

## THE RIGHTS OF THE INDIVIDUAL IN HEGEL'S STATE

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The socio-political organization put forward in Hegel's *Philosophy of Right* is seen from within, in its actual workings.<sup>1</sup> The outline of world history at the end of the book is viewed, on the other hand, from a standpoint outside each particular community. The society that was so carefully described in the first 340 paragraphs now suddenly turns out to be only one among many others. Hegel's theory does not deal with social and political change embracing the whole of society. It does, however, expressly assign the point through which change can supervene in the established organization. The absolute idea that governs history produces itself in the shape of diverse institutions and systems of law and has an absolute right to take on these several modes of being. The absolute idea does not act directly, but through certain agents, called heroes by Hegel, which he conceives mainly as forerunners or "founding fathers" of historical novelties. These heroes raise a problem of interpretation. Were it not for them, one might say that the *Philosophy of Right* acknowledges individual rights guaranteeing certain basic modes of free action. But we cannot unqualifiedly assert this, for an action capable of destroying social order can start at any time and no political society will passively accept what can destroy it. The precursor who acts against it is countered by it. The established institutions reject what Hegel calls the wrong form of individuality.<sup>2</sup> Thus the existence of forerunners shows us that it is not the individual as such who is endowed with rights in Hegel's state. Which individuals do, then, in fact have rights? What social and political conditions determine who does and who does not have them? Before answering these questions I shall refer to a possible objection.

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<sup>1</sup> This paper was read at the Hegel Symposium of the X Interamerican Congress of Philosophy, Tallahassee, Florida, in October, 1981.

<sup>2</sup> G.W.F. Hegel, *Sämtliche Werke* in 20 Bänden, hrsg. von H. Glockner, Stuttgart: Frommann, 1954, (quoted hereafter as W followed by the volume number and the page, or the volume and the sign § for the paragraph) XVIII, 117.

The *Philosophy of Right* says a couple of times that heroes are outdated, that they pertain to primitive circumstances. Once the state has been founded and its chief institutions are firmly established, the founding fathers have no role to play. However, in other works, especially in the *Philosophy of History* and in the *History of Philosophy* Hegel speaks of a variety of heroes very different from the founders of states — Socrates and Christ, Heracles and the great philosophers — who started changes that eventually ruined their societies and inaugurated new eras in the history of mankind. Of those who — like Schiller's *Räuber* — may stand up against the establishment in modern times Hegel said that they would have to rise against the whole civilized world as such. And he stressed that our interest in heroes and our need for them can never falter. ("Das Interesse... und das Bedürfnis solch einer wirklichen individuellen Totalität und Lebendigkeit wird und kann uns nie verlassen".<sup>3</sup>) Although the modern state as experienced by its citizens in its actuality and from within no longer needs any founders and is not required to maintain special agencies in charge of its own transformation, it is not viewed by the philosopher as something altogether beyond change. The *Philosophy of Right* which purports to spell out existing reason as it is now and refuses to speak about the future, obviously could not deal with this possibility. But we, who are well aware of it, may ask in the light of it: what is the status of individual rights in Hegel political theory?

The possibility of individual rights in a modern, rational society depended for Hegel on the unity of the political whole. Everything depends, Hegel said, on the unity of society and the individual.<sup>4</sup> Communities have to be formed by elements originally liable to become universal, to know and to will the whole. Social and political cohesion is already to be found in ancient states, but in them it was a fact of nature, something given and inescapable. Modern society too, in which all are free, has to have a strong political and cultural unity; in fact it has a greater need of it than ancient states because it has to withstand larger internal differences and the constant pressure of conflicting interests and opinions.<sup>5</sup> Because cultural and political unity is a requirement of modern societies but does not belong to them by nature,<sup>6</sup> the state must produce it, must somehow establish what it will not obtain otherwise. Politically produced cohesion need not be incompatible with different forms of personal independence as is natural, or substantial oneness, as Hegel calls

<sup>3</sup> W, XII, 266.

