

# Interpretation

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# The Specificity and Autonomy of Right: Alexandre Kojève's Legal Philosophy

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The following is a translation of the third chapter of the first section of Alexandre Kojève's *Esquisse d'une phénoménologie du droit* (*Outline of a Phenomenology of Right*).<sup>1</sup> We believe that this chapter raises and addresses fundamental questions in legal and political theory; and even though we do not always agree with Kojève's conclusions, we would argue that his bold and often provocative understanding of right and justice, law and politics, and religion and morality merits sustained critical scrutiny today. In this brief introduction, we give a short synopsis of Kojève's career; situate the *Esquisse* in his work as a whole; and provide a short summary of the chapters preceding the translated passage.

## I

Alexandre Kojève was born in Moscow on May 11, 1902, into a well-to-do bourgeois family.<sup>2</sup> (His uncle was the painter Wassily Kandinsky.) Kojève escaped from Russia in 1920 and spent the first half of the decade in Germany, where he completed his dissertation on the religious philosophy of Vladimir Soloviev under the supervision of Karl Jaspers. Towards the end of 1926, Kojève moved to Paris where he continued his studies; and in 1933, he took over Alexandre Koyré's seminar on Hegel's *Phenomenology of Spirit* at the *École Pratique des Hautes Études*, lecturing on this one book until 1939. Kojève's seminar achieved an exceptional notoriety: not only was his interpretation of the *Phenomenology* recognized as compelling (albeit controversial), but the persons who attended and were subsequently influenced by his lectures reads like a veritable who's who list of future French intellectuals.<sup>3</sup> Kojève wrote the *Esquisse* during the summer of 1943 in Gramat, France, where he also worked for the Resistance in various capacities. With the help of Robert Marjolin, Kojève secured a job at the *Direction des relations économiques extérieures* after the war, and for the next twenty years he was instrumental in helping to shape France's foreign trade and economic policy. Although Kojève continued

to publish occasionally, his longer and more detailed studies in the history of philosophy and political thought were published posthumously. He died in 1968 while giving a speech in Brussels before a meeting of the Common Market.

## II

Although all of Kojève's major works have now been published in French, his reputation among English-speaking political scientists is largely due to an abridged translation of his *Introduction to the Reading of Hegel* as well as to his debate and longstanding correspondence with Leo Strauss in the latter's *On Tyranny*.<sup>4</sup> But despite the renown of these two books, the *Esquisse* is an indispensable work in Kojève's corpus as a whole. As the *Esquisse* was written after the *Introduction*, Kojève clarifies and elaborates upon many of the themes he raises there; and as it was written before his response to Strauss's *On Tyranny*, the *Esquisse* helps to set the stage for this important philosophical debate. Furthermore, the *Esquisse* is clearly Kojève's most political work, by which we mean that he most fully articulates his understanding of right, justice, and the universal and homogenous empire. The *Esquisse* is Kojève's only book that is not an interpretation of the history of philosophy and political thought, and this means that Kojève's own voice can be heard with an unrivalled clarity: the often-asked question whether Kojève is sincerely attempting to interpret another philosopher or is masking his own thoughts behind that interpretation simply does not apply in this case. Although the title of the book states that it is a provisional exposition, the *Esquisse* is certainly more unified or systematic than the *Introduction*, and Kojève declared that he was satisfied with it. And lastly, the *Esquisse* is also a highly accessible work, not being as abstract as some of his other epistemological writings. All in all, the *Esquisse* contains some of the most important and detailed articulations of Kojève's political thought, and it is extremely puzzling why political scientists have not paid more attention to it.<sup>5</sup>

