

Chapter 3

Contra Leviathan: Hegel's Contribution to Cosmopolitan Critique*

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“the *spirit of the world* produces itself in its freedom from all limits, and it is this spirit which exercises its right – which is the highest right of all – over finite spirits in *world history* as the *world's court of judgment*.” (Hegel, *Philosophy of Right*¹).

3.1 Introduction

Hegel's *Philosophy of Right* is often read as nationalistic and reactionary in relation to Kant's conception of the cosmopolitan condition or indeed to Hegel's own more youthful conception of the world spirit.² I want to suggest that this reading of Hegel's relation to cosmopolitanism is one-sided and ultimately untrue. Hegel praised Kant for having “some inkling of the nature of spirit . . . to assume a higher shape than that in which its being originally consisted.”³ He contrasted Kant to

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¹G.W.F. Hegel, *Elements of the Philosophy of Right*, ed. by Allen Wood, trans. H.B. Nisbet (Cambridge: Cambridge University Press, 1991) [hereafter *PR*], §340.

²Theodor W. Adorno, *Negative Dialectics* (London: Routledge, 1990), “World Spirit and Natural History,” 338.

³Hegel, *PR*, §343R.

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those for whom the concept of cosmopolitanism remained an “empty word.”⁴ He recognized the validity of Kant’s attempt to harmonize the principle on which the European revolution was based, the sovereignty of the state, with the universalism of enlightened thought. He echoed Kant’s insistence that “a human being counts as such,” regardless of his or her nationality or religion. He described this principle of human universality as one of “infinite importance.”⁵ As Hegel saw it, the main defect of Kant’s cosmopolitanism did not lie in the idea itself but in its elevation into a “fixed position . . . in opposition to the concrete life of the state.”⁶ To explore what Hegel might have meant by this criticism and thereby help recover Hegel’s contribution to our own understanding of cosmopolitanism is the aim of this paper.

3.2 Misreading Hegel

Let us begin with the clouds of critical discourse that surround Hegel’s text – or rather with an attempt to dispel them. A generation of scholars concluded with Karl Popper that in *The Philosophy of Right* “the state is everything and the individual is nothing.” In 1945 Karl Popper spoke for many when he wrote that the “old man” debased philosophy by turning it into a tool for state interests.⁷ In 1946 Bertrand Russell wrote that Hegel’s *Philosophy of Right* “justifies every internal tyranny and every external aggression that can possibly be imagined.”⁸ Even Ernst Cassirer wrote that “no other philosophical system has done so much for the preparation of fascism and imperialism as Hegel’s doctrine of the state.”⁹

These comments, which have done so much to create our sense of what the term “Hegelian” means, were written under the shadow of Nazism and reveal a temptation to hold Hegel’s *Philosophy of Right* partly responsible for the barbarities of a later age. My own view, following Hannah Arendt, is that none of the revolutionary thinkers of the nineteenth century – Hegel, Kierkegaard, Marx, Nietzsche – can be held responsible for the assault on human civilization that took the name of totalitarianism in the twentieth century. However, they all shared, including Hegel, a premonition of dark times to come.¹⁰

If Hegel’s *Philosophy of Right* were the compliant philosophy of state this reading takes it to be, there would be little point in recovering it today except as a salutary warning of how the idea of human freedom can be converted into its opposite, a doctrine of worshipping authority. And yet we must acknowledge

⁴Hegel, *PR*, §343R.

⁵Hegel, *PR*, §209R.

⁶Hegel, *PR*, §209R.

⁷Karl Popper, *The Open Society and Its Enemies* (London: Routledge, 1966), 31.

⁸Bertrand Russell, *A History of Western Philosophy* (London: Unwin, 1984), 768–9.

⁹Ernst Cassirer, *The Myth of the State* (New Haven: Yale University Press, 1946), 273.

¹⁰Hannah Arendt, *Between Past and Future* (Harmondsworth: Penguin, 1977), 27.

there are passages in the *Philosophy of Right* which seem, at least at first sight, to confirm this reading. At the start of the section on "The State" Hegel describes the state as "the actuality of the ethical Idea . . . *self-consciousness* . . . raised to its universality."¹¹ He writes that in the state "freedom enters into its highest right in relation to individuals" and that we should "expect nothing from the state except what is an expression of rationality." The state, he writes Hobbesian-style, "consists in the March of God in the world"¹² and it is the duty of members of the state to venerate it and acknowledge its divinity.¹³ It certainly appears in these passages that Hegel was seeking to persuade us that the modern state is the actualization of God's will in the world. If this is so, it does not bode well for any cosmopolitan sensibility, particularly as Hegel also seems to uphold the rationality of archaic institutions such as the monarchy, the House of Lords, capital punishment and the exclusion of women.

