

# **Hegel's Concept of the Estates**

A dissertation submitted for degree in Doctor of Philosophy (PhD)

by

Nathaniel Boyd

Department of Politics, History and the Brunel Law School,  
Brunel University London

April 30, 2015

I declare that the work presented in this dissertation is my own, except where due and accurate acknowledgement of another source has been made.

Nathaniel Boyd

I want to thank my supervisor Peter Thomas for seeing me through the process of writing this dissertation as well as Astrid Swenson and Mark Neocleous whose helpful comments on the final draft made it all that much easier to complete. I also want to thank John Macmillan for making this last write-up year possible. My studies at Brunel University would not have been possible without the kind financial support of Peter Caws and the Peter Caws Studentship in Social Sciences. Above all, I thank my partner Judith Lindekens for putting up with me during this long process.

## Abstract

The development of political modernity in Europe entailed a process whereby formerly important political forms increasingly lost significance and were transformed in a long process that led to the separation of individuals from political power, in the distinctive shape of modern (depoliticised) civil society and the state. The thought of G.W.F Hegel (1770–1831), which has fundamentally shaped the modern understanding of these developments, came to its maturity at the most advanced stage of this process, while the French Revolution was transforming the continental world. He thought through this process from a very early stage in his development (1800–4), and thereby formed the essentials of his political theory. But on the cusp of this modernity Hegel seemed to affirm what has appeared to many as the old powers that had disappeared in the formation of the modern state – the *Stände*. For many he thereby turned his political thought into an apparent anachronism. This dissertation, however, will argue that Hegel's thought remains fundamentally modern and not at all anachronistic in its affirmation of the *Stände*. On the contrary, it is *only* through an examination of the concept of the *Stände* in Hegel's thought, that one can fully understand the essentially institutional focus of his politics. This dissertation will argue for the significance of the concept of the *Stände* through historically situating Hegel's thought and its engagement with the modern tradition. It will do so through a methodological examination of the concept in Hegel's early period (1800–4) where the institutional character of his politics is first shaped and formed, in the perspective of insights from his mature political philosophy (1820/21). In so doing it will show how the concept of the *Stände* and the institutionalism it implies form Hegel's unique response to the development of modern civil society.

## TABLE OF CONTENTS

INTRODUCTION	6
CHAPTER ONE: DETERMINATION OF THE CONCEPT	21
I.1 Transformation of the <i>Stände</i> in the Early Modern Period	21
I.2 The Philosophical Sources	35
I.3 The Fundamental Difference between <i>Stand</i> and <i>Klasse</i>	40
Conclusion	45
CHAPTER TWO: CONSTITUTION	47
II.1 The Critique of the Imperial Constitution	48
II.2 The <i>Stände</i> : Hegel's Attempt at Legitimate Organisational Form	66
II.3 The Private 'Indirect Powers' of the <i>Landstände</i>	81
Conclusion	94
CHAPTER THREE: NATURAL RIGHT	100
Hegel and Natural Law	104
III.1 <i>Geselligkeit</i> : Pufendorf's Socialisation of Hobbes's <i>Naturzustand</i>	108
III.2 Hegel and Kant	121
III.3 The Critique of Plato and the Ancients	129
III.4 From Nature to Right by way of Labour and Recognition	139
Conclusion	155
CHAPTER FOUR: ETHICAL LIFE	161
IV.1 From Forum Externum to Forum Internum	164
α Thomas Hobbes (1588–1679)	164
β Christian Thomasius (1655–1728)	170
γ Immanuel Kant (1724–1804)	176
IV.2 The Development of the <i>Stände</i> in <i>System der Sittlichkeit</i>	185
α The Contents and Contexts of <i>System der Sittlichkeit</i>	188
β From Love as Reconciliation to the House Community	195
γ The Structure of Rule and Freedom – the System of <i>Sittlichkeit</i>	208
IV.3 Hegel's Definition of <i>Sittlichkeit</i>	225
CONCLUSION	231
Afterword	237
BIBLIOGRAPHY	241

## Introduction

The development of political modernity in Europe entailed a process whereby formerly important political forms increasingly lost significance and were transformed in a long process that led to the separation of individuals from political power, in the distinctive shape of modern (depoliticised) civil society and the state. The thought of G.W.F Hegel (1770–1831), which has fundamentally shaped the modern understanding of these developments, came to its maturity at the most advanced stage of this process, while the French Revolution was transforming the continental world. He thought through this process from a very early stage in his development (1800–4), and thereby formed the essentials of his political theory. But on the cusp of this modernity Hegel seemed to affirm what has appeared to many as the old powers that had disappeared in the formation of the modern state. Hegel first elaborated this dimension of his political theory in his late Frankfurt (1800) and early Jena period (1801–4) by appealing to the estates, or *Stände* in German. For many this seemed to indicate that he thereby turned his political thought into an apparent anachronism. This dissertation, however, will argue that Hegel's thought remains fundamentally modern and not at all anachronistic in its affirmation of the *Stände*. On the contrary, it is *only* through an examination of the concept of the *Stände* in Hegel's thought that one can fully understand the essentially institutional focus of his politics.

In contrast to the rich existing scholarship which only noted with some irritation the apparent anachronism of Hegel's concept of the *Stände*, and therefore relegated it to the margins of analysis, this dissertation will offer the first comprehensive study of the concept in Hegel's early writings with a view to its modernity, arguing that it is central for comprehending the development of his original institutional thought. Moreover, a study that focuses on the theoretical potential and the novelty of Hegel's concept of the *Stände* and its distinctive development in his early period in order to utilise this as a mode of interpretation to bring out the originality of his institutional thought is currently lacking in the scholarship.<sup>1</sup> Thus, the conceptual focus of this study – the *Stände* – will be shown to shed light on Hegel's theoretical analysis and conceptual development of modern civil

---

<sup>1</sup> For the only current full-length study on this concept in the young Hegel, see Hočevar 1968. Hočevar's study, however, is limited to the representational aspects of the concept of the *Stände* and its connection to the German political tradition.

society [*bürgerliche Gesellschaft*] as well as the formation of his concept of the state. I will proceed by focusing on the conceptual development of the *Stände* in Hegel's thought in his early period where, as I will argue, the originality of his institutional politics is first expressed most forcefully. In Chapter One, I will introduce the concept of the *Stände* and give a general background of the theoretical debates and historical events that most influenced Hegel's appropriation and utilisation of the concept. I will then proceed to analyse three early texts focussing on Hegel's late Frankfurt (1800) and early Jena periods (1801–4): the *Verfassungsschrift* (1800–3) in Chapter Two, *Über die wissenschaftlichen Behandlungsarten des Naturrechts seine Stelle in der praktischen Philosophie und sein Verhältnis zu den positiven Rechtswissenschaften* (1802–3) in Chapter Three, and *System der Sittlichkeit* (1802–3) in Chapter Four. It is in these early manuscripts that the concept first receives its theoretical articulation and central placement in Hegel's thought, which makes them the central reference point for my analysis. Moreover, the concept for Hegel responds to the specificity of political modernity – which, for sake of simplicity, I will designate at this stage as the cleft between the social and the political that leads to modern bourgeois society and the state.

The question of political modernity has been at the centre of the Hegel scholarship in the twentieth century. Prior to the Second World War, Hegel had been variously described as the most profound thinker of the modern period and as 'its truest and most genuine son',<sup>2</sup> and, by contrast, also as a committed conservative reflecting the ideals of the nineteenth century Prussian absolutist state in his description of the *Stände*.<sup>3</sup> In the latter half of the twentieth century, the modernity of Hegel's political thought has been expressed in a similar fashion. On the one hand, it has been noted that Hegel conceptually discovers modern civil society only to in turn limit it through the *Stände* and his

---

<sup>2</sup> See Barth 1973, pp. 386, 387.

<sup>3</sup> See Tönnies 1972, p. 782: ... 'this conception of the people represented in the absolute monarchy defeats the enlightened liberal protestants on the one hand and, on the other, the protesting will of a growing proletariat'. As Henrich 1983, p. 29 has noted, Hegel had problems with the censor for the part on the theory of princely sovereignty in the *Grundlinien*; this came to give it its imperial tenor. The discovery of new manuscripts has now thrown Tönnies's interpretation into question. Hegel is now understood to have 'grasped revolution not only as an historical fact and necessity, but to have captured and clarified it in the right to revolution out of a systematic analysis of one of its contemporary institutions' – civil society and its failure to provide for the poor (p. 20). For Henrich, Hegel thus anticipates Marx's *Critique* in the 1819/20 lectures on the *Rechtsphilosophie* (see p. 21); compare Kouvelakis 2003, pp. 23–43.

institutional politics in one and the same gesture.<sup>4</sup> On the other, Hegel is understood to have grasped ‘*the historical essence of the Revolution and of the entire age and all its problems [in] the emergence of the modern industrial civil society of labor*’.<sup>5</sup> The latter evidently implies interpreting the *Stände* as a distinctively modern component of labouring society. Hegel’s modernity is thus ambiguous for many interpreters, and a central point in this ambiguity lies in the interpretation of the *Stände*. One of the central contributions of this dissertation will be to analyse this question in depth. The debates of the twentieth century continue to determine the twenty-first century, notably in terms of Hegel’s theory of the concrete and institutional state that conflicts with the liberal tradition of the social contract.<sup>6</sup> Moreover, there has been a concerted attempt to situate Hegel more firmly in the Kantian tradition, by the likes of Robert Pippin for example,<sup>7</sup> or to take partial aspects of his thought, such as recognition, and to develop these in isolation from his systematic thinking.<sup>8</sup>

Methodologically, my dissertation is based upon the modernising assumptions of the research on Hegel that has been carried out by Joachim Ritter (1903–74) and Manfred Riedel (1936–2009). Their ground-breaking work resituated the debates on Hegel’s political philosophy in the latter half of the twentieth century, which had to a large extent been determined by the scholarship of the nineteenth century that had perceived Hegel’s political thought in view of the restorationist philosophy of the state – an interpretation that both Hegel’s followers and critics shared.<sup>9</sup> The orientation towards Hegel’s modernity or the modernising aspects of his thought continues to remain a determining conceptual framework and approach.<sup>10</sup> On the one hand, for Ritter, Hegel’s work corresponded to the modernity of the French Revolution with its foundation of individual right as the basis of the state while, on the other, for Riedel, it developed the conception

---

<sup>4</sup> See Riedel 2011, pp. 182–3.

<sup>5</sup> Ritter 1984, p. 69 (original emphasis).

<sup>6</sup> ‘In my view this doctrine represents the most important respect in which Hegel’s understanding of the state diverges from liberal political theory. I shall argue, further, that it is the *only* aspect of Hegel’s position that is unequivocally and irreconcilably at odds with the fundamental tenets of liberalism. I shall also claim that this unattractive and archaic doctrine is a relatively expendable part of Hegel’s social theory that has little bearing on the relation between individual and collective goods’ (Neuhouser 2000, p. 205 (original emphasis)).

<sup>7</sup> See Pippin 1989.

<sup>8</sup> See Honneth 1995.

<sup>9</sup> See Riedel 2011, p. 34.

<sup>10</sup> See Weisser-Lohmann and Köhler 2000.



of a depoliticised sphere of liberal individualism and the meeting of individual needs and the economic exchange that was their prerequisite, which formed the basis of Hegel's innovative conceptual development of modern civil society in his later work.<sup>11</sup> The position of each of these scholars has become canonical in the scholarship.

A similar type of tendency can often be noted in the Anglophone scholarship as well not only insofar as the work of both Ritter and Riedel has appeared in translation, but also insofar as a distinctively liberal turn toward Hegel can be recognised at the basis of the English reception since the studies of T.M. Knox (1900–80), Z.A. Pelczynski (1925–), Shlomo Avineri (1933–) and others.<sup>12</sup> These figures remain highly influential as does the attempt at a liberal interpretation of Hegel,<sup>13</sup> despite the more recent appearance of alternative critical readings such as those of Stathis Kouvelakis and Domenico Losurdo.<sup>14</sup> The importance of the former scholars in both the German and English scholarship, however, has been paramount in the rehabilitation of Hegel since the end of the Second World War; they have done much to give a more objective basis for research and have jettisoned much of the earlier biases and Hegel 'myths and legends'.<sup>15</sup>

My conceptual approach builds above all upon Manfred Riedel's work, which has conceived of Hegel and his modernity in the most complex and articulate of fashions. Riedel's approach has the merit of avoiding the assertions typical of the liberal rehabilitation of Hegel put forward by Pelczynski and others, which seeks to reduce Hegel to a theorist of the liberal state in many ways no different from other authors in the Western tradition such as Hobbes and Locke, Kant and Fichte.<sup>16</sup> Yet it is clear that there are very specific limits to Hegel's supposed liberalism, most notably his rejection of the contract and individualism in the formation of the state that, as he put it in his youth with

---

<sup>11</sup> See Ritter 1984 and Riedel 2011.

<sup>12</sup> See respectively Knox 1940; Pelczynski 1971, 1984 and 1998, pp. 5–137; Avineri 1972.

<sup>13</sup> See in particular Neuhauser 2000.

<sup>14</sup> See Kouvelakis 2003; Losurdo 2004.

<sup>15</sup> I take this from the title of Jon Stewart's edited volume in which many of the canonical texts in the English literature have been collected (see Stewart 1996).

<sup>16</sup> See Pelczynski 1971, pp. 1–29; and also 1998, pp. 5–137 where he attempts to retrieve a 'liberal' Hegel more in tune with the Western tradition in his 'publicist' essays where he deals with the political issues of his day. For the definition of this as a liberal reading, and a synopsis, see Dickey 1999, pp. vii–xli. Another side to this debate stretches back to Eric Weil, who defended Hegel (1950) on the basis of his advocacy that Prussia was the most advanced state on the Continent and in Europe more generally – thus Hegel's supposed esteem for Prussia was justified (Weil pp. 14–17).

reference to Aristotle, is by ‘nature prior’.<sup>17</sup> Moreover, in the late Frankfurt period, Hegel comes to a definitive conclusion that will determine his philosophy from this point onwards: that the Kantian ‘principle of “formal” autonomy must be subordinate to a higher principle’.<sup>18</sup> As I will show in Chapter Four, Hegel eventually discovers this in the ‘absolute concept’,<sup>19</sup> which after the *nature* of the family emerges in the *Stände* in *System der Sittlichkeit* (1802–3). In the *Grundlinien* (1820/21),<sup>20</sup> Hegel will initially speak of this in terms of ‘laws and institutions which have being in and for themselves’ – the emphasis is strictly on the institutional formation of subjectivity, which is ‘substance made concrete’ in the ‘objective sphere of ethics’.<sup>21</sup> Karl Heinz Ilting (1925–84) noted the absence of the contract [*Staatsvertrag*] in Hegel as well as the identification of ‘*Sitte*’ with ‘*Sittlichkeit*’, whereby Hegel returned to a period prior to the Sophists and Socrates by identifying the customs of a people, their ethos, with ethics. Hegel stated this for the first in 1803 and thoroughly separated morality from ethics, emphasising the individualist character of latter and the universality of the *Sittlichkeit* of the community: ‘it is the nature of absolute ethical life [*Sittlichkeit*] to be a universal or an *ethos* [*Sitten*]’.<sup>22</sup> Ilting condemned both the lack of contract and the theory of ethical life in Hegel in turn,<sup>23</sup> and produced one of the most influential interpretations of Hegel’s philosophy of right in the twentieth century by publishing all extant lecture manuscripts on the philosophy of right at that time (1973–4) with critical commentary. However, arguably, significant dimensions of Ilting’s interpretation still labour under the influence of the dominant biases of those readings of the nineteenth century that argued how Hegel ‘reconciled’ himself to the Prussian state. This is how Henning Ottman interpreted Ilting’s reading after praising his edition of the *Rechtsphilosophie*.<sup>24</sup> The ‘accommodation thesis’, as Ottmann put it, was not new as

---

<sup>17</sup> See Ilting 2006, p. 15 – a landmark study in the interpretation of Hegel’s *System der Sittlichkeit* (1802–3).

<sup>18</sup> Henrich 1983, p. 17.

<sup>19</sup> Hegel 2002, p. 4.

<sup>20</sup> The variations on the dates are due to the fact that Hegel first delivered it as a lecture in 1820 before the official publication in 1821.

<sup>21</sup> Hegel 1991a, p. 189 (§144).

<sup>22</sup> Hegel 1999, p. 159.

<sup>23</sup> See Ilting 1983, pp. 108, and 246 referencing the remark to §153 of the *Grundlinien*, where Hegel approvingly cites a Pythagorean.