## III

Kojève discusses three large themes in the first section of the *Esquisse*: the phenomenological or behaviorist definition of right (pp. 17–121); under what conditions right or legal justice is actualized (pp. 122–87); and the specificity and autonomy of right (pp. 188–230).<sup>6</sup> As is implied in his phenomenological method, Kojève begins from commonsense intuitions about the meaning of the word *droit*. Thus, a “*juridical situation or relation of right*” exists when someone “*has the right to do or to omit something,*” or when someone “*has the right to an effective behaviour*” (pp. 21–22). Kojève quickly notes, however, that the only way to distinguish an authentic juridical situation is when a “disin-

terested and impartial” “third person C intervenes” in an interaction between two persons, A and B, and allows A (or B) the right to his or her effective behaviour. Without such an intervention, it would be impossible phenomenologically to determine “with certitude that A has the *right* to his action,” i.e., it would be impossible phenomenologically to distinguish a juridical situation from one in which person A simply has the desire (without necessarily the right) to do or to omit something (pp. 22–24). Kojève concludes that the essence of right is revealed or manifested “in and by the interaction between two human beings, A and B, which necessarily provokes the intervention of an impartial and disinterested third, C, [and] whose intervention annuls the reaction of B opposed to the action of A” (p. 28).

Kojève spends the remainder of the first chapter refining and elaborating upon this definition. Perhaps the most important issue he raises is how C can be genuinely disinterested given that the intervention is a voluntary, purposive act. After proposing several possible solutions to this problem, Kojève suggests that C will be disinterested if C could be anyone at all and the same intervention would occur (pp. 76–79).<sup>7</sup> Kojève quickly adds, however, that since C must be someone living, and since “experience shows that the intervention of C varies in respect to space and time,” C can never really be anyone at all (p. 80). Moreover, Kojève argues that C is always chosen from within the ruling group of a given state, that group which can suppress all other competing groups while still being able to rule the state (pp. 88–90). In the end, Kojève admits that C is disinterested only in the sense that he or she “is supposed to be able to be anyone at all within an exclusive group of a given Society at a given moment” (p. 90).

Kojève then goes on to observe that if a state were universal (or encompassed all of humanity), then the words “of a given Society” could be removed from the previous definition; and if the state were homogenous (with no group of persons having interests essentially hostile to any other), then the phrase “within an exclusive group” could also be deleted (pp. 90–91). And since a universal and homogenous state would not “perish or even change,” it having by definition no external wars or internal revolutions, the phrase “at a given moment” could be removed as well. Therefore, the disinterestedness of C—the full and complete articulation of justice and right—can only be realized in practice in a universal and homogenous state (pp. 91–94).

In the second chapter, Kojève makes two important clarifications, the first of which is between the potentiality and actuality of right. Although right is “real” in both cases, the potentiality of right implies a “reality in the process of becoming [*devenir*], while the reality *en acte* [actuality] is the reality ‘having become’ [*devenue*], the result or integration of its becoming” (p. 127). Phenomenologically, the critical difference between the potentiality or actuality of right is whether or not a criminal act can be annulled or suppressed within a given state (pp. 128–32). Kojève’s emphasis here is not so much whether a state has good arms to enforce the law but whether criminals can flee the state in which they committed their crime. As long as a multitude of separate states

exist, right will remain in a state of potentiality; only when all persons belong to a single state will right be actualized (pp. 133–34).

The second clarification involves Kojève's definition of the state. A state possess two characteristics: first, it is a "Society in which all the members are 'friends' and which treats as an 'enemy' all non-members, whoever they may be"; and second, a state has "within this Society a group of 'governors,' who are clearly distinguished from other members, those who constitute the group of the 'governed'" (p. 143). Kojève appropriates the friend-enemy distinction directly from Carl Schmitt,<sup>8</sup> and he assumes that his readers are familiar with and accept these two fundamental political categories. The distinction between governor and governed, by contrast, corresponds to the exclusive or elite group which Kojève spoke about in the preceding chapter, namely that group which can suppress other competing groups who want to govern without destroying the state.

Kojève ends the second chapter by arguing that "the *reality* of Justice is Right, and Right is nothing other than the application of the idea of Justice to social interactions" (p. 181). But while Kojève sees that the state or society is a necessary condition for the realization of right, politics and justice are in his mind two separate phenomena (pp. 185–87). For if right and justice could be reduced to politics (or to some other human phenomenon) then there would be no possibility of conflict (or negation) between right and the state such that both of them could progress historically (or dialectically) (cf. p. 206 n.1). In other words, unless right is a specific and autonomous phenomenon, it will not be able to evolve over time into the "absolute Right of the universal and homogenous State" (p. 187). It is with the intention of proving the autonomy of right that Kojève begins the chapter we have chosen to translate.