It is now well established that there is another side to Hegel's *Philosophy of Right* which provides a counterpoint to this paean to the state and which characterises "the right of subjective freedom" as the achievement of the modern age:

The state is the actuality of concrete freedom. But concrete freedom requires that personal individuality and its particular interests should reach their full development and gain recognition of their right for itself . . . The principle of modern states has enormous strength and depth because it allows the principle of subjectivity to attain fulfilment in the self-sufficient extreme of personal particularity . . . The essence of the modern state is that the universal should be linked with the complete freedom of particularity and the well-being of individuals . . . Only when both moments are present in full measure can the state be regarded as articulated and truly organised.¹⁴

He views the emergence of subjective freedom as a marker of the difference between the ancient and modern world:

In the states of classical antiquity university was indeed already present but particularity had not yet been released and set at liberty . . .¹⁵

Hegel maintains that the ripples of the modern right of subjective freedom spread not only into economic, legal and political forms (like the declaration of the rights of man and citizen, the institution of trial by jury, the separation of church and state and the system of needs in civil society), but also into the spheres of social and spiritual life: Christianity and the eternal salvation of the individual; romantic love, morality and conscience; the history of art, the sciences and philosophy.¹⁶ It would appear from these passages that for Hegel the right of subjective freedom is the solid ground on which *modern* identities and institutions are based.

¹¹Hegel, *PR*, §257.

¹²Hegel, *PR*, §258A.

¹³Hegel, *PR*, §272A.

¹⁴Hegel, *PR*, §260.

¹⁵Hegel, *PR*, §260A.

¹⁶Hegel, *PR*, §124R.

The difficulty Hegel's text leaves us with is how to reconcile what appear as two quite distinct emphases: on the one hand, state deification; on the other, the right of subjective freedom. In the secondary literature we find various ingenious explanations. Critical Theory places its emphasis on the changing nature of modern capitalism itself. Herbert Marcuse and Theodor Adorno both argue that Hegel *attempted* to reconcile the state with individual freedom but *failed* because he could not confront the class antagonisms determining the future of bourgeois society. The value of the *Philosophy of Right* for them was that it revealed the vulnerability of the individual in the modern world. Marcuse wrote that Hegel ended up turning the state into an object of divine worship in order to achieve social integration in a capitalist society torn apart by class antagonisms. Adorno added that Hegel accurately depicted the fate of the individual in the modern world: one among "an endless procession of bent figures . . . no longer able to raise their heads under the burden of what is."¹⁷

The strength of this reading was to face up to the difficulties presented by Hegel's work and make the move from subjective freedom to state worship dependent on the contradictory nature of capitalist social relations. It contrasts with what may be a stronger tendency today to downplay or reinterpret those passages in the *Philosophy of Right* that refer to the deification of the modern state and emphasize instead the more acceptable aspects of Hegel's text. Shlomo Avineri set the scene for this affirmative reading of Hegel when he reread Hegel's idea of the "rational state" as an antecedent to the social democratic welfare state to come – a state "based on representation, served by a rationally ordered bureaucracy, allowing ample space for voluntary associations, and trying to strike a balance between *homo economicus* and *zoon politikon*."¹⁸

Following on from this important re-assessment, a number of American scholars have read *Philosophy of Right* as a republican treatise that both recognizes the necessity of private rights (because they make possible relations of mutual recognition among autonomous social actors), and the necessity of comprehensive public institutions (to educate individuals in the ethical life of the community as a whole).¹⁹ In this reading, if I am not mistaken, Hegel is put to use as a resource in the struggle against neo-liberalism and its program of freeing the market from political restraints. Hegel reminds us that the aim of liberalism, at least in its classical form, is not to prioritize private rights over social intervention but to find ways of harmonizing

¹⁷Herbert Marcuse, *Reason and Revolution: Hegel and the Rise of Social Theory* (Boston: Beacon Press, 1979), 314; Adorno *Negative Dialectics*, 309.

¹⁸Shlomo Avineri, *Hegel's Theory of the Modern State* (Cambridge: Cambridge University Press, 1972), 240.