<sup>24</sup> See Ottmann 1979, pp. 228, 227; compare Losurdo 2004, pp. 282–6 who critiqued Ilting’s interpretation as determined by a significantly liberal bias. Losurdo has also traced the false dichotomisation of understanding Hegel’s thought in conservative or liberal terms, criticising Norberto Bobbio in particular (see pp. 71ff).

Rudolf Haym first expressed it in his *Hegel und sein Zeit*.<sup>25</sup> What was new was the level of scholarship behind it in Ilting's work. By way of comparative and analytic use of all existent lecture manuscripts on the philosophy of right, Ilting sought to prove a real transformation in Hegel's attitude towards Prussia and a transformation in his political philosophy more generally. Dieter Henrich spoke of Ilting in much the same way as Ottmann, denouncing Ilting's imputation of underlying psychological motivations (such as fear for his life) to Hegel, but also a more explicit 'external theoretical partisanship' both prior to and after *Die Karlsbader Beschlüsse* (1819).<sup>26</sup>

Riedel's method, on the other hand, problematises Hegel's modernity and situates it in a period of transformation in which the historical and philosophical horizon shifts – as do words, concepts, and meanings – which Hegel's political philosophy attempts to order in a systematic fashion. The grounds on which Riedel's work is based are thus at once contextual and conceptual; his method rightly situates Hegel in his own time without, however, appealing to the impulse of directly and fully equating Hegel's politics with the tradition of liberal political thought that had emerged fully with the French Revolution on the Continent.<sup>27</sup> It is precisely in this way, according to Riedel, that Hegel is thereby 'able to conceive the modern form of civil society and at the same time limit its substantial power by the older structures – although only "accidentally" and for his own time'.<sup>28</sup> Thus if Riedel has indeed 'secured' a new paradigm in the interpretation of Hegel's political philosophy in the latter half of the twentieth century, which involves its orientation towards the modern constitutional state [*Rechtsstaat*], he has done so by astutely perceiving the specificities that determine Hegel's historical epoch which allow for the distinctive conceptual possibilities of his philosophy.<sup>29</sup> Riedel was thus well aware of the

---

<sup>25</sup> See Haym 1972.

<sup>26</sup> See Henrich 1983, p. 27 whose criticism of Ilting is definitive insofar as on the discovery of the 1819/20 lectures on the *Rechtsphilosophie*, as he put it, have 'surprisingly and decisively transformed the body of source material'.

<sup>27</sup> See Riedel 2011, p. vii where he distinguishes his study as a contextual one that attempts to separate itself from the 'global ideologies' of Liberalism, Marxism and Fascism that had previously determined Hegel interpretation. For the conceptual approach, see pp. 139n, 146n, 163n, 185n; his criticism of Ritter appears on p. 131. See also Henrich 1971 for another contextual study. Harris's analyses are also excellent (Harris 1972, 1983) in terms of Hegel's intellectual milieu as well as knowledge of historical detail.

<sup>28</sup> Riedel 2011, p. 156.

<sup>29</sup> I follow Henning Ottmann in his assertion that Riedel's study, in combination with Ritter's 'enlightening interpretation' has more or less secured the new paradigm in Germany of Hegel as a theorist of the modern state, which was first begun in France, England and America (see Ottmann 1984, pp. 316–17). It is in this

flaws behind the liberal interpretation and made no attempt to gloss over the fact that Hegel provided a different model than contractual right and individualism in his formation of the state.

The following study takes its lead from Riedel's contextual and conceptual approach but significantly transforms it. It does so through the addition of a comparative textual approach that utilises Hegel's early period to study the development of his political and institutional thought in a genetic fashion. It is in this way that I will stress the novelty of Hegel's political philosophy and his complex approach to modernity. This leads to the necessary introduction of other sources in the modern political tradition and the necessity of highlighting the French Revolution as the particular event that orients Hegel's theory of the *Stände*. Moreover, this dissertation introduces a new perspective by interpreting the development of the *Stände* in Hegel as an attempt to provide a thoroughly distinctive and *modern* answer to the issue of organisation in an age where individualism and individual right became the central ordering principles in the constitutions of states. My approach thus builds on Riedel's attempt to read Hegel in a contextual way, independent of the retrospective ideologisations that have shaped previous interpretations of his work,<sup>30</sup> but it does so by substantially reforming Riedel's ideas by focusing on the concept of the estates, which he himself rejected as anachronistic.<sup>31</sup> My approach is thus guided by the idea that what Hegel precisely attempts to express in the *Stände* is a new reality under the guise of an older concept that will be transformed in turn, borrowed from various political, legal, and philosophical traditions. That is to say, rather than perceiving the *Stände* as anachronistic and simply relegating them to previous political forms, I will show their contemporaneity in Hegel's thought by relating them to the broader historical and philosophical context. This allows for a distinctively conceptual approach to the *Stände* and their formation in Hegel's thought, which leads directly to the possibility of interpretation at the level of textual analysis. The historical context leads to Hegel's

---

sense that I will frame my discussion as a way of interpreting the concept of the *Stände*, which has been viewed traditionally as the central problematic aspect of political modernity present in Hegel's thought.

<sup>30</sup> See Riedel 2011, pp. vii, 130. If we are to truly operate according to the philosophical position of our own time grasped in thought, we must concede that such a scholarly approach would be the result of the history of Hegelian interpretation itself and the contestation that has marked this history – no matter the level of its 'judiciousness', we do not escape the 'objective spirit' of our own period and thus the previous interpretations and subsequent history determines our own approach.

<sup>31</sup> See Riedel 2011, p. 148.

development of the concept and to the possibility of a textual reading of its development and significance in his writings. As Reinhart Koselleck has put it, ‘actuality may have changed long before the transformation has been brought to its concept and similarly concepts may have been formed which release new actualities’.<sup>32</sup> It is with this idea in mind that the *Stände* will be analysed in this study. Moreover, in focusing explicitly on this concept, my research pushes beyond the limits of Riedel’s methodology, which isolated the turning point in Hegel’s thought explicitly in the return to individualist natural law at the end of the Jena period (1805–7). I will be led back to the late Frankfurt (1800) and early Jena periods (1801–4) in my analysis of the genesis of Hegel’s institutionalism and to the first systematic appearance of the *Stände*. In so doing I will show how Hegel’s political logic proceeded according to *both* the individual *and* the community whereby each was taken up into higher forms, and ultimately to the absolute.<sup>33</sup> Thus rather than strictly stressing the individualist angle as determinative of Hegel’s mature *Rechtsphilosophie* (1817–31) I will also focus on the institutional character of right. Thus the dissertation will argue how it is only by way of Hegel’s early institutional thought in combination *with* the late Jena period (1805–7), in which individualism returns as a formative aspect, that his mature development and political modernity can be fully understood. This twofold analytical approach brings out the distinctive character of Hegel’s politics. The ‘paradoxical ambiguity’ that Riedel noted in his interpretation of Hegel’s modernity, and particularly of the problem of the *Stände* in this respect, will be thus overturned to reveal a different institutional type of modernity.<sup>34</sup> In turning explicitly to the concept of the *Stände* it is thus necessary to engage with broader debates in the scholarship, either supplanting Riedel’s study or approaching the *Stände* from a different angle.<sup>35</sup>

Principal in this respect are the discoveries in the 1980s of two manuscripts that shed new light on Hegel’s concept of the *Stände* and his institutional organisation of right – the Heidelberg lectures 1817/18 (the so-called Wannenmann manuscript) and the Berlin

---

<sup>32</sup> Koselleck 1989, p. 323.

<sup>33</sup> See Hegel 1991b, pp. 69–70 (§70) for his mature formulation where he consistently uses this logic as speculative contra the strict dichotomy of the *either-or*.

<sup>34</sup> Riedel 2011, p. 182.

<sup>35</sup> Riedel’s original German *Studien zu Hegels Rechtsphilosophie* (translated as *Between Tradition and Revolution: The Hegelian Transformation of Political Philosophy*) appeared in 1969, and in second edition in 1972.

lectures 1819/20 (of unknown compilation).<sup>36</sup> The two editorial introductions to these lectures, the first by Otto Pöggeler and the second by Dieter Henrich, introduce two other important aspects or methodological issues for my research. Both Pöggeler and Henrich have made important references to the concept of the *Stände* and to Hegel's institutional thought, yet while they have opened up an area for debate and research neither has attempted to read their insights back in a genetic fashion into the *Stände* in Hegel's earlier manuscripts in which his institutional thought appears for the first time. This is precisely what this dissertation does in a novel fashion, which leads to a significant reinterpretation of Hegel's understanding of political modernity and the centrality of his institutional thought.

The latter point opens up an important methodological issue in the discussion and approach to the *Stände* employed in this dissertation, which in turn allows for the development of a particular approach to the conceptual character of Hegel's political thought. I will develop a retrospective form of textual analysis in this dissertation to reveal the novelty and modernity of Hegel's mature concept of the *Stände* through an explicitly genetic analysis of how it is formed and shaped in the earlier works. To be more specific, I will be using later insights into the structure of Hegel's *Rechtsphilosophie* and perspectives from Hegel's mature political thought in the dissertation in order to open up the early material in an heuristic fashion to guide and structure my discussion of the development of the *Stände*. This will lead to an emphasis on the transformation of the concept from the Frankfurt and early Jena periods (1797–1804) onwards in view of later developments. The early period will thus be interpreted in an anticipatory fashion. The novelty of such an approach is that it will allow for the structure of Hegel's political thought to be clarified in the very process of the development of one of its specific concepts. This will lend a structural significance to Hegel's developing conception of political modernity and how it is shaped and formed in the specific character of the *Stände* and the institutional orientation of his politics. This interpretive strategy is justified insofar as it allows the entire character of the concept of the *Stände* in Hegel's political

---

<sup>36</sup> See Hegel 1983a and 1983b. The Wannenmann manuscript has appeared in English translation (Hegel 1995a) and this will be used by critical comparison with the original German edition.

thought to come into view and in so doing shows the distinctive significance of the concept's modernity.

Pöggeler has made a very important observation regarding the novelty of the *Stände* in Hegel's thought and their modernity. In so doing he has shifted the significance of the *Stände* beyond Riedel's restriction of the concept to 'older structures'.<sup>37</sup> My research methodology follows Pöggeler very precisely in this respect and his consideration that the *Stände* are developed as Hegel's 'concrete conception' of the French Revolution in understanding that 'what had to be done was to reanchor the representatives to their proper sphere, the sphere of the estates or classes (using the term *Stände in a new sense*)'.<sup>38</sup> Secondly, Henrich has isolated Hegel's political form in his *Rechtsphilosophie* and designated it as 'institutionalism'; he has, furthermore, analysed this institutionalism in what he termed 'severe' and 'moderate' forms. By the former, Henrich means that the right that is fulfilled in institutions could never be understood as a right against these institutions as such; by the latter, that institutions nevertheless required individual freedom in their realisation. The former, Henrich concludes, is indefensible on theoretical grounds as to achieve the absolute and actuality of the state it was unnecessary to do so by way of the recognition of the individual; the second, by contrast, Henrich problematized by recognising that even if 'the principle of institution as such was not to be achieved out of subjective volition [*Wollen*]' it nevertheless 'required the right of the individual'.<sup>39</sup> Even if Hegel's institutional thought was solely connected to older long-forgotten forms, to the Greek *polis* for example, or was merely tied distinctively to his own period, it still, as Henrich notes, 'contains in the form of its structure a substantial theoretical potential'.<sup>40</sup> This can be understood in terms of the capacity of institutions to conform with the individual will that leads to concrete freedom and vice versa, which allows Hegel to develop an alternative model to social contractualism and what he perceived as the strictly liberal character of individualism in the modern period.<sup>41</sup> My dissertation analyses this theoretical potential in the concept of the *Stände*, which lay at

---

<sup>37</sup> See Riedel 2011, pp. 148, 156.

<sup>38</sup> Pöggeler 1995, p. 3 (emphasis added). I will problematise the issue of translating the *Stände* in Chapter One below. In Pöggeler's original German essay introducing the Heidelberg lectures the word 'class' is entirely absent (see Pöggeler 1983, p. x).

<sup>39</sup> Henrich 1983, pp. 32, 33.

<sup>40</sup> Henrich 1983, p. 21.

<sup>41</sup> Hegel 1991a, p 344 (§303); compare Hegel 1999, p. 219.

the basis of the systematic form of Hegel's institutional thought, from its earliest period (1802–3) onwards.

Such a study is necessary for an understanding of Hegel's fully developed institutional thought in the *Grundlinien* (1820/21) and his mature *Rechtsphilosophie* (1817–31). By way of a genetic approach to the concept of the *Stände* – that is, a study of its formal development in Hegel's early works – the framing, orientation, and understanding of the theoretical potential and novelty of his institutional thought in the later works will become apparent. I will show how a new actuality lay precisely in Hegel's concept of the *Stände*, how he expressed this as a confrontation between formal and concrete freedom, and how he developed it out of an encounter with the modern philosophical tradition and the French Revolution. Hegel rarely spoke of the future and when he did these were largely 'scant references'.<sup>42</sup> Yet in the Berlin *Lectures on the Philosophy of History* (1827–31), he identified the opposition between the formal will and organisation as a 'collision' and a 'crux' between 'the atomistic principle of individual will', which did 'not allow any firmly based organisation to emerge', and concrete freedom.<sup>43</sup> 'This problem is what history now faces, and it must solve it at some time in the future'.<sup>44</sup> As I will show in this dissertation, Hegel was occupied with this problem from his earliest period and it directs the development of his politics and the theoretical potential and novelty of the *Stände*, which are not 'older structures', but a formative principle of institutionality.

The main chapters of the following study each pursue a theme and explore a text of the young Hegel in detail. Firstly, however, I will examine the concept of the *Stände* in its historical context, and how it is transformed in Hegel's period in Chapter One. This will then be further studied throughout Hegel's early development in the other chapters in order to grasp the potential ingenuity of his institutional thought as it comes into being in the Frankfurt and early Jena periods (1797–1804). The *Stände*, as I will show, highlight Hegel's institutional strategy and the complexity of his response, firstly to the philosophical tradition stemming from Hobbes until Fichte and, secondly, to the French

---

<sup>42</sup> See Löwith 1995, p. 200.

<sup>43</sup> Hegel 1999, p. 219.

<sup>44</sup> Ibid.



Revolution and ‘the crisis of the modern bourgeois production society’.<sup>45</sup> By ‘production society’ Dieter Henrich indicates what Hegel isolates in the *Grundlinien* as, on the one hand, the ‘unrestricted’ activity of civil society, and, on the other, the development of an excess of artificial needs and of the limitation and specialisation in the division of labour, which leads to the concentration of wealth and the impoverishment of the labouring class. The crisis of this production society is that even if it has and produces an ‘excess of wealth’, it is no way ‘wealthy enough’ to respond to the needs of all of its members.<sup>46</sup> As Henrich has noted, for Hegel the crisis of civil society ‘is the crisis of its defectiveness’ as ‘this society is organised from self-interest’.<sup>47</sup> What can be seen already at this initial stage then are two trajectories orienting and forming Hegel’s thought: on the one hand, the political and philosophical tradition and, on the other, the real actuality of history and the historical developments that lead to modernity. Any assessment of the validity of Hegel’s institutionalism must be based upon a prior analysis of the specificity of his position, which I will analyse in detail in this dissertation.

Chapter One provides a brief historical-conceptual introduction to the development of the *Stände* from the perspectives that most influenced Hegel’s development of the concept. It is important to undertake this analysis at this initial stage in the dissertation as it will clarify the complexity of the historical background and philosophical traditions underlying Hegel’s distinctive usage of the concept. This chapter thus has three essential tasks to fulfil. Firstly, it will give a general overview of the concept of the *Stände*, highlighting the essential importance of the French Revolution and analysing how this transformed the concept. The significance in doing this at this early stage in the dissertation is essential as the impact of the French Revolution will be an important theme in the remaining chapters. Secondly, I will analyse the sources that oriented Hegel’s usage of the concept and how such usage forms a distinctive political-philosophical response to the period. Lastly, I will turn to the issue of how the concept has been translated in the English literature and compare *Stand* and *Klasse* to clarify this issue. I will show how the conceptual interpretation involves more than simple transformations in meaning and linguistic usage and forces the adoption of a much broader referential

---

<sup>45</sup> Henrich 1983, p. 21.

<sup>46</sup> Hegel 1991a, pp. 266, 267 (§§243, 245) (original emphasis).

<sup>47</sup> Henrich 1983, p. 21.

horizon. I close by analysing Koselleck's theorisation of the '*Sattelzeit*' as a very apt way of contextualising Hegel's period and his usage of the *Stände*.

