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Reflections Upon Hegel's Concept of Property, Contract, Punishment, and Constitutional Law

Morris D. Forkosch*

Professor Forkosch here examines Hegelian theories of justice and law in the belief that Hegel's theories are helpful in understanding legal concepts today. Hegel's philosophy in general is first discussed as a background for the author's subsequent discussion of Hegel's legal theories.

Codification and re-codification in federal and state jurisdictions has proceeded in a geometrical progression these past decades. To what extent is the old law yielding or, *au contraire*, to what extent is the ancient law reappearing? For example, are Plato's views on crime and punishment being revived, continued, or changed?¹ Or, to what extent are Hegel's views in a certain few legal areas of present interest and value? As we shall see, an understanding of Hegel's jurisprudential views,² as related to specific topics, is a present-day pragmatic necessity. We propose to seek these views, albeit briefly, in the fields of property, contract, punishment, and constitutional law.

Hegel's political philosophy is abstruse³ and his jurisprudence is, unfortunately, esoteric.⁴ As a part of his totally "false and wicked doctrine,"⁵ his legal philosophy has been summarily rejected,⁶ ignored,⁷ or little discussed by legal scholars.⁸ Obscure and misunderstood,

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1. See, e.g., Shuchman, *Comments on the Criminal Code of Plato's Laws*, 24 J. HISTORY OF IDEAS, 25, 40 (1963), discussing the Platonic theories (in the REPUBLIC) and practice (in the LAWS), and concluding that insofar as this portion of the LAWS is concerned, Plato sought to "bridge the gap between his own socio-ethical theorizing and the immediate realities of Greek law and the ethical theories implicitly embodied therein."

2. See, e.g., Viereck, *The Revolution in Values: Roots of the European Catastrophe, 1870-1952*, 67 POL. SCI. Q. 339 (1952); McIvin, *The Legal Norm in Secret Jurisprudence*, 25 PROCEEDINGS AND ADDRESSES OF THE AMERICAN PHILOSOPHY ASS'N, 42 (1952).

3. Commins & Linscott, *Preface*, "Hegel's Philosophy of Right," in III WORLD'S GREAT THINKERS 404 (1947).

4. I STIRLING, *THE SECRET OF HEGEL* xi (1865).

5. HOBHOUSE, *THE METAPHYSICAL THEORY OF THE STATE* 6 (1918).

6. *Ibid.* Professor Hobhouse rejects all of Hegel's social and political philosophy.

7. As an example of "ignored," see HALL, *READINGS IN JURISPRUDENCE* (1933); I SHERMAN, *ROMAN LAW IN THE MODERN WORLD* 302-36 (1924); see also POUND, *INTERPRETATIONS OF LEGAL HISTORY* 100-06 (1923).

8. For "little discussed" see CAIRNS, *LEGAL PHILOSOPHY FROM PLATO TO HEGEL*

necessary and required to round out his entire system,⁹ it is here felt that Hegel's theories of justice and law are today aidful in understanding the legal concepts investigated. Before examining this portion, however, it is required that the whole of Hegel be somewhat understood.

I. THE HEGELIAN SYSTEM

The "only complete, matured, and authentic statement of Hegel's philosophical system"¹⁰ is to be found in his *Encyclopaedia of the Philosophical Sciences*.¹¹ This work investigates¹² the "idea," i.e., all reality, and this all-embracing idea (Hegel's God?) is divided into logic, nature, and spirit (or mind);¹³ the last is subdivided into sub-

(1949), with one chapter of fifteen being devoted to Hegel. This is not to decry the discussion which is excellent and an outstanding condensation. One criticism must be made. There is preliminary acknowledgement that Hegel's thoughts are so interconnected that the latter's jurisprudence cannot be understood in isolation from his system. CAIRNS, *op. cit. supra* at 504. This is the prevailing view. Notwithstanding, Cairns feels that it is "possible to comprehend Hegel's philosophy of law without a preliminary excursus on his general system . . ." At p. 505 he cites Sandars, *Hegel's Philosophy of Right*, OXFORD ESSAYS 213, 216 (1855), as authority for this view, but Sandars' words are that "We need not travel beyond the limits of this particular sphere in order to apprehend its true character."

There is a definite distinction between "apprehend" and "comprehend," and WEBSTER, DICTIONARY 111, 459 (1931), defines these terms differently. Sandars limited his term, whereas Cairns enlarges it. See also HEGEL, THE PHILOSOPHY OF RIGHT (Dyde transl. 1896); CHANG, THE DEVELOPMENT, SIGNIFICANCE, AND SOME LIMITATIONS ON HEGEL'S ETHICAL TEACHING 48f (1926); MORRIS, HEGEL'S PHILOSOPHY OF THE HISTORY AND OF HISTORY 2 (1887); HEGEL, LOGIC 28f. If we adopt the necessarily "whole" or "integrated" approach, then Cairns' views are incorrect. CAIRNS, *op. cit. supra* note 8, at 505.

9. See note 8 *supra*.

10. WALLACE, THE LOGIC OF HEGEL ix (2d ed. 1892) [hereinafter cited as WALLACE, LOGIC].

MARCUSE, REASON AND REVOLUTION 62 (1941), speaks of Hegel's "First System" as evolving from his University of Jena lectures between 1802 and 1806, i.e., the "Jenenser system" of logic, metaphysic, philosophy of nature, and philosophy of mind. The early Jenenser system is not to be confused with the later *Encyclopaedia*.

11. Not completely translated into English, although Wallace has so done for the first (Logic) and third (Geist) portion of the *Encyclopaedia*. See note 13 *infra*. This volume is the third of Hegel's four works published during his life. In 1807 came his *Die Phaenomenologie Des Geistes (Phenomenology of Mind)*; in 1812 came the first part of his *Wissenschaft der Logik (Science of Logic)*, in 1813 the second part, both being combined in volume one, while in 1816 his second volume completed the *Science of Logic*; in 1817 the first edition of his *Encyclopaedie der Philosophischen Wissenschaften im Grundrisse (Encyclopaedia of the Philosophical Sciences in Outline)* appeared (second edition in 1827, third edition in 1830); and his final publication is the 1821 outlines of his *Grundlinien der Philosophie des Rechts (Philosophy of Right)*. HEGEL, THE PHILOSOPHY OF RIGHT v (Knox transl. 1942), states 1821 is the correct date; WALLACE, LOGIC gives 1820, as does LOEWENBERG, HEGEL—SELECTION x (1929), as well as do others.

12. Not fully, for its title-page states it is an outline only and is to act primarily as a manual for Hegel's students. WALLACE, LOGIC at ix.