¹⁹Drucilla Cornell et al., eds., *Hegel and Legal Theory* (London: Routledge, 1991); Fred Dallmayr, G.W.F. Hegel, *Modernity and Politics* (London: Sage, 1993); Michael Hardimon, *Hegel's Social Philosophy: The Project of Reconciliation* (Cambridge: Cambridge University Press, 1994); Steven Smith, *Hegel's Critique of Liberalism: Rights in Context* (Chicago: University of Chicago Press, 1991).

their co-existence.²⁰ In the more republican interpretations emphasis is placed on the proposition that the freedom of individuals requires active participation in the institutions of the modern *Sittlichkeit*. The question remains, however, how to reconcile a republican reading of Hegel with Hegel's apparent opposition to any politics that threatens to "destroy the absolutely divine principle of the state, together with its majesty and absolute authority"?²¹

It seems to me that the strength of this reading of Hegel is that it confronts asocial conceptions of right deriving from natural law and relocates the idea of right in the infrastructure of modern social and political life. In Robert Pippin's prose, "no account of . . . subjectivity can be complete . . . without a proper appreciation of the nature of [its] dependence . . . on the social world wherein such subjective tasks are formulated and acted on."²² However, it has less to say about the more *étatist* statements in Hegel's text. In the face of such difficulties some commentators simply conclude that there are two Hegels in the text – one *étatist*, the other sensitive to the rights and freedoms of individuals.²³ This reading accepts a fundamental inconsistency in Hegel's philosophy of right and asks us to choose which "Hegel" we prefer. A more integrated approach, which has the advantage of retaining the unity of Hegel's philosophy of right, is to be found in attempts to reconcile Hegel's view of the state as an "earthly divinity" with a non-authoritarian, republican view of political life.²⁴

I would emphasize that the additional cost of breaking up the unity of the text may also be to break up the unity of the system of right itself, that is, the unity of the object of Hegel's investigations. The point, I suggest, is not to distinguish between those aspects of Hegel's political philosophy we like and value and those we don't, but with Hegel to face up to the equivocations of modern political life. Perhaps Walter Benjamin was the most diligent student of Hegel when he put forward the proposition that "there is no document of civilisation which is not at the same time a document of barbarism."²⁵

²⁰Karl Löwith, *From Hegel to Nietzsche: The Revolution in Nineteenth Century Thought*, trans. David Green (New York: Anchor Books, 1967), 43.

²¹Hegel, *PR*, §258R.

²²Robert Pippin, *Hegel's Practical Philosophy: Rational Agency as Ethical Life* (Cambridge: Cambridge University Press, 2008), 239.

²³Andrew Arato, "A Reconstruction of Hegel's Theory of Civil Society," in *Hegel and Legal Theory*, ed. Drucilla Cornell, 301–320; K.-H. Ilting, "Hegel's Concept of the State and Marx's Early Critique," in *State and Civil Society: Studies in Hegel's Political Philosophy*, ed. Z.A. Pelczynski (Cambridge: Cambridge University Press, 1984), 93–113.

²⁴Andrew Buchwalter offers a heterodox reading of the text in "Hegels Begriff des Staates als Irdisch-Göttliches," *Deutsche Zeitschrift für Philosophie*: 56, no. 4: 495–509.

²⁵Walter Benjamin, "Theses on the Philosophy of History," in *Illuminations*, ed. Hannah Arendt (New York: Schocken, 1968), 256.

3.3 Decentering the Modern State

The aim of the *Philosophy of Right*, as Hegel presents it, is not to prescribe what the state ought to be but to understand what the state is. Hegel does not deny all normative intentions but he relegates them beneath his primary objective which is the “scientific treatment” of the modern system of right. His instruction is not to read his text as an expression of his opinions, which he says count for little, but as an attempt to understand “precisely what right is.” The aim of the philosophy of right, as he puts it, is scientific: it is “the comprehension of the present and the actual, not the setting up of a world beyond, which exists God knows where.”²⁶ Hegel placed a lot of emphasis on this instruction. He presented it as representing a leap from one kind of political philosophy to another: “Here is Rhodes; here make the leap.” As Robert Pippin observes, however, later commentators have more often than not discounted Hegel’s instruction and have assumed that Hegel meant to say that “the contemporary state, and even the contemporary Prussian state, was just as it ought to be.”²⁷ There seems to be a resistance on the part of political philosophy to hear Hegel’s instruction and approach his text from the scientific rather than normative viewpoint.