Chapter Two traces Hegel's early critique in the *Verfassungsschrift* (1798–1803) of the imperial constitution and the traditional function of the *Landstände*. This is important as it highlights Hegel's early derivation of the concept, and his awareness of its historical meaning in constitutional history. The central thesis of the chapter will involve demonstrating the difference between the traditional concept of the *Reichs-* and *Landstände* in Hegel's early critique and his late political conceptualisation of the *Stände* as an organisational form that contrasts with private particularity. Firstly, the chapter analyses the conflation between treaty (contract) and constitution in the Holy Roman Empire. This accords with Hegel's critique of modern political association based on the contract and significantly differentiates his own political theory in turn. Secondly, this is contrasted with Hegel's usage of the *Stände* in the *Grundlinien* (1820/21), where rather than the dominance of private right the public capacity of the *Stände* are conceived. I thus distinguish his early usage of the concept in the imperial context from his late conceptualisation. This is significant as it emphasises the political function of the concept, which will appear in the remaining chapters. Lastly, I will turn to the question of the specific linguistic usage of the concept that Hegel mentions in his maturity in the *Grundlinien*, which opens up his discussion to a contiguity between social and political dimensions. This is essential to understanding how the *Stände* will be formed once Hegel turns to elaborate his first system (1802–3). I conclude by comparing and contrasting Hegel's concept to how it was developed in reactionary and conservative circles in the period of Restoration (1815–30) in the call for a return to the *Ständestaat*.

Chapter Three examines how the *Stände* are transformed from a natural order in the Jena *Natural Law* essay of 1802–3 into a spiritual order through the concept of reciprocal recognition that establishes a nascent system of needs and a division of labour. This allows Hegel's concept to be contextualised in a developing modern scenario of labour as social organisation and a society of needs. The critique of Plato as it appears in the *Philosophie des Geistes* of 1805–6 is taken up into the *Grundlinien* (1820/21) alongside Hegel's transformation of the state of nature as a conceptual and spiritual moment. This in combination with the early Jena period leads Hegel to his institutional emphasis on the

individual will, that the individual can only be fully realised in the concrete circles in which they can act or work. Hegel thus develops the concept of the *Stände* in this period as a way of stemming the *bellum omnium contra omnes*, which will give the *Stände* their importance in Hegel's fully developed institutional thought in the *Grundlinien*. He does this by transforming the way in which the basis of modern society is conceptualised from conflicting individuals to a system of needs and social labour whereby 'particular interest' is led to a 'universal end [and] is therefore *concrete*'.<sup>48</sup> This lays the foundation for Hegel's critique of the emergence of the modern market economy as it is fully developed in the *Grundlinien* in terms of the 'remnant of the state of nature' that develops in a society based on the self-interestedness of individuals.<sup>49</sup> The concept of the *Stände* are given a significant modern import in this respect as institutional structures of right, Hegel's attempt to answer the problem of organisation in an era that has reduced individuals to depoliticised actors restricted to the social sphere. It is thus necessary to analyse the context that leads to this development. This will be detailed through an analysis of the tradition of natural law to show how the understanding of market society develops from a state of nature. I will show how Hegel's valorisation of labour develops beyond the original Greek ethical ideal he drew from Plato's *Republic* in which the *polis* was organised into a stratified hierarchy,<sup>50</sup> as well as Aristotle's teleology of *polis* life that divided the slave from the free man according to nature, which also lay at the basis of the Roman law of the *status civilis*.

Chapter Four analyses how Hegel attempts to overcome the dichotomy of inner and outer through his institutional formation of the *Stände* from the earliest period in which they are introduced in an explicitly Hobbesian and Fichtean context in *System der Sittlichkeit* (1802–3). I discuss the development of this paradigm that lays at the basis of the cleft between civil and political in modernity, and how it is transformed from a religious to a political and then to a metaphysical subject in the modern political tradition. Hegel reveals his concern over the separation of inner and outer – long before his conceptual innovation of civil society – in his initial rejection of Kant's theory of autonomy in his Frankfurt period (1797–1800). For the young Hegel, love, or the

---

<sup>48</sup> Hegel 1991a, p. 270 (§251) (original emphasis).

<sup>49</sup> Hegel 1991a, p. 234 (§200).

<sup>50</sup> See Pöggeler 1995, pp. 17, 18.

Christian religion, was seen as overcoming the division between the isolated individual and the compulsion of the positive order of law. Yet already in *System der Sittlichkeit* (1802–3) love becomes limited to the family, and the positive order of law appears in the state. *Sittlichkeit* will eventually replace the traditional discussion of a civil religion. This becomes secular doctrine or embodied right in institutions. I will problematise this development that leads to the first positing of the concept of the *Stände* in *System der Sittlichkeit* and the first formation of Hegel's institutional thought as a mediation between inner and outer.

The character of the dissertation, while focusing on a distinctive concept in Hegel's thought, therefore simultaneously opens onto the broader dimension of Hegel's intellectual formation. Throughout the study I will reaffirm the significance of the late Frankfurt and early Jena periods (1797–1804) in the development of Hegel's institutionalism. In this way I will introduce a novel aspect to the existing scholarship on this period insofar as the institutional dimension of Hegel's thought in this period remains relatively unexplored. By emphasising the *Stände* and tracing their genetic origin to the early Jena period in the young Hegel's political thought, this dissertation will reframe the debates on Hegel's modernity, and emphasise a strong institutional and representative aspect to his politics. In so doing it will stress the importance of context and historical development in the interpretation of Hegel and his transformation of political modernity. This essentially leads in turn to the conceptual focus of this dissertation, which will prove the modernity of Hegel's institutional thought in its formation, which fundamentally will be shown to determine the character of his politics precisely in a period of transformation in conceptual meaning and linguistic change.

## Chapter One: Determination of the Concept

*A concept by contrast in order to be a concept must remain ambiguous.*<sup>1</sup>

In this chapter I will examine the concept of the *Stände* from the perspective of the historical developments and philosophical transformations that most influenced Hegel's perception and appropriation of the concept. The chapter will fulfil three main tasks: firstly, to give the reader an overview of the *Stände*. I will not attempt to trace the entire complex history of the concept, but rather, to outline the political and philosophical transformations that led Hegel to utilise the *Stände*. Consequently, I will analyse the concept in relation to the developments that occurred with the French Revolution, which will be analysed in further detail in the subsequent chapters. Secondly, I will briefly turn to analyse some of Hegel's actual sources and continue to emphasise the philosophical context underlying his appropriation of the *Stände*. Thirdly, I will turn to compare *Stand* and *Klasse* to clarify this issue of translation in Hegel scholarship. The chapter will conclude with a reflection on the historical context of Hegel's period, a period of 'crisis' that I will have traced in its different dimensions having completed the three preceding tasks. This crisis – both political and metaphysical – will subsequently set the tone for the thematic discussions in the following three chapters of my study.

### I.1 *Transformation of the Stände in the Early Modern Period*

From the late Middle Ages to the early modern and modern periods the *Stände* underwent a great degree of transformation. This was not only specific to the German-speaking context, but also at the broader level of continental politics in which it was intertwined, culminating in the French Revolution and the post-Napoleonic period. Between France and Germany it is interesting to compare continuity and transformation in linguistic usage, which reveals the distinctiveness of their respective political developments. The reason why the term *Stand* remains at the centre of political life in Germany for example is precisely because the structures of domination remained largely continuous. As late as the

---

<sup>1</sup> Koselleck 1995, p. 115.

nineteenth century local diets [*Landstände*] remained equivalent to a parliament in a number of places in Germany while the term *Mittelstand* for ‘middle class’ continues to exist to this day.<sup>2</sup> By contrast in France the ‘*états*’ represented an aspect of the *ancien régime* that, under the advancement of monarchical absolutism, had long since been abandoned as regional *ancien parlements*, easily making way for the *assemblée nationale*, while the division of society into classes replaced the *société des ordres* in the years immediately following Sieyès’s proclamation ‘*le tiers État c’est la Nation*’.<sup>3</sup> This simplified the social stratification in France to a large degree, at least from the perspective of modern eyes.

The structure of government, the patterns of social stratification, the legal system: all seem perversely complication and confused. Some of the confusion was certainly inherent in the society. France in the century or two before the revolution was a very complex society, and the complexity was composed by social, economic and intellectual challenges. But most of the confusion is in our minds. The problem is that we are inheritors of the French Revolution and therefore tend to see the old regime through post-revolutionary eyes – as is proven, indeed, by the use of the very term ‘old regime’.<sup>4</sup>

As I established in the Introduction the present study sets out from the modernising assumptions of the research on Hegel that has been carried out by Joachim Ritter. As he noted famously, Hegel speaks from the standpoint of the Revolution in both thought and actuality.<sup>5</sup> But it must also be emphasised that from a very early stage Hegel also spoke of its one-sidedness in its abolishment of the *états généraux* [*Generalstände*] in the

---

<sup>2</sup> See Conze 1968, p. 53: ‘In France the opposition is already very clear, order [*ordre*] and estate [*États*] are a reality of the *ancien régime*, but in Germany, known for a failed [*brisée*] revolution, one can utilise the concepts of the *ancien régime* until 1918 to characterise social reality’. Originally *Mittelstand* can be brought into relationship with Aristotle’s ideal of the harmonising capacity of the middling element in his *Politics* (1295b3–1295b34). In the German political tradition it thus has more to do with the nobility as ‘an intermediary authority, transmitting the authority of the monarchy down to the peasantry’ than with the modern notion of a middle class (Berdahl 1988, p. 75). An extended discussion of the contemporary usage and significance of the *Stände* does not concern us here. It is also beyond the reach of this study to look to its application as a tool of analysis in sociology, legal thought, and the historical sciences where a consensus on the concept as a ‘*terminus technicus*’ has not yet been achieved (see Oexle, Conze, and Walther 2004, p. 157). See Brady 1978, pp. 19–34 for a critique of the concept as a tool of historical sociology in contrast to stratification by class. The fact that Conze here uses *Mittelstand* as equivalent to ‘*ordre intermédiaire*’ refers to an additional lexical issue in the scholarship. In the *Handbuch politisch-sozialer Grundbegriffe in Frankreich 1680–1820* no entry appears on the *États*, which is rather framed within a much more general discussion on *Ordre, Désordre* (see Scotti-Rosin 1993). The *Handbuch* thus engages with the demise of the estates within larger conceptual framework that involves questions of order and feudalism.

<sup>3</sup> See Ossowski 1969, p. 123; compare Stuke 1968, p. 45.

<sup>4</sup> Sewell 1974, p. 49.

<sup>5</sup> See Ritter 1984.

*Verfassungsschrift* (1800–3).<sup>6</sup> For Hegel, the French Revolution left the individual isolated and opposed to state power and destroyed the existence of the French constitution in its abolishment of all former means of representation. This was linked to its complete destruction of the feudal system, which Hegel, following Montesquieu (1689–1755), saw as the principle of freedom, as a representational and legal status system between vassal and lord that eventually formed into the *Stände* – that is, the representational bodies that followed on the development of the system of fiefs [*Lehenswesen*] the led in western Europe to the parliamentary form.<sup>7</sup> Hegel expressed the same concern in a lecture on the *Rechtsphilosophie* (1824–5) by comparing the centralisation brought about by the French Revolution, which Napoleon then further developed, with the corporate forms of the Middle Ages. Hegel concluded that ‘legitimate power is to be found only when the particular spheres are organized’.<sup>8</sup> Such ‘legitimacy’ was famously developed by way of the *Stände* in the *Grundlinien* and proceeded through to the administration of justice, the police and the corporation whereby the *Stände* reappear in the bi-cameralism of the state as a parliamentary form. The *Stände* for Hegel in the *Grundlinien* are an attempt organically to structure Rousseau’s ‘*volonté général*’. ‘Rousseau considered the will only in the determinate form of the *individual* will (as Fichte subsequently also did) and regarded the universal will not as the will’s rationality in and for itself’ – which would signal its ‘concrete universality’ in the *Stände*: the ‘individual makes his appearance only as a member of a universal’ – ‘but only as a *common element* arising out of the individual will as a *conscious will*’.<sup>9</sup> Thus Hegel understood that the consequences of Emmanuel Joseph Sieyès’s (1748–1836) “‘*le tiers État c’est la Nation*” were more profoundly revolutionary than anyone expected’.<sup>10</sup> For when ‘a single estate identified itself with the nation, it abolished the very idea of the estates, which required a plurality of estates to constitute a social order’.<sup>11</sup> The French Revolution thus brought the decay of the

---

<sup>6</sup> See Hegel 1999, p. 65; more details on this manuscript will be provided in Chapter Two.

<sup>7</sup> See Hegel 1999, pp. 64ff. Hegel anticipates the insights of Max Weber and Otto Hintze in his conviction, moreover, that the *Stände* are unique to western Europe; they form part of his early world historical conception. Hegel also recognised the importance of the religious question in this respect (see Weber 1978, pp. 1072ff; Hintze 1975, pp. 302–53).

<sup>8</sup> See Hegel 1991a, p. 331 (§290).

<sup>9</sup> Hegel 1991a, pp. 277 (§258), 344 (§303) (original emphasis).

<sup>10</sup> Schmitt 1996, p. 20

<sup>11</sup> Ibid; compare Riedel 2004, p. 763: ‘During the night of 4 August 1789 both the elite [*oberen*] *Stände* lost their rule as well as the provinces, parishes, and corporations their privileges and the underprivileged strata

*ständischen Welt* to a head; and Hegel's later reformulation of the *Stände* (1820/21) can be seen perilously to reconstitute this system of representation into economic, social, and occupational elements, 'which previously would be entirely contained in one concept in the appropriate political description of the *Stände* [*Standesbezeichnung*]'.<sup>12</sup>

Sieyès saw the fundamental social conflict as a struggle between the estates, and used only the latter term in his picture of contemporary social structure and of the homogenous society of the future. Some years later, however, Babeuf was writing only of social classes, and was presenting French society as divided by a basic class antagonism. In the new conditions, a new term was essential to underline this antagonism, which Sieyès had not discerned or at least not mentioned.<sup>13</sup>

The significance of the *Stände* thus transform, the meaning of the concept itself shifts until it is emptied of its original content while the ambit of other concepts such as *Klasse* in this instance expand. Yet the persistence of a different distribution of power in Germany allows the *Stände* to persist even beyond the collapse of the Holy Roman Empire (1806) as Werner Conze (1910–86) indicated above.<sup>14</sup> This does not necessarily, however, tell us anything about Hegel's usage of the concept. Indeed, in his early period he condemns the *Stände* in the form of the *Landstände* in his 'playful' *Verfassungsgeschichte* where he sketches 'the main features of a comparative developmental history of representation'.<sup>15</sup> According to Pöggeler, 'Hegel seeks to build on the ideas of the French Revolution, but in a way that endeavours to correct the historical one-sidedness of the French solution... Hegel thus propounds a view of political science that as far as constitutional policy is concerned involves a *concrete conception* opposed to the guiding principle of the French Revolution'.<sup>16</sup> For the purposes of this study, Hegel's institutional form of the *Stände* develop 'out of the radical crisis of civil

---

their rightlessness. Thereby the entirety of the society became "civil" in the sense that it no longer existed on the basis of political entitlement, the *Stände* and *Korporationen*, but the entirety of the free and equal were enfolded under a "sovereign" force of associated individuals'.

<sup>12</sup> Koselleck 2004a, p. xvi.

<sup>13</sup> Ossowski 1969, p. 123.

<sup>14</sup> In the form of the *Allgemeines Landrecht für die Preußischen Staaten* (1794) – which Koselleck has stated lay at Prussian society until 1900 – we have another example of such a thesis insofar as the code was an explicit organisation of the *ständische Gesellschaft* (see Koselleck 1975, p. 23).

<sup>15</sup> Maier 2004, p. 208.

<sup>16</sup> Pöggeler 1995, p. 36 (emphasis added).



society’, which is also premised on the development of liberalism and the market economy, on the Industrial Revolution as it appeared in England.<sup>17</sup>

The French Revolution for Hegel had taken the principles of thought – the ideas of modern natural law and the Enlightenment, of individual consciousness (Thomas Hobbes 1588–1679) and the will (Jean-Jacques Rousseau 1712–88) – and placed them at the foundation of the modern state.<sup>18</sup> Once the property qualification was theoretically seen to develop prior to the state [*civitas*] in the *Naturzustand*, economy came to form a second ‘nature’ based on reciprocal recognition and exchange.<sup>19</sup> In the German-speaking world it was Immanuel Kant (1724–1804) who above all responded to the modern theories of natural law, and both the Enlightenment and the French Revolution. The categorical imperative supplied a renewed foundation for modern natural law theory, which reaffirmed the primacy of the individual, this time on a metaphysical plane.<sup>20</sup> Kant’s theory of the categorical imperative represents a culmination of the Enlightenment insofar as the isolation of the individual directed by the moral law is now entirely cleft from the political order. Hegel’s early *rapprochement* to Aristotle and the Greeks is to be understood in this context, whereby he initially takes over the stratification and ordering of the ancient *polis*.<sup>21</sup> For Hegel, it is only by ‘vindicating the old and utterly inconsistent empiricism [that] a great and pure intuition can in this way express the genuinely ethical in the purely architectonic qualities of its exposition’ thereby consolidating once again the theoretical and practical sciences that had been cleft by Kant’s axiomatic ‘either/or’ between the ‘formalism’ of reason and its absolute separation from the ‘material’ of the world. This failed to restore the ‘theoretical sciences’ – read, empirical – to philosophy by way of its critique of their scientific objectivity and ‘placed the absolute wholly within practical philosophy’.<sup>22</sup> This is not a philosophical aside to the development of the

---

<sup>17</sup> See Ritter 1984, p. 73: ‘the revolutionary idea of the freedom of all is founded in the emergence of modern labour society’.