<sup>4</sup> W, VII, § 261, Zusatz.

<sup>5</sup> W, VII, §§ 260, 273.

<sup>6</sup> W, XII, 247, 248-9, 251-2, 253.

the unity of the Greek polis.

The novelty of the situation considered by Hegel lies in the fact that the "Gemeinsamkeit des Daseins" of the individual and the community<sup>7</sup> will serve its true purpose only if it stems from the freedom of both and furthers both forms of freedom. This strong unity should not be a natural link; nor should it sacrifice the state's right or the rights of free personalities.<sup>8</sup> To meet these and related conditions Hegel proposes the notion of recognition:<sup>9</sup> social cohesion has to result from mutual recognition by all parties. Though society and the individual do not grant each other's freedom<sup>10</sup> according to Hegel, they are mutually dependent for the exercise of it. They have to acknowledge each others rights and will their freedoms in order to develop what each is potentially. For Hegel real freedom is a process moving toward its perfection, a story. The freedom of the state will only become actual in the feelings and the "Gesinnung" of its citizens, from which it depends in peace and in war.<sup>11</sup> The freedom of citizens must be the purpose of laws and institutions<sup>12</sup> if the state is to be preserved from falling back into the condition of a primitive, arbitrary, externally coercive and therefore apolitical power. The intimate unity of the individual and the state promotes both kinds of freedom if they establish it in their capacity as subjects of rights who recognize one another and regard the freedom of the other as one of their own practical ends.<sup>13</sup>

The unity formed by individuals and the state in Hegel's theory cannot be interpreted apart from his metaphysical idea of rational freedom. The modern world represents an advanced stage of the realization of freedom because men are born now into circumstances which already make sense in human terms. Nobody can be free apart from an adequate world, and such a world is one in which freedom is already objectively established. It is true that each individual will have again to make the established world his own, but his development runs basically in the same sense as the existent institutions. The modern world is kept alive and going by the state. For modern man to become one with the existent state has not an exclusively political meaning in Hegel's theory; through his early recognition of the establishment, modern man becomes part of a civilization which having conquered nature is especially prepared to

<sup>7</sup> W, XI, 71.

<sup>8</sup> Rights of the state: W, VII, §§ 261, 155, 323-28; XVIII, 115; rights of free persons; W, X § 514.

<sup>9</sup> W, X § 431 and Zusatz; VII, § § 71 and Zusatz, 286.

<sup>10</sup> The bond that links the individual to the state is a moral one and does not proceed from his natural wants, according to Hegel: W, VII, § 258.

<sup>11</sup> W, VII, § § 267-69; XI, 328.

<sup>12</sup> W, VII, § § 124, 185, 205.

<sup>13</sup> W, XI, 71.

make freedom more easily accessible, more readily true.<sup>14</sup>

Hegel was convinced that any political establishment is better than none, and that the modern state is much better than its predecessors. The same holds in the *Philosophy of Right* for citizens: they approve of their way of living and knowingly strive to become part of modern existence. Their recognition of the state is part of their recognition of a world in which others have readied for them the ways and means of self-hood.

Rational freedom is the coincidence of a subject with himself. But the subject has to go through a whole world for his identity to be the result of his own efforts, as indeed it must be in the case of freedom. The natural world makes a bad mediator between the subject and himself. Only the civilized world, or second nature, is adequate for the purpose of actualizing freedom.<sup>15</sup>

Hegel does not fear that the modern state can eventually repress individual freedom as much as he doubts that all men will be able to embody the rationality in force in contemporary society. The mutual understanding between individuals and institutions is a fruit of freedom<sup>16</sup> and therefore a permanent task. The individual must grow until he is able to stand for universal reason as it is operative in his society.<sup>17</sup> The community that teaches him how to speak and how to think, how to behave responsibly and how to work, fills with its own contents the indefinite possibilities of the free subject. In order to have an ethical world or second nature, in which man is with himself in his own,<sup>18</sup> two things must concur: the formative action of the established universal and the development of the individual, who initially contributes only his empty potential freedom and his impulsive and appetitive nature. Everything — i.e. the existence of actual freedom — depends on the concurrence of these two processes: the renewal of the cultural legacy and its continual progress, the freedom of individual men and of the whole to which they belong.

