

# PERSONHOOD AND PROPERTY IN HEGEL'S CONCEPTION OF FREEDOM

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## Introduction

In the preface of *Philosophy of Right*, Hegel writes that «each individual is in any case a *child of his time*; thus philosophy, too, is *its own time comprehended in thoughts*». As one of the primary institutions of his time, Hegel sought to discover what was rational about the institution of private property and whether it contributed to human freedom. By seeking «standards of rationality within existing systems of thought and forms of life»<sup>1</sup>, Hegel engages in a critique of private property while recognizing it as the apotheosis of freedom in the 1800s<sup>2</sup>. Property, for Hegel, does not simply represent or facilitate freedom: property *is* freedom. Accordingly, writes Seyla Benhabib, Hegel provides a «systematic analysis of the norms of personality, property and contract» all of which are «presupposed by modern exchange»<sup>3</sup>, which is facilitated by the kind of burgeoning liberal/capitalist market economies that were coming to dominate Hegel's era.

The goal of *Philosophy of Right*, particularly in the sections which address property as the primary abstract right, is to determine what kinds of conditions must be present for individuals to develop as legal/juridical persons in a way that is distinct from other animals. Unlike other animals, who are wholly dependent upon nature to survive, persons are free, and persons create institutions. For Hegel, institutions provide the conditions that permit human freedom, and it is by working within institutions that the things that make up the free individual are developed. These things are *property*. The abstract right to property is secured by the institution of private property, and the institution of private property is created and maintained by a social

<sup>1</sup> S.B. Smith, *Hegel's Critique of Liberalism*, University of Chicago Press, Chicago 1989, p. 10.

<sup>2</sup> D.E. Rose, *Hegel's Philosophy of Right: A Reader's Guide*, Continuum, New York 2007, p. 150 n4.

<sup>3</sup> S. Benhabib, «Obligation, contract, and exchange: on the significance of Hegel's abstract Right» in Z.A. Pelczynski (eds by), *The State and Civil Society in Hegel's Political Philosophy*, Cambridge University Press, Cambridge 1984, p. 161.

community that, in turn, is conscious of the importance of private property for the development of the free individual. Unlike the heuristic starting points of liberal theorists such as Hobbes and Locke, Hegel's abstract right is not situated in a state of nature filled with unsocialized beings who spontaneously develop powerful systems of rights and duties. Rather, the persons in Hegel's abstract right are fully socialized by their family, civil society, and the state in order to prepare them for property ownership, the creation and enforcement of contracts, and other social relationships<sup>4</sup>.

Because of the importance of property for the establishment of personhood, the state must permit broad discretion for the acquisition, use, and alienation of property. From Hegel's perspective, this broad discretion can only be exercised through institutions that define and protect private property. To that extent, Peter Stillman writes, «Hegel's thought is grounded on property» where «the right to property is the basis of the rights to life and freedom»<sup>5</sup>.

However, Hegel's theory of the political state (hereditary monarchy) is authoritarian, and it is unlikely that authoritarian states would permit the kind of extensive property rights and personal freedoms that Hegel proposes. This results in what may prove to be a fatal flaw in Hegel's political philosophy: by arguing for particular rights and freedoms at the social level, Hegel concurrently argues for political institutions that are not capable of respecting, nor obligated to respect, those rights. By trying to incorporate Hegel's property theory into contemporary property jurisprudence – as I intend to do here – any attempt to work around this flaw raises up the twin issues of *rehabilitation* and *cherry picking*. Rehabilitation involves either justifying or explaining away unacceptable aspects of Hegel's – or anyone else's – philosophy. Cherry-picking, or selective reading, permits a commentator to latch onto certain aspects of a thinker's oeuvre while disregarding the rest, much of which is (as it is in Hegel) illiberal, sexist, or authoritarian. It is a kind of reverse rehabilitation: it permits commentary upon an individual topic without having to rehabilitate, or justify, other aspects. According to Robert Pippin, it is improper to cherry-pick sections of *Philosophy of Right* «as if they were

<sup>4</sup> J. Ritter, «Person and Property in Hegel's *Philosophy of Right* (§§ 34-81)» in R. Pippin and O. Höffe (eds by), *Hegel on Ethics and Politics*, Cambridge University Press, Cambridge 2004, p. 121.

<sup>5</sup> P. Stillman, «Property, Freedom, and Individuality in Hegel's and Marx's Political Thought», in J. R. Pennock and J. W. Chapman (eds by), *Property*, New York University Press, New York 1980, p. 130.

individual chapters that one could consult about Hegel's views on individual topics such as 'property'<sup>6</sup>. This raises the issue of whether Hegel's property theory can be evaluated apart from the rest of *Philosophy of Right* and from his other writings. Axel Honneth suggests that it can, and provides a way to avoid charges of cherry picking while justifiably refusing to rehabilitate parts of Hegel's philosophy.

In *Suffering from Indeterminacy*, Honneth writes, «we can reach a productive understanding» of *Philosophy of Right* without either “rehabilitating” Hegel's concept of the state or «calling upon the state as a substance»<sup>7</sup>. This is because, for Honneth, Hegel's concept of the state, and his concept of “spirit”, *cannot* be rehabilitated due to their authoritarian implications. Honneth terms this the *indirect mode* of reactualizing the *Philosophy of Right*; the *direct mode* entails a criticism that renders Hegel irrelevant because of the clearly objectionable positions he takes in terms of the state. So, like Honneth, I aim to show how «the fundamental aim of the text and its construction as a whole», particularly in regards to the moral foundation of Hegel's property theory, can be understood when Hegel's «basic conception of the state has been rejected in principle»<sup>8</sup>. I therefore propose to indirectly reactualize the property theory of *Philosophy of Right* in light of Hegel's ethical, legal, and political theory, but – like Honneth – I will show that a rejection of Hegel's conception of the state nevertheless permits the acceptance of his conception of property. To that end, I construct a Hegelian property law that recognizes the following:

- property is developmental, meaning that persons are not born ready for the ethical community nor for the state of nature, and property is therefore necessary for the development of persons as moral and social beings;
- the institution of private property is justified to the extent it contributes to individual freedom and individuality<sup>9</sup>; and
- in contrast to Hegel's authoritarian state, a broadly liberal/capitalist social and political economy is required to realize

<sup>6</sup> R. Pippin, «Introduction» in R. Pippin, O. Höffe, op. cit., p. 8.