<sup>18</sup> Hegel 1995b, pp. 315–19; 1991a, p. 277 (§258).

<sup>19</sup> See Ilting 1971, p. 91. For further detailed discussion of this subject I refer the reader to Chapter Three.

<sup>20</sup> For this discussion, see Haakonssen 2006, p. 279.

<sup>21</sup> The Jena 1802–3 essay *Über die wissenschaftlichen Behandlungsarten des Naturrechts seine Stelle in der praktischen Philosophie und sein Verhältnis zu den positiven Rechtswissenschaften* appeared in the *Kritischen Journal der Philosophie* co-edited with Schelling in two parts (the first in December 1802, the second in May 1803).

<sup>22</sup> Hegel 1999, pp. 115, 104. For Hegel, the critical philosophy had relegated all other (theoretical) sciences such as mechanics, physics, and natural law to empiricism through the isolation of the ‘philosophical

concept of the *Stände*, but central to its articulation in Hegel's hands insofar as he perceived the Kantian and French revolutions as one and the same phenomenon.<sup>23</sup> I will now pursue some of the transformations that affected Hegel's appropriation of the concept in more elaborate detail.

A decisive aspect to the evolution of the concept of the *Stände* in the seventeenth century was the development of modern natural law premised on the individual and the social contract with Hobbes.<sup>24</sup> This eventually reduced all individuals equally to subjects of natural right, to physical existence *with no regard for status*.<sup>25</sup> It was this that laid the foundation for the aristocratic opposition to natural law as well as social contract theory, enlightened absolutism and rationalism insofar as traditional society could not be preserved within these structures. Such resistance developed in the ensuing centuries, and stood against the modern forces that had led to state formation in the seventeenth century and to the development of society in the eighteenth. In Germany this could be seen most clearly in the persistence of the Prussian aristocracy, which rejected the rational formalisation of privilege in the *Allgemeines Landrecht für die Preußischen Staaten* (1794).<sup>26</sup> In the guise of the Prussian nobility, the *Stände* had shown organised resistance since the seventeenth century when the Elector of Brandenburg-Prussia (1620–88) attempted to centralise and unify 'the far flung territories of the state by limiting the

---

element in philosophy' solely to metaphysics. It was precisely through this move that practical philosophy became wholly metaphysical-moral, while theoretical sciences became empirical, 'thereby renouncing their claim to be genuine sciences; they are content to consist of a collection of empirical knowledge [*Kenntnisse*] and to make use of the concepts of the understanding as postulates [*bittweise*], without claiming to make any objective assertion' (Hegel 1999, p. 102). Hegel is concerned with overturning the divide between theoretical and practical philosophy, and he initially finds the solution in *natural* intuition and *Sittlichkeit*, the state as a 'work' or 'the spirit of the people' as it appears in *System der Sittlichkeit*. It is in this way that practical morality is 'annihilated' as well as the private property relation; the justification for the subordination of labouring *Stände* lies in the equalisation of all *Stände* in the state of 'absolute equality' – war with other nations where the state of nature real for the first time (Hegel 2002, pp. 52ff). This will eventually be overturned through the transition from the state as an ethical work to the practical as embodied in the labour process in the later Jena period (1805–7) as I will analyse in Chapter Three. Ethical life (Chapter Four) is what first allows for this transition as it connects the inner life of the subject with the outer order of the state as the customs of a people, while practical philosophy as isolated in metaphysical speculation turns into a 'positive or dogmatic knowledge' (Hegel 1999, p. 140).

<sup>23</sup> See Hegel 1991a, pp. 157–86 (§129–41); 1999, pp. 217ff.

<sup>24</sup> See Dreitzel 2003 for the relation of Hobbes to the German context. For Pufendorf's role in 'depreciating' [*Abwertung*] the *Stände* in particular, see Oexle, Conze and Walther 2004, pp. 211–12.

<sup>25</sup> I will analyse the German natural law model and its exception in this respect below (III.1, III.3).

<sup>26</sup> See Berdahl 1973.

power of the nobility'.<sup>27</sup> The growth of a state bureaucracy and an absolutist political form opposed to the nobility lost its edge over time as offices became inheritable. This is what made absolutism in Eastern Europe, 'the repressive machine of a feudal class ... a device for the consolidation of serfdom, in a landscape scoured of urban life and resistance'.<sup>28</sup>

Both the natural law systems of the classical epoch of the seventeenth century and their eighteenth century vulgarisation in the Enlightenment had not in fact conflicted with state authority, but offered a unifying discourse for centralised power and state formation. In the German speaking lands they led to absolutism in the figure of a monarch consolidating power on the *Reichs-* and *Landstände* forming and giving shape to the state. The natural law systems moreover led to a trained officialdom, and to the positivisation of rights and functions in the drafting and establishment of various codifications.

The distinctively modern concept of the state entailed a process that essentially involved a 'socio-political' transformation of the concept of the *Stände*, which modified the subject of politics – and, one might add, the political lexicon as well – from a decentralised system of domination and power sharing – a form of pluralism operative in feudalism – to a centralised territorial subject recognised by its rationalised system of jurisprudence and uniform bureaucracy. 'We see everywhere in the West [that] the development of a standing army created and maintained, outfitted and trained according to the system of bureaucratic administration at state expense spelled the death of the feudal political order of the estates'.<sup>29</sup> Thus 'the fate of the Estates ... was everywhere the clearest index of the progress of absolutisation'.<sup>30</sup>

These phenomena can also be observed in the German-speaking context as well, in particular in the context of the *Reichs-* and *Landstände* and their transformation into state forms. Yet the peculiarity of German development led to the different political forms in the Holy Roman Empire. It is perhaps precisely for this reason that the state-concept even if it 'had come to Germany with the *Ratio-Status-Lehre* remained in this context up until

---

<sup>27</sup> Berdahl 1988, p. 3 (text modified).

<sup>28</sup> Anderson 1974, p. 195.

<sup>29</sup> Hintze 1975, p. 332.

<sup>30</sup> Anderson 1974, p. 228.

the threshold of the nineteenth century'.<sup>31</sup> Indeed there were many 'intermediate formations to be found, which lay mid-way between the federal form of state and the unitary state with autonomous provinces'.<sup>32</sup> The German jurist Samuel von Pufendorf (1632–94) thus measured the empire according to the standards of the unified *civitas* attained by other continental powers and found it wanting. The political developments in the Holy Roman Empire thus conveyed in turn a distinct conception of law, whereby 'it is often difficult to maintain the textbook division between universalist natural law – whether Thomasian or Wolffian – and particularist historical law and the associated division between reformist absolutism and traditionalist ideals of estate-based governance'.<sup>33</sup>

What can initially be observed through these historical transformations is that 'modern' [*neuzeitliche*] conceptuality ... comprises more than only "modern" [*modern*] meanings', and that the distinctiveness of the concept of the *Stände* itself emerges only by way of the historical processes. As Koselleck had adequately noted, a concept is inherently ambiguous [*vieldeutig*] and, citing Nietzsche, 'only that which has no history is definable'. Such ambiguity leads to different interpretations, and 'concepts are thus condensations [*Konzentrat*] of many meanings [*Bedeutungsgehalt*]'. For Koselleck, moreover, the history of words [*Wortgeschichte*] serves as an entry point'.<sup>34</sup> I will begin to employ Koselleck's insights here in more detail later in this chapter. The etymology of the *Stände* further provides us with the possibility of observing a broad historical process that involves the transformation of the European world. I have begun to show this in the case of the French Revolution and its dissolution of the *états*, which opens up the modern state to a 'social' foundation and a different form of stratification (what will eventually become stratification by class); this overlaps briefly with the *états* and the *société des ordres* as I showed above.<sup>35</sup> In Germany the context of transformation proceeds in a much

---

<sup>31</sup> Maier 2004, pp. 202. It should be remarked that the transformation to the state concept occurs precisely when the Holy Roman Empire begins to encounter the French Republic.

<sup>32</sup> Gierke 1934, p. 197.

<sup>33</sup> Haakonssen 2006, p. 276.

<sup>34</sup> Koselleck 2004a, pp. xvi, xxiii, xxii, xx; Koselleck uses '*neuzeitlich*' in contrast with '*modern*' to emphasise a new experience of time – indeed to emphasise a process, which is not conveyed by the synonym '*modern*'.

<sup>35</sup> There is a problematic point here that I cannot explore further; that is stratification by classes as a model of historical analysis – see footnote 1 above in this chapter.

slower fashion, but in a ‘social’ ordering of *Stände* governed by economic or vocational criteria – as can be seen in the great codifications such as the *Allgemeines Landrecht für die Preußischen Staaten*, which provoked such resistance from the aristocracy<sup>36</sup> – a difference and contrast can be seen to emerge between this and their ‘political’ descriptions. This moreover lies at the core of Hegel’s political philosophy and his distinctive etymological observation of the former ‘linguistic usage’ of the *Stände*.

The idea [*Vorstellung*] that those communities [the *Stände* and the corporation] which are already present in the circles referred to above [civil society] can be split up again into a collection of individuals as soon as they enter the sphere of politics – i.e. the sphere of the *highest concrete universality* – involves separating civil and political life from each other and leaves political life hanging, so to speak, in the air; for its basis is then merely the abstract individuality of arbitrary will and opinion, and is thus grounded only on contingency rather than on a foundation which is *stable* and *legitimate* [*berechtigt*] in and for itself. – Although the *Stände* of civil society in general and the *Stände* in the *political* sense are represented, in so-called theories, as remote from each other, linguistic usage still preserves the unity which they certainly possessed in earlier times.<sup>37</sup>

It is ‘precisely in this way that the overlapping and displacement [*Verschiebung*] of modern and old word meanings become observable’.<sup>38</sup> When I turn towards the closing remark to this chapter I will have the opportunity to make some more specific observations on Hegel and to contextualise more precisely his political thought and the distinctiveness of the period that fundamentally shapes and forms it. For the moment, however, one can note how the slow dissolution and transformation of the *Stände* mark the emergence of the modern world as such.

This process of dissolution and transformation can be taken up and analysed at the etymological level in the contiguity of the terms *Stand* and *Staat*. The German *Staat*, like *Stand*, derives from Middle Low German *stehen* and like the Latin ‘*status*’, from the Proto-Indo-European ‘*Sta*’ – to ‘*stay*’, ‘*stand*’, ‘*remain*’. The English word “state” is, in fact, a contraction of the word “estate”. This is similar to the old French word *estat* and

---

<sup>36</sup> For extensive treatments of this subject see most notably Koselleck 1975; this should be compared with the Marxist approach in Heuer 1960.

<sup>37</sup> Hegel 1991a, p. 344 (§303) (original emphasis) the translation has been modified here to emphasis the *Stände* rather than the division between ‘social’ and ‘political’, which the translators in English have the habit to emphasise by using *e/Estates* of classes/*estates* in the *Grundlinien* see below I.3 when I turn to analyse the problem of translation. The additions in [...] are mine.

<sup>38</sup> Koselleck 2004a, p. xiv.

the modern French *état*'.<sup>39</sup> *Estate* derives from the Greek aorist *esthsa* [*estēsa*], as would the French *état*.<sup>40</sup> The basic meaning would be 'something caused to stand', i.e., something which stands in its own right. The *estate/state/état* – in the German *Stand* and *Staat* – would be something which gains an objective or independent existence apart from the majority, albeit created and propped up by a few.<sup>41</sup>

In the fourteenth century German context for the first time '*stant*' in the sense of '*Stand*', '*Rang*' – as in rank, degree, or gradation – appears, and is derived from the Latin '*status*' and the related '*ordo*' and means 'action, place, type of standing'.<sup>42</sup> But at this very early stage the sematic field is rather broad and signifies 'a succession of other meanings such as "*Verfassung*", "*Herrschaft*", "*Land*" and "*Reich*": i.e., the words "*stant*" (= "*Stand*") and "*stat*" (= "*Staat*") are not yet used specifically; the separation of meanings as well as terms [*Bezeichnungen*] takes place first in modernity'.<sup>43</sup> The word *Stand* eventually comes to replace the former Latinate concepts *status*, *ordo*, *conditio*, *dignitas* and *gradus*, and often *officium* and *vocatio* with *Stellung*, *Zustand*, *Umstände*, and *Lage*.<sup>44</sup> The former related and even contiguous Latin words are of the utmost importance insofar as they convey how deeply the German concept of *Stand* is rooted in a reflection on the ordering of the entirety of the traditional *civitas sive societas civilis sive res publica*, or the *status civilis* that comes to be based on the *Herrschaftsstände*.<sup>45</sup>

A central contradiction in Hegel's usage of the *Stände* lies in the fact that he is the first to conceptually recognise and distinguish a political modernity that entails the division between 'the social' and 'the political' but in the same gesture undoes this 'liberal-revolutionary idea of a contrast between state and society'.<sup>46</sup> It is in this sense that the *Stände* for Hegel retain the traditional characterisation of 'all estate systems and representative constitutions ... as a reunion of the separate elements of state and society'.<sup>47</sup> Indeed, Hegel sought to conceive of the *Stände* in the context of the history of

---

<sup>39</sup> Vincent 2004, p. 43.

<sup>40</sup> Liddell, Scott, Jones, McKenzie 1996, pp. 344, 1793–4.

<sup>41</sup> See Lewis 1915, pp. 949–50.

<sup>42</sup> Grimm 1971 quoted in Oexle, Conze and Walther 2004, p. 156.

<sup>43</sup> Oexle, Conze and Walther 2004, p. 156.

<sup>44</sup> See Stuke 1968, p. 38.

<sup>45</sup> Oexle, Conze and Walther 2004, pp. 156ff.

<sup>46</sup> Riedel 2011, p. 148

<sup>47</sup> Hintze 1975, p. 168.

European representation.<sup>48</sup> There is a sufficient amount of contention, however, over the actual meaning of the *Stände* in this sense. To indicate a ‘reunion’ between ‘society’ and ‘the state’ already implies another political stage in history and perhaps conveys a ‘modern’ meaning to the *Stände* that does not accord with their historical actuality. This interpretation of the *Stände* as leading distinctively to parliamentarianism, writ large in Hegel’s constitutional history, can also be seen as conflictual with the ‘pre-modern’ period:

The *Stände* were not arrayed against the prince, ‘representing’ the people before the institutions of the state. They were organized institutionally insofar as they shared in the rule; they represented in real and symbolic terms, the structure of authority before the people. As Otto Brunner put it, ‘The *Stände* do not “represent” the land, rather they “are” the land’. Thus, a *ständisch* assembly offered a public presentation of a *Herrschaft* that was in fact based on private relationships. In this situation, the ‘public’ exercise of authority was fused with the ‘private’.<sup>49</sup>

Clearly Hegel does not use the concept in such a ‘patrimonial’ fashion in the *Grundlinien*, but employed it at the precise moment of the disorganisation of ‘modern’ civil society, and what he perceived as the necessary institutional organisation of individuals when they enter the political order of the state. ‘The relation between concepts and reality poses an important methodological question’; Hegel, in order ‘to better adapt words to reality, ... sought to create a vocabulary as exact as possible’.<sup>50</sup> What must be recognised then is that Hegel did not chose the concept of the *Stand* arbitrarily. Rather he took over the former ‘linguistic usage’ of the concept, and its proximity to organisational terminology in his structuring of both civil society and the state *and* their unification – as can be seen in the quotation from the *Grundlinien* cited above – and emphasised their capacity for representation.

What occurs on the linguistic and etymological level – as I noted above in the common etymology of the terms *Stand* and *Staat* – is reflected in the distinctive formation of the ‘modern’ European concept of the state; it entails historical processes that essentially involve a ‘socio-political’ transformation of the *Stände*; this subsequently

---

<sup>48</sup> See Hegel 1999, pp. 80, 94 for the earliest example of this tendency in his thought, which I will explore in more detail in Chapter Two.

<sup>49</sup> Berdahl 1988, p. 13, the quote is from Brunner *Land und Herrschaft*, p. 423.