13. The idea is divided into the idea in itself, or the logical idea, the idea outside

jective, objective, and absolute spirit. *The Philosophy of Right*,¹⁴ which gives us Hegel's theory of law, treats of the second, or objective, spirit.¹⁵ We propose first to analyze the *Encyclopaedia*, thereby setting the philosophical stage for the introduction of Hegel's jurisprudence, and then to examine his legal approach in detail. The *Encyclopaedia* presents a self-contained¹⁶ system which proceeds from the abstract to the concrete.¹⁷

The first of the three *Encyclopaedia* divisions is logic, which "is the real foundation of the Hegelian philosophy. Its aim is the systematic reorganization of the commonwealth of thought."¹⁸ The Logic, in accordance with the scheme adopted, begins with the most abstract and contentious of all thoughts, the concept of being. But a concept alone is insufficient. It therefore necessitates the utilization of a method whereby the truth may be reached. This method is termed mediation. Thus, writes Hegel, "The truth is the whole. The whole, however, is merely the essential nature reaching its completeness through the process of its own development. Of the Absolute it must be said that it is essentially a result, that only at the end is it what it is in very truth Should it appear contradictory to say that the absolute has to be conceived essentially as a result" this is not so. For at the outset of our thinking do we not use universals, e.g., all animals, but is this zoology? So, words like absolute, divine, and eternal do not express what is implied in them; "and only mere words like these, in point of fact, express intuition as the immediate. Whatever is more than a word like that, even the mere transition to a proposition, is a form of mediation, contains a process towards another state from which we must return once more."¹⁹ In other words,

itself, or nature, and the idea in and for itself, or spirit. CAIRNS, *op. cit. supra* note 8, at 504 n.3, calls this division logic, nature, and mind. He cites Wallace's translation of the Geist, see note 11 *supra*, as Hegel's PHILOSOPHY OF MIND, but we shall speak of it as the PHILOSOPHY OF SPIRIT, since Wallace himself confesses that "it may be said the term mind is wretchedly inadequate and common-place, and that the better rendering of the title would be PHILOSOPHY OF SPIRIT." HEGEL, THE PHILOSOPHY OF MIND 37 (Wallace transl. 1894).

14. Translations by Knox (1942) and Dyde, *op. cit. supra* note 8; the former is preferred since he gives us the 1821, see note 11 *supra*, work plus Hegel's own explanatory notes, plus "Additions" which Hegel's "official" biographer, E. Gans, culled from his notes taken at Hegel's lectures [references to the Knox Translation hereinafter cited as "PR" followed by page numeral].

15. STACE, THE PHILOSOPHY OF HEGEL 526 (1924) gives a chart which indicates the placement of the various divisions and subdivisions of which we speak.

16. REYBURN, THE ETHICAL THEORY OF HEGEL xii (1921).

17. MORRIS, *op. cit. supra* note 8, at 3.

18. WALLACE, LOGIC at xiv; see also BAILLIE, THE ORIGIN AND SIGNIFICANCE OF HEGEL'S LOGIC x (1901). Wallace gives a structural break-down of the three ENCYCLOPAEDIA editions at xv, xviii, and xxiii.

19. HEGEL, THE PHENOMENOLOGY OF MIND 82 (2d ed. Baillie transl. 1961). "It is this process of mediation, however, that is rejected with horror, as if absolute

Hegel's post-Kantianism invokes a transcendentalism which goes beyond that of his predecessor and reaches into an Absolute, with mediation being the method whereby this is achieved. And, as he then states, "mediating is nothing but self-identity working itself out through an active self-directed process; or, in other words, it is reflection into self, the aspect in which the ego is for itself, objective to itself. It is pure negativity, or, reduced to its utmost abstraction, the process of bare and simple becoming."

It is not difficult to see, in these quotations, the famous dialectic which Hegel (and later Marx) used, that is, the negating of assumptions so as to produce a higher level of understanding,²⁰ and shortly we return to it. But for the present Hegel's Logic, which uses this mediating method, concludes with the Idea, that is, an absolute self-consciousness which is the thought in which all other thoughts are included.²¹ To these concepts of mediation and dialectics, which are only means to the ultimate end (the Absolute Idea), there is now added reason. Reason is purposive activity and is everything.²² It is the generating force (the "will") which, using the method of mediation, will ultimately reach the Idea. Dialectically it negates, that is, it reaches into itself and abstracts from its real nature, thereby objectifying itself. In other words, the self-consciousness (see fourth previous sentence) becomes conscious of itself (wills itself) on its own purposive account (*für sich zu sein*).²³ Thus universality and objectivity become (are) identical, and the objective spirit is founded

knowledge were being surrendered when more is made of mediation than merely the assertion that it is nothing absolute, and does not exist in Absolute." *Ibid.*

Since Hegel's interpreters are numerous as the leaves in a forest, the definition of his Absolute is uncertain. See, e.g., HALDAR, NEO-HEGELIANISM 438-85 (1927), disclosing the view that Hegel's "Absolute is not a unitary self, but a self-conscious unity of many selves." *Id.* at vii.

20. The dialectic is not original with Hegel, as he admits, but he refines it and brings it to an apogee. Commins & Linscott, *supra* note 3, discuss this. It may be parenthetically here queried whether our adversary system of law is not also a dialectical seeking after truth.

21. MORRIS, *op. cit. supra* note 8, at 3; see also WALLACE, LOGIC 132f; MARCUSE, *op. cit. supra* note 10, at 62; JOAD, INTRODUCTION TO MODERN PHILOSOPHY 40 (1924).

While all this may sound as if Hegel omitted (or rejected) the practical world of life, the inference is fallacious. He felt that while each was a synthesis they were yet inadequate by themselves, that they were in constant contradiction, and that only the Absolute Idea, as the Rational Comprehension which in its reality encounters only itself, was ultimately Being or All Truth. HEGEL, FIRST PRINCIPLE: AN EXPOSITION OF COMPREHENSION AND IDEA 30-31 (Harris transl. 1869). On the mediation-negation concepts see also *Id.* at 8-10. And see also note 40 *infra*, as well as ORYNSKI, HEGEL 3 (1960), that his *Phenomenology* "constitutes a systematic survey of the ways in which experience appears."

22. See HEGEL, *op. cit. supra* note 19, at 83; III ERDMANN, A HISTORY OF PHILOSOPHY 681 (Hough transl. 1893). "Self-consciousness . . . is Reason, which as such an identity is not only the absolute *substance* but the *truth* that knows it . . . Truth, aware of what it is, is mind (spirit)." HEGEL, *op. cit. supra* note 13, at 205.