<sup>7</sup> A. Honneth, *Suffering from Indeterminacy*, Van Gorcum, Amsterdam 2000, p. 18.

<sup>8</sup> Ivi, p. 19. I will presume that there is nothing particularly difficult about rejecting Hegel's preferred state, to wit, a hereditary monarchy.

<sup>9</sup> P. Stillman, «Property, Freedom, and Individuality», cit., p. 134.

the institution of private property and the free and individualized persons produced by it.

The argument will proceed as follows. When the state secures the property right through the establishment of institutions which codify the rights, define it, and punish those who violate it, it is bound by a certain logic: only private property creates free individuals, and persons are free to the extent they can exchange property in accord with rational desire. These free individuals in turn perpetuate the institution of private property by owning and exchanging property on the terms established by abstract right, which promotes the development of persons by permitting them to freely exercise their will upon the internal and external world. Because of the importance of property for personhood, the state must conscientiously choose to allow broad discretion for the acquisition, use, and alienation of property, and this kind of freedom is only guaranteed in liberal/democratic political communities.

### 1. Property for Personhood

Unlike Locke – who simplifies ownership as the “mixing” of self-ownership and labor upon previously unowned things – Hegel provides a deeply nuanced approach to property ownership which carefully incorporates several key concepts that define the Idealist philosophy of his day. Accordingly, the following sections explore Hegel’s personhood argument, which begins with the importance of property for personhood and then moves to the relationship of property to Hegel’s conceptions of recognition, mediation, respect, and, finally, freedom.

In § 41, Hegel writes that

[t]he rationale of property is to be found not in the satisfaction of needs but in the supersession of the pure subjectivity of personality. In his property a person exists for the first time as reason. Even if my freedom is here realised first of all in an external thing, and so falsely realised, nevertheless abstract personality in its immediacy can have no other embodiment save one characterised by immediacy.

According to Alan Patten, Hegel initially assumes that persons occupy the social world, and then asks what kinds of institutions must exist in such a world. The social world cannot be one consisting solely of individuals and institutions; this, according to Patten, is the

standard liberal understanding of the relationship between the individual and the community, and one that Hegel seeks to challenge. Individuals also need *subjectivity*, without which there are no property rights, no contracts, and no legitimate punishment: persons *as subjects* – and not as mere individuals – have rights, make contracts, or suffer the consequences of their actions. Without those phenomena, all of which require at least two people for their realization, there is no social world for persons to occupy<sup>10</sup>.

Subjectivity, Patten explains, is a person's independence from, and knowledge of, their situation, circumstances, and desires. Subjectivity is the basis for individual personality, and personality is the distance between oneself and one's situation. It is what gives persons the ability to evaluate and reflect on their ends<sup>11</sup>. According to Benhabib, this right of personality is neither natural or the product of reason: rather, it is the result of a variety of historical processes, including the market economy, the struggle for recognition, reform, revolution, Christianity, the «spread of bourgeois market relations», and *Bildung*<sup>12</sup>. Whereas *Bildung* is constituted by the social experiences of education and culture, it is the institution of private property, Hegel will argue, that uniquely allows persons to use their education and culture as the material with which they construct their personalities as free subjects<sup>13</sup>.

Personality, therefore, is not given *a priori*: must be developed. To develop as a person, a human being must «at a minimum take possession of her body and acquire property in external things»<sup>14</sup>. For Hegel, all individuals have the capacity develop into a person, but we only do so when we first will our possession over life and body and then over other things<sup>15</sup>. The institutions that regulate property, to the extent they permit the free development of personhood, are in turn «derive[d] from our conception of ourselves as persons, that is, individuals who can abstract the contents from particular states of

<sup>10</sup> A. Patten, *Hegel's Idea of Freedom*, Oxford University Press, Oxford 2002, p. 144.

<sup>11</sup> Ivi, p. 145.

<sup>12</sup> S. Benhabib, op. cit., pp. 168-173.

<sup>13</sup> A. Patten, op. cit., p. 146.

<sup>14</sup> C.J. P. Di Salvo, «Hegel's Torment: Poverty and the Rationality of the Modern State» in A. Buchwalter (eds by), *Hegel and Capitalism*, State University of New York Press, Albany 2015, p. 108.

<sup>15</sup> G.W.F. Hegel, *The Philosophy of Right*, Cambridge University Press, Cambridge 1991, §47. All references to *The Philosophy of Right* herein are cited by section number and refer to this edition.

desire and recognise ourselves as possessors of will»<sup>16</sup>. Hans-Christoph Schmidt am Busch explains that Hegel derives the institution of private property from personhood by way of four theses:

- (1) “The person must give himself an external sphere of freedom” (§ 41).
- (2) This sphere of freedom must consist of entities that are “immediately different and separable” from the person.
- (3) The human body, human capacities, and external things can be said to meet Hegel’s criterion of difference and separability; however, they do so in different ways.
- (4) The person can only give himself a “sphere of its freedom” in private property<sup>17</sup>.

For Schmidt am Busch, it Hegel’s position that «as a person, the individual claims to decide on his own which goals to pursue; therefore, the external sphere of freedom he gives himself must consist of private property»<sup>18</sup>. This external sphere, made up of external entities that are different and separate from the individual, is the social world consisting of other things and persons. In contrast to Locke’s property theory, which presupposes an individual with the *a priori* ability and willingness to consent to another’s acquisition of property, Hegel presupposes an individual who develops into a person as they *learn* how to acquire and trade property pursuant to social norms. These norms are comprised, in part, by the institution of private property itself. The kinds of actions that constitute property institutions (including the acquisition, use, and alienation property by trade and exchange) are the types of actions through which persons experience the freedoms inherent in the willful acquisition, use, or alienation of property, and the relevant institutions promote freedom to the extent they promote broad property and contractual rights. In this way, Schmidt am Busch concludes, «the institution of private property can be derived from [Hegel’s] concept of the person»<sup>19</sup>. If the institutions do not promote

<sup>16</sup> D. Knowles, *Hegel on Property and Personality*, in «The Philosophical Quarterly», n. 130, 1983, pp. 45-62, 49.

<sup>17</sup> H.C. Schmidt am Busch, *Personal Respect, Private Property, And Market Economy: What Critical Theory Can Learn From Hegel*, in «Ethic Theory Moral Prac», n. 11, 2008, pp. 573–586, 579.