<sup>50</sup> Conze 1968, pp. 52–3.

modifies the subject of politics – and, one might add, the political lexicon as well. The character of the *Stände* as inherently political patrimonial structures give way from a decentralised system of domination and power sharing – a form of pluralism, or more appropriation of co-regency in the era of the *Ständestaat* – to a centralised territorial subject recognised by its rationalised system of jurisprudence and uniform bureaucracy.<sup>51</sup> The development of the state essentially involves ‘a system of administrative levelling’ whereby the former independent ‘administrative and military tasks of the *Stände* [*des ordres*]’ are now ‘progressively carried out [*assurées*] by the State that, through the legislative and the administrative reinforcement of its powers, reduces the *Stände* [*les ordres*] to a private function [*rôle*]. The result of this evolution is the separation of the political and the social, the public and the private, in a word the separation of society and State ...’.<sup>52</sup> Thus at the same time as *a singular Stand moves towards a State-like political condition* and becomes increasingly independent and autonomous in its activities, *the other Stände undergo an inverse process of ‘socialisation’* and are eventually relegated to a subservient and increasingly *civil* status. Thus there is simultaneously a movement toward a ‘depoliticised’ condition and the eventual formation of a ‘civil’ social order of stratification – the nascent object of sociology, statistics, and the like – as political power becomes concentrated in the movement from *Stand* to *Staat*. Suffice to say that the logic of modern political development is intrinsic to this process of separation, while historically speaking it is strongly reinforced by the development of patrimonialism, as ‘political units in the process of becoming States are not seen in the first place as conquering entities, but as growing *estates* of dominant dynasties’.<sup>53</sup>

Absolutism suppressed what Montesquieu called the intermediary powers; it did not by any means abolish the differences between the Estates; on the contrary, it purposively sought to maintain the Estates’ social order as a useful basis of the absolute system of government. The preferential position which the nobility and the privileged classes enjoyed, however, was legal and social rather than political.<sup>54</sup>

---

<sup>51</sup> See Weber 1978, p. 56 for his by now infamous description of the political unity of the modern state.

<sup>52</sup> See Stuke 1968, p. 45; although he uses *les ordres* rather than *Stände* in this instance, which loses the sense of etymological proximity to the concept of the state, elsewhere he uses *estat* as a French synonym, from which the word *état* derives. His presentation is moreover on the development of the word ‘*Stand*’ in the German speaking territories.

<sup>53</sup> Poggi 2006, p. 98 (emphasis added).

<sup>54</sup> Hintze 1975, p. 175.



From a politicist perspective, the circumstances of continuous warfare on the Continent, the necessity of state building in order to survive, led originally patrimonial *Stände* to territorial state forms through an increase and appropriation of land; the expansion of certain demesne at the expense of others.<sup>55</sup> Such events preceded the modern split between public and private law, civil society and state, as public authority [*imperium*] was the private property [*dominium*] of the ruler; this certainly coincided with the longstanding perception of the *Stände* as such, which were based historically on a series of private relationships of domination and of domestic economy.<sup>56</sup> As I have established, this is not related to Hegel's usage of the concept of the *Stände*. I have rather been emphasising the modern context as the structure in which Hegel's concept is shaped and formed. The fluidity between patrimonial regimes and the developing absolutist tendency can perhaps be best seen in the theorisations of the absolutist thinkers themselves, who when conceptualising the state form conceived of sovereignty along the lines of the *pater familias*, something which both Jean de Bodin (1529–96) and Hobbes shared, which was maintained alongside the Aristotelian formulation of the *oikos*.<sup>57</sup> It was only over an extended period of time that Aristotle's dichotomy (domestic society – political society) was replaced by the Hobbesian model (state of nature – civil society).<sup>58</sup> Yet insofar as the *civitas*, as the recognised sphere of politics, was modelled on the *oikos* of the *paterfamilias* subsequent to the state of nature the two models in the final analysis were mixed. Thus the former *politische Gesellschaft* was composed of *Herrschaftsstände*; 'that is to say, of corporate associations of "lords" [*seigneurs*] that formed divisions of a political and social whole [*ensemble*]'.<sup>59</sup>

Hegel was acutely aware of the differentiation between *Staat* and *Stand* or *Reichs-* and *Landstände* in the *Verfassungsschrift*, which he also used in his characterisation of the political forms existent in the Holy Roman Empire prior to its dissolution. The latter terms were far more common in the political descriptions of the Holy Roman Empire.<sup>60</sup>

<sup>55</sup> For this perspective see Anderson 1974; compare Brenner 1982.

<sup>56</sup> See Stuke 1968, p. 39; the reference is to Brunner 1949.

<sup>57</sup> See Bodin 1606, p. 8; Hobbes 1983, p. 117; Pufendorf 1994, pp. 89, 134 (I will analyse this below III.1).

<sup>58</sup> This development was implicit in Hegel's departure from classical *oikonomik* and his shift towards modern political economy, which entailed his interpretation of the family as based on the love relation rather than household rule.

<sup>59</sup> Stuke 1968, p. 39.

<sup>60</sup> This will be analysed in much extensive detail in Chapter Two.

‘Even if state was an already established word and had long exceeded the realm of scholarly language ... it stood in a wide context of competing concepts such as *Herrschaft*, *Obrigkeit*, *gemeines Wesen*, *Landschaft* – and even *Reich* and *Stand*’.<sup>61</sup> As I have begun to analyse in the first section of this chapter, a concept is not an isolated phenomenon but structured by a broader historical context and semantic field of meaning. ‘Both words and concepts are always plurivalent [*mehrdeutig*], but they are so in different ways. This is what gives them their historical quality. ... A word can become unambiguous, can be reduced to a single meaning [*eindeutig*], precisely because it is plurivalent. A concept, on the other hand, must remain ambiguous [*vieldeutig*] in order to be able to be a concept. The concept does indeed adhere to the word, but is simultaneously more than the word’.<sup>62</sup> It implies the broader political and social context of meaning that I have thus far analysed in order to apprehend the concept of the *Stand*. In this particular case, one can see how Hegel’s conception of the state, while the word *Staat* itself existed in the linguistic context of the Holy Roman Empire, is structured entirely by a revolutionary phenomenon: the emergence of the French Republic, ‘the condensation [*Zusammenfassung*] of all forces to a central point determined through law [*Gesetze*]; the association in a universal in “common subordination [*Unterwürfigkeit*] to a supreme state authority [*oberste Staatsgewalt*]”’.<sup>63</sup>

Thus Hegel cannot get around an explication of his concept of the state. Considering the ambiguity of the usage of the word [this was] a plain necessity and a precaution against misunderstanding. He defines the concept rigorously from every angle and not without didactic emphasis. The state [of the Holy Roman Empire] is a *Gedankenstaat*. It must be made *actual*, not only in intentions and planning but be capable of defence and self-assertiveness.<sup>64</sup>

The context here thus structures, conveys meaning and precisely defines Hegel’s concept, and from this point onwards he distinguishes a state as a necessity of reason: ‘even if no state is present reason requires that one be established’.<sup>65</sup> On the other hand, as I have noted above, Hegel’s critical perspectives on revolutionary France also shape the peculiarity of his concept of the state. This is why he gives particular meaning to the

---

<sup>61</sup> Maier 2004, p. 202.

<sup>62</sup> Koselleck 2004a, p. xxii.

<sup>63</sup> Maier 2004, p. 197, the latter part of the quotation is from Hegel 2004, p. 62.

<sup>64</sup> Maier 2004, pp. 202, 203.

<sup>65</sup> Hegel 1991a, p. 106 (§75).

unification of the social and the political in the *Stände* – the unity and sovereignty of the modern state form for Hegel is not simply a question of the success of its ‘centralised’ power structure that permits the capability of defence, but also equally as important is its institutional articulation and how the different spheres come to be organised and participate within the state.

## I.2 *The Philosophical Sources*

As I have begun to show in this chapter, the difficulty of approaching the concept of the *Stände* is that it involves many other phenomena such as state development, the collapse of the old regime and the French Revolution even in the limited case I am examining. This issue is further intensified when I turn to the philosophical sources of the *Stände* in Hegel’s thought, regarding which a consensus has not as yet been reached.<sup>66</sup> My ‘conceptual’ approach therefore involves studying more than simple transformations in meaning and linguistic usage; it requires rather a much broader referential horizon – for example, Hegel’s distinctive approach to the political (history) in Chapter Two, the legal (natural right) in Chapter Three, and the ethical (consciousness) in Chapter Four – in order to discover the particular way the concept is used and determined, developed and transformed in Hegel’s hands. As I aim to show, the existence of a context conveys meaning to a given concept, and can transform its underlying ideas and theoretical formation to such a degree that it becomes unrelated to the traditional milieu from which it arose. Yet in the continuance of the older language structures it still seems to relate to the tradition, but its usage, meaning, and theoretical formation betrays a different purpose and the coming into being of a different concept. It is in this way that the context of a

---

<sup>66</sup> Hočevar in a second study on Hegel’s *Stände* (Hočevar 1973) relates them to the *Allgemeines Landrecht für die Preußischen Staaten*; by contrast in his early study they are in part related also to the Greek *polis* (see Hočevar 1968, pp. 41–2). Clearly this relates to the distinctiveness of Hegel positions, his place in Frankfurt and Jena in the early period and his position in Berlin much later on. His more positive appreciation of codification – he condemned it as destroying Greek *Sittlichkeit* in 1802–3 and saw it as destructive of the possibility of a state form in Germany in the same period – can be seen to develop in view of the *Historische Rechtsschule* (see Becchi 2009; and the landmark study by Schiavone 1984). Hočevar’s later study should be compared to Walker 1978 who conceives of the German traditions of police science [*Polizeiwissenschaft*] and jurisprudence combined in the ‘rights’ and ‘functions’ of Hegel’s modern civil society. See also Waszek 1988, p. 171 who adds another dimension to this debate: ‘Hegel’s tripartite class distinction as well as a number of subdivisions and subsequent definitions show a number of significant affinities with Sir James Steuart’s corresponding exposition’.

given concept, its idea and theoretical formation can pre-exist its definitive entrance into language whereby it coincides with its definition.<sup>67</sup> Thus a conceptual history neither simply entails

a modification in linguistic usage nor a (perceived [*vermeintliche*]) history of the concept, but the history of the comprehension [*Geschichte des Begreifens*] (the interpretation of the conception [*des Erfassens*] or definition) a concept [*Begriff*] has in relation to the subject-matter [*zum Gegenstand*]. A conceptual-historical inquiry is therefore technically speaking always the exposition [*Darstellung*] of the history of the concept of a concept.<sup>68</sup>

What K.H. Ilting indicates here is precisely the broader context that must be taken into account in the definition of a given concept. For example, the history of a concept implies more than the history of a word, it necessitates an analysis of the various forces that have determined and shaped its coming into being. In reference to the European philosophical and metaphysical tradition one confronts a further obstacle insofar as the grasping of a concept is all too easily structured with reference to specifically modern conceptuality; that is to say, the *Stände* are seen to be tied up with the ‘stratification’ of the European *ancien régime*. In sum, ‘modern thought discovers itself in its reflection on social order in a fundamental contradiction to each classical European system of thought, which encircles ‘*Ordnung*’ and ‘*Stand*’ in metaphysical, recognition-theoretical, and moral meanings’.<sup>69</sup> It is precisely in this way that what is required is an act of distancing from the present whereby one can discover that the ‘emergence of modernity in its conceptual recognition [*Erfassung*] is only explicable if also directly shifted to earlier meanings [*Sinngehalt*]’.<sup>70</sup> In this way, as Reinhart Koselleck (1923–2006) explains, an ‘effect of alienation [*Verfremdungseffekt*] through past experience may then serve the present sharpening of consciousness which leads from historical clarification [*Klarstellung*] to

---

<sup>67</sup> See Koselleck 1989, p. 12: ‘What occurs at some point in time may be unique and new, but it is never so new that longer-term, pre-given social conditions had not made the one-time event in question possible. A new concept may be coined which had never before expressed experiences or expectations which had been present in words. But it can never be so new that it was not virtually laid out in the pre-given language at the time and even drawing its sense from its conventional linguistic context. The interplay of speaking and doing in which events occur is thus extended by the two directions of research around its – variously defined – diachronic dimensions. Without this history is neither possible nor comprehensible’.

<sup>68</sup> Ilting 1983, p. 13.

<sup>69</sup> Oexle, Conze, and Walther 2004, p. 157.

<sup>70</sup> Koselleck 2004a, p. xix.

political clarification [*Klärung*].<sup>71</sup> This is a particularly distinctive process when one considers that the analysis of the *Stände* largely implies a ‘pre-modern’ context. A shift moreover in the perception of social order can be very precisely fixed in time to the rise of what is termed ‘philosophical functionalism’, which transformed the typical relationships between ontology, the theory of recognition and morality existent in traditional European metaphysics.<sup>72</sup> As truly modern political theory emerged, the former Aristotelian and scholastic conception of the unity of politics broke into two parts; on the one hand, the theory of ‘the highest force [*Gewalt*] or sovereignty’ was formed while, on the other, ‘political concepts [*Begriffe*]’ began to be deduced on the basis of natural law. Galilean physics also emerged and broke with the teleological conception of nature. ‘The nature and history of man, which in the classical tradition of politics formed a unity, now separated’.<sup>73</sup>

The Aristotelian tradition of a single discipline was substituted by a distinction between theoretical reflection and practical application, and in this new context the leading role was attributed to natural law, the new ‘architectonic’ discipline which reduced other disciplines to a subordinate function.<sup>74</sup>

As Manfred Riedel has noted, this eventually led to Christian Wolff’s ‘division of practical philosophy into a “rational” and “empirical” part’, which was followed by Kant’s rejection of all empiricism with the idea of the will’s pure ‘self-grounding’ that rendered ‘impossible the recapitulation of the concepts and objects transmitted by the tradition’.<sup>75</sup> This was followed by the division between the theoretical and practical sciences that are at the centre of Hegel’s debate with the modern tradition in the Jena natural law essay of 1802–3. And in the essay it is telling that Hegel precisely appropriates the *Stände* by way of his renewed engagement with the ancient metaphysical tradition in order to solve the problems introduced by modern natural law.<sup>76</sup> For Kant, the theoretical sciences are to be fundamentally excluded from practical philosophy as I showed above. In so doing he reduced politics and economics to ‘doctrines of prudence

---

<sup>71</sup> Koselleck 2004a, pp. xvi, xix.

<sup>72</sup> See Oexle, Conze, and Walther 2004, p. 157.

<sup>73</sup> Riedel 2004a, pp. 733, 737.

<sup>74</sup> Scattola 2009, p. 6.

<sup>75</sup> Riedel 2011, p. 11.

<sup>76</sup> See Ilting 2006, pp. 17ff; compare Riedel 2011, p. 13; and below III.2, III.3, III.4.

and pleasure’, which are ‘merely pragmatic, technical sciences which belong to the world of empirical experience’ and can no longer ‘borrow the ends which generate the power of ethical obligation in moral and political action’.<sup>77</sup> Kant had stated this in no uncertain terms at the outset of his *Metaphysik der Sitten* by dividing the ‘material’ from the ‘formal’.<sup>78</sup>

As I argued in the Introduction, for Hegel the *Stände* respond to a contemporary metaphysical problem and represent an *institutional form* ‘at rest’ developed from the ‘absolute movement or absolute relation’ to contrast with the ‘formal’ autonomy of the will that appeared with Kant *and* the *civitas* conceived as a ‘sovereign’ (Hobbes, Rousseau, Fichte) in *System der Sittlichkeit*.<sup>79</sup> There is a correspondence here moreover between the metaphysical subject and the political subject of the French Revolution, which, as is well known, had its basis in the modern natural law tradition. Indeed for Hegel there will be no division between metaphysics and politics; it is thus that he simultaneously conceptualises the *Stände* in the context of modern ‘depoliticised’ society and as an answer to the formal ‘autonomy’ of the individual subject.<sup>80</sup> Hegel’s earliest appropriation of the concept of the *Stände* as a structuring principle of his *Rechtsphilosophie* belongs precisely within the horizon of traditional European metaphysics. He retrieves the *Stände* from the other side of the irreparable break begun by Hobbes and metaphysically construed by Kant (of an axiomatic individualism). Following on the Spinozistic orientation of the *Verfassungsschrift*, according to Ilting, Hegel ‘sought to unify in a system Spinoza’s natural law theory [*Naturrechtslehre*] and Aristotle’s politics’.<sup>81</sup> In this way Hegel identified ‘nature’ [*natura sive Deus*] in Spinoza with the political community organised according to nature in Aristotle – a metaphysically derived system of inequality, of a part that rules *by nature* over another part.<sup>82</sup>

---

<sup>77</sup> Riedel 2011, pp. 8–9.

