

interpretation

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interpretation

Volume 13 number 1

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An Introduction to Hegel's "Introduction" to the *Philosophy of Right*

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Hegel's *Philosophy of Right* is in many ways the great book about the modern state at the beginning of its period of self-confidence. This work defends and explicates the modern state; it also teaches an admittedly new kind of political thought which will be adequate to the foundations and the problems of the modern state. As a modern work in political thought, however, its intention is perhaps obscured rather than illuminated by the fact that it was published with two separate title pages, placed on consecutive sheets with no comment on their relationship except that implied by the sequence. The first of the titles appears to look back to an older form of political philosophy; it calls Hegel's study "Natural Right and the Science of the State [Staatswissenschaft] in Outline." On the other hand, for the second title there is "Outlines of the Philosophy of Right"; this page drops the mention of "natural" right, as well as the reference to a "science" of the "state," but it does give us "philosophy."¹ Characteristically, Hegel calls attention to the dual or the divided ("natural right" and the "science of the state") and replaces it with the single or the unified ("philosophy of right"). The task sug-

This article is the first of two on Hegel's *Philosophy of Right* (cited as *PR*). Both are devoted to the difficult "Introduction" to this book, in which Hegel presents the basis for his analysis of right itself and of the consequences which flow from it, such as the state. In the present study, the theme is the criticism of natural right which informs Hegel's work from the beginning and then the first three theses of the "Introduction." These theses describe the mode of thought which Hegel follows, especially in his doctrine of 'will' as the basis of right. The second of these articles is a reading of §§ 4–29 of the *PR*, where the idea of will is presented in a comprehensive manner. All too often neglected, this section of the *PR* is in fact the basis for Hegel's novel understanding of the meaning of right and the sources of both political thought and of the state itself. To the extent possible, I have attempted to give a reading of the argument as it unfolds, supposing that the strengths and weaknesses of Hegel's thought will become clearer if we learn to spell him out.

Note on editions and citations: For the text of the *Philosophy of Right* (cited as *PR*), I have used the critical edition edited by K.-H. Ilting: G. W. F. Hegel, *Vorlesungen über Rechtsphilosophie*, 1818–31, 4 vols. (Stuttgart–Bad Canstatt: Frommann, 1973–74). The second volume is a critical edition of the text of the *Philosophy of Right* published in 1820. I have consulted, for the translations into English, *Hegel's Philosophy of Right*, trans. T. M. Knox (Oxford: Oxford University Press, 1967); however, in some cases I have altered Knox's version in order to achieve a more literal rendering, and the translation from Ilting's volumes is my own in cases where Ilting supplies material by Hegel that was not used by Knox.

1. The two titles use the words, respectively, "Grundrisse" and "Grundlinien." I have translated both as 'outline.' Knox (p. v) uses 'outline' for the former, 'elements' for the latter, but 'elements' is plainly a word chosen to point out the difference of the terms, not because it is required by the meaning of "Grundlinien." Cf. *PR* 1, 66, where Hegel gives the title of his enterprise as "jus naturae et civitatis, i.e., philosophia juris."

gested by the titles, albeit enigmatically, is that of understanding what could be meant by a new unity and why and how it is to be sought; and this question is the most direct way, in fact, to enter into the themes of the book. In what follows, we will attempt to examine some of the chief premises of the *Philosophy of Right* by following the hint given by the titles and the full elucidation of that hint in the opening theses of the theoretical "Introduction" to the book.

Hegel's argument throughout the *Philosophy of Right* is that it is possible to give a coherent, philosophic, and systematic account of right and of the state. The beginning as well as the concluding theses of the entire work report a new unity of reason and worldly life, there is the famous or notorious proposition about the actuality of the rational and the rationality of the actual, and of course Hegel's entire approach is one which claims to find the inner logic at work even in material that seems on the surface to be anything but rational. The basis for this audacious project is argued above all in the "Introduction." Here Hegel prepares the groundwork by presenting a thesis about freedom and will, which will then be the basis for a new understanding of right and all that flows from it—individual rights, morality, ethics, civil society, and the state. The premise for this account of the free will and its implications is a critique of the notion of natural right. Hegel abandons the derivation of right from nature in favor of the principle that right comes from reason, more particularly from the free will; correspondingly, he also abandons the view that life in accordance with the right moves toward the natural as a goal, and thus his inquiry concludes by viewing right as historical, rather than natural. The *Philosophy of Right* ends with a sketch of "world history" as a manifestation of rational freedom, a "second nature" which we construct; this, according to Hegel, is the insight to which we are led when we explore the difficulties of natural right without taking them as an excuse for giving up the cause of reason.

Hegel's argument is a landmark of the period when the natural right ideas lying at the early foundation of modern liberal democracy, not to mention at the basis of classical thought, are replaced by a philosophic doctrine claiming to be independent of nature or naturalness, while also more than a merely positive, non- or antiphilosophic science. That transition is an essential element of the self-understanding of modern political thought and also the source of many of its greatest dilemmas.

The first of Hegel's titles mentions the theme of "natural right" and thus builds on a long-established tradition stretching back to the beginnings of political philosophy in classical thought. Yet it also draws attention to a distinction between "natural right" ["*Naturrecht*"] and the "science of the state" ["*Staatswissenschaft*"], a distinction introduced especially in modern thought by those who would separate ethics from politics, what men ought to be and do from what they in fact are and do.² As we look further into the *Philosophy of Right*, we find that

2. See the introductory remarks by Eduard Gans to Volume VII (i.e., *The Philosophy of Right*) of G. W. F. Hegel, *Sämtliche Werke*, ed. Hermann Glockner, 20 vols. (Stuttgart: Fr. Frommann, 1928),

Hegel claims to offer a "science" ["Wissenschaft"] but a "speculative science" or "philosophic science," dependent ultimately on knowing the "nature of speculative knowledge," as taught in his *Science of Logic* (*PR* II, 58; § 1). The orientation he offers proves to be a new one, based on a critique of received ideas about natural right; but it is not an adoption of that "science of the state" which rejects knowledge of ethics. It is a kind of science that claims to preserve the concern of natural right thought for knowledge of what is right or just in itself while also proposing to elucidate concurrently the real world of the "state" (*PR* IV, 75). Hegel offers a "philosophic right" (we find once the phrase "natural right or philosophic right") which will explain how the actual state and the right as accessible to thought are inextricably bound together.³

Hegel's thought concerning politics was, from the first, occupied with the idea of natural right, for he saw that the concern for natural right was the mode by which was expressed the quest for a rational understanding of law and politics, as opposed to a simple, pragmatic acquaintance with positive law or historical examples.⁴ Yet the term natural right refers also to the source of standards of right, to the source in nature; natural right is thought to refer to the right as received, as coming from nature, as distinguished from the conventional, what

pp. 2–4. By "science of the state" is meant the study of positive law (*PR* III, 75), and also, as Gans suggests, the study of "politics," the moving, changing life of the state, as distinguished from the study of its form. The distinction between natural right and the science of the state goes back, according to Gans, to the 'abstract' political philosophy of the sixteenth and seventeenth centuries; it is not found in antiquity, which rather treated these as parts of a whole, he argues. For clear discussion of Hegel's views on the division of modern culture into irreconcilable dichotomies, see Werner Marx, *Hegel's Phenomenology of Spirit* (New York: Harper & Row, 1975), pp. 19–21. See also *PR* IV, 75.

3. Or one of its variants, such as "die philosophische Rechtswissenschaft," *PR* § 1; or "das philosophische Recht," *PR* § 3 Remark (here is the phrase 'natural right or philosophic right'). See also *PR* I, 239–240: "The name natural right is merely traditional, not wholly correct; for by 'nature' is meant 1) essence or concept, or 2) unconscious nature (the actual meaning). The actual name: 'philosophic doctrine of right' [philosophische Rechtslehre]." Cf. the suggestion of Leo Strauss that in Epicurean thought there is a replacement of natural right by the "nature of right." *Natural Right and History* (Chicago: University of Chicago Press, 1953), p. 111, note 41. I would note here a comment of Judith Shklar, with which I agree: "One should perhaps read the *Philosophy of Right* as a defense of political philosophy . . . rather than of the institutions of the post-Napoleonic state." Review of Raymond Plant's *Hegel*, *American Political Science Review*, vol. LXVIII (December 1974), p. 1745. While the philosophic and the political in Hegel, by his own teaching, cannot be abstracted one from another, the clear priority and the leading theme of the *PR* is the renewal of political philosophy and the consequent study of the modern state on the basis of that renewed study.