<sup>18</sup> Ivi, p. 581.

<sup>19</sup> Ivi; see also S. Benhabib, op. cit., p. 171: «the right of property is deduced

these rights or severely limit them, then they similarly do not support the free development of personhood.

## 2. Recognition and the Mediation of Subjectivity

According to David Rose, personality requires property in order to demonstrate its particularity to the world. Persons assert themselves as free individuals by obtaining the things they desire<sup>20</sup>. The desire for things fills the will, which then manifests itself through action in the world. By obtaining things, the rational desire to own becomes real in the actual ownership of the thing, and the will becomes embodied in the world. The most important of these desires is the desire for recognition, and recognition requires physical things for it to become real or objectified. Although it is less important in the *Philosophy of Right* than in Hegel's other writings, recognition is necessary for the creation of self-consciousness, which, in turn, is necessary for the objectification of the will through the medium of private property. Hegel makes this clear in § 40, writing that «a person, in distinguishing himself from himself, relates himself to *another person*, and indeed it is only as owners of property that the two have existence (*Dasein*) for each other. Their identity *in themselves* acquires existence (*Existenz*) through the transference of the property of the one to the other by common will and with due respect of the rights of both – that is, by *contracts*»<sup>21</sup>. It is not enough to will to own something and to then take initial possession of it: the thing must be “ownerless”, which contemplates the «anticipated relation to others» (§ 51), whereby the inner act of the willing person «that says something is mine must also become recognizable by others» (§ 51A). Unlike Locke's property theory, which grants ownership based on a purely individualized relationship (e.g., the mixing of labor) between person and thing, Hegel stresses that ownership can only be achieved by acting in the social world in the presence of other persons, and it is recognition that makes this possible.

The concept of recognition as a key concept in Hegelian property is introduced in paragraphs 182-184 of the *Phenomenology of Spirit*. Here, Hegel writes

from right of personality».

<sup>20</sup> D. E. Rose, op. cit., p. 60.

<sup>21</sup> See also G.W. F. Hegel, *Philosophy of Right*, cit., §§ 71-72.

this movement of self-consciousness in relation to another self-consciousness has in this way been represented as the action of *one* self-consciousness, but this action of the one has itself the double significance of being both its own action and the action of the other as well. For the other is equally independent and self-contained, and there is nothing in it of which it is not itself the origin. The first does not have the object before it merely as it exists primarily for desire, but as something that has an independent existence of its own, which, therefore, it cannot utilize for its own purposes, if that object does not of its own accord do what the first does to it...Each sees the *other* do the same as it does; each does itself what it demands of the other, and therefore also does what it does only in so far as the other does the same...They *recognise* themselves as *mutually recognising* one another<sup>22</sup>.

«Property is thus», writes Dudley Knowles, «an essential element of self-consciousness»<sup>23</sup>.

If I am to determine myself, make something of myself, the self that is operated on must be recognisable by me in just the same way that it is recognised by others. If, therefore, we recognise the grasping of an object as taking possession, we do so precisely because we identify the will of the property holder in his grasp<sup>24</sup>.

This effort to «make something of oneself» constitutes the struggle for recognition, and, as Shlomo Avineri writes, property is a key moment in this struggle<sup>25</sup>. According to Steven Smith, «the desire for recognition is the quintessential human desire»: it is desiring the desire of another<sup>26</sup>. Above all, persons desire to be treated with decency and respect, and they are in fact treated with decency and respect when their property is similarly treated. The right to recognition is therefore the right to dignity, respect, and civility, all of which require the presence of others organized into a community, and community itself arises through exchange and the institutions that promote it. As Michael Quante writes, it is through contract and exchange that property becomes the thing that mediates between two persons and thereby produces a «shared community of will» in that

<sup>22</sup> Id., *Phenomenology of Spirit*, Oxford University Press, Oxford 1977, pp. 182-184; cited in D. Knowles, *Hegel on Property and Personality*, op. cit., p. 56.

<sup>23</sup> D. Knowles, op. cit., p. 57.

<sup>24</sup> Ivi, p. 50.

<sup>25</sup> S. Avineri, *Hegel's Theory of the Modern State*, Cambridge University Press, Cambridge 1974, p. 89.

<sup>26</sup> S. B. Smith, op. cit., p. 116.



«both parties will the maintenance of the institution of property» and of their right<sup>27</sup>. The result of this mediation is the «moment of mutual recognition between subjects [that] can only be achieved through the mediating object of property, contract, and abstract law»<sup>28</sup>. When individuals operate in a community of reciprocal recognition, «the object of property serves as a medium in and through which such recognition is manifested and given presence as a public sign»<sup>29</sup>. The object of property is a social object because another person recognizes the other's will in it. The crime of theft, for example, is the breakdown in the recognition of another's will in their property: «crime is denial of right because it fails to engage in any mutual recognition with others (§ 95)»<sup>30</sup>.

According to Honneth, recognition occurs when the property object becomes subject to my ability to say “yes” or “no” to another potential property owner's offer to exchange her property for mine<sup>31</sup>. If this exchange takes the form of a promise to exchange in the future (e.g., «I hereby agree to sell you my tractor in 30 days»), then, despite the fact that no actual property has been exchanged, the willful act of promising moves the physical/material alienation or transfer of property into the realm of moral obligation: here, the seller is obligated to perform an event in the future<sup>32</sup>. Conversely, even a thief or robber recognizes the owner's right to property by *denying* them their right to say “yes” or “no” to an exchange and thereby refusing to permit the owner to engage in the willful withdrawal of their will from the thing itself.

Property, however, does not merely meet an individual's needs. For Hegel, objective property – the “things” of the world – is the initial mediator between the intersubjectivities of subjective subjects. According to Thom Brookes, the rational aspect of property lies in the *superseding* of the mere subjectivity of personality (§ 41, § 41A), whereby «property is instrumental to our discovery of how we can

<sup>27</sup> M. Quante, «“The Personality of the Will” as the Principle of Abstract Right: An Analysis of §§ 34-40 of Hegel's *Philosophy of Right* in Terms of the Logical Structure of the Concept», in R. Pippin, O. Höffe, op. cit., p. 98.

<sup>28</sup> J. Schroeder, *The Vestal and the Fasces: Hegel, Lacan, Property, and the Feminine*, University of California Press, Berkeley 1998, p. 19.

