

UDK 1Hegel, G. W. H.

1:34

Izvorni znanstveni rad / Original scientific paper

Primljeno 20. 3. 2024. / Received 20-03-2024

DOI: 10.38003/zrffs.17.6

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PROPERTY AND ITS FATE: HEGEL AND FICHTE ON THE VIOLENCE OF PRIVATE PROPERTY RIGHTS¹

Abstract

This paper argues that the issues of right and private property are pivotal to grasp the transformations in the development of Hegel's thought that push Hegel from his ontological theory of re-unification through love, developed in his Frankfurt fragments as an explicit remedy against the dominion of law and its form, to a more complex ontological conception of unification as the unity of unity and difference that marks Hegel's Jena thought, most notably in his essay on natural right, where he attempts to think the absolute ethical life as inclusive of differences in the sense of an atomistic civil society, thereby rethinking the status of law anew. The problem of private property will also allow us to raise the question of Hegel's complex relationship to Fichte's *Wissenschaftslehre* differently. It will be argued that despite Hegel's harsh critique of Fichte's theory of natural right and the state, both thinkers, nevertheless, agree that the crucial problem in thinking of right and the state is the inherent violence of civil society expressed in the notion of the contract, which, it will be furthermore argued, reveals a profoundly materialist thought. Finally, in relation to the problem of property, Hegel's infamous conceptualization of sacrifice, a tragedy that the Absolute plays with itself, will be discussed. It will be suggested that war, for Hegel, pertains to the inherent violence of civil society as its self-relating negativity, which points to contingency at the very heart of his conception of the Absolute. Beginning with the *Natural Law* essay, Hegel already shows that neither the Absolute, nor the speculative unity he seeks to think, can remain a matter of indifference.

Key words: private property, tragedy, ethical life, negativity, formalism

The Preface to the *Elements of the Philosophy of Right* (1821) is perhaps one of the most controversial texts in the entire oeuvre of Hegel. In this preface, as is well-known, Hegel presents one of the best known (and ill-received) speculative propositions, the so-called *Doppelsatz*, which states that "What is rational is actual; and what is actual is rational" (Hegel 1991: 20). This scandalous proposition, broadly speaking,

¹ Acknowledgment: this article is part of the research project Ontology of Law (Vilnius University). This project has received funding from the Research Council of Lithuania (LMTLT), (project No. P-MIP-21-193, Agreement No. S-MIP-21-51).

has been taken as proof of Hegel's ultimate quietism and that his *Philosophy of Right* is nothing but the justification of what simply *is*. Indeed, this has led many thinkers to interpret the Hegelian concept as a figure of false reconciliation.

Even if such a non-speculative reading of the *Doppelsatz* is accepted—which would go against the very *spirit* of Hegel's philosophical project—one cannot help but be taken aback when considering Hegel's earlier works, most notably his so-called Frankfurt theological writings, where the young Hegel, rather than trying to philosophically justify the state of things, in fact, attempts to circumscribe an alternative to the already dying *actuality* of his historical present. What is perhaps most surprising in these writings is Hegel's sustained critique of legality, law, and even *the concept*, which he opposes to an idea of reconciliation through love. This apparent stark difference between the thought of “young” and “mature” Hegel has even invited some readers to draw the conclusion that Hegel's mature philosophy is a betrayal of the ideas and ideals of his youth.²

It is my contention that this apparent stark difference is untenable and that Hegel's late philosophy is drawing, albeit in a much more conceptuality developed form, from the same sources that motivated Hegel from the beginning. But how can one approach this source? Perhaps one must look for the symptomatic point, which persists throughout his philosophy that might serve as the royal road to this source. Or, perhaps, this point is the very source?

It will be argued that the question of private property is that symptomatic point that persists throughout Hegel's career. But rather than using it as a crucial point *against* Hegel's philosophy, it will be treated as a point that helps us perhaps to rethink Hegel's philosophy, in particular his political thought, *against* the abovementioned criticisms. My scope will be modest—here I only want to schematically trace how the issue of private property rights informs Hegel's transition from his Frankfurt period writings to his early Jena attempts to sketch a philosophical system of ethical life, and how it retains its problematic status in his philosophy in general. It is in this perspective that Hegel's relationship with another German idealist, Fichte, is of crucial importance. As I will attempt to show, Hegel's relationship to Fichte's philosophy is not as one-sided as it may appear, since they are united by that very “symptomatic point” that is the issue of private property and the incessant negativity it generates.

Finally, it must be said that private property here will not be treated as a problem of law or economics, but as a philosophical issue pertaining to these spheres, yet irreducible to them. Nor will Hegel's involvement with political economy as such be discussed. My question rather is: what does the issue of private property disclose philosophically about Hegel's conception of *negativity* and his attempt to think the Absolute? Why it is necessary to think the Absolute to gauge the issue of private property and law?

1. Private property and sacrifice in Hegel's early Frankfurt writings

The problem of private property profoundly marks Hegel's early ruminations in Frankfurt. Already in the fragment “On Love,” Hegel argued that any relationship

2 For one, there is the influential and sympathetic reading of Lukács in his *The Young Hegel* (Lukács: 1976), but this also includes Adorno (Adorno 2008: 16).

premised on pure immediacy which “excludes all oppositions” runs aground when faced with property rights. “Since possession and property make up such an important part of men’s life, cares, and thoughts, even lovers cannot refrain from reflection on this aspect of their relations” (Hegel 1971: 308). But love, Hegel continues, is indignant to the exclusive right to the object which property expresses. Only shame, a shame of what is finite and private, to quote Werner Hamacher, “promotes the sublation of property which is based on a system of separations” (Hamacher 1998: 83). According to Hegel, not even the idea of communal property can surmount this system of separations. Love can only be sustained by the surrender of one’s rights to property.