4. See G. W. F. Hegel, *Über die wissenschaftlichen Behandlungsarten des Naturrechts*, in *Sämtliche Werke*, I, pp. 437–537. Published in English as *Natural Law*, trans. T. M. Knox (Philadelphia: University of Pennsylvania Press, 1975); see especially p. 55. For my understanding of Hegel's position on natural right, I am indebted to two articles by Manfred Riedel: "Natur und Freiheit in Hegels Rechtsphilosophie," in *Materialien zu Hegels Rechtsphilosophie*, 2 vols. (Frankfurt: Suhrkamp, 1975), II, pp. 109–127; and "Hegels Kritik des Naturrechts," in Riedel, *Studien zu Hegels Rechtsphilosophie* (Frankfurt: Suhrkamp, 1969), pp. 42–79. The former essay is translated as "Nature and Freedom in Hegel's Philosophy of Right," in *Hegel's Political Philosophy, Problems and Perspectives*, ed. Z. A. Pelczynski (Cambridge: Cambridge University Press, 1971), pp. 136–150. Cf. also Steven B. Smith, "Hegel's Discovery of History," *The Review of Politics*, vol. 45, no. 2 (April 1983), pp. 163–166.

men have happened to agree on among themselves. The quest for a rational understanding of right was once inseparable from the quest to know what was by nature right and therefore more authoritative than any human conventions. But Hegel perceives a new difficulty in linking right to nature.

In his well-known "Preface" to the *Philosophy of Right*, he describes the modern crisis of natural right, a crisis already emerging independently of Hegel's influence. He argues that it is too widely believed at this time that "freedom of thought, and of the spirit generally, evinces itself only in divergence from, indeed in hostility to, what is publicly recognized" (*PR* II, 61). This tendency is self-evidently a problem when we observe that in regard to knowledge of "nature," it is now widely acknowledged that nature is to be viewed as "inherently rational" so that "knowledge" must "investigate and grasp in concepts this actual reason present in it." Knowledge seeks the "law and essence" immanent within nature (*PR* II, 61–62). Yet this view, becoming the common possession of those influenced by modern science, cannot help but cause us to wonder whether the "ethical world," the "state," is "not allowed to enjoy the good fortune which springs from the fact that it is reason which has achieved power and mastery within that element and which maintains itself and has its home there" (*PR* II, 62). Could the by-product of modern scientific rationalism be an exemption of the practical concerns of men (so different, it would seem, from lawful nature) from rational order, thus opening the way to a modernism in practical affairs that encourages antirational, antinomian modes of thought? We find before us in the modern spirit an apparent dualism of lawful nature and a seemingly free man, whose freedom now tends to be interpreted as independence from rational and universal standards, a license for innovation in ideas and practices unguided by intelligible standards.⁵

To reply to the dilemma, Hegel proposes to seek the intelligible core of the practical realm. We must then understand why it is not possible to approach this issue from the standpoint of natural right, especially since Hegel understands the question with which natural right thought began to be a wholly necessary and important one. We move easily toward notions of natural right, toward a desire to grasp what is by nature right, when we find ourselves confronted with a conflicting set of rights, duties or relationships, or even with conflicting opinions concerning what is right. Arising in the case where there is not simplicity but complexity and conflict, the question of natural right seeks to reduce the multifarious demands of practical life to their essentials, supposing that the essential is what is natural; it seeks to ascertain which of many laws, rights and duties are fundamental, natural as opposed to arbitrary and conventional (*PR* IV, 75–6; I, 239–40). What is conventional in origin seems lacking in final authority; it is the source of the contradictions that provoke the questioning. That which we have freely in-

5. Cf. Judith Shklar, *Freedom and Independence* (Cambridge: Cambridge University Press, 1976), pp. 3, 12–13; Charles Taylor, *Hegel and Modern Society* (Cambridge: Cambridge University Press, 1979), pp. 154 ff.; *PR* III, 95ff.

vented, or invented under the press of circumstances, appears to have its limitations, and it appears to us that we can see beyond those limitations to something more authoritative, less relative.

Yet the traditional answer to this question in terms of natural right or natural law is now subject, for Hegel, to a fatal ambiguity connected with the very word nature. The question of natural right has sought both that right which proceeds from nature and also that which is right simply, a definitive answer to the question of what is right. However, nature means now two quite different and opposed things. On the one hand, it is 'natural being,' the way we find ourselves constituted at the beginning, the primary or original material of our existence before alteration by any man-made processes or conventions. On the other hand, we also mean by the nature of a thing its essence or concept, what it means from the point of view of reason. The rational essence of a thing may be, Hegel remarks, something other than what it is 'naturally,' for which he gives the example precisely of man and right. What is right by nature might mean either what is right as it appears to original man, man in a state of nature, or what is right in and of itself (*PR* I, 239–40; IV, 76).

The character of this ambiguity should be compared to a difficulty connected with the concept of law. "There is a world of laws, which we call nature in general." The laws of nature properly speaking are those laws discoverable by natural science. These laws are "absolute," that is, they "are what they are and are valid as they are"; to "know the law of nature, we must learn to know nature, since its laws are correct and it is only our notion of them which can be false." "The measure of these laws is outside of us; knowing them adds nothing to them and does not assist their operation; our knowledge of them can expand, that is all" (*PR* III, 91–93).⁶ Next to this account of an impersonal, inhumanly fixed nature, we put then the human world, which alone is the locus of striving, intentions, disagreement and purposive change. "The knowledge [of the world] of right is in one way similar and another way not" (*PR* III, 92).

The similarity is only preliminary. "We learn to know the laws [human laws] just as they exist." That is, the citizen and the jurist become acquainted with the laws of the land, and to an extent at first accept them just as given. Yet eventually the differences among laws, or the question as to what is essential among the many duties charged to us, make it plain that these laws are "not absolute," they are changeable, which does not mean that they are ultimately relative but rather "not so absolute" as those of nature. We observe that the "laws of right are posited, they come from man" (*PR* III, 92–93; IV, 77). What comes from this positing, the result of human action and choice, can be criticized or evaluated, also freely accepted; it is not, in any case, simply a given, not "natural being."

6. Cf. *PR* III, 95: "die Natur, die die Gesetzmäßigkeit doch zu ihren Grundlage hat." Cf. Kant, *Kritik der reinen Vernunft*, A 216, B 263. But cf. also Hegel's *Phänomenologie des Geistes*, ed. J. Hoffmeister (Hamburg: Meiner, 1952), p. 186; English translation by A. V. Miller, *Hegel's Phenomenology of Spirit* (Oxford: Oxford University Press, 1977), § 245.

Further, when we know the human source of the law, and know it as in contrast to the laws of nature, then an “inner voice” compels us either to assent or to object. “In the case of the laws of right [Rechtsgesetze], the spirit arouses itself” (*PR* III, 93). In knowing the fallible source, it becomes impossible to resist the question whether what is enforced is as it should be; it is the mark of the human realm that it makes the question of what ought to be irresistible, in a way that the natural realm cannot. Even when we are compelled to subordinate ourselves to the powerful, we cannot do so in the same way in which we submit to nature. For a powerful ruler may intimidate our actions, but he cannot compel the mind to ignore the question of the rightness of the rules. Thus, the concept of nature will remain always in the background in matters of right; it is not the standard for right, but it is a model of precisely what politics is not, namely knowable but unquestionable necessity; it is that against which the political world appears in its true character, as that realm where freedom finds expression.