<sup>29</sup> S. Benhabib, op. cit., p. 172.

<sup>30</sup> T. Brooks, «Political Philosophy» in *Hegel Key Concepts*, ed. M. Baur, Routledge, New York 2015, p. 81.

<sup>31</sup> A. Honneth, *The Struggle for Recognition*, The MIT Press, Boston 1996, pp. 18-19.

<sup>32</sup> Ivi, p. 51.

improve upon a mere subjective judgment about freedom»<sup>33</sup>. In other words, we discover our freedom through property when we manipulate it, transform it, or, most importantly, alienate it. In doing so, we also alienate our will by placing it into an object that is external to it.

In another departure from Locke, who prioritized the acquisition aspect of ownership, Hegel emphasizes the contractual elements of ownership in which the parties to a property transaction are briefly united in a common will<sup>34</sup>. Specifically, Hegel claims that we truly become owners *not* by acquiring property, but when we «cease to be an owner of property» by getting rid of it through a contract to sell it (§ 72). Hegel recognizes that the contractual or alienable element in property means that, for a brief moment, structures such as residential buildings are neither house nor home but *both* for the parties – this is the moment where an owner’s will identifies with the next owner’s will in a «unity of different wills» (§ 72-73):

This relation of will to will is the true distinctive ground in which freedom has its existence. This mediation whereby I no longer own property by means of a thing and my subjective will, but also by means of another will, and hence within the context of a common (*gemeinsamen*) will, constitutes the sphere of contract (§ 71).

It is in the moment of this profoundly important agreement (the «transition from property to contract») that the «contracting parties *recognize* each other as persons and owners of property» (§ 71R; emphasis in original), and where the alienation of property allows its soon-to-be former owner to experience their independence from it as the experience of freedom *from* the thing itself. In this way, Hegelian property serves as a way to mediate the intersubjectivity between persons: it is not merely the “receptacle” of individual will or labor as liberal Lockean property theory imagines it to be. It permits persons to recognize oneself and one another, and property holding therefore permits recognition between conflicting persons and their competing wills. Because property transfers are social interactions, they therefore require extensive moral foundations as well as social institutions for their success. The primary moral foundation is the idea of respect.

<sup>33</sup> T. Brooks, op. cit., p. 79.

<sup>34</sup> J. Schroeder, op. cit., p. 49.

### 3. Ownership and Respect

Respect is the first “commandment” of Hegelian property: «be a person and respect others as persons» (§ 36). For Robert Pippin, Hegel is clear that we must respect abstract rights, including those that pertain to property<sup>35</sup>. Respect, Avineri writes, is keyed to recognition, and it is «[t]hrough property [that] man’s existence is recognized by others since the respect others show to his property by not trespassing on it reflects their acceptance of him as a person»<sup>36</sup>. Respect also permits us to «identify ourselves through the medium of our property and to accord others equivalent status as they express and recognise themselves in their property»<sup>37</sup>. Ownership rights impose constraints and duties on other persons, whereby «my having these rights involves others recognizing me as a source of moral constraint and thus as a locus of respect»<sup>38</sup>.

Respect is, therefore, recognition of the duty not to interfere with another’s property right, and it is the foundation of the moral prohibition against theft. Hegel writes in § 113 that the origin of the moral duty not to interfere occurs when an owner recognizes the legal action whereby «I retain my property and let the other party to retain his». According to Schmidt am Busch, respect is also a key element in Hegel’s capitalism. Respect «gives individuals who wish to cooperate economically a *prima facie* reason to favor market-like exchanges over state-regulated distributions of goods»<sup>39</sup>. Market exchanges can therefore «be understood as possible institutionalizations of personal respect», due to the realization that «the structure of personal freedom seems to be larger in market economies than in state-regulated economies»<sup>40</sup>. For Hegel, «there is thus no recognition of an individual as a person without recognition of individual property rights»<sup>41</sup>, and it is only through mutual recognition with another person, Brooks writes, that freedom is possible: «It is through someone else’s recognition of a thing as mine that [freedom’s] existence becomes more “actual” and determinate»<sup>42</sup>.

<sup>35</sup> R. Pippin, «Introduction», cit., p. 8.

<sup>36</sup> S. Avineri, op. cit., p. 136.

<sup>37</sup> D. Knowles, op. cit., p. 55.

<sup>38</sup> J. Waldron, *The Right to Private Property*, Cambridge University Press, Cambridge 1988, p. 303.

<sup>39</sup> H.C. Schmidt am Busch, op. cit., p. 535, n31.

<sup>40</sup> Ivi, p. 582.

<sup>41</sup> Ivi, p. 581.

<sup>42</sup> T. Brooks, op. cit., citing Hegel, *Philosophy of Right*, §§ 71,75.

## 4. Property and Freedom

Private property provides a concrete expression of independence which is the essential part of being a person<sup>43</sup>. For Hegel, freedom is the will, and by putting their will in a thing through acquisition and use (§ 44), a person's subjective will becomes "actual will" in property by gaining embodiment in the external world (§ 45). When persons enter the world, they act in and upon it. When persons are not oppressed or restrained, they freely manipulate the world's resources, and their free will gives itself existence by reference to an external «sphere of freedom» (§ 41), «a collection of external object over which it alone has power». The interior life becomes "exteriorized" (§ 43) in civil society through trade and exchange, which are framed by the legal contract. If the law allows for considerable 'conflict' in the pursuit of trade and exchange, then the law is consonant with freedom.<sup>44</sup> Conversely, persons who are not permitted to trade or exchange their property are not free.<sup>45</sup>

Importantly, freedom is not a feeling or intuition. As Richard A. Davis writes, genuine freedom requires a «definite contact with objective reality»<sup>46</sup>. At each step, Davis continues, «property is thus the agent of this development of a consciousness of the ethical substance. Whether considered in its role in education, or in its more traditional, "pure" form, property is ultimately responsible for bringing into existence an objective form of the concept of freedom that was one of the original goals of the will (§ 4)»<sup>47</sup>.

True to the spirit of the dialectic, Hegel is also aware of the potential for private property to create moral ruin. According to Joachim Ritter, property can, through «diremption and difference» (§§ 33 and 182), «reduce all of human existence to buying and selling, thereby "loosening" the relations that bonded persons together in the first place in order to create the civil law». Here, «each individual is his own end and everything else counts for nothing» (§ 182A)<sup>48</sup>. Despite this potential for ruin, Hegel nevertheless insists that «property must

<sup>43</sup> A. Patten, op. cit., p. 149.