## NOTES

1. Alexandre Kojève, *Esquisse d'une phénoménologie du droit* (Paris: Gallimard, 1981), pp. 188–230. We are currently in the process of translating the entire book, which is to be published by Rowman & Littlefield some time towards the latter half of 1997.

2. A biography was recently published by Dominique Auffret entitled *Alexandre Kojève: La philosophie, l'État, la fin de l'Histoire* (Paris: Bernard Grasset, 1990). Auffret discusses the events leading up to and after the writing of the *Esquisse* on pp. 265–92.

3. Kojève's lectures were subsequently collected and edited by Raymond Queneau, *Introduction à la lecture de Hegel* (Paris: Gallimard, 1947). Raymond Aron, Georges Bataille, André Breton, Gaston Fessard, Jacques Lacan, Maurice Merleau-Ponty, Eric Weil, and many others attended Kojève's seminar at various times and attested to the power of his interpretation. In fact, according to Allan Bloom, both Leo Strauss and Raymond Aron admitted that Kojève was the most brilliant man they had ever met. See Allan Bloom, "Alexandre Kojève," in *Giants and Dwarfs: Essays 1960–1990* (New York: Simon and Schuster, 1990), p. 268 n.1, and Raymond Aron, *Memoirs: Fifty Years of Political Reflection* (New York: Holmes & Meier, 1990), pp. 65–70, 465–66. For a list of those who were registered for Kojève's seminar, see Michael S. Roth, *Knowing and History: Appropriations of Hegel in Twentieth-Century France* (Ithaca: Cornell University Press, 1988), pp. 225–27. Kojève's enormous influence on French intellectual life, from literature to philosophy, psychology to political science, is reflected in André Glucksmann's comment in *Le*

*nouvel observateur*, No. 992 (November 11, 1983), p. 4, that “the big secret of French philosophy, behind Sartre, Merleau-Ponty, Aron, as well as Lacan, behind the thought which dominates France between '45 and '70, is the presence of Kojève.”

4. Leo Strauss, *On Tyranny*, revised and expanded edition, including the Strauss-Kojève correspondence, edited by Victor Gourevitch and Michael S. Roth (New York: The Free Press, 1991); Alexandre Kojève, *Introduction to the Reading of Hegel*, translated by James H. Nichols, Jr. (New York: Basic Books, 1969).

5. For example, one looks in vain for a reference to the *Esquisse* in Francis Fukuyama's *The End of History and the Last Man* (New York: The Free Press, 1992), surely the one place we would expect the *Esquisse* to play a pivotal role. Not only would the *Esquisse* have helped Fukuyama see whether his understanding of capitalistic, liberal democracy is the same as Kojève's universal and homogenous empire, but it also would have suggested possible responses to Fukuyama's concern that the end of history might result in the reign of Nietzsche's last man. Shadia B. Drury, *Alexandre Kojève: The Roots of Postmodern Politics* (New York: St. Martin's Press, 1994), would also have been well advised to speak at length about the *Esquisse*, a work which is cited in her bibliography but which is not once discussed in the text. Such an analysis might have led her to a more serious and sustained confrontation of the character of the end state and the quality of its justice, aspects of Kojève's political thought which she discusses and then dispenses with in but a few pages (pp. 41–48). And finally, although Barry Cooper, *The End of History: An Essay on Modern Hegelianism* (Toronto: University of Toronto Press, 1984), might be excused for not referring to the *Esquisse*, since his book was published only three years after the *Esquisse*, it would be strange if he were unaware of the manuscript given the number of individuals familiar with Kojève whom he acknowledges in the preface. It would appear that the longest discussion of the *Esquisse* continues to be Michael Roth's brief review in *Political Theory*, vol. 11, No. 3 (1983), pp. 447–50.

6. In this essay, all emphasized and capitalized words, or words in quotation marks, are contained in the original. All page references are to the *Esquisse*.

7. It must be noted here that Kojève's understanding of the third person C encompasses not only a judge or arbiter but also the policeman who executes the judge's sentence and the juridical legislator who crystallizes an idea of justice into law. These three functions can be performed by different persons or by one and the same individual.

8. See Carl Schmitt, *The Concept of the Political*, translated by George Schwab (New Brunswick, NJ: Rutgers University Press, 1976).