When we become attentive to the character of the laws of right, then we turn into ourselves. “In nature, the highest proof is simply that a law is; in the laws of right, the thing is not valid because it is, but each demands that it should conform to his criterion” (*PR* III, 93).

Yet this consequence threatens to destroy the rationale which led to the issue of natural right in the first place, namely the quest for what is necessary or essential when one is in a position to recognize the pluralism of laws and duties. To suggest that the criterion is in oneself is to move the sphere of right into the area where subjective opinion and arbitrariness seem to have their play. If the spirit of man is the ground of right, then this might eliminate any possibility that one could find the essential and authoritative. Yet might one attempt to answer this objection by considering what it is in man’s “natural being” that is essential, what are the absolutely necessary drives or impulses? Might there be some basis upon which one could find in man’s natural constitution an analogue to the necessity of nature? One would then ask about the natural basis from which human choices spring. Such is the ‘naturalistic’ form of natural right teaching, a viewpoint that attempts to begin with man’s unchanging “natural being”—his desires, inclinations and passions—and to reason from them to what is right in and of itself. This approach begins not so much with nature itself, taken as a whole and contrasted with the human realm, but rather with “our nature,” the “nature of man” (*PR* IV, 77). More promising because it directs our attention to the specific character of the human, it is nevertheless not suitable unless it finds the specifically human. To do so, it must abandon the naturalism that attends only to animal drives, Hegel holds.

Hegel argues as follows concerning the natural human drives [“Triebe”]. There are physical drives, for example, for food and drink. To have such needs “is a necessity within us, within our nature, is our nature itself.” One might then argue that the right would mean acknowledging and satisfying these needs on a mutual basis: that everyone should live (the self-preservation of all) might seem the essential thing. Yet this is not finally satisfactory, because “the needs of the

physical life are not the only needs, there are others which indeed belong to life but at the same time must be counted as belonging to spiritual life" (*PR* IV, 77–78). The example here is the drive toward sociability.

Society, understood both as the sexual and marital relationship and as civil society, cannot be accounted for in terms of physical needs. First, animal drives are too limited to account for complicated ethical relations like marriage, and the attempt to make them do so would outrage "our ethical feelings." Further, physical needs cannot account for the multifarious, many-sided phenomena of civil society and state. The concept of the priority of physical needs is too "indefinite, abstract" (*PR* IV, 78). Hegel understands the ethical relationships of family and civil society as the givens which are to be explained and therefore as facts which stand against the attempt of naturalism to refer only to the physical as primary and essential. They are not, however, naturally given, simply irrevocable facts, as is our bodily constitution; they are givens, which it is now important to explain, but which have developed, which unfolded according to the terms of a nonmaterial necessity and have taken us beyond our original merely natural constitution. The concept of the natural as a precondition of human life in the sense of mere life is not rich enough to account for the element of right, as seen in social relationships as they have developed on the small or the large scale.

But the strongest objection to reductionistic naturalism comes as we consider the "drive toward freedom," a term Hegel employs here informally although it refers to a phenomenon that cannot be understood finally as a drive. To grasp the character of the demand for freedom, let us return to the drive with which we began, namely, the drive to preserve oneself through acquisition of the necessities for survival. That this drive is not 'absolute' is evident once we consider the capacity to limit concern for self-preservation. Limits can range from modest forms of self-limitation in pursuit of the goods that sustain life to all the forms of courage or self-sacrificing devotion to country, idea or friend.⁷ The need for freedom can contradict, resist or repudiate other drives. It is responsible for a "contradiction" in the 'nature' of man, a contradiction that is "not to be found in that which we have named nature" (*PR* IV, 79). This contradiction gives the human world a quite different ground than "natural being" and is that which constitutes the basis of right and of ethics, both making the problems of right and ethics appear and serving as the basis from which we respond to the problems as problems. It is this point which ultimately renders the term "natural right" so equivocal, since ". . . nature is not free and therefore is neither just nor unjust."⁸ Nature is "not

7. Cf. *PR* §§ 324–28.

8. *PR* § 49 Remark; *PR* I, 158; cf. *PR* I, 240, where Hegel links this view with that of Hobbes' "exeundum esse e statu naturae." Cf. further *PR* § 11, § 187 Remark, § 333. For an attempt to sever connections between the thought of Hobbes and Hegel, see Patrick Riley, "Introduction to the Reading of Alexander Kojève," pp. 269–271, in Michael Freeman and David Robertson, eds., *The Frontiers of Political Theory* (New York: St. Martin's Press, 1980). Contrast Riedel, *Studien zu Hegel's Rechtsphilosophie*, pp. 66–67. Cf. also Patrick Riley, *Will and Political Legitimacy* (Cambridge: Harvard University Press, 1982), pp. 180–182.

opposed to another,” whereas “freedom appears at once as polemical” (*PR* IV, 79; III, 95; cf. I, 231–234, 238–239).

In and of itself, mere recognition of the impulse to freedom is not sufficient to grasp the character of the problem of right. For we need to know what the place of freedom is in the human constitution. Is freedom merely a lacuna in natural being, an emptiness or indeterminacy that lowers us from the level of the lawfulness of nature? Is it the source of human uncertainty and unhappiness? Is it that which permits us to deviate from nature, to our eventual cost? Could freedom be treated as ‘in’ nature, even if somehow unlike its lawfulness, and therefore be regarded in terms of its potential for being directed ‘back’ to nature, to a kind of harmony with nature?

But as Hegel makes clear, these gropings do not do justice to the fact that “freedom does not want to be valid in a mixture with nature” but “insists on being the higher principle.” “The highest goal of freedom itself is unification with nature, but not as a conflation or in the form of nature simply as fact; rather the goal of the unification of freedom and nature must be so conceived that both are built upwards, both are transfigured by freedom toward freedom” (*PR* IV, 80). The natural being of a man must be grasped and transfigured in a manner conforming to the impulse toward manifesting, bringing to realization, the freedom of man itself. Nature is then subordinated; freedom aims at “being itself by itself, not having form through something else, but freedom must be this, to make its form equal to itself” (*PR* IV, 80). If freedom is eventually to arrive at a goal, that goal must be from within itself, not something external. Freedom is the basis of the moral thrust inherent in the original question of natural right. Thinking through that question after recognition of freedom will enable it to be approached in a more adequate way, one recognizing that element in our makeup which forces us to step beyond “natural being.”

With this step, we move entirely away from all concepts of natural right which take nature to be the source of laws of right or even a model of harmony and unity which mankind should seek to imitate as best it can. Nature lies before the Hegelian concept of freedom like a passive field which is to be cultivated by the self-activating dynamism of the free will. Lacking significant internal conflicts, nature is unconscious and ahistorical, while freedom, on the other hand, is self-generating activity bent on constructing its own higher reality, a reality in which the natural remains of course included (and in which it silently contributes to defining the limits of the possible) but subordinate to rational freedom’s directing monarchism. Nature is law, whereas the spirit of man cannot be said to be law but is a positer of law, also the critic of law, also the quest for the highest law. Natural law is simply there. Law in the ethically relevant sense is intertwined with the psychology of the human spirit; it is taken to be the potential master of nature, as if it can take the natural up into itself without any distortion of its sovereign autonomy.