In the Introduction to the *Philosophy of Right* Hegel offers detailed guidance on what a science of right might look like. He maintains that its subject matter, the idea of right itself, is not merely an “eternal idea” in our heads but is out there in the modern world – a historical product of definite historical circumstances. It has a determinate starting point, develops in traceable ways, and is external to our consciousness of it or our feelings about it. The idea of right is in the world of “objective spirit”: spirit and object, concept and its actualization:

The subject matter of the *philosophical science of right* is the *Idea of right* – the concept of right and its actualization. Philosophy has to do with Ideas and therefore not with what are commonly described as *mere concepts*. On the contrary, it shows that the latter are one-sided and lacking in truth The concept and its existence are two aspects (of the same thing), separate and united, like soul and body²⁸

Let us put together Hegel’s instruction to treat his text from a scientific rather than normative viewpoint with his proposition that, taken in isolation, the concept is one-sided and lacking in truth. If we do so, we can understand in a new light Hegel’s identification of the state as an earthly divinity.

I suggest that it was not Hegel’s *opinion* that the modern state is divine and that we *should* worship it as such. According to his own account, what would his opinion count for anyway? Rather it was Hegel’s view that the modern state, notwithstanding its “strength and depth,” is prone to demand of its subjects that they treat it as an earthly God. It is the state that demands veneration of itself, not Hegel who demands

²⁶Hegel, *PR*, 20.

²⁷Pippin *Hegel’s Practical Philosophy*, 269.

²⁸Hegel, *PR*, §1.

eneration of the state. Hegel is not Hobbes. Hobbes expresses the spirit of the modern state when he describes it as the high point of reason.²⁹ But Hegel warns us that the concept of the state, taken in isolation, is one sided and untrue: it reveals a degree of continuity with past absolutism (“the divine rights of kings”) as well as the symptoms of a thoroughly modern megalomania. It is the delusion of the state that it is the March of God on earth.

The actual state, as Hegel saw it, is based on a “complex architectonic”: more like a medieval Cathedral than a classical temple. It configures a plurality of elements: constitution, executive, legislature, political leadership, system of representation, system of rights and so forth. Its rationality lies in the guarantees provided by the various elements of this differentiated “organism” but they too are burdened with their own contradictions: for example, between equal rights and substantive inequalities in civil society; between the claims of representative government to stand for political freedom and the marginal place representation actually occupies within the organism of the state as a whole; between the seeming timelessness of the constitution and its all too human authorship and finality; between the appearance of public interest served by the executive and the private interests and secret powers embodied in the bureaucracy itself. The image of the modern state Hegel presents to us is that of a contradictory and ambivalent rationality.

In the *Philosophy of Right* Hegel does not stop at the state because the world does not stop at the boundaries of the state. In the text he moves from the state to international law and finally to the largely uncharted terrain of World History. At the risk of overstating our case, we might say that the state is not the end of ethical life for Hegel but a “middle” between civil society on one side and world history on the other. In this dialectic the state is not the *telos* of the system but one moment in the system of right as a whole. What may appear as the end of a process of development is but the unfolding of new conflicts and contradictions. As Hegel puts it at the close of his *Philosophy of History*, “Agitation and unrest are perpetuated. This collision, this nodus, this problem is that with which history is now occupied.”³⁰ Hegel present every stage in the development of the idea of right –personality, property, morality, family, civil society, the state, international law – as the actualization of freedom in *one* of its determinations. Each stage gives determinate form to freedom. No particular form of right can be understood except in relation to the system of right as a whole. No particular form of right is absolute: “only the right of the world spirit is absolute in an unlimited sense.”³¹

If Hegel had a normative political credo I would say that it is that we need to learn to live with contradiction and ambivalence in the modern world. He described it as the error of “abstract thought” to elevate one particular form of right over the rest, as

²⁹Hobbes construed the Leviathan as a secular divinity. Its laws can “never be against reason” and every member of society “must acknowledge himself to be the author . . . of whatever he that is already their sovereign shall do and judge fit to be done.”

³⁰G.W.F. Hegel, *Philosophy of History*, trans. J. Sibree (London: Dover, 1956), 452.

³¹Hegel, *PR* §30R.

if freedom were embodied in this particular form alone and all the rest were external to it. Today we can detect this error of abstract thought in doctrines which, for instance, give supreme status to private rights (neo-liberalism), the associational life of civil society (communitarianism), the representative aspect of the state (radical democracy), or the state itself (*étatisme*). We can also see it, as I think Hegel did, in doctrines which turn cosmopolitanism into a “fixed idea” and elevate it as an abstract ideal.³²

Hegel understood that the error of abstract thought can also manifest itself negatively, in what we might call an absolute negativity that expresses itself in a virulent hatred of all legally determined forms of right, law and state:

Hatred of law, of legally determined right, is the shibboleth whereby fanaticism, imbecility, and hypocritical good intensions manifestly and infallibly reveal themselves for what they are, no matter what disguise they may adopt.³³

In opposition to such “false theories” Hegel came to the defense of a more affirmative critique:

The state is not a work of art; it exists in the world . . . and bad behavior may disfigure it in many respects. But the ugliest man, the criminal, the invalid, or the cripple is still a living human being; the affirmative aspect – life – survives in spite of such deficiencies, and it is with this affirmative aspect we are concerned here.³⁴

Hegel acknowledges that all criticism contains a negative aspect and that negativity is an “essential determination” of our freedom and must not be dismissed. The problem arises when negativity is elevated to supreme status. A purely negative conception of freedom, he argues, occurs frequently in history but in the modern world appears concretely in the “active fanaticism of both political and religious life.”³⁵ It proved itself quite compatible with the Reign of Terror in the French Revolution:

This was a time of . . . intolerance towards everything particular. For fanaticism wills only what is abstract, not what is articulated, so that whenever differences emerge, it finds them incompatible with its own indeterminacy and cancels them. This is why the people, during the French revolution, destroyed once more the institutions they had themselves created, because all institutions are incompatible with the abstract self-consciousness of equality.³⁶

The pretext put forward for the aim of destruction may well be the construction of a new world order, but the target of Hegel’s critique is a conception of freedom that is fundamentally destructive.

Whatever such freedom believes that it wills can in itself be no more than an abstract representation and its actualization can only be the fury of destruction.³⁷

³²Hegel, *PR* §209R. See also *PR*, Preface, 20.

³³Hegel, *PR*, §258 footnote.

³⁴Hegel, *PR*, §258.

³⁵Hegel, *PR*, §5A.

³⁶Hegel, *PR*, §5A.

³⁷Hegel, *PR*, §5.

In such negative absolutism self-determination, as Hegel put it, becomes “sheer restless activity which cannot yet arrive at something *that is*.”³⁸ It may be noted in passing that the affinity of Hannah Arendt's analysis of totalitarian tendencies in modern politics to Hegel's critique of negative freedom is striking, even if it was not, as far as I know, acknowledged by Arendt herself.³⁹

3.4 Hegel's Critique of Kant's Cosmopolitanism

Let us now turn more directly to Hegel's critique of Kant's cosmopolitanism. Hegel's *Philosophy of Right* may be read in large measure as a response to Kant's *Metaphysics of Justice*. One of the strengths Hegel saw in Kant's work lay in the systematic character of the methodology he employed. Kant understood that rights comprise a system and in his analysis of this system he moved from its simplest elements to increasingly more complex and concrete forms. Thus he began with private law, moved onto public law, thence to international law and finally to cosmopolitan law. According to Kant, the actual historical development of private and public law, at least in republican states, was far in advance of that of international and cosmopolitan law. The development of international and cosmopolitan law was for Kant the next logical step: not in the sense that it would *displace* the already existing forms of law, but in the sense that the freedom of the subject requires the system of right as a whole to be in place.⁴⁰ The concrete freedom of individuals is dependent not only on the existence of private rights but also on the formation of republican states, the creation of legal and peaceful relations between states, and the institution of cosmopolitan rights for non-citizens. In a world

³⁸Hegel, *PR*, §108A. In the first half of the twentieth century the “Hegelian” philosopher, Giovanni Gentile, coined the term “totalitarian” to express the idea of “total freedom” in which the self-realisation of the individual is identified with the universality of a “comprehensive, all embracing, pervasive . . . total” state. See Richard Bellamy, *Modern Italian Social Theory* (Cambridge: Polity, 1988). Gentile's “actualist” philosophy exemplifies the error of abstract thought Hegel alerted us to: to elevate the concept of the state into an abstract ideal, raise the state to supreme status, and demand it be actualized.

³⁹See Robert Fine “Judgment and the Reification of the Faculties: a Reconstructive Reading of Arendt's *Life of the Mind*,” *Philosophy and Social Criticism* 34, no. 1–2 (2008): 157–176.