This problem finds its most sustained and complex articulation in the *Spirit of Christianity and its Fate*. In this fragmentary treatise, Hegel precisely attempts to think of communal life—in the form of religion—*beyond* the form private property and positive law. According to Hegel’s interpretation, early Christianity not only wanted to resist the commands of a purely external divine power, but likewise sought to avoid embroilment within the relations of right that could injure their ideal of reunification: the task was not only to surmount Judaic law by ‘fulfilling’ it, but also to maintain the refusal to grant recognition to the “state of legality” of the Roman Empire, to resist being reduced to *persons*, to private property owners.³

These fragments, however, reveal the extent to which this communal refusal of property rights proved to be self-defeating. According to Hegel’s reading, Christ ultimately failed to “fulfil” the law and the community, by virtue of trying to unify itself with the ontological unity of Life [*Leben*], not rend by the Law or the struggle for recognition, which were ultimately delivered to the “fate of fatelessness.” The powerful attempt of early Christians to avoid *fate*, to avoid right so as not to injure Life, delivered them first to pure externality of violence and then to a passive split subjectivity (“beauty of soul”) in opposition to the same power, which they refused to acknowledge: rather than surmounting all oppositions, they withdrew from public life and were left with “a prodigious field of objectivity which claims activity of many kinds and sets up a *fate* whose scope extends in all directions and whose power is mighty” (Hegel 1971: 280). Ironically, it was the Roman state of legality they refused which gave their withdrawal its form: “The citizens of the Kingdom of God become set over a hostile state, become private persons excluding themselves from it, [...] the fate of Jesus and his following [...] remains a loss of freedom, a restriction of life, passivity under the dominion of an alien might which was despised” (1971: 284).

Property is thus shown to be a fate to which the early Christian community of love succumbs. But the stakes here pertain not only to early Christianity, but concern, perhaps even more problematically, modernity. In a crucial passage discussing Jesus’ “Sermon on the Mount,” Hegel admits that: “About the command which follows [Mathew vi. 19–34] to cast aside one’s care for one’s life and to despise riches [...] there is nothing to be said; [...] for such a command is without truth for us. *The fate*

3 In a sense, this is a refusal of recognition understood in the narrow legal sense; an act of resistance to the very problematic nature of the law, which as Christoph Menke has argued, coercively binds even that which it cannot include as *non-law* and escape the logic of equivalence (Menke 2018: 41–42). Perhaps we could recast the whole of *The Spirit of Christianity* as the young Hegel’s critique of the notion of recognition, which seems to eclipse his later system, since for the young Hegel *reconciliation is not recognition*.

of property has become too powerful for us to tolerate reflections on it, to find its abolition thinkable" (1971: 221, my emphasis).

Hegel, however, does not abandon his quest for a more authentic religious (re)unification of community. In the so-called *Systemfragment* (1800), Hegel, once again, faces the challenge to account for property within the ideal of religious reconciliation, but now immediately admits that it is "fate to possess property, and this fate is necessary and can never be discarded" (1971: 316). Yet if one cannot escape it, one must nevertheless show how these furies can be appeased from engulfing and undoing the community. Hegel's answer is religious sacrifice.

In first surviving half of the fragment, Hegel, while rejecting unity by virtue of law, since it is "something purely conceptual not a living being" (1971: 311), stresses that the unity of life must nevertheless include within itself that which is dead and unliving. Opposition is not external but immanent to life itself, or emerges from Life's self-diremption. "Life," as Hegel puts it in a soon to be iconic formulation, "is the union of union and disunion" (1971: 312).

Sacrifice is the ritualistic destruction of that which binds the human being to finitude that is, the attachment to property and the relations it presupposes, which preclude the union with the Absolute (or Life). The human being, precisely because it is organic, is related to both the organic and inorganic nature as the means and objects for its subsistence (that is, in the negativity consumption and labour). Now sacrifice, in Hegel's view, attaches a symbolic negation to the negative activity of the human being through the superfluousness of sacrificial destruction, and only "through this destroying for destroying's sake, does he make good for the destruction which he causes for his own particular purposes" (1971: 316). Only in this manner can property rights be maintained but suppressed from encroaching upon a community, which can enjoy reconciliation in absolute life.

As the fragment concludes, however, it becomes evident that these considerations take a historical twist. Sacrifice, Hegel admits, works only for people "whose life is as little as possible separated and disintegrated" – "happy peoples," whereas "unhappy peoples" – "living in a state of separation, must take anxious care for the preservation of one member [of the whole], i.e., for their own independence" (1971: 317). In other words, this model of sacrifice pertains to the Greeks, who, in Hegel's still overly idealized view of the ancients, exhibited a much more unified ethical substance and could mediate conflicts through cultic practices. "Unhappy peoples" cannot but care for their own individuality and property. The fate of property is again revealed to be too powerful for Hegel. Is a reconciliation still possible for us or are we abandoned to this fate? This is precisely where Hegel begins to see the limits of religious unification for modernity and is faced with the need to consider another path, which he hitherto dismissed: philosophy. After all, Hegel himself belonged to an unhappy people and was thus obliged to do philosophy (Koyré 1971: 146).