Hegel thus discards the term ‘state of nature,’ for the state, the end product of

human social development, is emphatically not natural but a result of the striving which elevates us from out of our primitive naturalness toward an ethical condition which is ultimately a 'second nature' produced by the free will for the sake of the wholeness of the free will itself. From examining our 'natural condition' ["Naturzustand"], man in his naturalness, we learn to see that primitive, uncultivated, original which it is the function of rational freedom to overcome and transfigure. Rational freedom creates a "second nature" (§ 4), which is adequate to the "concept" of man; rational freedom is based on the proposition that human "natural being" must be overcome precisely in order to realize the 'nature' of man in the sense of his essence (*PR* I, 239–40; IV, 76).⁹

These reflections constitute the basis from which Hegel begins to construct the foundations of the *Philosophy of Right*. The task of the book is the positive one of attempting to explore and form the concept of freedom and will in a new way. Hegel does not hesitate to remind the reader that our first impression about freedom may be that it means license for arbitrariness or subjectivity in opinion and action (*PR* III, 94–95; II, 58, 66–67). It may seem to many that the modern state, precisely because moving toward emancipation from nature, is a state of freedom in the sense solely of liberation from what was viewed as the authority of natural law. The emphasis on freedom may thus seem to open as many new problems as it solves. Further, recalling the argument of Hegel's "Preface," with its attack on the kind of theorizing which rejects the discipline both of law and reason, we might wonder if Hegel's own approach is subject to the same complaint. Yet this is not finally the case, for the *Philosophy of Right* is the quest for an order that applies to the free will, above all for that order which is self-imposed by the genuinely free will on itself; it is in fact devoted to showing that such an ordering belongs to freedom properly understood. It is the attempt to find and specify this order that gives the *Philosophy of Right* its systematic goal. Hegel will try to show how an inner freedom reaches out for worldly realization in public life and ultimately in "world history"; he seeks to find in freedom an end or goal which is

9. For a lucid discussion of this critique of naturalism, see Taylor, *Hegel and Modern Society*, pp. 74–77. Cf. also Hegel's statement of this view in *PR* § 187 Remark. However, Taylor does not show clearly enough that the priority of freedom over the natural drives was not merely a substitute for the Hobbesian views but was based on the apparent discovery of a flaw in Hobbes' argument by Rousseau. See Rousseau's *Discourse on the Origin and Foundations of Inequality*, Part I. Cf. the remark of Strauss, *Natural Right and History*, pp. 270–272, that Rousseau's arguments are based on drawing a "necessary" conclusion from Hobbes' premises, but one not drawn by Hobbes himself. For the priority of Rousseau (and his importance also for Kant's doctrine of freedom), see Lewis White Beck, *A Commentary on Kant's Critique of Practical Reason* (Chicago: University of Chicago Press, 1960), pp. 179–180, 199–200. Cf. also Ernst Cassirer, *Rousseau, Kant and Goethe* (New York: Harper & Row, 1963), pp. 45ff. Cassirer's opinion is that in Rousseau's thought there is a transcending of the psychology based on sensations to a view in which: "The self is not a datum of sense and can never be understood as the mere product of sense data. It is an original activity, and the only evidence of such activity available to man. And this spontaneity of the self, not its receptivity, is the mark of the Divine" (pp. 46–47). Cf. Hegel's Remark to *PR* § 7.

deeper and more powerful than the commitment to liberation in and of itself. How this is argued can be seen if we now turn to the formal opening theses of the *Philosophy of Right*. Here one can hope to gain an insight into Hegel's exposition of the 'nature' (that is, the concept) of the will—the doctrine developed in the "Introduction" and constituting the systematic foundation for the remainder of the work—and into his grasp of the central practical problem facing that new civilization which sees itself as responsible in freedom to itself because emancipated from tutelage to nature.

Before we hear about the "will," which is "free" (§ 4), in the *Philosophy of Right*, before we learn what the will is or what freedom is, we encounter the following thesis, which is *the* initial formal proposition of the book. "The philosophic science of right has for its object the idea of right, that is, the concept of right together with its realization" (§ 1). This thesis is the first of three which attempt to specify the theoretical criteria brought to the new study of right. It is remarkable for its jointure of the *realization* with the concept, the co-equal status (though not necessarily without sequence) of the concern with what can be realized with the concept itself. The philosophic science of right asks not just for what is thought but for what is actualized or realized; and just this point distinguishes it from a nonphilosophic science, in which the abstraction of pure concepts assumes a false independence. Hegel's *Philosophy of Right* aspires to teach a certain 'realism,' not least by discovering how concept and actualization are joined, or how the gulf between the underlying themes of the traditional 'natural right' and the purely pragmatic, empirical 'science of the state' is overcome. This will be a realism in which the 'concept' leads and shapes the event and is ultimately inseparable from it.

Hegel's opening thesis is designed to introduce an exposition of the character of this distinctive philosophic realism. Philosophy, he says, is a critic of those abstractions which are merely clear and distinct and which therefore obscure the intelligible concepts through which we should interpret what is because they form what is. Philosophic science cannot be identified merely with the generation of concepts, for it is, in an important sense, a critic of 'mere' concepts, or it shows that a theoretical or abstract concept has to be considered as more of a question than an entity in itself.¹⁰ There are incomplete or one-sided concepts to which the mind may at first be led. Indeed, these may even be essential in human development, for the first steps of freedom are the discovery of the power of the mind or spirit to withdraw from what is given, to 'abstract from' every possible content or situation (be it the natural world or human needs and desires), in short, the ability to refuse, to criticize what it happens to find at hand (*PR* § 5). But the first, negative step, the generation of the abstract concept, must be examined in the light of the question concerning what is *the* concept. Abstractions by them-

10. Cf. the discussion of conceptual necessity in Taylor, *Hegel and Modern Society*, pp. 29–37, 49.

selves are defects. Hegel's philosophic science is concerned to develop a critique of the multiplicity of theories, those theories which will inevitably emerge when the liberated mind attempts its first steps away from thoughtless acquiescence to what is given.

Now this science holds that the essential goal is to grasp the core of what is substantial and essential in the play of "ephemeral existence, external contingency, opinions, unsubstantial appearance, falsity, illusion and so forth" (§ 1 Remark). Further, this same concern must be applied to thought itself, as a cure for the theoretical productivity that multiplies abstractions but has no cure for deciding among them. Yet Hegel would be misunderstood if interpreted to mean that we are to measure thought in some purely external way against the practical, historical world around us. For his proposition is not that we are to concern ourselves with the concept and also with whatever has been realized. On the contrary, the thesis is that we must know the concept and *its* realization. *The* concept of right is that which "has actuality" and, further, which "gives this actuality to itself" (§ 1 Remark).¹¹ It is a concept which is practical, having the force of a project, as if the freedom of mind without which even the issue of right is inconceivable is something necessarily transforming experience. The truth, *the* concept, is to be found in the realm of a thinking which is simultaneously both thought and practice, or whose truth is manifest and effective because it is inseparable from action; far from mere idealism, the genuine concept is that which is capable of becoming practical, or has already shown itself as practical and is therefore intelligible as idea, that is both as having been thought and as having been realized. *The* law is that the right itself and the real world of right effectively realized grasp themselves through thought and give themselves the form of rationality through thought alone and hence not through feeling, conscience, the heart, and so forth (*PR* II, 65–66).¹² This realism—or this concern for what realizes itself—is a realism which turns to history, understood as a process in which thought has an effect and in which the stages through which it proceeds in having this effect constitute the various "shapes" (§ 1 Remark) by which the ultimate goal, the complementarity of concept and actuality, mind and history, is brought into being.

In the "Preface" to the *Philosophy of Right*, Hegel gives an account of the aims of this procedure which will shed some light on an aspect of what is meant by 'the concept' giving reality to itself. When it is demanded that a science be taught, he explains, it is understood that what will be offered is not something ephemeral but something that we already know in a way, but concerning which we also perceive that we require a more systematic, orderly, coherent, 'scientific' arrangement of what is already in our mind. Not having that scientific clar-

11. Cf. the implications of Rousseau's treatment of the 'ideas,' *Discourse on Inequality*, Part I. An illuminating brief account of the premises of Hegel's use of the term 'concept' is given in Marx, *Hegel's Phenomenology*, pp. xix–xxi.