⁴⁰T.H. Marshall wrote in a not dissimilar vein of a movement from civil rights to political rights to social rights that has characterised modern constitutional states. He assigned them broadly to the evolution of constitutional states in the eighteenth, nineteenth and twentieth centuries. His distinctive contribution has less to do with his much criticized evolutionary claims than with the argument that modern citizens are only full citizens if they possess all three kinds of right. We can view the idea of *human* rights as a further stage in the development of the idea of right itself. The emergence of human rights should not be understood as making obsolete less developed legal forms. It supplements civil, political and social rights associated with the nation state. See T.H. Marshall, *Citizenship and Social Class and Other Essays* (Cambridge: Cambridge University Press, 1950).

in which millions of individuals engage in international commerce, migration and travel as well as flight from oppression and poverty, where “the peoples of the earth have entered in varying degrees into a universal community,” freedom requires a complex framework of private and public laws within, international laws between, and cosmopolitan rights across states. It requires that not only should nationals have the “rights of man and citizen” but that all individuals should have the right as “citizens of the world” to visit other countries, initiate communication with other peoples, try to engage in commerce with them, and appeal to them for help.

Kant’s opposition to a world state was grounded precisely in the systematic character of his philosophy of right. The role of the Federation of Nations was not to annul the sovereignty of states but to confront the *cult of sovereignty* states demand of subjects.⁴¹ The point was not to abolish sovereignty but to make it relative. In the non-European world the problem was that sovereignty was not at all respected by colonial states and corporations. In a world of multiple interconnections the hubris of European states had to be contained within legal bounds. The rights of man and citizen could no longer stop at the gates of the city.⁴²

It seems to me that Hegel fully endorsed Kant’s insight that every sphere of right must have its due in the system of right as a whole, that the system of right must be extended beyond its national limitations, and that this process of sublation (*Aufhebung*) was not just one of overcoming but also of reconstitution. Hegel’s critique of what we might call the fetishism of the modern state, its claim to divine status, was deeply indebted to Kant’s normative political philosophy, even though he criticized the *a priori* methodology that lay at its roots. Hegel understood that the idea of right is a social form of the subject in the modern world, not a deduction from the postulates of practical reason, and that the juridical categories Kant claimed to “deduce” from the postulates of practical reason were in fact based on categories of Roman law.⁴³ He observed, for example, that one of the limitations of this approach had to do with Kant’s inability to distinguish between civil society and the state.⁴⁴ It was not possible within the framework of Roman Law to understand civil society in its modern form, as a de-traditionalized society separated on one side from the family and on the other from the state, because this relatively independent sphere of social life only came into being with the development of modern urban society.

Hegel also criticized Kant’s tendency to think that the only rational way of dealing with problems is to “sweep away the inherited clutter from traditions, clean the slate and start again from scratch.”⁴⁵ Kant argued that the tradition

⁴¹Garrett Brown, “State Sovereignty, Federation and Kantian Cosmopolitanism,” *European Journal of International Relations* 11, no. 4 (2005): 495–522.

⁴²Sankar Muthu, *Enlightenment against Empire* (Princeton: Princeton University Press, 2003).

⁴³Gillian Rose, *Hegel Contra Sociology* (London: Athlone, 1981), 84.

⁴⁴Manfred Riedel, *Between Tradition and Revolution: The Hegelian Transformation of Political Philosophy*, trans. Walter Wright (Cambridge: Cambridge University Press, 1984).

⁴⁵Stephen Toulmin, *Cosmopolis: The Hidden Agenda of Modernity* (Chicago: University of Chicago Press, 1992), 175.

of international law merely painted a legal gloss on a system in which rulers granted themselves the licence to go to war as they pleased, use any means of warfare necessary, exploit newly discovered colonies as if they were lands without people, and treat foreigners as aliens without rights. Kant presented himself as breaking radically from this tradition. Hegel observed that this break was less radical than Kant imagined. The natural lawyers whom Kant lumped together as “sorry comforters” (Grotius, Pufendorf and the rest) were the first to conceive of the unity of the human race in spite of its division into nations and the first to argue that human unity was a natural law even if it went unacknowledged by those who held that the duties of humanity ought to be conferred on compatriots alone. The *ius gentium* they developed stood for legal principles that were binding in the absence of higher authority: treaties had to be respected, states had to recognize one another reciprocally as sovereign, the conduct of war had to preserve the possibility of a future peace.⁴⁶ States were not conceived merely as private persons, as Kant thought, but as members of an international society in which every state was entitled to be recognized as an independent power in the eyes of other states. Hegel pithily observed that when Napoleon declared that “the French Republic is no more in need of recognition than the sun is,” the illusion of self-sufficiency proved his undoing.⁴⁷