<sup>44</sup> J. Ritter, op. cit., p. 121.

<sup>45</sup> Ivi, p. 112.

<sup>46</sup> R.A. Davis, *The Conjunction of Property and Freedom in Hegel's Philosophy of Right*, in «Zeitschrift für philosophische Forschung», n. 43, 1989, pp. 111- 123, 119.

<sup>47</sup> Ivi, p. 123.

<sup>48</sup> J. Ritter, op. cit., p.113.

possess the character of private property» (§ 46). As Ritter notes, the «externality of civil society that presents the dual spectacle of extravagance and distress also represents for Hegel the actual existence of human freedom»<sup>49</sup>, and freedom would be impossible without the ability to acquire and get rid of goods and assets<sup>50</sup>.

Much like the right to alienate one's property, the duty of noninterference also bridges the important connection between private property and freedom<sup>51</sup>. Hegel, Patten writes, derives this connection from Fichte. For Fichte (and, consequently, Hegel) private property as an institution makes personality possible; because of the importance of personality, private property is justified in placing others under duties such as the duty of non-interference<sup>52</sup>. Private property is therefore the result of a person having the right to a sphere of the external world that is free from intervention by others<sup>53</sup>. For both Fichte and Hegel, the «[p]rivate property system centres on the way in which private property provides the individual property holder with a concrete perception of his own agency and in this way helps to constitute him as a free person»<sup>54</sup>. Non-interference, as a necessary feature of private property, also «plays an important role in self-understanding whereby the individual defines themselves in relation (and contrast) with others»<sup>55</sup>.

However, it is important to understand that Hegelian property is not merely instrumental towards personhood and freedom. It is not a means to those ends: rather, it is constitutive of them. The right over the acquisition, use, and alienation property is an expression of free will, where the right is constituted by the «ensemble of conditions that express and realize the conception of the person as free and equal, or, more exactly, a possessing the moral powers proper to this conception of the person»<sup>56</sup>. Put another way, right is the second

<sup>49</sup> Ivi, p. 114.

<sup>50</sup> D. Knowles, op. cit., p. 57.

<sup>51</sup> A. Patten, op. cit., p. 139.

<sup>52</sup> Ivi, p. 152.

<sup>53</sup> Ivi, p. 153.

<sup>54</sup> Ivi, p. 157.

<sup>55</sup> J. Waldron, op. cit., p. 376. As Schroeder notes, there is a substantial difference between the brute fact of possession as exclusion and the right to exclude others from interfering with one's possessions. J. Schroeder, op. cit., p. 42.

<sup>56</sup> P. Benson, «The Priority of Abstract Right and Constructivism in Hegel's Legal Philosophy», in D. Cornell, M. Rosenfeld, D. G. Carlson (eds by), *Hegel and Legal Theory*, Routledge, New York 1991, p. 179.

nature of the will: it is not “natural” or prior to or independent of free activity, but the result of it<sup>57</sup>.

To summarize thus far: Hegel asks what kinds of actions are the actions of free persons. He concludes that free persons are able to trade material objects amongst themselves with considerable autonomy and without undue oversight by a coercive authority. Different social orders, manifested through various methods for the implementation of *Sittlichkeit*, may require different contractual or property norms, but, in order to be rational and to embody freedom, they must provide core protections through a regime that protects private property and the freedom to contract<sup>58</sup>. It is Hegel’s idea of abstract right that justifies these freedoms.

## 5. Abstract Right as a Product of Social Life

Hegel uses the idea of abstract right to determine what kind of human actions are necessary for freedom, and concludes that human freedom is only possible if persons can own and transfer property without substantial restriction. Because abstract rights must be concretized and contextualized by custom and social life, the abstract property and contract right is then shaped by morality and finally ethical life, neither of which fully subsume Hegel’s insistence that freedom consists in the right to satisfy the will through free and consensual ownership and transfer of property. For Peter Stillman, the abstract property right operates as a kind of idealized property right, where persons are equal in their capacity for property ownership, and where «full and complete» ownership is dependent solely on their personhood and «irrelevant of social status or hierarchy»<sup>59</sup>. The corresponding idealized – yet still abstract – contract right is the way to move property along to others without domination or coercion. The persons who own and transfer property within abstract right operate freely, and the right to freely perform these specific actions is essential to any conception of social freedom<sup>60</sup>.

The abstract property right is complex, but it is best understood as

<sup>57</sup> Ibidem.

<sup>58</sup> C. McCracken, «Hegel and the Autonomy of Contract Law», in M. Salter (eds by), *Hegel and Law*, Ashgate, Hants 2003, p. 161.

<sup>59</sup> P. Stillman, «Property, Freedom, and Individuality», cit.; Id., «Property, Contract, and Ethical Life», cit., p. 206.

<sup>60</sup> Ibidem.

the final, most elemental right that remains after a person's social and cultural contingencies have been "stripped". It is the right that must remain in order to preserve a person's freedom. Therefore, various social contingencies will determine how the right is enjoyed in a variety of civil societies and states, but the right must be in place if the society is to promote freedom. Viewed in this way, property rights are the logical outcome of an ethical society populated with moral beings, in which rightsholders are fully socialized by their families, their society, and their state. According to Brian O'Connor, «[a]bstract right is the sphere of the agent within a system of laws. Fulfillment of one's role within that sphere requires no more than simple adherence to the laws...Morality, by sharp contrast, refers to the perspective of the subject as an independent agent on what that subject ought to do»<sup>61</sup>. As Ludwig Siep writes, the abstract property right «presupposes institutions for its own realization [and] can also be limited by those institutions», primarily by the «state's own "capacity for action"»<sup>62</sup>. The institutions that govern and protect abstract right are not independent from the law or from civil society: the abstract person always exists within the various institutions of civil society and ethical life. In other words: only persons who are fully socialized by ethical life are able to abstract themselves from that very life in order to understand right. According to Quante, morality and ethical life then *assist* abstract personality in its effort to become actual or concretized. The abstract right is therefore *empty* without moral reflection and an ethical community<sup>63</sup>. As Quante explains, the abstract person or will «necessarily implies a content that can only be found outside self-consciousness». This will has no content, and requires action or participation in the actual world. The self-conscious experience of freedom therefore «presupposes the existence of an external and immediately encountered world»<sup>64</sup>, and this world will necessary be filled with other persons who have also developed customs, ethics, and an ethical social life (*Sittlichkeit*).