2. Fichte's Private Right and Hegel's critique of transcendental idealism

In a letter to Schelling that marks his transition from Frankfurt to Jena, Hegel writes: "In my scientific development which started from [the] more subordinate needs of man, I was inevitably driven toward science, and the ideal of [my] youth had to take

the form of reflection and thus at once of a system" (Hegel 1984: 64). As can be gathered, Hegel is still pursuing the ideas developed in Frankfurt. However, now his considerations take an explicitly philosophically polemical shape and Hegel begins openly targeting transcendental philosophy in general, and Fichte in particular. Hegel begins his first published work, the so-called *Differenzschrift*, by discussing the very status of philosophy: "Dichotomy is the source of *the need of philosophy*" (1977^a: 89). But what is the source or the foundation of this "dichotomy"? According to Hegel, the need of philosophy emerges precisely from the diremption of living historical spirit:

When the might of union vanishes from the life of men and the antitheses lose their living connection and reciprocity and gain independence, the need of philosophy arises. From this point of view the need is contingent. But with respect to the given dichotomy the need is the necessary attempt to suspend the rigidified opposition between subjectivity and objectivity; to comprehend the achieved existence (*das Gewordensein*) of the understanding and the real world as becoming. (1977^a: 89)

Hegel suggests that the task of philosophy is intimately linked with the crises of specific historical shapes of spirit. Nevertheless, one has to be careful not to treat dichotomy as something inessential *in opposition to unity*. "For the necessary dichotomy is One factor in life. Life eternally forms itself by setting off oppositions, and totality at the highest pitch of living energy (*in der höchsten Lebendigkeit*) is only possible through its own re-establishment out of the deepest fission" (1977^a: 91) What this means is that *philosophy is a symptom of a crisis of Life qua absolute unity*. In relation to our discussion of Hegel's earlier ruminations, it could be claimed that the crisis to which philosophy must now rise is precisely the collapse of the *ancien régime* and the emerging bourgeois society.

It is from this perspective that Hegel's critique of transcendental idealism as formalism becomes legible. Philosophically, the problem with transcendental philosophy is that it remains enmeshed in an oppositional thinking of rigidified oppositions by failing to grasp the Absolute *qua* self-relating. Furthermore, it acknowledges but disavows the dichotomy, which gives rise to it. Although it tries to raise the concept to the status of the universal, it rather absolutizes finitude: the concept becomes empty, whereas the content – relegated to the sensible, non-conceptual sphere – takes a life of its own. This creates a strange double bind for the concept: on the one hand, its synthetic activity can only dominate the external content: "the only identity of the finite and infinite that remains possible is a relative identity, the domination of the concept over what appears as the real and finite – *everything beautiful and ethical being here included*" (1977^b: 61). On the other, it remains weak and susceptible to the non-conceptual, which belies the concept's claim to universality. We could call this the *formalist impasse*: the concept, in relation to content, ends up domineering and yet ultimately impotent: it demands the "ought," yet can only depend on the given, the *status quo*.

This, however, is not merely an abstract philosophical issue, but pertains to thinking the political. Fichte, as is well known, thought of himself as the true philosophical

heir of the French Revolution.⁴ Hegel, however, rejects Fichte's practical philosophy as the "harshest despotism," an extirpation of individual freedom within the positive law of the State, in which the people are not taken as an organic totality – even if Fichte claimed otherwise – but as "an atomistic, life-impooverished multitude" (Hegel 1977^a: 149).⁵ To understand what Hegel criticism better, it is important to briefly consider Fichte's problem.

Fichte, by virtue of his fundamental commitment to radical freedom and equality of all rational beings, was inevitably led to rethink the problem of private property relations in accordance with his *Wissenschaftslehre*. In terms of his works, the political problem of property rights concerns the passage from his *Foundation of Natural Right* to *The Closed Commercial State*, the passage from the actual to the rational state, which Fichte, in the latter treatise, explicitly defines as the very object of politics:

If we give the name of *politics* to the science of government of the actual state according to the maxims just indicated [P.D.: pure right], this politics would then lie halfway between the given state and the rational state: it would describe the continuous path [*Linie*] through which the former changes into the latter, and will itself terminate in pure Right of state. (Fichte 2012: 87)

When it comes to the actual state, Fichte argues, we should not ask what is right, but rather "how much of what is right can be carried out under the given conditions" (2012: 87). That is to say, if under the given conditions one cannot carry out Right to its full actualization, one must first transform the given conditions – and this transformation could be called "Fichtean politics."

To understand its stakes, we must turn to his engagement with the issue of property rights: for, as I will try to show, it is this issue not only informs the motivation behind "Fichtean politics," but also allows us to ascertain its success and/or its failure.

In the *Foundations* Fichte makes it clear that even though natural right rests on the laws of reason, it is nevertheless not something given, but something to be established. The question of right pertains to the sensible world, or rather *right expresses a system of relations between rational wills towards the sensible world*, and here lies Fichte's originality, the materialist side of his thought.⁶ Not to go into Fichte's remarkable deduction of the sensible world from the free self-positing *Ich*, which is a demanding question in its own right, for our purpose it will suffice to point out that for Fichte, *recognition*, which rests on the self-limitation of the *self-positing I* in response to a "summon" [*Aufforderung*], *yields*, in the final instance, *the recognition of mutual embodiment*. Yet this is also where all the troubles begin.

The *transcendental* body, in Fichte's conception, is "the *sphere of all person's possible*

4 See Fichte's draft of a letter to the Danish poet and writer Baggesen in Fichte 1988: 385–387.

5 More on Hegel's response to Fichte's police state in Kobe 2019: 101–121.

6 This may appear to be a jarring statement, but it may become clearer in relation to the materialism of Marx. As Balibar has argued regarding the "materialism without matter" of Marx, it was transcendental idealism itself that consistently raised the question of action and activity to the fore, Fichte being the chief thinker in this regard, from which, Balibar notes, "the philosophy of action" of the Young Hegelians actually stems from. It was precisely this, albeit misrecognized, aspect of idealism, which allowed Marx to formulate his theory of materialism against that of Feuerbach (Balibar 2017: 25). For more on the materialist aspect of Fichte's thought, see Merrill 2018.

free actions and nothing more" (Fichte 2000: 56). It is, simply put, what materially mediates the efficacy of the will of the pure *I* in relation to other rational bodies and physical objects.⁷ Now it is this sphere—the body—that has to be limited, or rather *self*-limited, for the difference between bodies (other *I*'s) and objects to be established and recognized. The problem is that the body, as physical, is delivered to the contingencies of nature in regard to needs and power. "Free activity is the seat of the conflict of forces" (2000: 93). The embodied subject becomes embroiled into a conflictual relationship to other embodied *I*'s in regard to the objects of its free activity, that is, *possessions*. As Bruce Merrill succinctly summarize:

Fichte binds together the materiality of the body, as the essential medium for external human agency, and the materialism of a fundamentally economic orientation, as the dynamic agent strives to possess her entire known world in order to bring it into the ambit of her personal causal agency. (Merrill 2018: 110)

For *possession* to become *property*, the embodied individuals must recognize each other's claims, and it is here that contract relations enter into Fichte's considerations. But even the contract, as Fichte argues, binds the conflicting individuals only *problematically*. It fails, because it already indicates the extent to which both parties *mistrust* one another, it shatters rather than consolidates the founding moment of mutual recognition. Behind the contract, there lurks the possibility of violence and possibility is already enough, according to Fichte, for it become undone (Fichte 2000: 125). The very character of property, which is to secure stability within the sensible world, transforms this word into an unstable battleground.

This impasse is remedied by the "social contract," which establishes the State, as the monopoly of violence. Only the protection of the State, with its positive law, averts the escalation of civil violence. Recognition here matters little and, insofar as the positive law of the state is enforced, is dispensable. The formal apparatus of the state relieves me of the need to recognize the other.⁸ In this manner, *Zwangsrecht* finds justification in Fichte's theory. However, now it is the state, which becomes indistinguishable from physical force:

Right must be enforceable, even if there is not a single human being with a good will; the very aim of the science of right is to sketch just such an order of things. In this domain, physical force – and it alone – gives right its sanction. (Fichte 2000: 50)

This sudden shift from recognition to the coercive right and police state has baffled many otherwise sympathetic readers of Fichte, who in this transition see Fichte's

7 Here another deeply egalitarian aspect of Fichte's conception of natural right is revealed: property does not simply designate one's rights to an exclusive possession of the thing, rather it is a right to "free activity" with respect to it, that is, it is a right to labour, *of all and everyone*.

8 Fichte's theory of embodiment as the condition for the applicability of rights *qua* rights is also the reason why he is the first thinker to propose a philosophical justification for passports, or more specifically, the inclusion of pictures in them: a picture would allow easier identification of the person for the purpose of policing. That is to say, it would enable what I am tempted to call the *formal visibility* of legal persons. More on the issue of passports in Fichte's police state in Chamayou 2015: 1–17.

disavowal of his own principles.⁹ In my view, the exact opposite is the case: Fichte arrives at his coercive police state not despite but precisely because he is profoundly consistent in thinking through the consequences of his theory of embodied recognition – the inherent violence of private property rights.

This violent character is explicit in the abovementioned treatise *Closed Commercial State*, where Fichte audaciously proposes the closure of international trade and explicates a theory of planned economy. Again, to leave the specifics of his theory aside, the thrust of Fichte's argument is this: the free market, due to the arbitrariness of its blind mechanism, threatens the economic security of the people and ultimately undermines the State itself. *The free market, in Fichte's eyes, is the real state of nature: "[a]n unceasing war of all against all, of buyers and sellers"* (Fichte 2012: 145).

As Kohei Saito has shown, Fichte's argument for planned economy goes much further than merely establishing material equality of people within a state:

He feared the dominance of commerce more because the magnification and multiplication of human desire through market activities triggers the deployment of a direct form of violence, one establishing domination of the stronger over the weaker, and thus completely annihilating the formal equality of persons. (Saito 2015: 39)

The real problem is that the "arbitrariness" of the market can turn into actual wars and colonialist expansionism, a point he had already made in his review of Kant's *Towards Perpetual Peace*.¹⁰

Despite Saito's sympathetic reading, the connection between Fichte's pure right and politics demands reassessment. If the instability of civility rests on the violent nature of private property rights, which calls for coercive measures of the State and constant police surveillance, while Fichte's theory of planned economy is to bring about the material security of all, does this security not retroactively – in a dialectical manner – transform his right into purely rational, that is, non-coercive right? Would this not make the coercive aspect inoperative? This would suggest that only in resolving the violent deadlock of private property can society – a mere aggregate of private property owners under the power of an external force of the State – be sublated towards Fichte's initial account of *a priori* mutual recognition. Isn't this exactly what Fichte had in mind, when in the *Lectures Concerning the Scholar's Vocation*, he audaciously claimed that "*The goal of all government is to make government superfluous*" (Fichte 1988: 156)?

Nevertheless, wouldn't that mean that the political, like the proverbial ladder, would have to be kicked off, once we reach the state of pure right? Is Fichte, in conceiving politics as transitional, aiming at a post-political world?

Be that as it may, "Fichtean politics" remain deeply problematic. To see this one only needs to refer to what Fichte tells us regarding the "the people" in the *Foundation*.

9 Robert R. Williams (See Williams 2018: 26–44) and Arnold Farr (See Farr 2010: 243–258), to name a few.

10 Fichte argues that formal freedom, as Kant conceives it, which contributes to the possibility of perpetual peace, can only be secured if it corresponds to actual material freedom. To the question why a more rational form of state has not been achieved, Fichte simply points out that it must be, in fact, more profitable for some than the state of perpetual peace. Only radical economic regulation, Fichte argues, will prevent Europe from taking advantage of non-European nations. See Fichte 2001: 319–321.

In his theory of the state, the popular form of power is to emerge only when the executive power falls into conflict with the judiciary system, hence, it is not a power proper, but a mere negative countermeasure. For the people are already, in his account, politically reduced to private property owners, whose status hinges on the smooth functioning of the state, which litigates their conflicts. Thus, it is difficult to see how these atoms could come together to exercise political power, when the condition of the possibility of their security rests precisely on their giving away the right to directly exercise political power. But this not a problem for Fichte, because, as he insists, the situation where the “people’s” involvement is needed is to be made politically impossible: “the ephorate will never have to exercise its authority because the executive power will always be just; there will never be any need to consider an interdict of a people” (Fichte 2000: 164).