Modern men owe their complex and difficult freedom to a historical process that has shaped a world in which freedom can flourish. Through *Bildung* historical societies extricate themselves gradually from nature and establish a human world. This is a product of labor and thought, and secures its own preservation by raising the natural individual born within it to the level of social rationality. Institutional education preserves the ethical world from falling back into nature. While society consists of

persons representing the spirit of the whole it is safe against inward barbarism.

The community of Hegel's *Philosophy of Right*, though thoroughly integrated, allows for much conflict, disagreement and competition between individuals. The common spirit of freedom, says Hegel<sup>19</sup> must be able to bear dissent and internal conflict without losing unity. Indeed, its unity ought to result from having successfully gone through the tests of division and confrontation.<sup>20</sup> Diversity and competition are of course regulated by law. Hegel obviously does not allow for an endless proliferation of unpredictable initiatives in every segment of social life. It would not be easy for a private group to fight for a legal reform to which the state powers are opposed. Dissent and competition have their assigned places and their established rules. Their role in the whole is, up to a point, preordained; their scope is fixed beforehand. In society violence is always a crime and is punished as such. Indeed, in order to permit and protect the extremes of free subjectivity, the many and varied rights of a free personality, the state must retain much power and authority. Religious freedom and the freedom of the press, the freedom to choose one's craft or profession, the freedom of the family to educate the children according to its beliefs, etc. need, for their effective operation, to be recognized by a state whose authority is not endangered by the liberty of its citizens. Legitimate state power, far from opposing individual freedoms, is their condition, while they, in turn, are conditions of the state viewed as a concrete substance. If the common good did not preserve the several special interests within itself, but destroyed them, it would be a mere general interest, void of content. "[The state's] end is the universal interest as such and the conservation therein of particular interests, since the universal interest is the substance of these."<sup>21</sup>

When rational society has achieved "an inherently stable and strong existence"<sup>22</sup> actions come to be seen as a danger to society.<sup>23</sup> Free action turns out to be dangerous insofar as it can aim for goals that are opposed to or different from the usual, socially acknowledged ones, and may thus deviate from decency and lawfulness.<sup>24</sup> Whatever has a definite form and a power related to this form will be deformed, destabilized and weakened by the unusual which runs counter to this form. The state is entitled to overcome all defiance. "The foremost principle of every state is that there

<sup>14</sup> W, XI, 70.

<sup>15</sup> W, VII, § 270; 187.

<sup>16</sup> W, VII, § 187.

<sup>17</sup> W, VII, § 186.

<sup>18</sup> W, VII, § 187.

<sup>19</sup> W, VII, § 33 Zusatz, 84, 85 and Zusatz; XII, 285, 286, 287, 288.

<sup>20</sup> W, VII, § 260.

<sup>21</sup> W, VII, § 270.

<sup>22</sup> W, VII, § 218.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid; W. XVIII, 120-21.

is no superior reason, no conscience, no rightfulness but that which the state recognizes as right".<sup>25</sup> If the state is powerful and sure of itself it will allow exceptions to its laws and deviations from the usual way of life. For a "strong and stable" power crime is, according to Hegel, always something idiosyncratic, something unstable and isolated.<sup>26</sup>

But a weak and shaky society will reject dissent and will punish crime severely.