So, freedom of the will in abstract right is a kind of incomplete freedom: the free will must act within an actual world defined by morality (how the will considers itself), ethical life (how others

<sup>61</sup> B. O'Connor, «Ethical theory», in M. Baur (eds by), *Hegel Key Concepts*, Routledge, New York 2015, p. 72.

<sup>62</sup> L. Siep, «Constitution, Fundamental Rights, and Social Welfare in Hegel's *Philosophy of Right*», in R. Pippin, O. Höffe, op. cit., p. 278.

<sup>63</sup> M. Quante, op. cit., p. 84.

<sup>64</sup> Ivi, p. 89.

consider the will), and other persons<sup>65</sup>. As Quante observes, making a claim (say, to a certain item of property) implicitly assumes that there are other persons who are “addressees” of the claim<sup>66</sup>. In § 38 Hegel writes that abstract right is «limited to the negative – *not to violate* personality and what ensues from personality». Property, of course, is what ensues from personality, so abstract right initially establishes a duty not to interfere with another’s property. This duty entails that «[a]n abstract right that contains a positive assertion in its external form (e.g., “the property of a person must be respected”) depends in the final analysis on a prohibition» against the mistreatment of others by, for example, stealing from them<sup>67</sup>. Quante concludes that the Hegelian right to property therefore formalizes the duty not to interfere with another’s property, but it also formalizes the right to attempt to acquire property without interference<sup>68</sup>.

Benhabib writes that abstract right is Hegel’s term for natural right<sup>69</sup>, but also that the property and contract rights in abstract right are *formal*, meaning that property-owning persons are legal persons operating within a «formally correct procedure» consisting of «background norms and procedures» which «confer validity on the contractual relations», which are derived from the rights of personality and property<sup>70</sup>. For Benhabib, contractual relations «presuppose the non-contracted and non-contractual capacity of individuals to be treated as beings entitled to rights»<sup>71</sup>. This capacity permits persons to freely enter into contracts, and to transfer their right to property pursuant to contract. These proprietary rights are «stipulated prior to the act of contract», and the only way a person can legitimately contract is if they have full rights over the terms of the contract itself, which is typically concerned with how an item of property is to be acquired, used or transferred<sup>72</sup>. Contract rights, of course, are considered to be foundational for all liberal/market economies, and it is at this point that Hegel’s property and contract rights can be situated into a capitalist framework.

<sup>65</sup> Ibidem.

<sup>66</sup> Ivi, p. 92.

<sup>67</sup> Ivi, p. 94.

<sup>68</sup> Ibidem.

<sup>69</sup> S. Benhabib, op. cit., p. 160.

<sup>70</sup> Ivi, p. 162.

<sup>71</sup> Ibidem.

<sup>72</sup> Ivi, p. 163.



## 6. Abstract Right Within Capitalism

For Benhabib, abstract right becomes the normative presupposition of «modern exchange relations», or capitalism, constituted by «the reciprocal transfer of proprietary rights among formally equal property owners»<sup>73</sup>. According to Honneth, as Hegel developed his system from his youth to his composition of *Philosophy of Right*, he

persisted in, or even held more strongly, the conviction that in such a culture of communicative freedom, or “ethical life”, considerable space would have to be provided for that social sphere of action in which subjects could each pursue their private interests reciprocally in accordance with the conditions of the capitalist market<sup>74</sup>.

In a capitalist or market framework, property is, of course, the primary object of trade<sup>75</sup>. Not only does Hegel clearly oppose the abolition of private property (§ 46R, § 185R), he is severely critical of both the grounds for, and the effect of, Plato’s communism for the guardians of the city. According to Kenneth Westphal, Hegel’s approval of capitalism is qualified, but nevertheless «he did not oppose it and indeed based his political philosophy on a careful rethinking of modern political economy»<sup>76</sup>. For Siep, Hegel believes that individuals can pursue their abilities and plans «only in the context of the effectively private pursuit of interests, involving the free choice of profession or occupation and the private disposal over the means of production»<sup>77</sup>. The modern era, Hegel writes in §261, promotes this private pursuit, in that modern human beings «expect their inner life to be respected» as much as we «expect to have our own views, our own volition, and our own conscience».

<sup>73</sup> Ivi, p. 161.

<sup>74</sup> A. Honneth, *Suffering from Indeterminacy*, cit., p. 21.

<sup>75</sup> J. Schroeder, op. cit., p. 261. For Schroeder Hegelian property as traded in the market can be “fungible property” and can also serve as a mediator. As such, «modern commercial relations allow us to form relationships and community far beyond our family or clan».

<sup>76</sup> K. Westphal, «The basic content and structure of Hegel’s *Philosophy of Right*», in F. Beiser (eds by), *The Cambridge Companion to Hegel*, Cambridge University Press, Cambridge 1993, p. 240.

<sup>77</sup> L. Siep, op. cit., p. 284.

In Hegel's view, writes Schmidt am Busch,

[c]ontracts and market-like exchanges are not a possible institutionalization, but a necessary condition of the realization of personal respect...In fact, individuals who exchange commodities for money as well as individuals who exchange labor for money or money for money "recognize each other as persons and property owners". Therefore, commodity, labor, and capital markets can, in principle, be said to be (possible) institutionalizations of personal respect (see § 80)<sup>78</sup>.

Hegel clearly adopts Adam Smith's theory of the invisible hand of the marketplace when he writes that the system of needs – the most basic system in civil society, consisting of requirements for food, shelter, and other necessities – is best met in an economy where subjective selfishness turns into a contribution towards the satisfaction of the needs of everyone else. By a dialectical movement, the particular is mediated by the universal so that each individual, in earning, producing, and enjoying his own account, thereby earns and produces for the enjoyment of others (§ 199)<sup>79</sup>.

However, according to Peter Stillman, Hegel does not attempt to justify capitalism, which «simply follows from the play of private property in civil society»<sup>80</sup>, nor does he provide an apology for it because he provides for extensive regulation of property as well as the subjugation of the individual to the state<sup>81</sup>, a subject that will occupy the final section of this paper.