23. HEGEL, *op. cit. supra* note 19, at 82-84, 218-20.

upon the will's reasoned and purposive activity. "Institutions are the work of the will putting itself forth into the world, moulding the crude material of the world into a new world of mind."²⁴ And this freely acting will, as shortly can be seen, may well be termed the sufficient cause for the Hegelian system.

Hegel's introduction to his Logic rejects as incomplete the statement incorrectly attributed to Aristotle, *Nihil est in intellectu quod non fuerit in sensu* (There is nothing in thought which has not been in sense and experience), and proposes that the other coin-face be added, namely, *Nihil est in sensu quod non fuerit in intellectu*.²⁵ The point of departure is thus conceded to be experience, which includes one's immediate consciousness and the inductions therefrom. "Awakened, as it were, by this stimulus, thought is vitally characterized by raising itself above the natural state of mind, above the sense and the inferences from the senses into its own unadulterated element, and by assuming, accordingly, at first a stand-alooof and negative attitude towards the point from which it started."²⁶ This aloofness, as was seen above, is really a state of antagonism to the sense-phenomena, a willed negative approach to the originating point, but still incapable of separation therefrom. It is through this continuing negating method that ultimately we reach, through such an inward, and yet outward, ladder, the Idea, which is the Absolute or God, and which may be more or less abstract.²⁷

Here is the negative²⁸ dialectic utilized at the very inception of Hegel's opening sentences and preliminary to the further exposition of his system. This logical process provides the necessary understanding for Hegel's approach, methodology, exposition, and conclusions.²⁹ Existence is thus negation and there can be no affirmation without a necessary and correlative negation. Truth, *i.e.*, the Idea, is reached in and through³⁰ this process.³¹ Inherent in this logical approach is

24. STACE, *op. cit. supra* note 15, at 375; see also STIRLING, LECTURES ON THE PHILOSOPHY OF LAW 28 (1873); WALLACE, *op. cit. supra* note 13, at 485-86.

25. WALLACE, LOGIC 15. Hegel's indebtedness to his predecessors is not unacknowledged by him or by others, *e.g.*, MURE, AN INTRODUCTION TO HEGEL xi (1940); see also STACE, *op. cit. supra* note 15 *passim*.

26. HEGEL, LOGIC 19; see also Harris' translation of Hegel's *Phenomenology* in LOWENBERG, *op. cit. supra* note 11, at 68-79.

27. HEGEL, LOGIC 19; see also MARCUSE, *op. cit. supra* note 10, at 64.

28. See, *e.g.*, MARCUSE, *op. cit. supra* note 10, at 123; see also GRAY, HEGEL'S HELLENIC IDEAL 74f (1941); Watson, *The Problem of Hegel*, 3 PHILOSOPHICAL REV. 546-67 (1894).

29. HEGEL, LOGIC 22; MARCUSE, *op. cit. supra* note 10, at 64.

30. The statement "in and through" implies that a self-unfolding from within occurs, so that it is not an external force which acts upon, but rather the thing, the concept, or notion, or being, which itself unfolds by virtue of its inner contradictions, the Idea being the ultimate realization.

31. HEGEL, SCIENCE OF LOGIC, quoted in MARCUSE, *op. cit. supra* note 10, at 123f, 147.

that same negation which is found in all other aspects of the entire system.³² But basic to an understanding of any isolated portion of the system is "the nature of speculative knowing [expounded] in my Science of Logic, [and] in this manual [Philosophy of Right] I have only added an explanatory note here and there about procedure and method."³³

Space limitations preclude further inquiry into the Logic but one additional comment is advisable. Hegel has been accused of favoring existing institutions because of his famous couplet, "What is rational is real, and what is real is rational."³⁴ There is agreement with the indictment but not with the proof, for Hegel cannot be so translated. What he did say is, "What is rational is actual, and what is actual is rational,"³⁵ and in section 6 of his *Encyclopaedia* he further explains and defends this latter belief. Hegel's German term is *wirklich*, not *real*, and there is a sharp distinction between the two. The former is translatable into the English "actual," and the latter into "real." In translating and understanding *wirklich* we obtain a synthesis of essence and existence.³⁶ It is this logical synthesis which, according to Hegel, gives us the rational. For it is through freedom of thought, *i.e.*, rational thought,³⁷ that we attain the Idea, and Hegel's philosophy thus shows that "nothing is actual except the Idea."³⁸ It is therefore the synthesis of essence and existence which is rational actuality, not per se that which is "real" to us,³⁹ or, as the Logic puts it, the world is "totality in itself, and contains the pure idea of truth itself"⁴⁰ in its unfoldingness.⁴¹

The second of Hegel's tripartite division of the Idea, *i.e.*, nature, is nowhere treated at length by commentators or translators. It is the forgotten part of Hegel's *Encyclopaedia*. It concerns itself with the

32. Eduard Gans (Hegel's official biographer), as summarized by Dyde, *Preface to HEGEL, THE PHILOSOPHY OF RIGHT* at x (Dyde transl. 1896).

33. PR *Preface* at 2.

34. Sanders, *op. cit. supra* note 8, at 213.

35. PR *Preface* at 10.

36. PR *Translator's Notes* at 283, 302 n.27.

37. MARCUSE, *op. cit. supra* note 10, at 143; FOSTER, *THE POLITICAL PHILOSOPHIES OF PLATO AND HEGEL* 150 (1935); HOBHOUSE, *op. cit. supra* note 5, at 32-33.

38. PR *Preface* at 10.

39. Hegel admits there are innumerable states and conditions which do not correspond to his definition in that they do not embody a unity of essence and existence, but he dismisses them as spurious, as chance existences, and therefore not of philosophical importance or even of importance for reality itself.

40. Quoted by MARCUSE, *op. cit. supra* note 10, at 167. Hegel never rejected the world for ideas and considered existence a necessary part of his system. See, *e.g.*, BARRETT, *WHAT IS EXISTENTIALISM?* 41f (1964), earlier a *PARTISAN REVIEW SERIES TWO* 21 (1947); see also note 21 *supra*.

41. The world contains the truth in itself since the negative dialectic will "unfold" that which is within, without. See note 30 *supra*.

particularization or objectification of the Idea, which now passes into phases of time, space, and phenomenal existence. As already seen, the Idea, which is Hegel's Absolute, necessarily unfolds from within, and the subject-matter of our present study evolves as the synthesis of Spirit (*Geist*). Thus the absolute idea is now interpreted as objective being, so that the Logic ends where it began, with the category of being. This is not, however, the same, but a different being, on a higher level of understanding, and therefore one which cannot be explained through the concepts applied in the opening analysis of the Logic. It now is understood as a concrete totality in which "all particular forms subsist as the essential distinctions and relations of one comprehensive principle. Thus comprehended, being is nature, and dialectical thought passes on to the Philosophy of Nature."⁴² In other words the Hegelian methods and procedures utilized for the first division, or logic, are now utilized for the second division, or nature, and this time the higher level or conclusions reached involve the objective, rather than the subjective. But now that an objective and a subjective, or logic and nature, are obtained, what must occur when their oppositions, or negations, interact? This brings us to the last of Hegel's tripartite analysis.

