such a practical freedom. In the idiosyncratic terminology of the *Philosophy of Right*, Hegel's concern must be to clarify the hierarchy of the "rights" associated with all the different understandings or spheres of freedom and show how they must come together to enable the complete realization of "free will"; and, to continue the argument, the aim of such a systematic lineup would be to allocate to the different conditions of freedom the precise place in the structure of modern societies that they must occupy in the process of enabling individual self-realization.

However, this reflection represents only a preliminary stage in the attempt to understand adequately the confusing structure of the *Philosophy of Right*. If Hegel had been guided only by the division into necessary and sufficient conditions of freedom, the

most obvious thing would have been for him to break down his treatise into two parts; however, the *Philosophy of Right* comprises three substantial sections which deal, in this order, with “Abstract Right,” “Morality,” and “Ethical Life.”¹⁷ It is true that this tripartition can be seen to reflect again the two types of conditions of freedom, because only the third section, entitled “Ethical Life,” with its chapters about “the Family,” “Civil Society,” and “the State,” seems to deal really with communicative spheres of action, while the first two sections are concerned only with individualistic conceptions of freedom, so that the contrast between incomplete and complete conditions in the background obviously plays a certain part in determining the structure. But as far as the explicit division is concerned, the fact remains that Hegel is trying to reconstruct the necessary conditions of individual self-realization in three separate steps: the opening section about “Abstract Right” is joined by the section about “Morality,” which is followed by the fundamental closing section about “Ethical Life” as a synthesis. If we want to avoid a superficial explanation of this tripartition by resorting to Hegel’s *Logic*, which offers a wealth of arguments in favor of such a three-stage procedure, we may find the key in remembering the discussion of the three conditions of “free will,” which take up substantial parts of the Introduction.

An attempt at explaining the tripartite structure of the *Philosophy of Right* with the help of the distinctions I made there would take roughly this shape: first, Hegel is convinced that by distinguishing the three concepts of “free will” he has opened up the entire spectrum of possible models of freedom in the modern world; second, he assumes that all three models of freedom contain essential and indispensable aspects of the social attitudes and practices and that these aspects must be brought into an explicit theoretically articulated relation to each other if we are to explain the communicative conditions of individual self-determination; third, he believes that all these

¹⁷For some interesting suggestions on how to interpret this tripartite division see, among others, Ilting, “Die Struktur der Hegelschen Rechtsphilosophie,” and Westphal, “Hegel’s *Philosophy of Right*.”

models of freedom have not remained mere abstract ideas or theoretical concepts but have in their turn already gained so much influence on social processes in the modern world that they must be treated as “manifestations” of the objective spirit and appraised as to their “rights.”¹⁸ If it is indeed these three premises that underlay Hegel’s structural intentions, regardless of any considerations of his system, the tripartition of the text reveals a systematic and quite comprehensible meaning. Before it becomes possible to determine the nature of those conditions that are necessary and sufficient for individual self-realization, that is, before the institutional conditions of communicative freedom can be sketched under the title “ethical life,” it is necessary to determine the restricted role that must be played by the two other, incomplete models of freedom in modern society, because they contain some constitutive prerequisites for individual participation in that communicative sphere. In that sense the two sections that precede the real core of the *Philosophy of Right* represent Hegel’s systematic attempt to clarify the legitimate claim to existence of two definitions of individual freedom, both of which, in his view, independently of each other, have gained a substantial influence on society’s practical self-understanding, even though they are able only to encompass some partial aspects of self-determination. Under the heading “Abstract Right” he wants to fix the social location of the modern conception of freedom, according to which the individual subject exercises his freedom in the form of subjective rights, while under the heading “Morality” he tries to outline the legitimate location of the modern conception of freedom according to which the freedom of the individual subject is characterized by his capacity for moral self-determination.