Hegel's point, I think, was that in overstating his own break from the natural law tradition, Kant also overstated the break between the envisaged cosmopolitan order – based on international legal norms, an international legal authority and the right of foreigners to “hospitality” – and the existing system of right. The light of the cosmopolitan future may shine all the brighter, the darker one paints the image of the past, but this light can also distort our understanding of the present. Hegel argued, for example that colonialism was more embedded in society than was evident from Kant's predominantly juridical perspective. European states were *driven* to establish colonies by the inability of civil society to prevent an excess of poverty despite its own excess of wealth. The roots of colonialism lay not *only* in the deficiencies of the international legal order but also in the social question at the heart of bourgeois society: “the emergence of a mass of people who cannot gain satisfaction for their needs by their work when production exceeds the needs of consumers.”⁴⁸ Hegel also revealed something of his own normative stance when he commented that the liberation of the colonies would prove to be of great advantage not only to the subjugated peoples themselves but also to the colonial state: “just as the emancipation of slaves is of the greatest advantage to the master.”⁴⁹

Similarly, whilst Kant thought he had provided a legal solution to the problem of wars between European states, Hegel demonstrated that the roots of the problem went deeper into the inner workings of European political community. He pointed out, for example, that whilst republican states may require the consent of the

⁴⁶Hegel, *PR*, §333.

⁴⁷Hegel, *PR*, §331A.

⁴⁸Hegel, *PR*, §246.

⁴⁹Hegel, *PR*, §248.

people to go to war or at least finance war, responsibility for making war and peace and for the command of armed forces usually remains with the rulers and that in any event the people may be more prone to martial enthusiasm than their rulers. He demonstrated that the “rights of man” could be subverted into a duty of unconditional obedience to the nation that grants these rights and that the very rationality of republican institutions could be a source of patriotic identification with them.⁵⁰ In times of war, he argued, when the independence of the state is at risk, popular identification with the state can lead to a situation in which the rights of individuals become a matter of complete indifference compared with the survival of the state.⁵¹ Hegel also maintained that we should not underestimate the utility of wars for modern states: they can serve as means of averting internal unrest and consolidating the power of the state within; they can appear as “ethical” because they elevate the interests of the community over the private interests of individuals; they can appear justified by the feeling that one has suffered an injury from another state or that the security of the people is at risk. Once we explore the inner relations of the modern state, the ratcheting of cosmopolitan laws and institutions onto these raw materials is revealed as far more difficult than is apparent within the Kantian schema.

3.5 Beyond Natural Law

Kant’s philosophy of right was self-consciously within the natural law tradition. Natural law, he wrote, provides “the immutable principles on which all positive legislation must rest.”⁵² Kant sought to give natural law a *critical form* by arguing that natural laws are laws to which “an obligation can be recognised *a priori* by reason without external legislation,”⁵³ and a *critical content* by deducing the necessity of cosmopolitan laws from the postulates of practical reason. Kant took a huge step forward in advancing a relational theory of right as “the sum of those conditions within which the will of one person can be reconciled with the will of another in accordance with a universal law of freedom.”⁵⁴ His insight was to see that individuals can be free only in relation to others and that this is possible only through the medium of law.

Hegel recognized that Kant laid the foundation for a critical philosophy of right but argued that the project of simply cancelling the empirical world in favor of

⁵⁰Hegel, *PR* §268.

⁵¹Hegel, *PR*, §145.

⁵²Kant, *Political Writings*, ed. Hans Reiss, trans. H.B. Nisbet (Cambridge: Cambridge University Press, 1991), 132.

⁵³Immanuel Kant, *The Metaphysical Elements of Justice*: part 1 of *The Metaphysics of Morals*, trans. John Ladd (Indianapolis: Bobbs-Merrill, 1965), 26.

⁵⁴Kant, *Metaphysical Elements of Justice*, Intro §B.

the *a priori* allows for definite social institutions to be “smuggled in.” By turning relations of bourgeois society into the *a priori* condition of social organisation – or more specifically into the *a priori* condition of the asocial form of sociality that results from a multitude of conflicting interests – Kant turned bourgeois society into his hidden premise. As a consequence, Kant’s relational theory of right was limited by its individualistic assumptions. Hegel argued that the essential element of Kant’s definition of right was “the *limitation* of my freedom or *arbitrary will* in such a way that it may coexist with the arbitrary will of everyone else in accordance with a universal law.”⁵⁵ Since this conception of right contains only a *negative* determination, the limitation of my will by the arbitrary will of others, what was advanced as “rational” may appear merely as a limitation on my freedom and give rise to the demand that this limitation be abolished. An individual self-consciousness can equally well give precedence to the “arbitrariness of its own particularity,” for once the principle is accepted that the idea of “doing as you please” is the main aim of life and that law is a “perennial and hostile struggle against one’s own satisfaction,” the path is prepared for treating all legal determination as a limitation on my freedom.⁵⁶ At the level of inter-state relations, every state could consider legal determination to be a limitation on its freedom and treat legal indeterminacy as the only true freedom on the international stage.