With the third major division of the Idea, *i.e.*, spirit, we are only slightly concerned, for this subdivision is itself subdivided into Subjective, Objective, and Absolute Spirit.⁴³ The Hegelian dialectic should be sufficiently clear at this point to grasp the present method and relationship as exhibited in and by this new tripartite division. The Spirit is the synthesis of the Logic and the Nature, but even as the Logic and the Nature are themselves a synthesis of other prior evolutions, so does the Spirit partake of the like principle. Thus, to follow the former pattern of thesis, antithesis, and synthesis, we now find the Spirit having a similar evolution.

The Subjective Spirit is thus the "in and for itself" Spirit, treating of the soul, of consciousness, and of the mind (the same subject, object, and synthesis heretofore examined), the Objective Spirit being its negative relation and evolving the Absolute Spirit therefrom. The Objective Spirit will probably concern itself with the antithesis of soul, consciousness, and mind (and which will likely be the external relational manifestations which we may term institutions); through and out of these evolves the eventual Absolute. Man now concerns himself with these objective institutions which are simultaneously cause and effect, acting and acted, part and yet whole. It is these institutions which are the particular subject-matter of our present

42. MARCUSE, *op. cit. supra* note 10, at 165f.

43. Hegel's *Geist* is translatable into Spirit or Mind, but the former is preferred.

analysis, and it is the *Philosophy of Right*⁴⁴ which treats of them. "Hence, as this work treats of an essential stage in the evolution of spirit, whose whole nature is unfolded scene by scene in the *Encyclopaedia*, it is not inaccurate to speak of Hegel's ethical principles as based upon his logic. . . .⁴⁵ One single thread runs through the whole organism of the work."⁴⁶

II. THE PHILOSOPHY OF RIGHT CONSIDERED

Since the *Encyclopaedia* already contained Hegel's views of Right in its relation to his system, why an expanded version? The opening paragraph of his *Preface* to the *Philosophy of Right* states that his pupils at Berlin required a textbook and so "This compendium is an enlarged and especially a more systematic exposition of the same fundamental concepts" set forth previously.⁴⁷ But Hegel nowhere asserts the *Right* can be considered apart from his entire system—as a matter of fact, he asseverates that "the nature of speculative knowing" has been expounded in his *Logic*. He therefore now omits "to bring out and demonstrate the chain of logical argument in each and every detail" because the reader's acquaintance with philosophical method is assumed.⁴⁸ The *Right* will, therefore, treat of one phase of the synthesis resulting from the *Logic* and the *Nature*; that phase will be the objective (institutional) antithesis to the subjective thesis (*Spirit*).

The *Right* is thus to consider the world in which we live,⁴⁹ *i.e.*, primarily "our" world of institutions and beliefs. So Hegel's breakdown, again tripartite, considers first Abstract Right, then Morality,⁵⁰ and, finally, the Ethical Life.⁵¹ The first subdivision is law, which involves property, contract, and wrong; the second is conscience,

44. See note 14 *supra*.

45. The Hegelian system is essentially methodological but his language may have been better chosen to express his thoughts, *e.g.*, *supra* note 19. His dialectic has a "substantial identity with the Platonic dialectic." HARRIS, INTRODUCTION TO HEGEL'S PHILOSOPHICAL METHOD 2 (undated, Col. Univ. Lib., Class. #193 H 36-D4); see also GRAY, *op. cit. supra* note 28, also referring this back to Heraclitus.

46. Dyde, *op. cit. supra* note 32, at xi. This is also Kuno Fischer's view. 8 GESCHICHTE DER NEUREN PHILOSOPHIE (1901). This volume is really two volumes, each a Part, and Part II, Bk. 11, chs. 30-32, discuss the *Philosophy of Right*.

The aspect of religion is not omitted, *e.g.*, WALLACE, *op. cit. supra* note 11. See also, *supra* note 13. PR 365 n.12 to par. 270.

47. PR 1, 14.

48. PR 2.

49. But not *Nature*, for this is examined elsewhere. The *Idea* is *Logic*, *Nature*, and *Spirit*. The physical aspects of the world are treated in *Nature*. *Spirit* consists of the tripartite division already discussed, with *Right* involving the Objective *Spirit*. If *Nature* were again treated in Objective *Spirit* it would do violence to Hegel's system and methodology.

50. See PR 319.

51. See references cited in note 20 *supra*.

treating three aspects thereof; and the third discusses the family, civil society, and the state. It is impossible here to treat all phases of the *Right*; only certain aspects in each of the first and third subdivisions will be examined,⁵² namely, property, contract, punishment, and constitutional law. First, however, Hegel's all-embracing and important doctrine of will must be examined and understood, for all that follows stems from it.

Hegel's "introduction" states that "The subject-matter of the philosophical science of right is the Idea of right, *i.e.*, the concept of right together with the actualization of that concept."⁵³ Prior works by Hegel have previously discussed the logical development of this concept so that he takes it now as given or presupposed.⁵⁴ But what is it, as we discuss it here? Hegel answers that "An existent of any sort embodying the free will, this is what right is. Right therefore is by definition freedom as Idea."⁵⁵ But still, where do we find it? "The basis of right is, in general, mind; its precise place and point of origin is the will. The will is free, so that freedom is both the substance of right and its goal, while the system of right is the realm of freedom made actual, the world of mind brought forth out of itself like a second nature."⁵⁶ The will is the *sine qua non* of right but it must be a free will,⁵⁷ capable of having its potentialities become actualized. In such actualization it simply turns backward into itself; it becomes "the infinite in actuality (*infinitum actu*), since the concept's existence or its objective externality is inwardness itself."⁵⁸

The freely-determining will is, therefore, an active actuality which is self-producing and self-determining; it seeks by its nature the good and demands that its impulses be purified.⁵⁹ Where it has erred it seeks to regain the good by expiation; where it acts contrary to the Idea it voluntarily and joyously demands punishment.

52. The second part, abstract Morality, involving Hegel's discussion of purpose and responsibility, intention and welfare, and good and conscience, is omitted from direct examination but it is mentioned throughout.