And even if they did, the concern of “the people” is the security of their property and nothing else. So, the positive legal order is here to simply to reaffirm the already non-political character of the people. In other words, recognition here matters little and, insofar as the positive law of the state is enforced, is dispensable. The formal apparatus of the state relieves me of the need to recognize the other.

3. *The tragedy of absolute ethical life in Hegel’s Natural Law essay*

In Jena, Hegel begins developing his own conception of a political unity capable of withstand the Fichtean pitfalls, which he calls absolute ethical life. The idea of absolute ethical life is first developed in Hegel’s essay *On the Scientific Ways of Treating Natural Law* (hereafter simply *Natural Law*). The difficulty in unravelling this essay lies in the fact that here Hegel simultaneously writes in three registers – methodological, historical, and philosophical – without often indicating where one ends and the other begins. Despite its complexity, it is evident that Hegel – having studied political economy – attempts to think the contradictions of modernity and indicates that the political question here concerns the status of a free market economy: *is ethical life possible under the emerging bourgeois social relations?*

In his attempt to answer this question, Hegel proposes a conception of absolute ethical life, which includes within itself what he calls relative ethical life. He seeks to make civil society, whose independence exploded in modernity, into an integral aspect of absolute ethical life. Absolute ethical life, Hegel claims, is to be understood as an organic unity of organic and inorganic. The ‘inorganic’ here, to simplify to the utmost, is another term for modern economy-centred civil society, which he sometimes also calls “the system of reality.” But unlike in his Frankfurt fragments, where this inorganic element, individual freedom, posed a serious challenge to the ideal of reconciliation with the ontological totality of Life, in Jena, *Hegel attempts to think this negativity as constitutive of the Absolute.*

On first sight it may appear that Hegel’s aim is directed solely against the levelling of absolute ethical life brought about by universalization of formal property rights, in which he saw an affront to the political, its subordination to the “inorganic” sphere and the legal property relations that pertain to it. Hegel does, following Gibbon, lament that due to this formalization, contract relations encroach political life and citizens withdraw into the apathy of private life (Hegel 1999: 170). But

there is another aspect that Hegel is pointing to: formalized rights not only fix but also perpetually reproduce forms of inequality which threaten ethical totality from within, since it sustains dichotomy, which it unifies only formally.

This should be read together with Hegel's philosophical critique of transcendental idealism, revealing the historico-political twist of his argument: if he criticised transcendental idealism for absolutizing oppositions and falling victim to the finite, here, "the formalist impasse" in its historical dimension, suggests a deep affinity between transcendental philosophy and the resurgence of the Roman regime of positive law in the wake of the crisis of the *ancien régime*.¹¹

From this perspective, the whole historical aspect of this essay – the transition from Greek *polis*, which serves as an idealized model for political unity, to the Roman "state of legality," which universalizes private property and shatters ethical totality into a multitude of atomistic private *persons* – can be understood as an attempt on Hegel's part to work out a genealogy of modernity and its political problems. But with this Hegel also begins to complicate his initially idealized image of the Greek *polis* and his conception of unity.¹²

Hegel returns to this issue in the *Natural Law* essay when he introduces the distinction between two classes (*Stände*) as necessary for the articulation of the 'organic' and 'inorganic' aspects of ethical life by drawing on Plato and Aristotle. According to Hegel, for absolute ethical life to be possible, one class is to be conceived as "taken up absolutely into indifference," that is, as free, whereas the other – "only the reflection of absolute ethical life" (Hegel 1999: 146), is to be conceived as unfree. The first is said to disavow death and become the universal class, which can thereby put itself on the line defending ethical totality, since they do not have to care for their own preservation but are provided for by the labouring class. The other, however, is to remain unfree.

But what does freedom in this speculative moment of the ethical mean? According to Nathan Ross, it "means giving up one's individuality for the sake of the whole, subsisting as much as possible in the moment of universality within the concept" (Ross 2008: 48). Hegel conceives of the Greeks as possessing "the heroic freedom of courage," as Hyppolite puts it, yet it is the prerogative of *some* (Hyppolite 1996: 53). Only the first class can enjoy this freedom; the labouring class, however, is subjugated to the whole – not only in the sense of direct enslavement by the free masters, but also in the sense that it remains embedded in the natural world. The ethical whole is maintained at the cost of the universality of freedom.

It is crucial to note that although Hegel distinguishes between two classes, the unfree class is itself differentiated between one that "has its being in differentiation [*Differenz*] of need and work and in the right and justice of possession and property," and one that is immediately immersed in labouring (1999: 147). It is precisely this split that becomes problematic in the collapse of Greek ethical life. As Hegel writes regarding slavery in Greek ethical life, it "vanished of its own accord in the empirical phenomenon [*Erscheinung*] of universality of Roman Empire"; in fact, slavery

11 It was Gillian Rose who convincingly showed the undeniable affinity between transcendental philosophy and Roman law. More on this in Rose 1984: 11–24.

12 We could obviously ask: if dichotomy calls for philosophy, as Hegel claimed, then isn't Greek philosophy a testament that Greek ethical life was already perturbed by a crisis?

vanished precisely because the debasement of the free universal class: “with the demise of freedom, slavery necessary came to an end” (1999: 148). For Hegel, this debasement of heroic freedom is the direct result of the elevation of the status of property ownership to formal universality, which rigidifies into a positive state of legality composed of atomized individuals:

This universal private life, and a state of affairs in which the people consists solely in the second class, immediately introduces the formal legal relationship [*Rechtsverhältnis*] which fixes individual being and posits it absolutely. [...] This system of property and right, which, because of the fixation of individuality already referred to, does not consist in anything absolute and eternal but wholly in the finite and formal, must constitute itself as a distinct [*eigenen*] class, really detached and set apart from nobility, and then be able to expand throughout its entire length and breath. (Hegel 1999: 149)

But does the collapse of the point of indifference and the levelling of absolute ethical life into the second class likewise sublimate its inner split between differentiation and immediacy, or has this split remain intact and merely covered over, or even excluded as external? Moreover, does this split not mirror the transcendental difference between intuition and concept? Is this not precisely the point at which it becomes necessary to think the issue of negativity?