<sup>78</sup> Kant 2011, p. 3.

<sup>79</sup> Hegel 2002, p. 4.

<sup>80</sup> I agree with Ilting’s perspective when he states that Hegel was not opposed to autonomy as such, which lay at the foundation of modern practical philosophy, but of its inadequate embodiment in the institutions of his own time (Ilting 1983, p. 27). It is to this that the concept of the *Stände* is a response.

<sup>81</sup> Ilting 2006, pp. 17.

<sup>82</sup> See *Politics* 1252a24–1252b27. At the same time the European reflection on forms of stratification begins in Plato (*Republic* 431e–432a, 435b), the metaphor of the body or organism as an interpretive schema also appears (see Oexle, Conze, and Walther 2004, p. 162). The *polis* as an organism ordered along a natural hierarchy, just and necessary, between rulers and slaves is expressed by way of ‘the rule of the soul over the

Spinoza grounds his doctrine of infinite substance in the Aristotelian determination of entities, which in its affections is by nature prior [*der Natur nach eher*] (*natura prior*). This similarity between Spinoza and Aristotle entitles Hegel to identify up to a certain point Spinoza's doctrine of substance with Aristotle's political science [*Staatslehre*].<sup>83</sup>

Hegel's political philosophy represents a last systematic attempt at unity between the metaphysical and empirical, in a period of transition to the modern age. It is thus that, following Riedel, who 'measured Hegel's "civil society" directly against the tradition of this concept in European political philosophy', I will analyse the *Stände* thematically in each following chapter of this study.<sup>84</sup> This will allow me to reveal the differentiation of Hegel's concept from the tradition and its distinctive relation to political modernity.

From early on, and under the influence of Hölderlin, the Greeks orient Hegel's political philosophy. This leads to his conception of the 'system of needs' that corresponds to Plato's origin of the city, where individualism is not self-subsistent but is directed towards the community for its satisfaction.<sup>85</sup> 'The Platonic subdivision of the three *Stände* is set against Aristotle's structural schema; on the one hand as a multitude of parts [and] on the other divided into six different functions'.<sup>86</sup> For Aristotle, the community is not only designed to meet the satisfaction of needs but is *naturally* oriented towards the good life – 'actualisation is only possible when we step into community with others'.<sup>87</sup> Moreover, for Ilting 'the economics of Aristotle gave Hegel the philosophical basis for the appropriation of modern English national economy'.<sup>88</sup> Thus from this

---

body' for Aristotle (see *Politics* 1254a29–1254b35). Chapter Three (III.3, III.4) will show Hegel's break from the Greek natural hierarchical concept, by way of the prioritisation of labour and the negative, which leads him to a new basis for the concept of the *Stände*. As can be seen in both the Jena natural law essay and in *System der Sittlichkeit*, Hegel is employing the classical model of the body politic as organic as a contrast to the Hobbesian metaphor of the artificial man (see Hegel 1999, p. 156; and 2002, p. 51 where ethical life appears as the 'independent spirit' of the mythical Greek Briarius with his 'myriad of eyes, arms and other members each of which is an absolute individual').

<sup>83</sup> Ilting 2006, p. 19. Also see Ilting's unpublished correspondence with Schmitt (letter 22.12.62). It is worth noting that Hegel's earliest appropriation of the *Stände* in *System der Sittlichkeit* here – which expresses in embryonic form Hegel's later philosophy of right – was written in 1802–3, a year after he co-edited Spinoza's work with his colleague Paulus. It was also the time when he was closest to Schelling (1801–3).

<sup>84</sup> Riedel 2011, p. 132.

<sup>85</sup> See *Republic* 369b.

<sup>86</sup> Oexle, Conze and Walther 2004, p. 162.

<sup>87</sup> See Ilting 2006, p. 18.

<sup>88</sup> Ilting 2006, p. 23; see *Politics* 1291a1–1291a30, 1328b15–1328b22 and Hegel 1991a, p. 219 (§181) and pp. 227, 233 (§§189, 199) on how subjective need and satisfaction leads to a system of needs and social labour.

perspective, it is clear in the first instance that the *Stände*, in the earliest outlines of Hegel's *Rechtsphilosophie* (1801–7), are derived from two sources: from Plato and Aristotle and from his readings in modern political economy that will eventually push the transformative capacity of labour to the forefront in the organisation of the political community, as I will analyse in Chapter Three. It is appropriate to add here an additional element that drives Hegel's political theory of institutionalism up to his maturity in the Berlin period (1818–31); that is, the correspondence between the soul and the *polis*.<sup>89</sup> In the *Grundlinien* and in the *Encyclopaedia*, Hegel's conception of the state descends from the Idea just as the individual, by contrast, ascends by way of subjective spirit through the institutional stages of its organisation. In this section I have thus traced an important aspect that gives definitive insight into the particular elements of Hegel's institutional theory of the *Stände*. I have moreover indicated the origin of Hegel's return to the Greeks in the 'crisis' of European metaphysics in his conceptualisation of the political. The initial formation of the concept of the *Stände* owes its origin in Hegel's thought precisely to this circumstance, which in turn determines and shapes his philosophy.

### I.3 *The Fundamental Difference between Stand and Klasse*

A large part of the problem in interpreting Hegel's concept of the *Stand* is the horizon from which his epoch is viewed and the development of modernity. This points in the direction of a lexical problem in the translation of the term in Hegel's writings, and its confusion with the concept of *Klasse*.<sup>90</sup> This is a common issue in historical-sociological studies where the existence of a concept is presumed – such as 'class' in this case – but where the corresponding term itself is not present. The scholar or translator has thus read the concept back into Hegel, where it may or may not yet exist. This is not simply an issue of translation as it also appears in scholars working within the tradition of the German scholarship.<sup>91</sup> Indeed here one is faced with a question of interpretation. The reader comes across a further complication in the *Grundlinien*, however, in that Hegel

---

<sup>89</sup> See *Republic* 577c–577d.

<sup>90</sup> In Nisbet's English translation of the *Grundlinien* (1991a) he translates *Stände* as E/estates; he capitalises the Estates for *Stände* in the 'political sense' of a 'parliament' to make the distinction, while in Knox's translation *Stände* in civil society is translated as 'class'.

<sup>91</sup> For example, see Waszek 1988, pp. 171ff.



divides the *Stände* between civil (social) and political (state) functions only to reunify them with the concept of the *Stände* as a representational form mediating between the interests of civil society and the state. The extent to which a transformation in their conceptual character can be seen is given most definitively by the French Revolution. I remind the reader here of the importance of Carl Schmitt's (1888–1985) reference to Sieyès cited above. There Schmitt noted how with Sieyès's proclamation of '*le tiers État c'est la Nation*', the identification of a singular *Stand* with the nation, the *Stände* that required a plurality of social orders to exist were dissolved. This undid the strict hierarchy of 'status' society, the *ständische Gesellschaft*. A citizen's allegiance was now neither bound to a definitive group nor was it situated in relations of dependence (subordination) or independence (super-ordination) to those above or below.<sup>92</sup> The state now claims every allegiance, which had formerly been divided into a plurality of duties and obligations on which the individual was dependent. This process eventually makes way for the conditions whereby *Klasse* – seen largely as governed by economic criteria or property qualifications – will increasingly come to replace *Stand*, even if for a time the two concepts frequently appear synonymous and interchangeable, which is indeed characteristic of periods undergoing conceptual innovation and linguistic change.<sup>93</sup>

Yet in the *Grundlinien* and other works Hegel consistently distinguishes *Stand* from the *Klasse*. The latter betrays a sociological character alien to Hegel's conception of the state as institutionalised and constructed on a foundational principle (of the correspondence between subjective and objective spirit). To translate the *Stand* in terms of *Klasse* is to lose precisely the integral aspect of *organisation*, the corporate or institutional significance that the *Stände* convey for Hegel and were distinctively implied in his usage of the term. On the other hand, it is to interpret class along the lines of an organisational structure that both Karl Marx (1818–83) and Max Weber (1864–1920) saw as particularly problematic. For Marx, *Klasse* posed a fundamental organisational problem as 'separated individuals form a class only insofar as they have to carry on a common battle against another class; in other respects they are on hostile terms with each

---

<sup>92</sup> Indeed as the *Stände* transformed so too did the concept of *Bürger*, see Koselleck 2004a, p. xx.

<sup>93</sup> See Ossowski 1969, in particular pp. 121–31.

other as competitors'.<sup>94</sup> Similarly, for Weber, 'a class does not in itself constitute a *Gemeinschaft*': to 'treat "*Klasse*" conceptually as being equivalent to "*Gemeinschaft*" is a warped form of reasoning'.<sup>95</sup>

As I showed in section I.2 above, Hegel's conceived of the French Revolution and the modern systems of natural law that preceded it as based on an axiomatic principle of individualism. This for Hegel leads fundamentally to a situation where individuals 'consists in being many, and since this many is ... devoid of unity, they are destined to be mutually opposed and in absolute conflict with one another'.<sup>96</sup> It is to this extent that he sought unity in the European tradition of metaphysics as I suggested. By contrast, *Klasse* for Hegel represents the isolated particularity of self-interest that threatens to destroy the unity of the state as such in the dialectic of poverty and wealth (the place where *Klasse* appears in the *Grundlinien* deals, without exception, with the accumulation of wealth and industrial production that leads to the impoverishment – 'the *dependence* and *want*' – 'of the class which is tied to such work').<sup>97</sup> Central to the development of the class concept for Hegel, then, is the 'creation of the rabble', a political problem that had to be accounted for in his philosophy.

Something inherently new came into being with this excess precisely because the dimension of the estates-order would be destroyed; thereby the overgrown rabble had imposed an impending question that must be accounted for politically.<sup>98</sup>

Clearly it is in this instance that Hegel's institutionalism comes once more into play, as well as the organisational capacities of the *Stände* that the strictly economic development of a class society threatens to destroy.<sup>99</sup> In the Berlin lectures on *Rechtsphilosophie* of 1819/20, 'poverty has a right to revolt in civil society against the system, which prohibited any realisation of the will of the free. This is only to be understood as the assertion [*Erklärung*] of right against society itself that denies the will of the poor its

---

<sup>94</sup> Marx and Engels 1975–2004, vol. 4, p. 77.

<sup>95</sup> Weber 1978, p. 930. The two concepts overlap on occasion for Weber, but his sociological concept is unnecessary to engage with as concerns the purposes of my study.

<sup>96</sup> Hegel 1999, p. 112.

<sup>97</sup> Hegel 1991a, p. 266 (original emphasis) (compare §243, addition §244, §245, remark §253).

<sup>98</sup> Conze 1954, p. 338; see also now Ruda 2011.

<sup>99</sup> Hegel uses *Klasse* as early as the Jena natural law essay (1802–3) in the context of the merchants. Thus he already relates it at this early stage to economic criteria (see Hegel 1999).

existence’.<sup>100</sup> The *Stände* in this context are thus meant to be the institutional forms – along with the other institutional aspects in the state such as the police and the corporation – that ward off the ever-impending crises of modern civil society. Yet Hegel’s institutionalism in its ‘severe’ form, as Henrich has termed it, ‘compellingly leads to his theory of sovereignty [*fürstliche Gewalt*] or to the full-fledged equivalent to it. This consequently ends in the thoughtlessness [*Undenkbarkeit*] of the boundaries of power [*Gewalt*] in any form of enforceable right’.<sup>101</sup> Thus while organisation is the internal solution to the dynamic of modern civil society for Hegel, the rights and limits of it over the individual are in no way clarified. As for the external solutions these are well known, and are indeed consequent on the organisation of power in the state from Hegel’s earliest understanding of natural law as the right of power in the conflict between nations.<sup>102</sup> This led to the development of colonies and the organisation for war between states.

Hegel had also indeed distinguished between *Stand* and *Klasse* explicitly in the *Nürnberger Propädeutik*. There, for example, he argued that

The different *estates* of a state are in general concrete distinctions, according to which the individuals are divided into classes; classes rest chiefly on the *inequality* of wealth, upbringing, and education, just as these again rest on inequality of birth, through which some individuals receive a kind of activity which is more useful for the state than that received by others.<sup>103</sup>

*Klassen* thus appear here in a comparable way to how individualism will appear when I arrive at my extensive treatment of civil society as the state of nature in Chapter Three (III.4). Hegel’s usage quoted above should be compared with Adam Smith’s who had

divided society into basic groups, according not to legal but to economic criteria. But he did not apply the term ‘class’ to these groups but the term ‘order’. We do find the word ‘class’, in the meaning of social group, in Smith’s works, but it is

---

<sup>100</sup> Henrich 1983, p. 20.

<sup>101</sup> Henrich 1983, p. 29; compare Ilting 2006, p. 26; Bobbio 1989, p. 67.

<sup>102</sup> See Ilting 2006, p. 28 who draws on the importance of Spinoza in Hegel’s thought on history and international law: ‘...in the political-philosophical [*staatphilosophischen*] writings of 1802 ... one can clearly recognise the presence of Aristotelian natural law in Hegel’s interpretation of the inner unity of the politically constituted community, the continuing impact of Spinozistic thought by contrast in his theory on war and international law, which will remain true for Hegel into the *Rechtsphilosophie* and the *Encyclopaedia*’ (Ilting 2006, p. 32).

<sup>103</sup> Hegel 1991a, p. 452 (original emphasis).

applied to a more differentiated division. The three basic orders are in turn divided into 'classes'.<sup>104</sup>

What can be observed then is the contiguity of the terms, which adds a problematic dimension to translation and meaning. Yet, as I have also noted above, this is not the case where Hegel is concerned. Even if both *Stand* and *Klasse* are often ambiguous and, at times, interchangeable in the period of transformation in which Hegel's political philosophy develops, this is largely external to his conceptual concerns. Yet for the former reason, the two terms appear in the same entry in the *Geschichtliche Grundbegriffe*.<sup>105</sup> For Marx, in his *Critique*, the *Stände* appear as the point where 'all of the contradictions of the modern state coalesce ...' and as 'the posited contradiction of the state and civil society'.<sup>106</sup> As Riedel has argued, Marx's philosophy embodies most profoundly the 'freeing of philosophy from law in favour of economics'<sup>107</sup> – the transition to a polemical class-concept.

During the nineteenth century, 'class' generally replaced the older term 'estate' in expressions which did not refer to *legal criteria*, particularly in expressions in which the term 'class' was used in its most general meaning: that is to say, when it referred to the basic groups in different societies. 'Class' ousted 'estate' in social theories, ideological declarations and the programmes of social movements. The only complication arose from the fact that as a consequence of socialist propaganda the word 'class' and its derivative expressions came to be regarded as typical of certain milieu and acquired a 'class flavour'.<sup>108</sup>

In conclusion, the confusion between the *Stände* with *Klassen* is something that Hegel himself appropriately clarified for the interpreter of his work. For the sake of my study and for clarity I will leave the term untranslated throughout insofar as to distinguished between the 'civil' and the 'political' *Stände* is already to dichotomise what Hegel attempted to structure organically and institutionally; it is precisely this unity which he was intent on expressing and which the young Marx, in turn, was intent on bringing to the point of 'essential contradiction' in his *Critique*.<sup>109</sup> Moreover, to translate *Stand* in terms of class is to reduce the ordering principle that the concept conveys, even if reduced to

---

<sup>104</sup> Ossowski 1969, p. 123.

<sup>105</sup> See Oexle, Conze and Walther 2004.

<sup>106</sup> Marx and Engels 1975–2004, Vol. 3, pp. 67, 69

<sup>107</sup> Riedel 2011, p. 161.

<sup>108</sup> Ossowski 1969, p. 125.

<sup>109</sup> See Marx and Engels 1975–2004, Vol. 3, p. 91 (original emphasis).

occupational strata based on the organisation of labour and need. On the other hand, insofar as the concept has been emptied of its former characterisation as a *patrimonial* form, ‘the *ständische* principle is merely an artifice, the acceptance of it arbitrary, and its inner truth has been stripped away’.<sup>110</sup> Georg Lukács (1885–1971) noted this by isolating ‘the purely economic articulation’ of what he termed ‘class consciousness’ whereby ‘social conflict was reflected in an ideological struggle for consciousness and the veiling or the exposure of class society’.<sup>111</sup> Hegel’s concept of *Sittlichkeit* and the *ständische* principle of order sought to answer to this process, precisely through the preservation of social differences and distinctions. Even if these were interchangeable, whereby the offices of the state were open to social mobility through specialisation and education, they were maintained on the basis of Hegel’s conception freedom and the right of the individual to have a concrete sphere of action. And this will be explored in detail in the following chapters. By contrast, Hegel would have denounced Lukács’s Marxist conception just as he attacked the socialism of Fichte and the abstract universality of the French Revolution.<sup>112</sup>

### *Conclusion*

Before I proceed more generally to the analysis of Hegel’s distinctive approach to the political (history) in Chapter Two, the legal (natural right) in Chapter Three, and the ethical (consciousness) in Chapter Four, it is necessary to methodologically frame and limit my approach and discussion accordingly. To this end I want to further delineate the historical period in which Hegel’s concept is shaped and formed. This will also allow for a more comprehensive contextualisation of the peculiarities of Hegel’s discussions of the *Stände* and what the determining factors underlying its usage are insofar as it takes shape within a very specific philosophical and historical horizon. I have begun to give hint at these details in this chapter, which will be explored in the thematic studies that follow. To methodologically frame my approach and the historical period in which Hegel’s concept

---

<sup>110</sup> This is how Hegel’s student Eduard Gans (1797–1839) and lecturer on his *Rechtsphilosophie* in Berlin perceived the *Stände* – Gans cited in Gräff 1846, p. 147 (I owe this reference and translation to Berdahl 1988, p. 222).