53. PR 14.

54. See note 47 *supra*.

55. PR 33.

56. PR 20. Freedom is not Hegel's alone but is found in philosophical antiquity also; Dyde, *Hegel's Conception of Freedom*, 3 PHILOSOPHICAL REV. 655-71 (1894), analyzes this. See also Harris, *Preface* to FICHTE, SCIENCE OF RIGHTS at v., vii. (Kroeger transl. 1889); FOSTER, *op. cit. supra* note 37, at 137; LUQUEER, HEGEL AS EDUCATOR 104f (1896).

57. McVANNEL, HEGEL'S DOCTRINE OF THE WILL 20, 37 (1896); MELVIN, *op. cit. supra* note 2, at 48, examining the basis of Pashukanis' Commodity Exchange Theory of Law, points up his view of a free market place with free men engaging in free transactions as the originating point of law.

58. PR 30, 317.

59. *Id.* at 28.

The will is then true, or rather truth itself, because its self-determination consists in a correspondence between what it is in its existence (*i.e.*, what it is as objective to itself) and its concept; or in other words, the pure concept of the will has the intuition of itself for its goal and its reality.⁶⁰

And, as Hegel concludes his Introduction, it is "In correspondence with the stages in the development of the Idea of the absolutely free will" that the *Philosophy of Right* is subdivided into, and the will thereby examined in, the three phases of (a) immediate, *i.e.*, an abstract will or personality and its embodiment in "an immediate external thing," giving the sphere of Abstract or Formal Right; (b) "reflected from its external embodiment into itself . . . *i.e.*, *Morality*;" and (c) "The unity and truth of both these abstract moments . . . [the Idea given] in its absolutely universal existence . . . Ethical Life."⁶¹

A. Property and Contract

From the preceding analysis the concept of legal property involves the play and interplay of one's will. A thing is mine when my will makes it mine, *i.e.*, when it enters and possesses the thing so willed. This willing is a substantive right, that is, an "absolute right of appropriation which man has over all 'things.'"⁶² It is with ownership that a man becomes more complete than one who owns not; in full ownership one's liberty becomes ascendingly higher since he wills relations which entail rights. Thus life is not an entirety without liberty, freedom, and property.⁶³

But what of a conflict between two wills? There exists what Hegel terms "the imperative of right," that is, "Be a person and respect others as persons."⁶⁴ To illustrate what Hegel means, the early explorers of Antarctica claimed possession and title for their countries because no other "will" had arrived there first. And, assuming America wins the race to the moon, will (not) this jurisprudential concept of first come-first served be followed? This factual situation where no "will" is found present may also, by a legal fiction, be utilized, *e.g.*, the landings by Columbus and the Pilgrims, where the will of the Indians was ignored (albeit the latter might be said to have utilized preemption and prescription, while the Dutch "pur-

60. *Id.* at 31-32.

61. *Id.* at 35-36.

62. *Id.* at 41. In the United States this concept of and approach to property and contract was dignified and protected by the due process clauses of the fifth and fourteenth amendments. See discussion in FORKOSCH, *CONSTITUTIONAL LAW* chs. XV, XVIII (1963).

63. These are protected in our own Constitution of the United States, note 56 *supra*, just as in Hegel's philosophy.

64. PR. 37.

chased" Manhattan). Or, to illustrate in a different fashion, when the United States, whose "will" then occupied the Northwest Territory (as indicated by the Northwest Ordinance of 1787), agreed to open it up to the settlers in the famous Land Ordinance of 1785 and the Homestead Act of 1862 (which supplemented the Pre-emption Act of 1841), as amongst themselves the homesteaders acted on a first come-first served basis, but only because the government willed it so. As between France and the United States, however, without war there could ordinarily have been no such homesteading or territorial occupation unless both nations had previously agreed to a sale and purchase. In other words, since my will originally desires and freely enters a thing, it may now voluntarily withdraw and permit another's will to enter (or merely withdraws as by discarding an article, whereupon the law of "finder's keepers" enters); when the other's will now enters this makes the thing his, *i.e.*, gives him legal title thereto. The deed or contract is the legal evidence of this withdrawal-entering relation.⁶⁵ The will, freely and voluntarily entering and leaving a thing, is the determining factor; and in a contract between two wills the common-law doctrine of mutuality of agreement finds expression, for it is only when both wills have freely and actively willed that they be bound that a contract is then entered into.⁶⁶ Here, too, the common law and Hegel agree, but there is now given us an analytical tool of potency and systematic utility which may be invoked when examining other phases of the law.

In the preliminary discussions of a contract two wills freely, actively, and voluntarily make their respective decisions and act thereon. The essence of the will consists in just this, for the right, or good, is sought after and, in a valid contract, makes its appearance; when the will errs in its course the opposite occurs and it does, or commits, a wrong. "Hegel distinguishes between *Schein* (show or resemblance) and *Erscheinung* (appearance) An appearance is a forth-shining of the reality. A show is the inessential masquerading as the essential, the denial of the essence in its apparent assertion."⁶⁷ Thus, even though a show of right is made, it is not of the

65. The Anglo-Saxon and Continental (Roman) distinction is exemplified by this rule, *i.e.*, the writing is merely evidence as against the agreement *per se*.

66. But assume the law says you have contracted with X, regardless of your will not to, because of your conduct, *e.g.*, as in an estoppel case—is this not a contradiction of the Hegelian doctrine? The answer is no, for as with punishment the law courts are merely the embodiment of your will telling you what it is you really want and, insofar as you refrain from entering the contract, you are negating your own will. The courts thus will your will for you, and it is your will (through them) which really wills the estoppel, thus willing for you the contract you would have willed in the first instance.

67. PR 329. See also PR 64.

essence of right and such show is therefore wrong, *e.g.*, a contract fraud or a criminal embezzlement. "But the truth of this show is its nullity and the fact that right reasserts itself by negating this negation of itself. In this process the right is mediated by returning unto itself out of the negation of itself; thereby it makes itself actual and valid, while at the start it was only implicity and something immediate," *i.e.*, fortuitous.⁶⁸

This right, in contract, "is present as something posited" as a substantive right,⁶⁹ but the contract right is still a private right which, assuming it is otherwise acceptable, is "created" by and between the parties. It is their own personalities and, as an off-shoot of such blending, is to be followed or enforced because that is what their wills will.⁷⁰ To do otherwise is to do a willed wrong; but that cannot be the will's appearance, merely a show, so that the true will, *i.e.*, its appearance, disavows the aberrant show and wills its punishment civilly, *e.g.*, a breach of contract damage suit. In this civil punishment the truly apparent will partakes through the medium it, with all other true wills, has previously agreed upon, *i.e.*, a court of justice, which is one aspect of the willed state; it thus wills its own civil punishment.⁷¹

B. Crime and Punishment

The concepts and theories analyzed in the discussion of property and contract are as applicable to criminal public wrongs as to civil private wrongs. But one change or modification is required in the formulation. It has been shown that a privately willed contractual right becomes a posited, substantive right which the true will desires be followed and enforced. But this cannot occur with respect to a public right. For how can the erring will discuss beforehand with

68. *Id.* at 64. In the *Encyclopaedia* Hegel's sub-section heading is entitled "Right versus wrong," whereas Knox's translation discloses Hegel's present heading as merely "Wrong."