In contrast to this “formalist impasse,” Hegel argues that absolute ethical life must distinguish its contrary determinations, the “organic” and “inorganic,” in order to dialectically re-establish itself. It must be a unity capable of self-relation. But as Hegel’s critique of formalism indicates, this is no painless reconciliation. For *positivity*, which threatens to ossify ethical totality, according to Hegel, *emerges precisely when negativity in absolute ethical life is misconstrued as something positive*: “Instead, the ethical whole must ensure that this system remains aware of its inner nullity, and prevent it from growing excessively in terms of quantity and from developing ever greater difference and inequality in keeping with its natural tendency” (1999: 142).

To avoid this danger, ethical totality has to organize itself in such a way that the negativity remains negative. Thus, Hegel conceives of ethical totality as nevertheless opposed, within itself, to its negative side. This takes the shape of a state intervening into the market, imposing taxes, etc. But not only that: the organic aspect has to constantly remind the “inorganic” of its nullity, to return its negativity back to it. In Hegel’s view, “the negative can only become completely one with the positive by becoming absolutely negative” (1999: 157).

It is thus not surprising then that the motif of sacrifice reappears amidst the *Natural Law* essay, since, in Hegel’s view, it allows for ethical totality to include negativity but not be undone by it. Now, however, Hegel links it with the tragic. The totality allows for the independence of the negative aspect, it separates itself from it *within itself*, giving it a sphere of free activity within the whole and thereby *purging* itself from it. This dynamic of the re-unification of absolute ethical life, as Hegel evocatively puts it, “is nothing other than the enactment, in the ethical realm of the tragedy which the absolute eternally plays out within itself – by eternally giving birth to itself into

objectivity, thereby surrendering itself in this shape to suffering and death, and rising up to glory from its ashes" (1999: 151).

We are again in realm of "fate," and what is even more perplexing, Hegel couches this "eternal tragedy" in an interpretation of Aeschylus' *The Eumenides*.¹³ This is perplexing, since if *The Eumenides* can be said to stage the foundational myth of the Athenian polis, then it seems Hegel beckons a return to Greek ethical life. However, Hegel, in my view, employs *The Eumenides* to make a case for modernity. By suggesting that it is only in modernity that thought can raise negativity itself to a concept. The placement of the discussion of the tragic suggests that Greek ethical life merely subdued and was not able to truly include and think this negativity within its ethical totality and its differentiations.

In the *polis's* confrontation with the archaic, that which preceded the conscious institution of human law, Hegel searches for a framework to think the *modernity* of subjectivity and political life whose self-diremption (negativity) must be shaped rather than eliminated once and for all: the furies of private property rights cannot be denied, but must be honoured, included and yet relegated to the relative aspect of ethical life. But can they be so easily appeased? Can Hegel's invocation of *The Eumenides* be contained within the bounds of his intentions in the *Natural Law* essay, or does it point beyond it, perhaps even beyond Hegel's political philosophy as such? Wes Furlotte, for instance, accuses Hegel of a reactionary ideological ruse: in invoking the tragic, Hegel professes a mythico – poetic justification of social contradictions.¹⁴ Karin de Boer, in her remarkable *On Hegel: The Sway of the Negative*, proposes a more nuanced deconstructive reading. In her view, Hegel illegitimately subordinates the "inorganic" element in its conflict with the organic to absolute ethical life and fails to uphold the very tragic dimension of ethical life invoked in the first place. Hence, in following *The Eumenides*, Hegel's tragedy of the absolute is anything but tragic, and seems to confirm the caricature version of the Hegelian dialectic which reduces every opposition to a moment of its self-actualization. The tragic, on the contrary, suggests something profoundly "anti-philosophical": it resists a rational unification of opposites and entails mutual self-annihilation as an equally possible outcome. For de Boer, this shows that Hegel disavows the tragic strand of his thinking for the sake of a reconciliatory one (de Boer 2010: 11).

Not to go deeply in de Boer's immense reading of Hegel's System, which would exceed the limits of this article, I will simply remark that, despite its scope, her presentation of Hegel's philosophy as exhibiting an opposition between two strands of the negative goes against Hegel's own endeavour to overcome one-sided thinking. This, however,

13 It is important to note, however, that in the *Natural Law* essay, Hegel does not approach *The Eumenides* as a drama in its relationship to the audience, to the city; only in the *Phenomenology* will this aspect of aesthetic representation be discussed, and I will leave this, as important to the present case as it is, aside. Here the tragedy is taken as a dialectical figure much like *Antigone* is taken as a shape of spirit in the *Phenomenology*. See Hegel 2018: 256–277.

14 "This aestheticization of the problem initially isolated ultimately serves to conceal and obfuscate the real social tensions it cannot further track conceptually. The analysis' appeal to aesthetic categories introduces a host of readily questionable metaphysical, ethical, sociopolitical presuppositions that atemporalize – and so preserve and perhaps even intensify – the very social phenomenon in question. This aestheticization of the analysis obliterates – even hijacks – its historical and critical dimension and, in so doing, risks demarcating the entire schema as reactionary" (Furlotte 2021: 72).

does not mean that she is wrong in circumscribing these strands; the question is rather whether it's a matter of choice. Perhaps the problem lies in that they *remain opposed*, rather than expressing what Hegel would call a *speculative identity*.