<sup>111</sup> Lukács 1971, p. 59; see also 1975.

<sup>112</sup> See Harris 1979, p. 200.

is shaped and formed I appeal to what Koselleck has termed the '*Sattelzeit*', a period of transformation in Germany from approximately 1770 to 1850 whereby older words and concepts receive new meaning and import or – as in the case of the *Stände* – undergo a political and social decline in significance. The *Sattelzeit* introduces the idea of a period stretched between the old and the new that allows for an analysis of conceptual transformation. The historical shift that leads to the modern profoundly transforms and increasingly limits the concept – indeed the long dissolution of the '*ständischen Welt*' signifies the coming into being of modernity as such. It is in accordance with such logic that the *Stände* would be given 'a new meaning as an antithesis to the historical processes that constitute modernity'.<sup>113</sup> The extent to which Hegel's concept can be conceived in this light or precisely contrary to it will methodologically structure the ensuing discussions in this study. If one can observe that the *Stände* initially arise 'out of the radical crisis of civil society' for Hegel, they must be at once perceived as an aspect of this same conceptuality; they are thus torn loose from the world in which they were originally shaped and formed.

---

<sup>113</sup> Oexle, Conze, and Walther 2004, p. 157 ('*Stand, Klasse*'). 'Therefore *Stand* became a twofold and contradictory laden [*besetzen*] "*Kampfbegriff*" (Otto Brunner)'.

## Chapter Two: Constitution

*Hegel, nevertheless, remains everywhere political in the decisive sense. Those of his writings which concern the actual problems of his time, particularly the highly gifted work of his youth, Die Verfassung Deutschlands, are enduring documentations of the philosophical truth that all spirit is present spirit. This remains visible also through the correctness or incorrectness of Hegel's ephemeral position on historical events of his time<sup>1</sup>.*

The central aim of the present chapter is to demonstrate the difference between the traditional concept of the *Reichs-* and *Landstände* and Hegel's late political conceptualisation of the *Stände* as an organisational form that contrasts with private particularity. It is important to clarify this here as it will set up a further clarification of the concept in the context of Hegel's developing state theory and reinforce the historical encounter with the French Republic that I have shown in the previous chapter orients his thinking. This chapter is divided into three parts. Firstly (II.1), I analyse how the young Hegel's early critique of the imperial constitution in the '*Verfassungsschrift*' (*Hegels Über die Reichsverfassung*) (1798–1803)<sup>2</sup> involves a critique of the *Stände* in their traditional function as *Reichs-* and *Landstände*: the subordination of what Hegel saw as imperial political power to private legal arbitration in the Holy Roman Empire. Hegel viewed the constitution of the empire after the Treaty of Westphalia (1648) as dominated by contractual relations of private right; this has a structural similarity with his critique of the impossibility of forming a state based on the contract. Secondly (II.2), I then contrast this with his later affirmation of the *Stände* as an attempt to develop a legitimate organisational form in the *Grundlinien* (1820/21) in precisely the opposite sense: where one sees the *Stände* as a 'socio-political' form that overcomes the isolation of private particularity. The issue that dominates Hegel's critique of the imperial constitution thus reappears in personality and abstract right in the *Grundlinien*. These initial sections of the *Grundlinien* are followed, by contrast, by the *Stände* in *Sittlichkeit* where they appear as an institutional solution to private particularity. Finally (II.3), I return to elaborate further on the constitutional problem for the young Hegel and contrast the private 'indirect

---

<sup>1</sup> Schmitt 2007, p. 62.

<sup>2</sup> See the critical edition (Hegel 2004) edited by Kurt Rainer Meist.

powers' of the *Reichs-* and *Landstände* in the *Verfassungsschrift* with Hegel's mature concept of the *Stände*, which is conceived as the initial concretisation of universality. This involves returning to the conceptual modification of 'linguistic usage' that I analysed in Chapter One to show how Hegel maintains the contiguity of the social and political dimensions that were traditionally accorded to the *Stände*. I will examine this in the conclusion to the chapter, alongside Hegel's mature position, the latter will be then opposed to the conservative and reactionary ideal that envisioned a return to the *Ständestaat* in the Restoration period.<sup>3</sup>

## II.1 *The Critique of the Imperial Constitution*

The significance of exploring Hegel's early criticism of the imperial constitution of the Holy Roman Empire in the *Verfassungsschrift* is that it allows for an approach to his thought on the peculiarity of the concept of the *Stände* in its early development. This will in turn clarify the historical meaning of the term in the constitutional history with which Hegel was engaged. Moreover it presents Hegel's first rigorous political engagement with the concept. It is important to undertake this analysis because it will allow me to compare subsequently and contrast the originality of the later concept of the *Stände* in view of Hegel's early arguments (II.2), which are related to the traditional usage of the term in the *Verfassungsschrift*. The present discussion also allows me to define further the thematic context of Hegel's political and philosophical development, and the conception of the state that orients it. Moreover, by focusing on how Hegel conceives of the traditional function of the *Landstände* in the imperial constitution an example of his persistent concern with private interest dominating in the political sphere comes to the fore.

The critical concern of the *Verfassungsschrift* was in the end a polemical and political one, which more generally marks the writings of the late Frankfurt and early Jena periods.<sup>4</sup> Hegel's intensive study of the constitution revealed for him, in his demand for a modern state concept in the *Reich*, the juridification of politics since the Peace of Westphalia (1648) and the continuance of what he perceived as the feudal form of

---

<sup>3</sup> This has been termed the 'polity of estates' (see Poggi 1990, pp. 40ff).

<sup>4</sup> See Harris 1972, pp. 409–77.



‘private’ right in the control of political offices in the Holy Roman Empire and in the electoral form of the *Reichs-* and *Landstände*. As Hans Meier noted, ‘Hegel saw in the encounter between revolutionary France and the empire a collision of contradictory principles’.<sup>5</sup> What this meant was that Hegel observed, on the one hand with France, a modern concentration of power unified around a central idea of the nation and its universality, which he then compared and contrasted to, on the other, an empire that he saw dominated by individual private interests that were recalcitrant and unrelenting in maintaining their privileges inherited over the centuries. For Hegel in the Holy Roman Empire this led to what he saw as precisely the inversion of political universality and the idea of a unified nation; it led to the predominance of arbitrary custom, the persistence of intransigent individual interests, and the particular stubborn adherence to old ways that destroyed any possibility for political unity. Hegel’s argument must be considered the perspective of an individual highly engaged with the revolutionary events taking place in France and the revolutionary wars that had already proved fatal to the Holy Roman Empire and would be definitively destructive a few years later (August 6 1806). The *Verfassungsschrift* in its argument for political unity in a territorial state form in part then represents a gross simplification of a highly complex and varied constitutional situation in the German-speaking lands, and can in no way be taken at face value. The example of Hegel’s native Württemberg is paradigmatic in this instance and even when limited to the Habsburg territories there was high degree of variation.<sup>6</sup> As the basis of this chapter is concerned mainly with the development of Hegel’s *concept* of the *Stände*, it will not proceed by extensively revising the historical fallacies of Hegel’s arguments but will make sure that they are defined strictly as Hegel’s opinions.

For Hegel, the constitution of the empire was dominated by contractual relations of private right, and in this can be seen as another example of his criticism of the contract as a basis for political relations. The reason it is impossible for Hegel to form a state

---

<sup>5</sup> Maier 2004, p. 197.

<sup>6</sup> See Stuke 1968, p. 44. Karl Bosl has contributed to re-evaluating the negative perception of the *Landständischen Verfassung* – the territorial estates constitution – that was partly established by Hegel’s discussions (see Krüger 2003, p. 66). See Harris 1972, pp. xxix–xxx: ...‘never was there such a liberal-conservative revolutionary as the young Hegel. Unlike many “enlighteners” whom he revered, he did not admire the English constitution. He felt that it was decadent, that it had become a cloak of ministerial tyranny; and he felt the same way about the constitution of his native Württemberg, which was so often compared with that of England’.

based on contract (once he arrives at his conceptual distinction of society and state in circa 1820) is that the contract is limited to the civil, social sphere of private legal arbitration. The criticism of the contract distinguishes his political theory from the majority of modern attempts since Hobbes to develop a theory of state formation. It is to this extent, moreover, that a direct parallel can be drawn between the conflicts in the empire, and what appears as a spiritualised version of the state of nature in civil society in the *Grundlinien*. I will analyse the latter in Chapter Three, and it will be seen how the *Stände* play a completely different role in that context. This is to say that the same issue reappears in personality and abstract right in the *Grundlinien* as that which takes place at the imperial level in the *Verfassungsschrift*. By contrast, in the *Grundlinien* Hegel is led to an appropriation of the *Stände* as nascent forms of public power where the individual must become concrete in the sphere of organisation; the *Stände* thus represent the institutional formation of universal interests in the later work. In the *Verfassungsschrift*, Hegel is engaging with the history of feudalism in which the contract, pre-eminently of private right or the patrimonial *Stände*, is taken up and analysed in the modern conditions of the empire in the shadow of the French Republic. Thus the *Stände* are bound to remain as a concentration of private (patrimonial) interests, which however imply a distinctive constitutional development and history unique to Europe.

As became apparent in Chapter One, the young Hegel measured the Holy Roman Empire according to the modern state form that had arisen in the French Republic. And he did so in the *Verfassungsschrift* according to the principles of national unity, patriotism and the destruction of the old feudal regime. The proximity of France and the continuing war and incursions of the French along the borders of the German-speaking lands gave Hegel the opportunity to reflect politically on the history of constitutional development in western Europe and why and how the Holy Roman Empire was successively defeated by the French Republic.

For Hegel, the historical condition of the German-speaking lands at the time of the *Verfassungsschrift* – between 1798 and 1803<sup>7</sup> – is best summed up in its famous introductory words: ‘*Deutschland ist kein Staat mehr*’. As he saw it, however, the dissolution of ‘universal political power’ [*allgemeine Staatsmacht*] had long been a reality

---

<sup>7</sup> See Harris 1972, pp. 434–64.

in the Holy Roman Empire that, infamously in the words of Voltaire, ‘*n’était en aucune manière ni saint, ni romain, ni empire*’.<sup>8</sup> For Hegel, it was essentially an ‘aggregate’ or loose ‘association’ of *Reichs-* and *Landstände* with two Great Powers, Austria and Prussia, vying for hegemony since the Peace of Westphalia;<sup>9</sup> two powers, moreover, that caused the political ‘anarchy’ – referring once more to Voltaire – of the constitution by invading smaller states. For Hegel civil war was a more or less apt description of the situation insofar as he measured the constitution by way of the uniform characteristics of the modern state and not through the pluralism of ‘indirect powers’. This is clear by way of his positive esteem for Richelieu in the manuscript, and his destruction of the French *états* that, however, lays the basis for the later destruction of the French constitution and the principle of representation that Hegel sees as unique to European world.<sup>10</sup> The problem of constructing a universal political power is essential to understanding Hegel’s rationalisation of the state, which cannot be premised on the contract and thus on the feudal era that he seems to come so close to idealising in the *Verfassungsschrift*.

The historical era Hegel analyses stretches back to the Peace of Westphalia of 1648 and forward to the Napoleonic period, which saw in the interval the rise of absolutism as the predominant political form that eventually determined Prussia’s development as a Great Power with the elector Frederick William, and the development of independent military force in the German states with standing armies that were a major force of centralisation. It was an era that saw the annexation of smaller states in the realm by both Austria and Prussia, while the German territory was subject to multiple invasions: by French absolutism under Louis XIV (1638–1715) – who was considered to have imported this ‘foreign’ political form through economic support of Prussia – and the northern incursions of Charles XII of Sweden (1682–1718), to name but a few. Thus for Hegel it was the foreign policy of other states that determined the domestic life of the German territory, while the ‘armed *Stände*’, a leftover of the former feudal form of vassalage and the right of private warfare, hired themselves out to the highest bidder, even in wars on German soil. As Montesquieu states in regard to this feudal type of

---

<sup>8</sup> Voltaire 1757, p. 70.

<sup>9</sup> See Aretin 1997, who problematizes the establishment of Austro-Prussian dualism in 1648. For him it is only truly dominant from the 1740s; compare Schlie 2013

<sup>10</sup> Hegel 1999, pp. 75–6. Hegel references Richelieu’s destruction of the Huguenot and the identification of personality with the principle of the state.

belligerence, ‘the armies were deadly only in their own country [and] were burdened with spoils before they arrived among the enemy’.<sup>11</sup> It is thus that Hegel can characterise the era by its lack of unity, the ruination of the ‘*Volksgeist*’<sup>12</sup> determined by the ‘spiritual exhaustion’ – i.e. for the young Hegel, the religious issue of the Reformation destroys the unity of the German-speaking lands – and universal disunity that was confirmed for him by the Thirty Years’ War and consolidated as German ‘freedom’ in the Peace of Westphalia.<sup>13</sup>

The destruction of the period for Hegel represented the culmination of a loss of social and political cohesion that had been going on for centuries, which saw the retreat of the individual *Landstände* into their own private-political claims. They developed into principalities and arbitrated through military means any demands from the imperial centre. The constitution for Hegel was a mere organised means to such private interests, while the individual subject was integrated into the developing absolutist political order with ever-increasing efficiency. At the same time, the institutions that had formerly mediated between ‘private’ and ‘public’ concerns – such as guilds, corporations, and ‘organic’ communities – were largely abolished in the consolidation of absolute power in monarchical states.<sup>14</sup> For Hegel, Germany remained determined by the primordial notion

---

<sup>11</sup> Montesquieu 1989, p. 678.

<sup>12</sup> See Kantorowicz 1912, p. 300 on Hegel’s usage of this term, firstly in 1793 in *Volksreligion und Christentum* where ‘religion is judged [*zugesprochen*] as an “aspect [*Anteil*] of the formation [*Bildung*] of the *Volksgeist*”’. According to Kantorowicz, Hegel took the concept over from Voltaire and Montesquieu. It, along with *Volksreligion*, is part of a conceptual development in Hegel’s thought that will lead him to identify ‘*Sittlichkeit*’ with ‘*Sitte*’, – custom or mores, as is in the ‘more of the Germans’ that he takes from Tacitus and Montesquieu. *Sittlichkeit* will come to replace both these terms as well as the concept of *Moralität*, which will be seen as a declining and isolated form of ethical life where the individual is no longer one with the ‘*sittliches Ganzes*’ (see Ilting 1983, pp. 244–5). Aspects of this discussion will return in Chapter Four. But I already draw attention here to foregrounding of the context of the differentiation between morality and ethical life, how the individual disappears in the *Gemeinsamkeit des Lebens* in the early Hegel, which will be a central issue in any attempt to breathe new life into his early institutional thought or to show how it transforms into his maturity. For Ilting the differentiation between morality and ethical life led to the relativisation of all morality since ‘the universal mandatory norms of right and morality’ are taken up into the customs of a people or state, *Sittlichkeit* in turn became a mere ‘standpoint of consciousness’, morality a ‘worldview’ that the individual overcomes (see Ilting 1983, pp. 245–7).

<sup>13</sup> See Harris 1972, p. 461 – i.e. the freedom of the territorial prince or *Kurfürsten*.

<sup>14</sup> There are important exceptions to this general trend, among the most notable being Hegel’s native Württemberg, as mentioned above, and also Mecklenburg. In the former, the peasants and the burgers dominated the *Landstände*. It cannot be doubted that Hegel was aware of such situations, specifically later in his attack on Württemberg *Landstände* in favour of the prince (see Hegel 1998, pp. 246–94 for a partial translation) and in his youthful reference to Justus Möser (1720–94), the historian of German constitutional law, in his diary on the day of the former’s death (see Harris 1972, p. 11). Hegel’s argument against the Württemberg *Landstände* has been simplified, by stating that it signalled ‘the shift from a corporate society

of its ‘freedom’,<sup>15</sup> an originary feudal form of independence that now resulted in the ‘farce’ of the imperial constitution and the sovereignty of *Landstände* – which in many places developed into essentially absolutist states.