69. *Id.* at 60. This substantive right, *e.g.*, as in *Lochner v. New York*, 198 U.S. 45 (1905), is given constitutional recognition as a right to be protected from invasion by the states. See also U.S. CONST. art. I, § 10, cl. 1, and the concluding paragraphs of Justice Black's opinion in *Lincoln Federal Labor Union v. Northwestern Iron & Metal Co.*, 335 U.S. 525 (1949).

70. See FERSON, *THE RATIONAL BASIS OF CONTRACTS AND RELATED PROBLEMS IN LEGAL ANALYSIS* v., 1 (1949); See also, HOLLAND, *ELEMENTS OF JURISPRUDENCE passim* (1917); Williston, *Mutual Assent in the Formation of Contracts*, 14 ILL. L. REV. 85 (1919); *Household Fire Ins. Co. v. Grant*, 48 L.J.Q.B. 577 (1879).

71. Our *ex post facto* constitutional limitations, U.S. CONST. art. I, §§ 9-10, and found also in the due process clauses, recognize this principle of prior-willed rules and principles, which are incapable of future change, unless again so willed, so as to apply to past occurrences. Compare the current (1965) agitation in Germany to extend the statute of limitations with respect to the prosecution of Nazi war criminals (or at least to utilize a different method and date for calculating the time).

the victim the right it proposes to breach, for which a self-imposed punishment will occur. There must be, then, another and different right, *i.e.*, a public right as distinguished from the private right; and for a breach of the former more onerous consequences will flow than those attendant upon a breach of the latter. But whereas we know the genesis of the private right, whence comes this public right?

The genesis of this public right is not in the active, free will of the individual personality but in the "imperative of right," namely, "Be a person and respect others as persons."⁷² In this phrase we see the imperative looming as a duty which is over and beyond the individual private will. This imperative follows the dialectical pattern of examining the concept of the individual will (the thesis), analyzing its conflicts and antinomies (the antithesis), and then mediating their reconciliation in a synthesis which is in, and yet above, the original wills. This public imperative is not discrete and unrelated to one's private will; it is another aspect of the going-out-from-within-and-returning-into-itself free will of the individual. In property this will is manifested and finds itself in the thing possessed; in contract it fuses or combines with another; in the present instance, however, an agreement is reached with all on a higher plane than with one or a few.⁷³ Essentially, therefore, this higher plane or will is one's own, coming back to one's own when punishment is (self-) inflicted. It is in this higher will that the public right is nurtured and, through the individual's own will-participation, it becomes a right comparable to the private right; and for a breach of this latter one now punishes one's self by self-willing it and acting through one's agents, *i.e.*, the state.⁷⁴ "The injury (penalty) which falls on the criminal is not merely *implicitly* just—as just, it is *eo ipso* his implicit will, an embodiment of his freedom, his right; on the contrary, it is also a right *established* within the criminal himself, *i.e.*, in his objectively embodied will, in his action."⁷⁵

Thus, in being an individual and respecting others' individualities, and by imposing punishment upon one's self and thereafter insisting and assisting in carrying out such punishment, the transgressor is given the dignity of a moral and rational individual.⁷⁶ Flechtheim's

72. PR 37.

73. Compare Rousseau's general will, and Locke's social contract, which are analogous to but distinguishable from Hegel's doctrine.

74. In Hegelian theory alone we may contrast this exposition with that given by the Moscow Bolshevik, Issue No. 4, 1947, as quoted by General Walter Bedell in his *Memoirs*, Installment 7, N.Y. Times, Nov. 12, 1949.

75. PR 70. See, *e.g.*, Shuchman, *supra* note 1, at 27, 30, 32; WATSON, COMTE, MILL, AND SPENCER 229-30 (1895). See further the language of the majority in *Mapp v. Ohio*, 367 U.S. 643, 659 (1961).

76. Hegel's approach runs contrary to principles historically espoused, namely, retribution and deterrent. See, *e.g.*, discussion in Shuchman, *supra* note 1, and discussion

historical analysis of the basis for and problem of punishment in Hegel's dialectical integration holds that "Hegel overreaches himself"⁷⁷ in that "such a conception can hardly make room for future development,"⁷⁸ and concludes that Hegel's philosophy forces him "to glorify [punishment] as a reasonable and emancipating force."⁷⁹ Hegel's approach is not, however, completely at odds with modern techniques of treating criminals, *e.g.*, parole, rehabilitation, and probation. The latest authoritative German criminal code agrees basically with Anglo-American law in its retributive and deterrent approach, but it does not overlook parole as a means of hastening expiation. And yet, what is this approach if not a recognition of intrinsic goodness and human dignity? Does not this aspect partake somewhat of the Hegelian doctrine of the will, its freedom, and its self-punishing "mechanism?"⁸⁰ And to the extent that the latest re-formulation of the American Law Institute's model code desires to let private conduct, not impinging upon the public, remain the concern of private wills, does this not follow the Hegelian approach?

There still remains the question what this public right consists of, for a violation of which punishment follows. Merely pointing out how it arises does not give us its content. It is at this stage that those who deride "*What is rational is actual and what is actual is rational*,"⁸¹ have their inning. For Hegel must give substance to the claimed public right; he therefore ventures, in the second part of his *Philosophy of Right*, into the field of Morality where he discusses Good and Conscience, finally passing from morality to Ethical Life.⁸² This middle part of his essay gives us, albeit inconclusively, the theoretical content of the public right, which now is defined as "the good become alive."⁸³ Briefly stated, the objective ethical order, which replaces the good in the abstract, "is substance made concrete by subjectivity as infinite form."⁸⁴ The country's laws and institutions, substantive in character, are duties binding the will of the individual who is related to them as to the substance of his own being.⁸⁵ The right of all individuals to be subjectively destined to freedom is thus fulfilled when they belong to an actual ethical

of Burke's thoughts in KIRK, *THE CONSERVATIVE MIND* 5, 9, 68, 74 (1960).

77. Flechtheim, *Hegel and the Problem of Punishment*, 8 J. HISTORY OF IDEAS 293-308, (1947).

78. *Id.* at 296.