Hegel's basically pragmatic approach to the dangers that action poses to the unity and permanence of the state can teach us something about the source of the limits which his theory sets to the free actions of individuals. A deviant initiative should be judged according to the peril it entails for the existence of the whole. Intolerance is senseless if there is no true menace to sovereignty.<sup>27</sup> Hegel is not a zealot of uniformity: he condemns extravagance only if it can lead to anarchy and dissolution.<sup>28</sup> Compared to the unity of sovereign power, on which the very existence of freedom depends in the real world, personal dissent then appears to him as sheer arbitrariness and wild caprice, potential violence that should be violently dealt with.<sup>29</sup> "The wrong form of individuality is discarded, and indeed violently, through punishment".<sup>30</sup>

But Hegel acknowledges a type of individual action which, though ultimately fatal to a particular political form, its law and institutions, has its own legitimacy, above the state. This superior "right", however, will only become known to posterity.<sup>31</sup> Neither the agent who clashes with his world<sup>32</sup> nor the sovereign people who condemn him as a criminal understand what is at stake in their conflict. The exceptional action of the great precursor is destined to generate a new order of things,<sup>33</sup> organized around a "higher principle".<sup>34</sup> By his deviant action the precursor causes a collision between two rights. "Not that one is right and the other wrong" —says Hegel— "they are both right but opposite", and they cause their mutual ruin.<sup>35</sup> The people suffers its dissolution in history; the precursor dies as a criminal. From this twofold ruin a new and better world is born.<sup>36</sup>

<sup>25</sup> W, XVIII, 115.

<sup>26</sup> W, VII, § 218 Zusatz.

<sup>27</sup> W, VII, § § 232, 233, 234 and Zusatz; XVIII, 112.

<sup>28</sup> W, VII, § 203; XI, 70.

<sup>29</sup> W, VII, § 93.

<sup>30</sup> W, XVIII, 117.

<sup>31</sup> Ibid.

<sup>32</sup> W, XI, 58-9, 63.

<sup>33</sup> W, XI, 71; VII, § 102.

<sup>34</sup> W, XVIII, 117-18.

<sup>35</sup> W, XVIII, 119.

<sup>36</sup> W, XVIII, 119-20.

We must not confuse customary action (which Hegel usually calls *Handlung*) with the feats or deeds of heroes (*Thaten*) which do not occur in the context of a class, a profession, a family, at a particular time, but pertain directly to a turning point of world history.<sup>37</sup> The differences between acts and deeds explain their distinct legal status.

Customary action is tied to the everyday interests of the agents, who seek to satisfy their needs, to fulfil the duties of their station, and to achieve happiness and well-being.<sup>38</sup> A deed or feat stems from the absorbing passion of an individual and seeks to satisfy it; it does not pursue commonplace interests of established validity,<sup>39</sup> but breaks through the bounds of social convenience. The deeds of a precursor are unique, irrepeatable, and unjustifiable in terms of ruling law and morality. Customary actions are repetitions of other actions of the same kind,<sup>40</sup> reiterations of shared patterns of behaviour, instances of traditional rules, an acting out of usage. Heroes, says Hegel, cannot make themselves clear because they lack the solid reference frame possessed by those who act as members of a group. The content of the hero's passion turns out to be a new world, which is unthinkable at the moment of its birth, and cannot be the goal of a deliberate action because the agent cannot imagine it. The extraordinary action is therefore doubly unreasonable: it does not pertain to the habitual rationality of an actual human world and it is not governed by the rational faculties at the agent's disposal. It is rational, however, in a higher sense. The hero is no madman. The goals on which he concentrates with all his might<sup>41</sup> belong to the necessary development plan of the idea, which, though equally unknown to the establishment and to the hero, is equally served by both.

The habitual or moral agent has rights within the state, but not the hero. The world to come will rest on a principle contrary to the present world.<sup>42</sup> Hegel believes that it is the state's duty to fight for its own preservation and for life in accordance with the established law. He speaks, however, of a "right" of the hero, which, because it is not dependent on the state, he calls "absolute". But the word "right" is used here, I submit, in a speculative or metaphysical, nor in a legal sense. The expression "absolute right", used when speaking of the substitution of one legal system for another one, does not belong to the language of any real body of law. "Absolute right" is, moreover, incompatible with the meaning of

<sup>37</sup> W, XI, 59.