I think that in Hegel’s eyes this conception of right compromised Kant’s analysis of the system of right as a whole, including its cosmopolitan moments. Kant offers a *roughly* accurate account of the forms of the modern state (albeit failing to distinguish between state and civil society) only to convert them into the juridical postulates of practical reason. He imposed his own “ought” onto the world. The modern state is a necessity everyone *must* recognize. The unilateral will of individuals must give way to a “collective, universal and powerful Will” actualized in the state. The people must obey the laws of the state once they have entered into a “civil condition.”⁵⁷ The duty of the citizen is to “endure even the most intolerable abuse of supreme authority.” The “well-being of the state” must not be confused with “the welfare or happiness of the citizens of the state.”⁵⁸ The limitation Hegel found in Kant’s critical philosophy was that it was not critical enough: in refusing to consider the subjective dispositions of individuals, it could not resist the temptation to impose a utopian blueprint on them.

Kant’s cosmopolitanism expressed an awareness that the cosmopolitan ideals that lit up the dawn of the French revolution had succumbed to war, xenophobia, colonial adventures and unbridled nationalisms.⁵⁹ Kant kept faith with the cosmopolitan ideals of the revolution by arguing that longer-term historical tendencies were conducive to their revival: in a commercial age peace is more profitable than

⁵⁵Hegel, *PR*, §29.

⁵⁶Hegel, *PR* §139.

⁵⁷Kant, *Metaphysical Elements of Justice*, §8.

⁵⁸Kant, *Metaphysical Elements of Justice*, §86.

⁵⁹Julia Kristeva, *Strangers to Ourselves* (New York: Columbia University Press, 1991).

war or pillage; as European states arm themselves, the escalating risks and costs of war would threaten to ruin their rulers; as the enlightenment and empowerment of republican citizens grow, so too making peace would become a demand from below. Kant acknowledged countervailing tendencies, not least the shallowness of what is called “the civilizing process,” but his faith remained that the “germ of enlightenment necessarily evolves toward a universal end.”⁶⁰ He also acknowledged that the education Nature offers us is “harsh and stern”: the means it employs “to bring about the development of innate capacities is that of antagonism with society”; it can only teach us by way of “great hardships” even to the extent of nearly destroying the human race. And yet Kant’s obstinacy was to insist that “the universal end is guaranteed by no less an authority than the great artist *Nature* herself.”⁶¹

It seems to me that Kant’s metaphysics offers us a far from comforting vision of humanity’s future: split, as it was, into extremes of pessimism and optimism. We find a similar split in political thought today. On the one hand, the so-called “human rights revolution” has given rise to the feeling that at last we are entering a cosmopolitan age. In the not too distant past international law operated largely in terms of treaties and other agreements between sovereign states; the idea of republican statehood was restricted to Europe and America; the rest of the world was under imperial control or outside world society altogether; there was no United Nations and no concept of human rights as such. Today by contrast it might appear that Kant’s vision of a cosmopolitan condition is finally taking root. On the other hand, the gulf between this image of an age of cosmopolitanism and the actual world of vast financial, military and ecological risks has given rise to a deep scepticism about the cosmopolitan project and indeed the very idea of a “universal humanity.”

To my mind, re-reading Hegel today allows us to recover our footing: not to look down on the existing world of rights, laws, states and global institutions from a great height and declare them without value; but neither to elevate cosmopolitanism into yet another abstract ideal. We should try to *understand* newly emergent forms of right before we judge them right or wrong. The panoply of human rights, world courts, international criminal laws, global institutions, anti-torture conventions and so forth are now, for better or for worse, part of our social world. Their existence is a fact. There is no going back to a time prior to their emergence without invoking the spectre of barbarism. Their present-day necessity lies in addressing the heinous crimes that hide behind the mask of absolute sovereignty. They are emergent forms of political modernity and have come into existence because they are useful in relation to our needs.⁶² They have entered into what Hegel called “the *ceaseless* turmoil of . . . passions, interests, ends, talents and virtues, violence, wrongdoing and vices” which marks the texture of our political life.⁶³

⁶⁰Kant, *Political Writings*, 50.

⁶¹Kant, *Political Writings*, 114.

⁶²Hegel, *PR*, §209A.

⁶³Hegel, *PR*, §340, my emphasis.

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