79. *Ibid.*

80. *Id.* at 298.

81. PR 10.

82. *Id.* at 103.

83. *Id.* at 105.

84. *Ibid.*

85. *Id.* at 106.

order.⁸⁶ This, in short, is Hegel's glorification of existing institutions which, if accepted, apparently prevents change or experiment.

C. Constitutional Law

The series of transitional steps just adumbrated brings us from the first part of the *Philosophy of Right* into the third. Hegel believes that the "ethical substance" is to be found as "the actual mind of a family and a nation."⁸⁷ These become the focal points of his concluding analysis. In this discussion of constitutional law we close the still-open question of how the substance of the preceding indestructible⁸⁸ public right is made known and "enforced."

The freely-acting will is now the basis of this phase of Right, as it has been in property, contract, and civil and criminal punishment. Here the subjective will recognizes as valid that which it sees as good and, acting objectively in accordance with this knowledge, commits a right or wrong, legal or illegal, act.⁸⁹ But this "right of insight into the good is distinct from the right of insight in respect of action as such;"⁹⁰ and, since any action is an alteration taking place in an actual⁹¹ world (thus obtaining recognition therein), "it must in general accord with what has validity there. Whoever wills to act in this world of actuality has *eo ipso* submitted himself to its laws and recognized the right of objectivity."⁹²

In other words, the free will, by the very nature of its essence, must reify itself, thereby recognizing and submitting to that which has "validity" in such objective sphere. Or, put differently, there can be no free will outside of (not in relation with) its own objectivity, *i.e.*, they are coin-faces. Actuality (objectivity) is thus subjectivity, and subjectivity is objectivity (actuality). Which must mean that the willed actuality, being the good and rational will objectifying itself, is either a reflection of, or the alter ego of, the Absolute come to life.⁹³

What is this Absolute objectified? "The principle of rightness passes over in civil society into law. My individual right, whose embodiment has hitherto been immediate and abstract, now similarly be-

86. *Id.* at 109.

87. *Id.* at 110.

88. Flechtheim, *supra* note 77, at 300.

89. PR 87.

90. *Id.* at 88.

91. Hegel's meaning of actual or actuality is found in citations in note 36 *supra*.

92. PR 88. In modern civilization there is no "willing" of one's self into this world for one is born into it, into a society, into a group. Perhaps by acceptance, or waiver, or estoppel, one "wills" to remain.

93. These conclusions enmesh us with natural law doctrines and while Hegel did not overlook this, PR 224, he did not treat it at length; he could make no distinction between natural and positive rights. McVANNEL, *op. cit. supra* note 54, at 71.

comes embodied in the existent will and knowledge of everyone, in the sense that it becomes recognized."⁹⁴ The Absolute is thus now the law, that is, the legal institutions and rules of conduct known, recognized, and obeyed by all.⁹⁵ For "if laws are to have a binding force . . . they must be made universally known;"⁹⁶ being thus known and recognized they must be obeyed; for "wrongdoing now becomes an infringement, not merely of what is subjectively infinite, but of the universal thing which is existent with inherent stability and strength."⁹⁷ Criminal punishment is thus self-willed⁹⁸ for it is an infraction of the will's own Absolutes, which are found objectified in such laws and customs. The court of justice is merely the objective instrumentality of the will's own will; the jury condemning the criminal is likewise his own will⁹⁹ objectifying itself so as to set the wheels of justice in motion; and the will thus wills itself to punish itself.

All this stems from the will objectifying and embodying itself in these laws and institutions which are the Absolute on earth; and these provide the basis for, as well as the actual content of, the public right which must not be violated. Whence come these laws and institutions which form the content of the public right? Obviously from a prince, a monarch, a state—from some authority which does not *represent* the will of each of us but *is* the wills of all and the will of each. For Hegel it is the state which is "the actuality of the ethical Idea," "the actuality of concrete freedom," and which exists "immediately in custom"; it "is absolutely rational,"¹⁰⁰ so that the "Idea of the state (a) has immediate actuality and is the individual state as a self-dependent organism—the *Constitution* or *Constitutional Law*; (b) passes over into the relation of one state to other states—*International Law*; (c) is the universal Idea as a genus and as an absolute power over individual states—the mind which gives itself its actuality in the process of *World-History*."¹⁰¹ The state is thus made the new basis for Hegel's dialectical analysis and is three-fold examined as before, with Constitutional Law being made the thesis out of whose contradictions the eventual synthesis of World-History will flow. This relational-identification of will and Absolute, of state and Idea, and of law and constitution, binds the ones into the many and the total into the Absolute. The constitution is therefore the

94. PR 139.

95. See HEGEL, *PHILOSOPHY OF HISTORY* (Sibree transl. 1900).

96. PR 138.

97. *Id.* at 140.

98. CHANG, *op. cit. supra* note 8, at 19.

99. PR 285. See also PR 165; REYBURN, *op. cit. supra* note 16, at 214, 215, 220.

100. PR 155.

101. *Id.* 160. See SANDARS, *op. cit. supra* note 8, at 241.

rational expression of the ethical Idea and its objective existence is a necessary aspect of the free will, *e.g.*, we may say with Locke that the Constitution of the United States was entered into by free wills acting collectively against one who had willed himself out of the original relationship. This, of course, presents the next question for Hegel, "Who is to frame the constitution?"¹⁰²

Hegel feels this question to be meaningless since it presupposes that only an agglomeration of individuals is present who, amongst themselves, now create a constitution, *e.g.*, Rousseau's general will, or the Mayflower Compact. Since his concept has nothing to do with an agglomeration then the question of how it, the agglomeration, could acquire a constitution, "it would have to be allowed to settle for itself . . ." ¹⁰³ But if we presuppose an existing constitution then our original question really becomes, Who is to alter the constitution? This assumes amendment by constitutional means only.

In any case, however, it is absolutely essential that the constitution should not be regarded as something made, even though it has come into being in time. It must be treated rather as something simply existent in and by itself, as divine therefore, and constant, and so as exalted above the sphere of things that are made.¹⁰⁴

This constitution, "existent in and by itself," is internally rational and is the organization of the state. The necessity for a division of state powers is a point "of the highest importance and, if taken in its true sense, may rightly be regarded as the guarantee of public freedom."¹⁰⁵ The three powers Hegel speaks of are the legislature, the executive, and the Crown;¹⁰⁶ the last binds these different powers "into an individual unity" of constitutional monarchy which "is the achievement of the modern world . . ." ¹⁰⁷ This exaltation of constitutional monarchy as the only true form in which a state can attain its perfection is the most unique and characteristic part of Hegel's theory of a state.¹⁰⁸ He not only makes the prince the be-all and the

102. PR 178.

103. *Ibid.* See also PR 179.