So, ethical life – a social framework of norms, laws, and practices that operate only because subjects actively participate in them – creates the possibility that persons might freely trade and contract for property (the actions of abstract right) and also engage in moral reflection (the actions of morality). Without ethical life, there is no free trade but only theft and barbarism, which are the products of failed moral reflection. For Stillman, *Sittlichkeit* is «rich in types of human relations, development, and freedom», and it is here that «[p]roperty must be *aufgehoben*, both preserved and transcended, so that Hegel can get from the property centered starting point of

<sup>78</sup> H.C. Schmidt am Busch, op. cit., p. 583.

<sup>79</sup> See also L. Herzog, «Two Ways of Taming the Market: Why Hegel Needs the Police and the Corporations», in A. Buchwalter, op. cit.

<sup>80</sup> P. Stillman, «Property, Freedom, and Individuality», cit., p. 166, n2.

<sup>81</sup> J. Schroeder, op. cit., p. 284. In terms of regulation, Hegel writes that the public has the right not to be cheated, which permits market commodities to be inspected by some kind of public authority (§ 236).

abstract right to a *Sittlichkeit* that is institutionally pluralistic and varied»<sup>82</sup>. It is at this point that Hegel is able to reconcile abstract, individual right with different social contexts by situating ethical life prior to the exercise of moral behavior, such as refraining from stealing and the enjoyment of property rights. Moral obligation to the community, however, does not mean that the community takes priority over private property and the exercise of abstract right: it means that the community has interests that the individual must respect, and, perhaps more importantly, the individual has interests (many of which are protected by abstract rights) that the community must, in turn, respect as well.

## 7. The Property Right and the State

It should be clear that the kind of society described by Hegel in these sections shares many features with contemporary societies driven by capitalist market economies. Hegel's civil society, on the one hand, secures extensive property and contract rights by allowing persons the freedom to trade without significant state or regulatory oversight. On the other hand, because civil society is a Hobbesian «field of conflict in which the private interest of each individual comes up against that of everyone else» (§ 289R), it is – like contemporary liberal democracies – marked by tension between private property and public welfare. For example, Hegel gives expansive authority to the police not only to prosecute and punish crime, but also to develop the corporations that are intended to provide assistance, as well as cooperation, mutuality, and ethical guidance, when markets fail. This guidance is, for Hegel, «crucial to offsetting the atomistic, self-seeking individualism basic to the *aporias* of modern market societies»<sup>83</sup>.

Although Hegel supposes a liberal conception of the priority of subjective rights and private property, these rights do not extend into the political sphere. In terms of private law – the statutes and common law jurisprudence that regulates ownership claims between individuals – Hegel's conception appears modern and even liberal, but this portrayal ends abruptly when the liberal conception of private property rights abuts public law, which is obligated to recognize the ethical priority of the state and its unregulated sovereign authority over property. Hegel's philosophy of right seeks to protect individuals

<sup>82</sup> P. Stillman, «Property, Contract, and Ethical Life», cit., p. 208.

<sup>83</sup> A. Buchwalter, «Introduction», in id., op. cit., p. 4.

from one another, but not from the state itself<sup>84</sup>. Although there is significant conflict between individuals in civil society, there is no «tension between personal right and the governing power of the state», and therefore, for Siep, no protection of individual freedoms against the state's monopoly of power<sup>85</sup>. This is the «decisive limit of Hegel's liberal outlook»<sup>86</sup>. For Siep, the «principal deficiency» inherent in *Philosophy of Right* is just this failure to establish a defense of fundamental rights against the state.

The contradiction between Hegel's social and political conceptions of property is apparent. Honneth is also aware of this when he writes that individuals must be able to «possess an exclusive portion of the external world, objects, or things (*Sachen*) (§ 42), in order to be able to actualize the preferences they have chosen without restriction». However, this «free-space of subjective arbitrariness» is merely protected from «interference by *other subjects* who contest their possession»<sup>87</sup>, but not from interference by the state. In establishing this zone of private property, subjects «must be willing to concede *other subjects* the same claim to unhindered actualization of their personal freedom»<sup>88</sup>. Of course, legal or abstract right is not unlimited or absolute, and it is in the transition to the later stages of morality and ethical life that individuals are said to «link one's will to a conception of a universal good»<sup>89</sup>.

Even when the purely legal protections afforded to, for example, property rights, are reproduced in the «concrete person» of civil society (§ 182) where the goal of the administration of justice is the «protection of property» (§ 208), there is apparently no indication or stipulation in the *Philosophy of Right* that state power in terms of property rights (and perhaps all rights) may or should be restricted or regulated at any level of abstract right, morality, or *Sittlichkeit*. Whatever protections are afforded property rights at the intersubjective level between subjects are non-existent between subjects and the state.

So, despite his recognition of the clash of private interests against one another, the conflict between persons and communities, and the

<sup>84</sup> L. Siep, op. cit., p. 287.

<sup>85</sup> Ibidem.

<sup>86</sup> Ibidem.

<sup>87</sup> A. Honneth, *The I in We*, Polity Press, Malden 2012, p. 26 (emphasis added).

<sup>88</sup> Ibidem. (emphasis added).

<sup>89</sup> Ivi, p. 27.

conflict between both persons and communities together against the state (§ 289), Hegel was unwilling to create the types of protections in a public law that he found necessary in the private law. This is because Hegel cannot countenance the idea that an individual property right, or even the property right of a community, can trump the superior right of the monarchic state that he presumed was necessary. Because there is no «exchange of equivalents» between citizens and state, there is no contract with the state, and states therefore cannot violate property or contractual rights. In the sections on contract (§§ 72-83) and specifically in § 75, Hegel explicitly denies that a contractual relationship – the kind advocated by Hobbes, Locke, Rousseau, and Fichte – exists between the citizen within a state (a «contract of all with all»), between the citizens (individually or as a «unity of different wills») and the state, or between (for example) persons in a marriage. He also denies that the state originated for the purpose of protecting private property «in opposition to the right of the sovereign and the state» where «the rights of the sovereign and the state [are] regarded as objects of contract and based on a contract» (§ 75). This is because, for Hegel, the ultimate purpose of the state is not «the security and the protection of property and of personal freedom» (§ 258). Civil society is tasked with the obligation to uphold these rights when they are violated by citizens to the detriment of others, whereas the state is *not* obligated to uphold property rights. For Hegel, states simply are not obligated to respect this category of right. According to Avineri, «under no condition should the state be conceived as an instrument for the preservation and defence of property»<sup>90</sup>, and, furthermore, the «state can't be mere executor of private, economic interests of citizens»<sup>91</sup>. When the state proper is confused with civil society, it is purported to exist solely for the protection of property – this, of course, is Locke's position. But that is not the goal of the state, because, unlike property, the state is not optional. Consequently, Hegel's state cannot be the product of a contract between citizens or between citizens (as a collective) and «the sovereign and the government» because contracts and property originate in the arbitrary will of persons (as an “optional matter”) and the state cannot enter into a contract with anyone because it does not possess an arbitrary will (see § 75A). Despite struggling against their fellow citizens, the Hegelian property owner does not struggle for

<sup>90</sup> S. Avineri, op. cit., p. 85.