12. Cf. *PR* §§ 21 Remark, 105–106, 152, 187 Remark, 343.

ity means to know something defectively; the teacher must take what is known haphazardly and then show the wholeness of it, unify it into a coherent view. He must make the “closed circle of a science” visible. Everything depends on bringing unity out of incoherence, on the “assembly and arrangement of the essential factors in a content which has long been familiar and accepted” (*PR* II, 57). But this is of course a two-edged notion. For it offers on the one hand an apparent deference to that “content which has long been familiar and accepted” and yet on the other hand implies that the familiar content is not known truly, its source and goal are somehow not known deeply enough and therefore must be fundamentally misunderstood. Precisely what is essential in the ‘familiar’ world we inhabit is not as yet known. Further, we are now in some ways more distant from that knowledge. For in a time of a “shameful decay” of philosophy, there is a turn against rationalism, whose rules have been cast off, “as if they were mere fetters in order to allow the heart, the imagination and casual intuition to say what they pleased” (*PR* II, 58). The deceptive novelty of new radical ideas serves up nothing but the “same old cabbage” (*PR* II, 59), while what threatens to disappear is the “science” which enables us to grasp the essential and distinguish it from its more or less accidental periphery.

Hegel replies to this situation with the following:

After all, the truth about right, ethics and the state is as old as its public recognition and formulation in the public law, in the morality of everyday life and in religion.

What more does this truth require—since the thinking spirit is not content to possess it in this ready fashion? It requires to be grasped in thought as well (*PR* II, 60).

In answer to certain modern theories, Hegel points to tradition, to what has become publicly recognized, to history; it is a thesis sure to puzzle or offend. Yet after perceiving the surface deference to the existing law, custom and belief, one must perceive the irony. The thinking spirit is in fact not cowed by tradition, the merely traditional possesses as such no authority at all for it, because it is “not content” to possess the truth in the form of tradition, that is, in this defective form. It seeks what can be grasped in thought. It asks the nontraditional question: just what is “publicly recognized” in law, in everyday morality, in religion? It looks for that element in the traditional which can be appropriated in thought, because it is at some level implicitly rational and can, through the proper activity of thought, be given the form of thought. This is as much as to say that the activity presented here by Hegel is one which is a critique of that part of tradition (and there will always be such a part [*PR* IV, 101]) which is merely external, shaped by arbitrary and transient causes. “Thinking does not remain stationary at the given”; “on the contrary, thought which is free starts out from itself and thereupon claims to know itself as united in its innermost being with the truth” (*PR* II, 60).

Hegel provides an illustration. “The unsophisticated heart takes the simple line of adhering with trustful conviction to what is publicly accepted as true and

then building upon this firm foundation its conduct and its set position in life" (PR II, 60). ("Unsophisticated" is, in Hegel's language, 'unbefangen,' a word that he elsewhere uses to modify 'nature': 'Nature' is "unbefangen," "not opposed to something else," not "polemical" [PR IV, 79; cf. § 185 Remark]). But the simple unity between citizen and country is a beginning which is broken apart by thought, in a movement which cannot and ought not be resisted. Critical thought demands to know the basis of what has been accepted as familiar and true; the given content must be appropriated in, and thus transmuted into, rational form, with the end, then, of a reunification, on a higher level of thoughtfulness, between the aware citizen and the laws and customs made explicitly rational.

The common sense world of ordinary experience is far from sufficient in itself but it is also something to which thought must return. What is first in our minds must be subjected to criticism; it is to be dissolved in its merely given quality and then reconstituted on the basis of thought. For thought, it is significant that there is a common sense world, a world of permeating tradition. That world contains what is true but only when reinterpreted. We must learn to see its truth not in terms of what is first for common sense, nor in terms of what is simply given; the key is rather to find that element in it which is the expression of free will actualizing itself, against which then the peripheral phenomena can be seen as such. But the affirmation of freedom cannot take place merely in abstraction. Thoughtful freedom returns to the world of common sense, recognizing that there must be a world of the inherited and traditional. That common sense world, for all of its muddle, is the source of our preliminary education, a stimulus to thought and finally the world in which the results of thought can be realized insofar as possible.¹³

In stating this picture, Hegel attacks vigorously those modern tendencies which repudiate, explicitly or implicitly, the possibility of regaining harmony with the practical world. A certain kind of modern thought tends to pursue an unending critique of what is or could be effectively established, of every practicable version of a reformed constitution. This liberation from the practical world takes the form either of a glorification of a primitive, prepolitical and presocial freedom, or an absolute insistence on the primacy of individual rights over the community at all times, or a moralism which makes the autonomous subjective conscience a universal censor never to be satisfied by any genuinely realizable alternative.¹⁴ In adopting this view, however, it makes two related errors—it errs in pursuing mere abstractions, and it errs in failing to perceive the rationality in the world at hand. It unnecessarily radicalizes the divorce between the practical

13. Cf. Hegel, *Phänomenologie des Geistes*, pp. 28–31; *Hegel's Phenomenology*, §§ 31–33, 69–72. Cf. PR §§ 146–147, 316–318. See also Knox's note 68 to § 216.

14. Hegel treats this theme throughout the "Preface" Consider PR II, 58–59, 63–68; cf. § 258 Remark, on the work of von Haller, and § 141 Remark. Cf. also Riley, *Will and Political Legitimacy*, pp. 164–166, 176ff., 184–185.

consciousness of first-hand unreflective experience and the thoughtful critique of that experience which emerged to break the original harmony. It divorces the practical from the world of thought, the citizen from the thinker, to a degree which it fails to recognize as problematic and necessarily incomplete. It is a doctrine of liberation that can find no road back to earth. It threatens to rekindle the latent tension between the state and thought, leading to a repudiation by practical men of the notion that rational thought has an essential role to play within the modern state, even while that modern state is in fact built on principles that have arisen from the modern rationalist critique of premodern society (*PR* II, 66–67). Yet the suppression of thought will in itself provide no solution; thought is an ineluctable necessity for “man thinks and tries to find in thinking both his freedom and the basis of ethical life” (*PR* II, 61). And he does so while being in “the state”: “those who live their lives in the state as it exists here and now and find satisfaction there for their knowledge and volition (and of these there are many, more in fact than think or know it, because *ultimately* this is the position of *everyone*) . . .” (*PR* II, 62).

This is, then, the dilemma of a modern thought for which reason has become a problem. It is theoretical, insisting on the importance of each pursuing the truth as he sees it. But it is also disposed to yield to a critique of rationalism, on the grounds that the discipline of reason is a fetter to the spontaneity of the heart or intuition. It is in a way not theoretical enough, not able to see the theoretical in the practical and the practical in the theoretical. The possibility that one might “consciously” find satisfaction in the state ought not be erased by the emergence of critical thought; it is made more complicated, and transformed into a goal to be achieved rather than a spontaneous actuality received in the form of natural sociability. What is needed is a restoration of insight into the basis for this conscious, knowing membership in the state. If this is now the practical question of the age, then the theoretical formulation of it follows: the study of right has to do not just with the concept but with its realization. With *its* realization, that is, with that realization which it creates for itself, which springs from the force of thought’s self-liberation from uncritical adherence to the traditional. We must ask to what the freedom of thought returns after it discovers its independence? To what practical result does it lead? Or is a practical result the necessary consequence of the free mind? Hegel means that we must learn to see the problem of the relationship between man and the state, thought and politics, in terms of that project (ultimately collectively human and historical, transcending single individuals and societies) by which free thought emerged in rebellion against the given world and then reconstituted the world according to its own criteria.