<sup>38</sup> W, VII, § 86-7.

<sup>39</sup> W, X, § 475 Zusatz.

<sup>40</sup> W, XII, 257.

<sup>41</sup> W, XI, 61; XII, 254.

<sup>42</sup> W, XI, 60, 305.

"right" in the sphere of political relations. In the *Philosophy of Right* it is mentioned as the right of the idea, not of persons: "It is the absolute right of the idea to step into existence in clear-cut laws and objective institutions."<sup>43</sup> The words have a logical and metaphysical sense because they refer to the development of universal reason. The idea, however, does not act directly but through human agents. Its absolute right is therefore efficient thanks to heroic deeds though not only through them. The absolute right is then really the right of precursors who act, by definition, outside the state as their founders, or against the established state. In the latter case they act as criminals from the point of view of prevalent law. Hegel says: "The heroes who founded states, introduced marriage and agriculture, did not do this as their recognized right, and their conduct still has the appearance of being their particular will. But as the higher right of the idea against nature, this heroic coercion is a rightful coercion. Mere goodness can achieve little against the power of nature."<sup>44</sup> Hegel himself distinguishes at least once the two senses of the word "right" which we are separating here. In the last section of the *Philosophy of Right* and speaking about the absolute idea he says that it appears in two different forms: "As a divine legislation and favor, or in the form of force and wrong".<sup>45</sup>

The existence of a right unacknowledged by the state does not seem to be consistent with what we have said about the status of individual rights in Hegel's theory. And yet such is the condition of the so-called absolute right of heroes. We should stress that this right remains unknown to the very subject to whom it is ascribed by posterity. Moved as he is by passion, the hero claims no right. He lacks a legal conscience and is in no mood to seek the protection of the law for his person and the fruits of his action.<sup>46</sup> A right that lies beyond the will and the awareness of persons and is not recognized by the state is nonsense in Hegel's theory. If there is such a thing as an "absolute right" it must be something completely different from rights within the state.<sup>47</sup>

The hero acts with total disregard for the community in which he lives, because, strictly speaking, he does not belong to it. In particular, he is not just one more member of the community among others with whom he stands in the characteristic relation of mutual recognition. When doing his deed, he only recognizes his purpose, for the sake of which he disavows every authority above him and every duty towards his neigh-

<sup>43</sup> W, VII, § 350.

<sup>44</sup> W, VII, § 93 Zusatz.

<sup>45</sup> W, VII, § 350.

<sup>46</sup> W, XII, 257; VII, § 118.

<sup>47</sup> W, XII, 249-52, 264-66.

bors. Now where mutual recognition is lacking, the very concept of right becomes paradoxical and can only have an extra-legal sense. The hero cannot have established rights within the state for he does not concur, through the recognition of the rights of others, to the constitution of the state as the universal encompassing all citizens. His deed is rather the effective negation of the state as such, and it is by virtue of this very negation that the state is entitled to proceed against him, according to Hegel. Mutual recognition and the communion of all in the ruling spirit are the prerequisites of a modern system of law as understood by Hegel. If reciprocity and agreement are missing the essential determinations of the concept of established right cannot be fulfilled.

From what we have seen we may therefore conclude the following. Individual rights, in a sense reminiscent of late 19th-century and early 20th-century liberalism, exist in Hegel's theory only within the state. Belonging to a state is a moral duty, not a natural necessity of the individual. Therefore, though the rights of the individual are politically conditioned, the individual's political existence is grounded on his character as a free subject, capable of self-determination. The state does not bestow on the subject the rights that belong to him insofar as he is morally free, but it only recognizes them. However, without the state's recognition nobody can actually exercise any right or contract any obligation, in the legal sense of these words. The legal person and moral subject depends on the state for the realization of his possibilities. Only a citizen can achieve a fully developed personality.

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