<sup>91</sup> Ibidem.

recognition against the state<sup>92</sup>. Therefore, the end of the state cannot be, as it is for Locke, the protection of property: the end of the state *is* the state.

The authority of the political state is most apparent in Hegel's complicated approach to expropriation, where the private right to property at the level of civil society confronts the public right of the state, and where, in true dialectical form, the right is both preserved and uplifted, and, at the same time, it is cancelled or annihilated by the state. In § 46, Hegel writes that «private property may have to be subordinated to higher spheres of right, such as a community or the state», but that this «cannot be grounded in chance, in private caprice, or private advantage, but only in the rational organism of the state». So, after having normalized private ownership, Hegel recognizes that «exceptions may be made by the state», and the state «alone...can make them» (§ 46). This is clearly a recognition that the state may confiscate and expropriate property; however, state officials may not use expropriation as a way to personally profit from state action, nor that they can use it arbitrarily. They may, however, take property “rationally”<sup>93</sup>. So, despite his prioritizing of private property, Hegel's property theory constitutes what Benhabib calls a “Pyrrhic victory” because he «confined the validity of contractual transactions to the civil or private sphere alone, and robbed contract arguments of their political significance»<sup>94</sup>.

<sup>92</sup> As Fred Dallmayr writes, the struggle for recognition exists in civil society but not at the ethical level of the state. F. Dallmayr, *G.W.F. Hegel: Modernity and Politics*, Rowman & Littlefield, Lanham 1993, p. 106.

<sup>93</sup> Hegel also notes that the opposite can occur: the state can force collectively-owned property, such as monasteries, to be sold to private interests (§ 46), and state property in the form of public memorials may become privatized by prescription (i.e. non-use), when their «indwelling soul of remembrance and honour» is abandoned (§ 64). Such was the case when the Reformation upset the tradition of the publicly-supported Mass, where «the spirit of the old faith [...] had departed, and they [the buildings and property set aside for church functions] could consequently be taken possession of as property». (§ 64 Addition). However, this only occurs when the state has withdrawn or alienated its own will from the public property and is not to be considered as any kind of privileging of private property rights against the state.

<sup>94</sup> S. Benhabib, op. cit., p. 177. There is an extensive literature regarding Hegel's authoritarianism. See, e.g., *Hegel's Political Philosophy*, ed. W. Kaufman, Atherton Press, New York 1970.

## Conclusion

Because Hegel fails to provide for rights between persons and the state, it cannot be said that the Hegelian state maintains an institution of private property.

What kind of political state, then, both preserves and uplifts Hegel's social ideas of property and freedom? As I have shown, it cannot be the authoritarian, monarchical state that Hegel endorses at the end of *Philosophy of Right*. As Honneth has suggested, Hegel can still be profitably read without making a commitment to this unacceptable conception of the state. To that extent, a Hegelian property theory, one in which Hegel's «basic conception of the state has been rejected in principle»<sup>95</sup>, can still provide robust *social* property rights with the understanding that, because those rights wither at the level of the state, his property theory cannot be said to provide robust *political* property rights. Hegel's basic conception of the state must therefore be rejected because it is not the kind of state that maintains an institution of private property, which, in order to protect the abstract property right against fellow citizens, must also protect that right against the state. In its place is the liberal, democratic, and capitalist state that Hegel gestures towards in his appraisal of property and freedom and their operation within *Sittlichkeit*, and it is that kind of state which preserves these rights against the state itself. By providing for property rights between private persons as well as between private persons and the state, it is this type of state that permits Hegel's idealized abstract property right to be the social and legal embodiment of personality and freedom.

<sup>95</sup> A. Honneth, *Suffering from Indeterminacy*, cit., p. 19.

## Abstract

Per Hegel, la personalità si sviluppa principalmente attraverso il possesso, la proprietà e lo scambio di proprietà: la proprietà è quindi fondamentale affinché gli individui possano vivere la libertà come persone e per l'esistenza della *Sittlichkeit*, o della vita etica, all'interno di una comunità. Il libero scambio di proprietà serve a sviluppare le anche personalità individuali mediandone l'intersoggettività, per cui condividiamo l'esperienza soggettiva dell'altro riconoscendo la sua volontà e rispettandone la proprietà. Come ogni diritto giuridico, il diritto astratto di proprietà e la sua istituzione sono il prodotto dello Stato, che può pertanto rivendicare la priorità su di esso. Ciò evidenzia la dialettica inerente sia al concetto che all'esercizio del diritto, entro la quale il diritto privato di proprietà all'interno della società civile si scontra con il diritto pubblico dello stato, risultando sia nella conservazione ed elevazione del diritto e, al contempo, nella sua cancellazione o annientamento.

*Parole chiave:* Hegel, proprietà, personalità, filosofia sociale

*For Hegel, personhood is developed primarily through the possession, ownership, and exchange of property. Property is crucial for individuals to experience freedom as persons and for the existence of Sittlichkeit, or ethical life within a community. The free exchange of property serves to develop individual personalities by mediating our intersubjectivity between one another, whereby we share another's subjective experience of the object by recognizing their will in it and respecting their ownership of it. This free exchange is grounded the abstract right to property which is defined by the liberal institution of private property. Like all legal/juridical rights, the abstract property right and its related institution are productions of the state, which can also claim priority over them. This prioritization reveals the dialectic inherent in the both the conception and exercise of the right, in which the private right to property at the level of civil society confronts the public right of the state, resulting in both the preservation and uplifting of the right, and, at the same time, its cancellation or annihilation.*

*Keywords:* Hegel, Property, Personhood, Social Philosophy