Hegel’s opening thesis thus establishes the orientation of the philosophic study of right as one which necessarily pursues the connections between the rational and the practical, between thought and history. Perhaps what is at first visible in this argument is Hegel’s critical view of modern rationalism. It tears itself away from comprehension of real practice, generating dissent and “theories”

aimlessly and groundlessly. Hegel soberly defends the achieved world of politics and law against what he considers a revival of sophistry (*PR* II, 67). But Hegel's proposition contains another element, as he develops it. Taking this linkage of thought to history with the utmost seriousness, Hegel is also preparing to argue that all thought is inherently practical, just as all practice is ultimately rational or theoretical; that there is no ultimate autonomy of thought from history, for "philosophy is its own time grasped in thought" (*PR* II, 72); that his study will attempt to grasp the state as something intrinsically rational, rejecting any attempt to speak philosophically about what the state ought to be (*ibid.*); that the "idea" is in and of history, not beyond it. This more radical embrace of the historical derives not so much from an urge to reply to the intellectuals who need to come down to earth as from a systematic questioning of every attempt, philosophical or theological, to articulate a division between the mundane and a higher world. Hegel's opening argument lays the groundwork for the concluding argument of the entire book. If we concern ourselves with what can be realized, we then limit ourselves to what is realizable. We adopt the limits of the practical world as the rational limits; worldliness becomes the home of reason, but the rational mind must learn worldliness, must recover the mundane world on the basis of having instructed and reformed it. The aim is to live within the 'idea,' understood to be a mundane world in which there has been a lowering of "the spirit's heaven to an earthly here and now, to a common worldliness of fact and idea," plus an elevation of the mundane world, which is to be built up toward the "rationality of right and law," losing its "barbarity and unrighteous caprice" (of course, only to the extent possible *within* a mundane world). This goal, stated as the concluding proposition of the *Philosophy of Right* (§ 360; cf. *PR* II, 73), is the "history" which philosophy is to reveal and, ultimately, inhabit. Hegel's "history" claims to be the movement by which the worlds of thought and fact are in the process of mutual permeation by the 'idea,' by an endeavor of the human spirit to think freely and to act on its thought.

The linkage of thought and history proposed by Hegel is necessarily difficult because the two spheres at first glance appear to be opposed. Thought is free, Hegel has told us, and, we might think, seeks no other authority than what can be ratified by thought alone. In the world of historical practice, on the other hand, we must deal with the limitations of a specific time and place, with the authority of a particular state and its laws, with that which is not timeless but which shares the apparent transience of things commonly called 'merely historical.' Hegel has argued that we must replace the quest for natural right with the notion of the unification of concept and realization in the 'idea.' Does the proposed unity violate the apparent autonomy of both thought and history? This question, the age-old issue of the relation between politics and philosophy, is the theme guiding the remainder of the introductory theses preceding his account of the will itself.

We read that the "science of right [*Rechtswissenschaft*] is a part of philoso-

phy" (*PR* § 2). It is a "part," but only a part. Being only a part, it therefore has the limitation which every part suffers from not being the whole. Its partness is shown in the fact that it begins with a given, that there is a free will, and hence a concern with right, a concern developing from more primordial factors but eventuating in the possibility of an intellectual proposition about the right.¹⁵ That there is and must be a concept of right is not in itself a theme of Hegel's philosophic science of right, which is rather concerned with *what* that concept is and *how* it develops (*PR* I, 241; IV, 99–100). Moreover, Hegel would also seem to imply that the concept of right emerges both as a problem and a force only with the emergence of philosophy proper. The philosophic science of right remains dependent on this prior development; it is a tutelary discipline of philosophy, not autonomous in itself. But its dependency is not simply an external one. It is, rather, caught up in the cause of philosophy itself, and its eventual outcome is not a matter of indifference as far as the significance of philosophy is concerned.

To show why this is the case, let us consider more closely the matter of the beginning point ["Anfangspunkt"] for this science. That first emergence of the issue of right presupposes a prior development of philosophy simply. It is then a *result*, a consequence, of the emergence of philosophy. But it is a result not merely in an accidental way, but as a culmination; the emergence of a concept of right is the "result and the truth" of what has preceded it, and it even constitutes a "proof" of it (*PR* § 2). The emergence of a concept of right is philosophy's own project for reaching a self-actualization, that is for becoming 'idea' and not 'mere' abstract concept. As part of the "result" of philosophy, the philosophic science of right belongs to the project by which philosophic reflection emerged with a means for discriminating between what is true and what is false in common notions, thus promoting their reformulation (*PR* IV, 100).

There is a certain circularity to this argument, as Hegel here indicates. The end and the beginning are linked, for the only adequate beginning point is that which is necessarily actualizing itself to produce the end; but it only becomes visible as both point of commencement and final goal when one can view the whole process as a whole. Thus, if we look at the argument of the *Philosophy of Right* in its entirety, we see first an initially dogmatic assertion—that thought leads to its own realization—which is also, in another form, the concluding argument of the book, namely the explicit doctrine of history as the realization of thought (§§ 341–360). The argument offers the "closed circle of a science" (*PR* II, 47). At the end, mind and history are joined; but this is also the beginning, and one can then recognize it for what it is only after having seen and understood the

15. This view is given only within the philosophic science of right. But it is not an item of faith, for within philosophy proper it is a doctrine receiving adequate explanation and proof. *PR* I, 241; II, 88, 112. See Hegel's *Encyclopedia*, 3rd edition (1830, §§ 234–235, 440–444, 465–482, 483–552, for the placement of right into a "system" of philosophy.

end.¹⁶ The entire subject matter of the book is shot through with this thesis; the historical thesis is the final cause driving the study through to its realization. It is a thesis, in Hegel's account, which cannot be deduced or demonstrated in the conventional way followed by the common sciences; it is, rather, presented and then described in all of its manifestations, after which it has acquired determinate and concrete character, and the initial proposition comes to seem realized as a result.

Hegel's statement on the relationship of philosophy to his philosophic science of right, or his attempt to define that relationship, is given its particular urgency by the problem of the "sciences," with which his Remark to § 2 is concerned. The use of the plural—"sciences"—is already revealing; he is concerned with those modes of knowledge which claim independence from philosophy and which, lacking a central unifying standard, can therefore go off in directions of their own based on diverse, unreconcilable premises. For this is the characteristic of the "formal, nonphilosophic method of the sciences" (*PR* § 2 Remark): it builds on primary "definitions," from which the further elements of the science can then be deduced in a formally necessary manner. But what is the validity of the initial definition? If it is arbitrarily chosen, or, more likely, chosen because it implicitly accords with common notions, then the entire structure lacks justification.

Hegel's principal example is the "positive science of law." In this field, the problem of a proper beginning point is particularly pressing. On the one hand, its concern to elucidate what is enforced as law compels it to avoid clarifying first principles, especially in those cases where the actual laws are contradictory and confused and cannot be brought together under a single principle. On the other hand, its claim to the status of knowledge requires an attempt to unify the disparate aspects of law into coherence. Yet as a nonphilosophic science, it can only achieve this by deriving its definition from "etymology" or "by abstracting from particular cases." By either method, the ultimate test of validity is only that the definition correspond to what common opinion expects, because it lacks any way of turning away from instances of positive right to the source of all experience and inquiry into the right.

The procedure of this positive science is contrasted with that of a philosophic science, which acknowledges the primary authority of the "concept" or the inner conceptualizing activity by which the mind moves itself toward its fruition. This method is something different from following common notions or abstracting from this or that example chosen haphazardly. It is a conceptualizing activity which is not bound to the existing world in its given form; it necessarily objects to what is confused, contradictory and erroneous in the mundane world and in

16. Cf. Hegel's Remark to § 256, on the "philosophic proof of the concept of the state," where the state appears both as the result and the beginning. Cf. also §§ 257, 279 Remark, 301 Remark, 302 Remark.

mundane notions, and it claims the right to prescribe and correct; it is an activity of the mind which is 'in' history and which necessarily attends to realizing itself in history, but which is not the product of history in the sense that it accepts unquestioningly the authority of what immediately prevails. Further, the philosophic science of right would also raise a 'historical' objection to the nonphilosophic sciences. According to the principle by which the merely abstract was rejected, it is apparent that what is justifiable by the criteria of thought must also be that which eventuates in a result. A philosophic science appeals against the authority of the positive and the historical to another understanding of history, namely to history seen as the realization of thought. It would claim that it abstracts from positive law and that which immediately exists to the conceptual activity by which we both emancipate ourselves from the existing world and then return to it under the aegis of thought, with thought leading rather than following experience. The definitions or first principles offered by the purely positive sciences of law are in a sense ahistorical, for they are not related to the sources of the critical thought by which we have not only followed positive law but also rebelled against it and reformed it.