To overcome the *opposition* between the tragic and the dialectical, between entanglement and *sublation*, and the advocacy for one over the other, one must, perhaps, *think* this very split of Spirit (or *polis*), which both tragedy and philosophy seek to circumscribe and maintain, a split that is irreducible to the distinction between the organic and the "inorganic," a split within ethical life itself. Or more precisely, we need to *think ethical life as this very split that separates it from itself*. After all, Hegel, in trying to develop a conception of absolute ethical life, to quote Gillian Rose, "could not provide any abstract statement of it apart from the presentations of the contradictions which imply it" (Rose 2009: 54). But is this not simply to say that the *presentation* is the thing itself, *die Sache selbst*?

Perhaps the first thing to be noted in this context is that far from exclusively presenting an ideal of reconciliation – although Aeschylus, as Nicole Loraux observed, believed that *logos* will be triumphant (Loraux 2005: 83), *The Oresteia* also reveals the extent to which ethical totality, in conceding the rights to the *chthonic* powers within its limits, remains fragile and pervaded by antagonism. That is, *first*, it points that the archaic mode of ethical life is already inherently self-undermining, and *second*, that once it becomes "sublated" in the *polis*, the political union itself becomes in danger of being tainted by archaic blood feud ("justice," *dike*). After all, the trial, which exonerates Orestes is an attempt of the political community to purify itself from the danger of civil strife – *stasis*. No wonder then that in *The Eumenides*, the Erinyes, initially not appeased by the trial, issue threats to engulf the polis in civil strife and Athena implores them to turn their bloodthirsty gaze away from the *polis* towards the limit which separates it from the "outside," that is, towards a potential war in the sense of *polemos*. So, what is this "sacrifice" as a site of reconciliation, understood as the recognition and subordination of the "rights of the inorganic"? As Alberto Toscano has perspicuously argued, what Hegel takes from *The Eumenides* is the site of "litigation," a site which allows for the Erinyes, conceived as "the powers of the right which resides in difference," and Apollo, "the god of undifferentiated light," to stand against Orestes before the citizens of Athens, assembled as the Areopagus (Toscano 2015: 201). The legal proceedings, as we know, end in a stalemate, yet, for Hegel, this is an index of the co-existence of the claims of the litigants. The legal produces a symmetry that threatens to dissolve into *stasis*. Athena, the city in the divine mode, with her final vote – an extra-legal act *par excellence* – reintroduces an asymmetry by exonerating Orestes in the eyes of the people of Athens to avoid an outbreak of civic strife.

Hegel took the Aeschylean lesson to heart, for already in the *Natural Law* essay he suggests that only war can truly return negativity back to civil society; in *System of Ethical Life*, the *enemy* is even conceived as a condition of possibility for the emergence of the people in the first place (1979: 147). Here Hegel also seems to be aware that this internalization of *chthonic* powers may infect ethical life and maybe that's why he, very problematically, praises the invention of gunpower for the distance it allows, since it thereby precludes *hatred* (1979: 149). Not to get embroiled into a difficult

discussion of Hegel's conception of the necessity of war (which perhaps becomes most problematic precisely when the "inorganic" comes to eclipse the "organic"), there is something else to be gathered from his argument: *negativity*.

The exclusion or the sacrifice of the "inorganic" aspect is hence a form of inclusion within the ethical totality. But this inclusion by exclusion begs the question of to what extent ethical life, in internalizing the conflict of civil society, is capable of withstanding this negativity and assert its positivity, that is, how its point of indifference, to use Schellingian parlance, can remain uninfected by the encroaching negativity of the "*subterranean powers*." Perhaps Hegel's uneasiness and constant attention to negativity testifies that his intoxication with Schelling's *Identitätsphilosophie* is already wearing off. Differently from Schelling's identity philosophy, as Peter Szondi remarked, "Hegel focuses not only on identity, but also on the constant confrontation between the powers grasped in their identity and on the immanent movement of their unity, through which real identity first becomes possible" (Szondi 2002: 16).

When Hegel claims that in separating itself from the "inorganic" (and positing its "organic" aspect) absolute ethical life *purges* itself from its negativity, we should insist that far from avoiding the absolute negativity of the "inorganic," the Absolute is itself implicated in this sacrificial tragedy: from the perspective of absolute ethical life, not only do intuition and concept lose their absolute opposition and reach an *indifference* point, but their separation, *included within their unity*, disturbs this absolute indifference from within. That is to say, far from remaining a neutral *third*, sacrifice is the very movement through which something of absolute ethical life can emerge. The absolute, in this perspective, is the result of itself, of its own diremption. In the differentiation, absolute ethical life manifests itself as a member within the division, as the "organic," which already indicates that absolute ethical life, in its division, is first and foremost divided against itself and its other.

So, it is not that there's simply a conflict between private and the political spheres: as Hegel furthermore develops in *The System of Ethical Life*, it is the private that is pervaded by the possibility of violence and domination, especially when the universality of money becomes a power of its own, for which even ethical life can be sacrificed (Hegel 1979: 171). What Hegel is in effect saying is that it is the private, which by equalizing every individual in a legal formal way as a *person*, threatens not only the state, but the private sphere itself. It is for this reason that Hegel writes that civil society, elevated to the universal form of money, "requires continual strict dominance and taming like a wild beast" (1979: 249).

As Slavoj Žižek has observed:

The true problem is that the concrete self-differentiation of a social totality does not reside only or primarily in society's organic articulation; the primary form of what differentiates a society from and within itself is that of a non-organic social *antagonism* ('class struggle'), and the organic articulation is an attempt to domesticate this antagonism. (Žižek 2016: 372)

Similarly, in the case of the *Natural Law* essay, the "inorganic" is always-already inherently antagonistic: we are not dealing with two stable orders, but with an antagonism between antagonistic civil society and its organic containment, and *this antagonism as the "unity"*

of the differentiated aspects of ethical life is where the political dwells.