This tripartite structure of the *Philosophy of Right*, which has its own inherent rationale and is not dependent on the formal structure or requirements of Hegel’s system, does not merely presuppose a certain symmetry between his characterizations

¹⁸The idea that for Hegel “abstract right” and “morality” are influential and powerful concepts of freedom in the modern world is well developed in Allan Wood, “Hegel’s Ethics,” in *Cambridge Companion to Hegel*, ed. Beiser, 211–33.

of the incomplete conception of “free will” and his definitions of “abstract right” and “morality”; it also implies that he was actually engaged in an ingenious quest to represent both restricted models of freedom as socially influential complexes of ideas which, in their correct location, would prove to be among the necessary institutional prerequisites of communicative freedom. I am convinced that Hegel sets out to supply proof for both premises in the first two sections of his *Philosophy of Right*. In so doing he must have found it much easier to elaborate the first thesis than processing the proof demanded by the second. With respect to the first thesis, he can restrict himself to uncovering in both models of freedom—“abstract right” and “morality”—the characteristic features that turn them into the expression of a merely “negativistic” definition in the case of the former and into the expression of an “optional” definition of “free will” in the case of the latter. The demonstration of the first thesis is connected to the more far-reaching supposition that, given a reduction of individual freedom to moral autonomy, the subject continues to depend on contingent impulses or drives. It must, however, have been much more difficult for Hegel to document the second thesis, which I have only touched on so far, and which asserts that if those two restricted models of freedom are correctly placed, their constitutive significance for all the communicative forms of freedom can be proved. Here the question that immediately arises is what we may mean when we speak of an adequate place, or an appropriate “right” of the attitudes connected with such ideas of freedom in the institutional fabric of our intersubjective freedoms.

The multilayered argumentation with which Hegel tries to answer this question in the first two sections of his text represents one of the greatest challenges of his practical philosophy to this day; that is one of the reasons why, in an examination of the *Philosophy of Right*, it is pointless to concentrate exclusively on the section about “Ethical Life,” taking it to some extent for the sum of the whole. Hegel conducts his argument negatively in the sense that he tries to circumscribe the appropriate “place,” or the specific “right,” of the two incomplete models of freedom by demonstrating the social damage their

comprehensive use would lead to. The decisive argument runs as follows: if either of the two ideas of individual freedom is treated as an absolute, be it in the form of a legal demand or equated with moral autonomy, the social reality itself will undergo some pathological dislocations that are a certain, almost “empirical” indication that the limits of legitimacy have been transgressed.¹⁹ Thus, by illustrating the negative consequences that are bound to occur if incomplete, or inadequate, conceptions of freedom are allowed to establish themselves in society in complete independence, it is possible step by step to fathom the proper place in our communicative practice to which their structure entitles them.

Two background convictions allow Hegel to use such an indirect method of justification in his diagnosis of the age. First, he is empirically certain that in his own time those two models of freedom have not only become powerful influences in the social world but also that as a result of being treated as absolutes they have caused the first dislocations in the practical relations of the subjects with themselves. This enables him, at several points of the text, to scatter references to pathological conditions and phenomena that can be regarded as indicators of a violation of the legitimate borders of “abstract right” and “morality”; and the terms with which he tries to characterize such social pathologies are words used in diagnoses of the age such as *solitude* (§ 136), *vacuity* (§ 141), or *burden* (§ 149), all of which can be reduced to the common denominator of “suffering from indeterminacy.” But in order to help his diagnosis of the age acquire a systematic significance for the *Philosophy of Right*, Hegel must resort to a second assumption, which is far more theoretically relevant: to maintain a necessary connection

¹⁹In this methodological respect, but in none other, Hegel’s approach resembles that of Alasdair McIntyre in *After Virtue*: the plea for a different, more extensive, understanding of freedom is developed in the light of a diagnosis of the social damage or pathology that the false or incomplete understanding of freedom under criticism leaves behind in the individual’s relation to himself; a structurally comparable argumentation is found in Michael Theunissen, *Selbstverwirklichung und Allgemeinheit: Zur Kritik des gegenwärtigen Bewußtseins* (Berlin, 1982).

between those pathological states and the treatment of two incomplete models of freedom as absolutes, he must be able to demonstrate that social reality is not indifferent to the use of those false or incomplete definitions of human existence. Here the central part is played by his conviction that social reality is always permeated by rational reasons to such an extent that a practical infringement of them is bound to create dislocations in social life. It is these two ideas that Hegel asserts in the first two sections of his *Philosophy of Right* in an extremely provocative form; together they allow him to combine his draft of a theory of justice with a diagnosis of the age intended to convince his contemporaries that in their “burdened” state of mind they can find good reasons to let themselves be persuaded by his plea for an ethical relationship of communicative freedom.