Thus, the philosophic science of right has as its basis the discovery of the concept (namely, of a "freedom which gives itself existence," as Hegel puts it). On the basis of its meditation on this inner spring of both theoretical and practical activity, it then returns to common opinion and looks for that notion corresponding to this concept and, further, for the word designating that notion ("right") (*PR* IV, 100). "Right" in our ordinary experience is a term of confused and contradictory meaning. No merely positive science will definitively overcome this defect. The philosophic science of right is that which alone can achieve the reformulation of this term in accordance with the standards of thought.

What is the relationship of this philosophic right to the state and its laws? Hegel's thesis about law follows from the principle of the concept shaping its own realization. In the sphere of the laws we can find the results, the expression, of thought. This view cannot mean that the rationality of the laws is manifest to casual observation or unmixed with the arbitrary and conventional. Precisely because the rational core is hidden by the surface variety, the problem at hand is two-fold: there is a need for a critique of that abstract theorizing which is unable to come to terms with the modern state and its laws; and there is a need for a mode of philosophic science which can expound authoritatively the rational core of law, by teaching how to discriminate between the core and what is inessential.

It should therefore not be surprising that Hegel's first thesis about law in the *Philosophy of Right* is introduced as follows: "the right is positive . . ." (*PR* § 3). At the basis of positive law there is its source, which is the reasoning will; law properly speaking is right, or the free will, become positive. The law is a manifestation of the activity and development of the will; it is, in principle, the manifestation of the right, which must eventuate in positive law. The problem in understanding the law arises from the problem of penetrating to the point

where this source will be visible. It would be false to suggest that this means a mindless acceptance of the laws of the day. It is a view which, on the contrary, is an implicit criticism of the laws, though not of positive law as such. It is a criticism because it becomes evident in Hegel's presentation that positive law does not know how, on its own, to make its rational core visible. The laws of the day do not know how to defend their legitimacy except by appeal to authority. From within positive law, there is no clarity about the ultimate meaning or source of positive law. Therefore, Hegel's remarks on law are occupied with a critique of the strictly legal mind. It is only the philosophic view which knows the authoritative case to be made for positive law. Thus Hegel's treatment of positive law, and of the science of positive law (literally "right": "die positive Rechtswissenschaft"), is based entirely on asking a question about positive law *from within* the philosophic approach. From within it, we inquire what is to be found when the philosophic approach, concerned with 'the right,' takes a look at the state as it first comes to light, as a positer of specific rights and obligations.

Now the questioning of positive law by the philosophic approach must be guided by two premises, which follow from the thesis of § 1. The first is a recognition of the necessity of positive law itself (though not necessarily of any particular law or institution at this stage). Thought eventuates in real consequences for the practical world, in laws, institutions, and ethics. Secondly, the philosophic approach holds that the totality of positive law is revealing, that it is the expression of the attempt of the mind as will to give reality to its reflections on the right, to achieve their embodiment into concrete ways of life.¹⁷ While in the order of common experience, the particular—positive law—comes first, in the order of reflection the particular must be seen as the product of that which precedes it, the thinking activity of the will.

But when we hold that the right "is" positive, and is thus in some sense at the core of the laws, we must also then account for the non-self-evident quality of this fact. This is the theme of § 3. The laws seem at first glance to be only particular. They fit the particular needs and situations of distinct peoples. They arise from practical men responding to concrete situations. The right inheres in them only in the way in which general principles can belong to particular cases (*PR* § 3). While we must at first learn that the right is positive and therefore is in some way at hand in the traditions and laws under which we live, we must also see that a portion of the law is chiefly a response to local exigency. We must recognize the borders of the philosophic view. It can penetrate to the essence of the law; it cannot, however, pretend to legislate nor justify every particular. It grasps the necessity of the realization of thought. But it does not lay claim to the ability itself to specify every detail. There is a relatively autonomous sphere within which practical considerations, guided by general philosophic principles in the overall, dominate.

17. Cf. Taylor's discussion of 'expressivism,' *Hegel and Modern Society*, ch. 1.

These observations are not designed as a criticism of the philosophic knowledge of right; they do, however, expose a limitation.¹⁸ It is limited from above, in a sense, by being only one of the parts of “philosophy.” It is further limited from below by the necessary particulars of positive law, for the details of law and custom belong in a sphere that is the province of the more calculating methods of the “understanding” rather than of philosophical reflection proper. The actual laws necessarily apply to factors which fall into three categories: (1) the national character of a people, including the influence of its stage of historical development and the specific natural (climatic, geographical, etc.) situation; (2) the inevitable fact that the right, in expressing itself in definite laws, will require the application of general rules to particular circumstances, a process which in itself requires practical and calculative skills rather than philosophic reflection; (3) the need that somewhere there be an authority which can make the final decision, that is, have the last word and then act. Philosophic reflection is the thoughtful response to the needs and circumstances which will constitute the specific situation of all peoples; and it knows that all peoples will exist in situations partaking of each of these three elements of specificity. But it cannot presume to legislate on each and every matter. It will not issue a book of laws (perhaps alluding to Plato). Not exactly indifferent to the details of legislation, it rather regards them “liberally.”¹⁹ To attempt to legislate would be to show a failure to recognize the limits of philosophic reflection, a failure to recognize that reflection’s embodiment and externalization will be mediated through the existing world in its multifariousness.

This limitation on the scope of the philosophy of right then establishes room for a study devoted explicitly to the particular laws and rules that apply to the exact circumstances of a specific country’s situation. This study—the study of positive law—has a legitimate claim to a certain limited independence from philosophy. But the positive study of law may go so far as to assert categorical independence of philosophic review and critique. It may deny the possibility of a philosophic contribution to the understanding of law, holding that law can only be that which is concretely enforced. Claiming total autonomy in this fashion, it may then participate in or reflect a tendency which Hegel seems to regard as ever more powerful in certain strands of modern thought, a tendency to hold that there are fundamental facts—of consciousness, of feeling, or, in this case, of positive law—which simply must be taken as arbitrary premises of society and thought and for which no critique on the grounds of reason is possible. This view leads to a maxim, the principle guiding an autonomous science of law and asserting the inability of rational thought to elucidate the basis of what is right in a way relevant to the actual world. The principle, quoted from Roman jurisprudence:

18. See *PR* § 3 Remark; cf. *PR* II, 71.

19. For this use of “liberal,” see *PR* II, 71, and § 270 Remark (II, 715). Philosophy cannot provide a “positives Gesetzbuch” [book of positive law], “that is, such a book as a real state needs” (*PR* II, 94).

"omnis definitio in jure civili periculosa" (in the civil law, every definition is dangerous) (*PR* II, 84; § 2 Remark). Definition is treacherous, it is asserted, because the laws are not based on rational principle nor intelligibly ordered. The telling example, and the one in the context of which this maxim emerged: Roman law was not able to provide a definition of "man," for its practices (slavery, family and property relations) could not be brought into conformity with an idea of man and therefore the attempt at a definition would only make the injustices more visible (§ 2 Remark). Definition might thus be dangerous both theoretically and practically.

The science of positive law may then try to defend itself and the laws as they exist by becoming a critic of rationalist criticism of the law. It may recommend that definition be regarded as impossible, on the grounds that man, law and society begin from certain premises which simply appear but which are not amenable to rational criticism or revision. Ultimately, this view would then become a thesis about the absolute priority of fact to theory, the historical reality to thought, the empirical conditions to philosophic reflection.

To reply to this possibility, Hegel urges the following considerations. First, to restate the fundamental thesis of that kind of questioning for which the entire natural right tradition stands: when we seek to examine the law, we desire to know not only what is enforced but what is justifiable. No matter how widely a law or custom is accepted, it cannot be argued simply from that acceptance that it is right in itself; the thoughtful mind refuses to be contented merely with the given, for what counts is to discover the necessity of the matter, to discover whether a law or institution flows from the concept of right.