In other words, absolute ethical life is nothing but this antagonism raised to the point of actuality. This is perhaps how we should understand Hegel's famous speculative *Doppelsatz* from the *Philosophy of Right*, as the speculative identity of the rational and actual. Following Gillian Rose, for whom this "speculative identity" involves a "speculative experience of the lack of identity" (Rose 2009: 53), we could argue that Hegel's thought accepts contradiction not to erase it in a higher identity, but to show its unavoidability in thinking the Absolute *as* contradiction. The actual is rational, and vice versa, only insofar as they, from the perspective of their *speculative* identity, express their *non-relation that is actual*.

But what does that mean for the negativity within ethical totality that Hegel expresses as the infamous necessity of war? As Žižek has argued, this tragedy of the Absolute is precisely a sign of Hegel's materialism:

This regenerating passage through radical negativity can never be "sublated" in a stable social edifice – a proof, if one is needed, of Hegel's ultimate *materialism*. That is to say, the persistent threat that radical self-relating negativity will threaten and ultimately dissolve any organic social structure points towards the *finite* status of all such structures. [...] The identity of opposites here does not mean that, in an idealist way, the inner spirit "generates" external obstacles which appear as accidental: external accidents which cause wars are genuinely accidental, the point is that, as such, they "echo" the innermost negativity that is the core of subjectivity. (Žižek 2012: 453)

To return to the problem of the relationship between dichotomy and the need for reconciliation, it could perhaps be argued that, following Žižek, necessity for Hegel is itself pervaded by the contingency of negativity, that is, contingency is an expression of the Absolute's self-relating negativity. Yet this "contingency of necessity" is perhaps nothing other than Hegelian actuality, *Wirklichkeit*.

In this manner, the "eternal tragedy that the Absolute plays out with itself" can neither be understood as some metaphysical necessity, nor a mere aesthetization of contingent social antagonisms, but rather as the expression of the actuality of antagonisms, of the contradiction at the heart of the ethical life and perhaps the Absolute in-and-for-itself. This contradiction cannot be effaced by means of some theoretical sleight-of-hand, or demands for what ought to be – after all, Hegel accuses Kant and Fichte for precisely this obfuscation through their one-sided rationalization of oppositions – but must be raised to the fore of philosophy, as the true object of speculative thought.

4. Conclusion

Thus, as we have tried to argue that the "fate of property" that Hegel noted in his Frankfurt fragments resurfaces as the "tragedy which the absolute eternally plays out within itself." From this perspective, it becomes possible to claim that Hegel's critique of Fichte goes deeper than may appear at first sight: far from merely dismissing the one-sidedness of his thinking, Hegel, it could be argued, implicitly critiques him

for not being able to develop what he discovered to its full consequences. Fichte's inability to think the antagonism at the heart of abstract right immanently, forced him to introduce the idea of an external police state and close the gap between his theory and actuality. Fichte, it could be argued, opts for tyranny not because of a mistake, but rather because of his acute awareness of the problems of modernity. But Hegel thinks this contradictoriness at the heart of modernity is not to be merely wished away by one-sided theoretical constructions, let alone one-sided practical ideals. Negativity is actual and pervades the Absolute in-and-for itself. This is the reason why philosophy can only grasp what *is*, rather than what *ought to be*, because the *is* that Hegel grasps is already pervaded by objective contradictions. Rather than being a sign of his quietism, it signals something else.

For all his ideological and political misgivings we may enumerate, Hegel, I believe, in his difficult attempt to avoid formalist pitfalls, manages to bring to the fore the very contradiction that makes up modernity as such. The reconciliation that Hegel already professes in these early political writings is not a reconciliation *of* divisions, but *with* divisions. Perhaps the point of absolute ethical life is not to disentangle oppositions in order to annul them, but to sublimate and redeploy them along the lines of contradictions, which requires one to rethink the status of Hegelian politics.

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LA PROPRIETÀ E IL SUO DESTINO: HEGEL E FICHTE SULLA VIOLENZA DEI DIRITTI DI PROPRIETÀ PRIVATA

Riassunto

Il presente articolo sostiene che la questione del diritto e della proprietà privata è fondamentale per cogliere le trasformazioni nello sviluppo del pensiero hegeliano, che induce Hegel dalla sua teoria ontologica della riunificazione attraverso l'amore, sviluppata nei frammenti di Francoforte come rimedio esplicito contro il dominio del diritto e della sua forma, a una concezione ontologica più complessa dell'unificazione come unità di unità e differenza che caratterizza il pensiero di Jena di Hegel, in particolare nel saggio sul diritto naturale, dove egli si prova a pensare la vita etica assoluta come comprensiva delle differenze nel senso della società civile atomistica, ripensando così lo statuto del diritto. Il problema della proprietà privata ci permetterà anche di sollevare diversamente la questione del complesso rapporto di Hegel con la *Wissenschaftslehre* di Fichte. Si sosterrà che, nonostante la dura critica di Hegel alla teoria del diritto naturale e dello Stato di Fichte, entrambi i pensatori concordano sul fatto che il problema cruciale nel pensare il diritto e lo Stato è la violenza intrinseca della società civile espressa nella nozione di contratto, che, si sosterrà inoltre, rivela il loro pensiero profondamente materialista. Infine, in relazione al problema della proprietà, verrà discussa la famigerata concettualizzazione di Hegel del sacrificio, una tragedia che l'assoluto gioca con se stesso. Si suggerirà che la guerra, per Hegel, riguarda la violenza intrinseca della società civile come negatività auto-relazionale che dimostra come la contingenza sia al centro della sua concezione dell'Assoluto. Già a partire dal saggio il *Diritto naturale*, Hegel mostra che né l'Assoluto, né l'unità speculativa che egli cerca di pensare possono rimanere una questione di Indifferenza.

Parole chiave: proprietà privata, tragedia, vita etica, negatività, formalismo