104. *Id.* at 178. May we ask, parenthetically, whether Hegel was influenced in any degree by the unwritten constitution of the English, although he says it is an "idle question" to ask which is a better form of government, monarchy or democracy. PR 268.

105. *Id.* at 175. When Hegel speaks of "a division of powers within the State," Knox gives his own reference as "A cardinal point in Montesquieu," PR 367, and upon which see the American concepts also. FORKOSCH, *op. cit. supra* note 56, chs. I, III.

106. PR 176, differing, however, from the American form which involves a degree of independence. See also MARCUSE, *op. cit. supra* note 10, at 219.

107. PR 176. See also CUNNINGHAM, *THOUGHT AND REALITY IN HEGEL'S SYSTEM* 130 (1910).

108. Sandars, *supra* note 8, at 244.

end-all of the state¹⁰⁹ but makes him "raised to the dignity of monarchy in an immediate, natural, fashion, *i.e.*, through his birth in the course of nature."¹¹⁰

It is at this point that Hegel's doctrine of free will breaks down. While it is an excellent starting tool to investigate his closed system,¹¹¹ free will is now dispensed with and acceptance because of state-ment, authority, or belief is substituted. Assuming that free will is "proved" and therefore is logically acceptable, Hegel's Greater Logic¹¹² nowhere permits logical insertion¹¹³ of a constitutional monarchy in his *Philosophy of Right*. Examination of property, contract, punishment, and law permits a logical development from the will of one or all; but what umbilical cord maintains life in this potentate?¹¹⁴ Of course the freely acting will of all may conceive him, but conception is not continued life or actual birth; then what becomes of Hegel's admission that a constitution's "alteration may come about only by constitutional means?"¹¹⁵ For alteration implies change with no eventual limitation, but here is foisted¹¹⁶ a concept of such inalienability that no freely willing people can escape its crushing impact.

What Hobhouse has termed a "false and wicked doctrine"¹¹⁷ may be, instead, labelled a series of conclusions which are false to their premises, illogical in their synthesis, and therefore wicked to the free will of their author. For if a free will desires the good end, which is a logical end or culmination or synthesis, then in at least this one instance of constitutional monarchy and a prince Hegel errs against himself—which means the free will acts against its own precepts and therefore should castigate itself. How? Apparently by removing the canker presently impeding the will's free actions. A constitutional government there must be but not a constitutional monarchy which is ruled simply by divine right of birth. And if the state, so-called, represents the will of all, even of those who deny it by show of

109. PR 179.

110. *Id.* at 184.

111. REYBURN, *op. cit. supra* note 16, at xii, feels there is no starting point to Hegel's closed system.

112. See note 11, *supra*; McTAGGART, A COMMENTARY ON HEGEL'S LOGIC 2 (1910), terming it the Greater Logic because it encompasses "a complete system of philosophy."

113. See BAILLIE, *op. cit. supra* note 18, at x.

114. *E.g.*, compare the language of Mr. Justice Jackson in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 634-55 (1952).

115. PR 178.

116. *E.g.*, WRIGHT, A HISTORY OF MODERN PHILOSOPHY 317 (1941).

117. *Supra* note 5. Tocqueville felt that Hegel's required submission to established facts as legitimate created a Pandora's box from which "have escaped all sorts of moral diseases from which the people is still suffering." Quoted by Zetterbaum, *Tocqueville: Neutrality and the Use of History*, 58 AM. POL. SCI. REV. 611, 619 (1964).

hands, *i.e.*, the dissenters, that self-same will may then alter and amend without hindrance of the illogical concept inserted by Hegel. The question of making known its day-to-day decisions is a problem not within our scope; but the road-block in the *Philosophy of Right* has been removed; this permits us to consider alternative forks which lie ahead.

As opposed to Hegel's dislike of "people," whom he thinks of "only as an aggregate, a formless mass whose commotion and activity could therefore only be elementary, irrational, barbarous, and frightful,"¹¹⁸ may be proposed Jefferson's concepts, or those of others, all equally as logical. Hegel's belief that the state should exercise control¹¹⁹ over these antagonisms is predicated upon two concepts, both of which the American Constitution rejects: (1) that the people cannot be trusted whereas a monarch can; and (2) that constitutional monarchy is the ultimate in political dialectics (instead of a phase or stage in the world-history of a particular time).¹²⁰

As corollaries of his beliefs Hegel must, and does, logically conclude that "War is not to be regarded as an absolute evil and as a purely external accident" but, rather, as "a necessity."¹²¹ Further, that "Sacrifice on behalf of the individuality of the state is the substantial tie between the state and all its members and so is a universal duty."¹²² But, as has been heretofore demonstrated, while all these are logical as deductions from premises, the assumptions from which they are drawn are not themselves logically deduced as in a sorites, and so all that follows is fallacious. For example, since logically there can be no impairment of the powers of the prince, else he is not the supreme authority, there can be no international law *per se*, which involves such impairment, nor can there be valid, circumscribing treaties. Since nations "are in a state of nature, they act according to violence. They maintain and procure their rights through their own power and must as a matter of necessity plunge into war."¹²³ The logic is irresistible, but who created a prince? Who defines his powers? Who acts as he wills? And who bears the brunt

118. PR 198.

119. BAILLIE, *op. cit. supra* note 18, at 14-16, discussing the "rooted antithesis between Kant's theory of the supreme worth of the individual will and purpose, and the Greek ideal of the "limitation of the individual for and by the universal end of the State." Hegel built upon both. See, however, HEGEL, *op. cit. supra* note 19, at 17; PR 2.

120. See, *e.g.*, John Dewey's language in 9 *ENCYCLOPEDIA SOC. SCI.* 602. See also KNOX, *THE AESTHETIC THEORIES OF KANT, HEGEL, AND SCHOPENHAUER* 109 (1936); MACKINTOSH, *HEGEL AND HEGELIANISM* 211 (1913).

121. PR 209.

122. *Id.* at 210. See also BAILLIE, *op. cit. supra* note 18, at 9-13.

123. *PHILOSOPHISCHE PROPÄDEUTIK*, I, § 31, quoted by MARCUSE, *op. cit. supra* note 10, at 222.

of his errors? Whereas a prince cannot be limited, why permit individuals so to be? The free will doctrine is emasculated of vitality when Hegel leaps onto a foundation of quicksand intuition.

Although in his analysis of constitutional law Hegel substitutes error and intuition for logic and reason, with the free will necessarily going astray, his prior methodology is logically infallible, based upon its premises, and provides an excellent tool for an investigation into the bases and application of property, contract, criminal, and constitutional law.