Second, we need to ask about the character of positive law in a deeper way. What exactly is that which is posited, posited by some free choice, in positive law? The answer to this question, the thesis of § 3, is only apparently an empty one: "The right is positive"; further on, "the right must become positive." The ultimate origin of positive law as a whole is that free activity of thought which has practical consequences (the will), altering our perceptions and demands of the practical order, responding to the particulars of a given situation by ordering and choosing among them in accordance with criteria that are justifiable to the mind. The polemically positive legal mind errs on the side of the facts, for it has no tenable account of the origin both of law and of criticism of the law.

Thirdly, while no course of reflection can escape beginning from what is present to hand, and therefore from the contingent and relative, the positive science of law itself remains bound to that which happens to prevail in a specific time and place (and to all of what prevails in that time and place). The philosophic science of right, on the other hand, begins from what is relative but emancipates itself from it and comes back to it from a new point of view. It commences with a certain question (which of the numerous obligations to which I am subject is really essential?) and these questions are in some measure presented through the medium of the practical issues of the day. Yet the philosophic approach does not

leave these beginning points untouched. It takes the common notions which we imbibe directly from naive experience and poses its central question of them. It pursues its course by attempting to separate out from them what is essential and to distinguish it as such from what is merely relative. Indeed, it is the approach which alone permits the discovery that the common notions are a disorderly mixture of the temporary and the essential, the transient and the substantial, that which has merely "historical value"²⁰ and that which is justifiable in and of itself; it is hardly anything other, initially, than the emergence of the possibility of this distinction. It therefore emancipates us from uncritical subjection to the common notions and is not in any sense dominated by them; it is their critic, their assayer, though not a critic of the proposition that there must be common notions, positive law, established institutions and so forth.

The positive science of law, on the other hand, is bound to limit its thought to what is enforced. It cannot arrive at independent criteria for ordering what is enforced into the significant and the merely transient and accidental. Therefore, it finally presents everything that the law commands as transient and accidental, as bound to particular circumstances and therefore limited in its validity to the period when exactly those circumstances prevail.

When the purely positive science of law claims autonomy from philosophic or theoretical questions, it in effect consigns philosophic questions to the realm of the impractical. But this then also defines the practical realm as one unaffected by reason because controlled by other forces. The law then becomes an instrument of purely contingent response to contingent and fluctuating circumstances. This approach relativizes the law. It may do so with conservative intentions, to preserve the laws from the critical distinctions of philosophy.²¹ But the cure is worse than the disease. For this relativizing in fact shows that every aspect of law is bound totally to the circumstances; this would mean that when circumstances change, the validity of the law changes. Hegel chooses, not by accident, an example having to do with religion. One may defend the monasteries by emphasizing their usefulness in helping to begin the cultivation of unsettled areas or in preserving and passing on learning in barbaric times. But this historical defense also implies that the justification for monasteries disappears when conditions change. If the function of providing education is now accomplished by other means, then the monasteries have outlived their usefulness and have no present justification. To relativize the law by rejecting the significance of rational thought is then to open law to the purely disintegrating effect of historical change in all of its superficial variety. The paradoxical result of this supposedly conservative view is then to undermine, not to stabilize, laws and institutions.

20. *PR* II, 100–101; § 3 Remark: that which has only "historical value" is therefore of "a transitory nature." Hegel's historicism is one in which it is still possible to depreciate the 'merely' historical.

21. Strauss, *Natural Right and History*, pp. 13–15, 314–317, 318–319. And Peter Hanns Reill, *The German Enlightenment and the Rise of Historicism* (Berkeley: University of California Press, 1975), pp. 180–189.

The philosophic approach to law is one which assigns that positive science of law a dependent role. In its own sphere it has a certain validity. The laws are, in one aspect, a necessary adaptation of the general to the particular; they must reflect the particular and specific imperatives of their time and place. But the particular law exists within a larger horizon. It is guided by an intention. It was Montesquieu who paved the way to seeing "the true historical view, the genuinely philosophical standpoint." For Montesquieu considered "legislation" and "its particular determinations" as parts of one totality comprising the character of a nation and an age. The "true meaning" of the laws and the other characteristics of a people, as well as their justification, is revealed in the light of that underlying unity, its own implicit unity (*PR* § 3 Remark). The unity is the idea for which it stands and which is accessible only to those who bring the questions of the philosophic historian to the study of that people.²²

Thus Hegel's treatment of law leads to a reformulation of what we are to understand by the meaning of history. Just as 'nature' has been altered as a term, so that it now is intellectualized and refers in Hegel's usage to the concept of a thing, so the meaning of 'history' is similarly redefined. The *merely* historical is the "in der Zeit erscheinende," that which "appears in time" and which remains purely temporary. (*PR* § 3 Remark; II, 94; this realm is the "purely historical.") On an entirely different plane we find the philosophic history, that which is linked with the rational and therefore belongs to that enduring process of thought's self-actualization. Hegel intransigently opposes attempts to make the "purely historical" into the highest standard, as do the positive or historical schools of jurisprudence. His opposition is not based, however, on objections to the historical altogether. Rather, it is a prelude to an affirmative teaching about history which can elucidate what it is that is posited in history, what is its source and eventual meaning or end, and which finally seeks to join philosophy and history.

It is the element of the "purely historical" which is the source of difficulties for Hegel. The *Philosophy of Right* offers a remarkable schooling in the method by which we learn to rise above the purely historical, in order to ascend to that history which is of philosophical interest because a part of philosophy's own self-realization. This intellectualization of history dissolves and reformulates the structure of ordinary experience, natural or primary experience, in a manner designed to force recognition of the rationalizing activity through which ordinary unreflective experience is compelled to point beyond itself. Thus Hegel denies the autonomy of that experience which has not been subjected to the rationalist critique, which is totally absorbed in the particularities of time and place, and he concerns himself not so much with educating it but with subordinating it to a higher, more 'idea-ological' politics, as it were.

22. On Montesquieu's importance for Hegel, see Shklar, *Freedom and Independence*, pp. 142ff. Cf. also the comments on Montesquieu's idea of "spirit" in Thomas Pangle, *Montesquieu's Philosophy of Liberalism* (Chicago: University of Chicago Press, 1973), pp. 43-44, 184, 194-195.

Now this depreciation of the purely historical is not the same as the age-old contemplative distance from the quotidian and the particular. For this Hegelian view is a teaching which criticizes the merely historical not in the name of that which is ahistorical but in the name of a higher history. The introductory principles examined above are the preface to Hegel's doctrine of history as the actualization of the free, rational will. He argues in the remainder of the "Introduction" (§§ 4–33) that the will unfolds toward the actualization of a state embodying the full demands of free men. But the unfolding of the will must proceed in and through the concrete circumstances of the existing world; it is mediated through the confused, disorderly procedures of the world at hand, which are taken up and governed by reason and by no means eliminated.

Despite Hegel's thesis concerning the inevitability of this actualization, he cannot avoid drawing attention to a distinction between the rational as embodied or actualized and the rational in its purity. Actualization means a coupling of the rational with that which partakes of the particular and the transitory; while he would call this union the 'idea,' an overcoming of the merely abstract, it is impossible to ignore the fact that it is also tinged with the qualities of compromise. The actualization of the rational means its adaptation to the needs and limitations of the mundane world. Yet that which is empirical ("auf empirischen Boden, im Dasein") is not perfect ("nicht vollkommen" [*PR* IV, 101]). In adapting to the existing world, the rational meets with that which is "ephemeral existence, external contingency, opinion, insubstantial appearance, untruth, illusion, etc." (*PR* § 1 Remark), the realm of circumstances, conditions, the unpredictable variety of life. If Hegel would argue for the necessity of this linkage, and the consequent elevation of the mundane world, he cannot avoid noting that it remains less than a perfect harmony. His proposition concerning the unification seems to be in many ways the core of the modern state's high claim: that the rational can govern the real, that reason can merge into history, and thus that it can make one out of what was formerly two, thought and practice, spirit and world, heaven and earth.²³ But the imperfections encountered and even perhaps intensified by this project seem to be the source of the modern state's self-doubt.

23. Cf. Hegel, *Encyclopedia*, 3rd edition (1830), § 552 Remark, where he contrasts his view on the possibility of this unity with that of Plato.