From the point of view of constitutional law of the countries that participated in the Peace of Westphalia, the principle of royal supremacy over both church and state ... was reaffirmed... The treaty recognized the sovereignty not only of each of the German principalities but also of other European states... The empire itself continued to exist in name but was in fact a phantom; it could not enact laws or raise taxes or mount armies or otherwise function as a state.<sup>16</sup>

For Hegel, Germany did not make the transition to a modern state based on a political power [*Staatsmacht*] precisely because ‘the old independence of the parts of Germany was consolidated in the peace of Westphalia’ – the rights of the independence of the *Reichs*- and *Landstände* for Hegel were declared absolute as were the rulers that gained sovereignty over them.<sup>17</sup>

The reasons that lay behind foreign rule in Germany for Hegel were not the product of the mere present appearance of the constitution, but of a much more deep-seated reality and spiritual movement that must be brought to the fore. Max Weber’s assertion that ‘the only kind of political passion which inspired the ideas of classical writers, other than angry rebellion against foreign rule, lay in their ideal enthusiasm for moral demands’<sup>18</sup> cannot be applied to Hegel, who is far more analytic in his approach, sidesteps morality for politics and will later avoid the developing national enthusiasm of the wars of liberation that enticed Fichte, even though Hegel himself develops a

---

composed of particular estates (*Stände*) to a civil society governed by universal precepts and the “rational” state’ (see McNeely 2004, p. 345). By contrast, Hegel’s conception of the rational state explicitly involves the institutional capacities of the *Stände*. As Habermas has rightly noted, it is the appeal to *das Alte Recht* that Hegel opposes in the Württemberg *Stände* (see Habermas 1974, p. 122); on the contrary, the *Stände* must be constructed on the basis of modern right and the principles of the French Revolution. The claim that places like Württemberg, which even though it ‘preserved its old institutions’ saw the *Stände* ‘disregarded by its rulers all throughout the eighteenth century’ (Holborn 1982, p. 21), has been contested in the historical literature (see Krüger 2003 for an historiographical overview).

<sup>15</sup> See Montesquieu 1989, p. 166 (the reference was made popular by Tacitus’ *On the Mores of the Germans*).

<sup>16</sup> Berman 2003, p. 62.

<sup>17</sup> Hegel 1999, pp. 74, 97 (text modified).

<sup>18</sup> Weber 2003, p. 123.

distinctive conception of the German nation – or more appropriately of the ‘Germanic’ – well into his Berlin period.<sup>19</sup>

The comparative conception of the European states system that develops at the core of the *Verfassungsschrift* through its analysis of the history of representation shows the young Hegel’s acuity and knowledge as a historian, jurist, economist, and as an expert in constitutional, military and financial history.<sup>20</sup> It moreover determines Hegel’s mature state concept, and his conception of the ‘modern’ state form as he conceived of it as distinctively *representational*. Below, in this chapter, I will develop this representational aspect further in its connection with the history of European feudalism. For the moment, however, it is necessary to further determine the distinctiveness of the young Hegel’s state theory in the *Verfassungsschrift* in reference to both the *Reichs-* and *Landstände*. The central issue here is of sufficiently analysing the details behind their development so that it can be understood how Hegel conceives of them in differentiation from the *Stände* as an aspect of the modern state.

According to Hegel’s diagnosis, the feudal system in the German-speaking lands neither developed into a more general notion of the *Stände* (along the lines of a parliament) as it had in England, nor had a unified political authority existed in Germany since the Thirty Years’ War. As he perceived it, ‘in the peace of Westphalia, the sovereignty – or at least the supremacy – of the emperor was declared irredeemable [and] Germany’s statelessness became organized’.<sup>21</sup> The German Middle Ages moreover only formed a *negative* ideal for Hegel as they were at once ‘a radically free nation, [that] had not, as France had, any dominant family as a central authority’; it thus possessed no existent comparable form of political universality, and Hegel appealed to the imperial centre of Austria in his manuscript as an ideal that could possibly transform what he saw

---

<sup>19</sup> The ‘Germanic World’ for Hegel is not the state of Germany, but also encompasses France, England, and Scandinavia; it is thus the Germanic peoples. For Hegel this means a form of representation, and thus is intricately connected to his conceptualisation of the *Stände* and the modern state. See Maier in Hegel 2004, p. 214 who notes how in the *Verfassungsschrift* there is a trichotomous division of history, which anticipates Hegel’s Berlin lectures on the philosophy of world history, though in the latter there will be four phases: Oriental, Greek, Roman and Germanic. As for Hegel’s direct opposition to the national question, this is most clear in his mature period in his polemic against the student fraternities and Jakob Friedrich Fries (1773 –1843) (see Hegel 1991a, pp. 9–23).

<sup>20</sup> See Maier 2004, p. 195.

<sup>21</sup> Hegel 1999, pp. 95, 74.

as the current malaise of disunity.<sup>22</sup> Thus the same characteristics that predominated in the feudal epoch for Hegel remained in the present, which he saw as the sovereignty of private individual right – arguably as the original arbitrary power of a patrimonial Lord – or, in his present, the independence of the *Reichs-* and *Landstände* from the empire. Indeed, later, in the *Lectures on the Philosophy of History* (1827–31),<sup>23</sup> Hegel saw the undoing of the Holy Roman Empire paralleled in the elective capabilities of the princes of the medieval period who ‘refused to surrender the privileges of choosing their sovereign for themselves. The kings and emperors were no longer chiefs of the State, but of the Princes, who were indeed vassals, but possessed sovereignty and territorial lordships of their own’.<sup>24</sup>

The German constitution established since the Treaty of Westphalia was also ‘anarchy’ for Hegel insofar as he saw it merely guaranteed *for* and *by* foreign powers. But it must be clear that Hegel contrasted it with the contemporary conditions that had brought for him such private and foreign interests to light; the revolutionary wars that revealed to him the conviction that ‘life which is close to decay can be reorganized only by the most drastic means... and that concepts and insight fraught with self-distrust must be justified by force before people will submit to them’.<sup>25</sup> This is to be contrasted with many other perspectives on the imperial constitution and the relative peace and stability it provided, albeit prior to the war with France.<sup>26</sup> For Hegel centralisation was also a chimera to German thinking and in this he followed Montesquieu.<sup>27</sup> But such decentralisation for Hegel became meaningless in the context of continual foreign invasion. He saw the ‘decentralised’ character of manorial feudalism [*Lehenswesen*] from which the *Reichs-* and *Landstände* themselves had been formed as having led to the fragmentation and diffusion of power in the empire, to what he saw as the

---

<sup>22</sup> See Pöggeler 1977.

<sup>23</sup> Eduard Gans originally edited the text that has been published under this title; it was assembled from various lecture manuscripts (for a detailed overview, see Waszek 1988) (see Hegel 2001, p. 333).

<sup>24</sup> Hegel 2001, p. 388.

<sup>25</sup> Hegel 1999, pp. 80, 101 (text modified).

<sup>26</sup> See Epstein 1966, pp. 252–3 referencing Johannes von Müller (1752–1809): ‘A decentralized and loosely federated Germany ... avoided the disadvantages inherent in any centralized monarchy per se. These disadvantages included the propensity to wage aggressive war and to suppress domestic liberty, two evils known in individual states within the empire but not in the Holy Roman Empire as a whole. The empire was, on the contrary, an expression of the deeply rooted German sense for liberty’.

<sup>27</sup> For a prehistory of these ideas see the landmark study by Hölzle 1925.

meaninglessness of the Imperial Diet, a form of pseudo-parliamentarianism, in his opinion, where the private interests of the *Reichs-* and *Landstände* reigned. The fact for Hegel was that centralisation had indeed taken place, but only in the individual *Reichs-* and *Landstände*. Hegel's critique of the constitution came to the definitive conclusion that the empire was decidedly not a modern state form, nor was this the case at the level of the individual *Reichs-* and *Landstände* as absolutist principalities and bishoprics insofar as he, one-sidedly perhaps, viewed these as lacking in the representational forms that would have led to a more universal power in which an active citizenry could be engaged.<sup>28</sup> What Hegel sarcastically calls contemporary German freedom was what he saw as a *relatively* dominant force in the concentrated power of nefariously self-interested absolute states, with two Great Powers, Austria and Prussia, vying for hegemony.

What had taken place in the German-speaking lands for Hegel was comparable to the transition from political monarchy to feudal law in the Middle Ages. What he saw was how originally patrimonial fiefs had become independent of the imperial structure and given up their real tribute to the monarch. The requirement of going to war and raising troops for the emperor on the *Reichs-* and *Landstände* for Hegel had disappeared as they themselves became embroiled in private warfare against each other in the realm. The universal characteristics of a centralised authority, taxation and a standing army had little or no significance in the empire as a whole.<sup>29</sup> Hegel now perceived the arbitrary freedom and independence of the local lord at the level of the empire in the independence of absolute monarchs. What this meant for Hegel is that an alternative must be discovered, which is his critical and constructive purpose in his reference to a German Theseus at the close of the *Verfassungsschrift* who would enliven a universal principle and found a modern state.

Hegel is very close to Montesquieu when he is writing the *Verfassungsschrift*. He explicitly referenced him in the work alongside a critique of the French Republic and the abolishment of the *états généraux* in France. As Hans Maier has noted, Montesquieu's

---

<sup>28</sup> I will show, however, that France also in no way represented an ideal for Hegel. Indeed in this and much else he follows Montesquieu in an attempt to envision constructively the formation of Rousseau's (and Fichte's) general will.

<sup>29</sup> See footnote 25 above.



influence moreover can be seen to predominate over Rousseau.<sup>30</sup> This is an important fact in Hegel's development at this stage, and arguably leads him to affirm the principles of representation he sees in the feudal political form and the parliamentarianism that stems from it. This will lead to his appropriation of the *Stände* in his *Rechtsphilosophie*, and also from a very early date – indeed in the same period as the *Verfassungsschrift* as I will analyse in more detail in Chapter Three. Already at this stage for Hegel in the *Verfassungsschrift* 'representation is the universal principle of modern history. The system of representation is the system of every modern European state'.<sup>31</sup> This is also comparable to the mature Hegel in his understanding of this universal historical principle of modernity in his interpretation of the Germanic World in the *Lectures on the Philosophy of History*. Rousseau may have laid the basis of the modern revolutionary conception of state with the will but, like Fichte after him, had a highly limited conception of its institutionalisation.<sup>32</sup> It is in precisely this respect that the young Hegel turns to Montesquieu and to the history of the 'mores of the Germans'. This leads Hegel to trace the history of representation from feudalism to the imperial constitution in the *Verfassungsschrift*.

Arguably what Hegel also takes over from the Middle Ages in his evocation of feudalism as the history of representation is 'the idea of the social contract as the basis of the distribution of political power, an idea which led to constitutionalism...'.<sup>33</sup> But he very precisely problematises this by showing how private right and privilege dominate in the Middle Ages. By contrast, the modern state grew beyond the traditional sphere of the contract, which remains for Hegel restricted to the sphere of abstract right in the *Grundlinien*. This leads fundamentally to his characterisation of all former natural law theory, as I will analyse in Chapter Three, which only ever had the traditional *civitas* in view and substituted private relations for manifestly political ones in the *Herrschaftsvertrag* and *Gesellschaftsvertrag*. Yet beyond the contract that characterises private right in modern civil society in the *Grundlinien*, Hegel affirms aspects of the medieval social structure, which he first drew from his critical interpretation of the

---

<sup>30</sup> Maier 2004, p. 206.

<sup>31</sup> Ibid.

<sup>32</sup> See Hegel 1991a, p. 277 (§258).

<sup>33</sup> Weber 1978, p. 1082.

imperial constitution and the decadence of the feudal form in the Holy Roman Empire in the *Verfassungsschrift*. The feudal system ‘born in the forests of Germany’, systematised in the contractual dualism of prince and *Stände*, the *Ständestaat*, is overcome in the modern period with the historical awakening of ‘a people’s tremendous struggle for freedom’ with the French Revolution, which undoes the strict hierarchy of ‘status’ [*ständische*] society.<sup>34</sup> Yet it does not introduce the principle of social mobility within the institutional and representational structures that had determined European history for the young Hegel up into his maturity. The French Revolution in its call for equality abolishes all the older institutional structures and the very possibility of concretising freedom and right for Hegel. Thus, ‘in spite of his criticisms, he displays a sympathy with feudal modes of thought’ as he also ‘thinks that the centralised ... organisation of the modern state has many dangers within it’.<sup>35</sup>

In the *Verfassungsschrift*, Hegel conceives of the medieval polity in an ideal fashion like Montesquieu insofar as he states that the ‘great advantage of the older European states [was that] their political authority was secure in respect of its needs and functions, [but left] free scope for the citizens’ own activity in individual aspects of judicial procedure, administration, etc.’.<sup>36</sup> For Montesquieu, the predominant forms of the feudal order ‘diminished the whole of the weight of lordship by giving many people various kinds of lordship over the same thing or the same persons, which set various limits to empire that was too extensive, which produced rule with an inclination to anarchy and anarchy with a tendency to order and harmony’.<sup>37</sup> It is thus that feudalism can be characterised as ‘the most extreme type of systematically decentralized domination’, while, on the contrary, ‘the absolutist state, based on taxation and office, developed in conflict with and at the expense of, the old decentralised forms of seigniorial extraction’.<sup>38</sup> Thus for Hegel feudalism remains an ideal of the past, and is taken up only in the conceptualisation of the institutional aspects that provide for the individual’s engagement with a universal political structure in the modern state form. Feudalism is the prehistory of the modern European state forms constructed on a representational and constitutional

---

<sup>34</sup> Hegel 2004, p. 107.

<sup>35</sup> Harris 1972, p. 453.

<sup>36</sup> Hegel 1999, p. 21.

<sup>37</sup> Montesquieu 1989, p. 619.

<sup>38</sup> Weber 1978, p. 1079; Brenner 1982, p. 80.

basis.

To return to the constitutional question for Hegel, the ‘obduracy of the German character’ is perhaps best represented by the image of the Lord’s arbitrary domination. Feudalism became a corrupted form when justices that were patrimonial became strict private right, and benefices ‘became real rather than personal’.<sup>39</sup> The transition from a political – under Charlemagne – to a civil government in the Middle Ages is directly related to the inheritance of fiefs (the hereditary nature of *private property*), something true for both Montesquieu and Hegel.

When fiefs were revocable or for life, they scarcely belonged to any but the political laws; this is why in the civil laws of those times so little mention is made of the laws of fiefs. But, when they became hereditary, they could be given, sold, or given as legacies, and they belonged both to the political and civil laws.<sup>40</sup>

At this moment, the political community became, as Hegel expressed it in his maturity in the *Grundlinien*, ‘a patchwork of private rights, and a rational political life was the tardy issue of wearisome struggles and convulsions’.<sup>41</sup> The medieval character of the constitution was composed of oppositional powers fragmented into local sovereignties *each standing under the other*, or of power struggles between different branches of one and the same society. For Hegel in the *Grundlinien* the constitution in the Middle Ages ‘was destitute of any firm bond; it had no objective support in subjectivity; for in fact no constitution was as yet possible. [What] renders a constitution real is that it exists as objective freedom – the substantial form of volition – as duty and obligation acknowledged by the subjects themselves...’.<sup>42</sup> What it requires is self-consciousness, the recognition of the common will in the legal order and in this respect for Hegel it was

---

<sup>39</sup> ‘Lordship was never mere right; primarily it was a duty ... Rulers are instituted for the sake of peoples, not peoples for the sake of rulers’ (Gierke 1922, p. 34). See Montesquieu 1989, p. 709. Montesquieu points to the time of Charlemagne when the benefice was personal rather than real, and where the vassal was obligated to the lord. Through the inheritance of fiefs passing ‘to more different relatives’ these ‘justices that were patrimonial’ resulted in the development of mediatory institutions between the crown and the lord and led to the corruption of the feudal epoch (Montesquieu 1989, pp. 653, 709, 712). Thus, for Hegel, again following Montesquieu very closely ‘it is not the principle of feudalism that has cut off the possibility of Germany becoming a state; on the contrary, the disproportionate expansion of individual estates has destroyed both the principle of feudalism itself and Germany’s continued existence as a state’ (Hegel 1999, p. 56).

<sup>40</sup> Montesquieu 1989, p. 721.

<sup>41</sup> Hegel 1991a, p. 370.

<sup>42</sup> Hegel 1991a, p. 386.

Rousseau's discovery; not only in form, as it had been for Pufendorf and Hobbes, but in content also.<sup>43</sup> What existed by contrast in the Middle Ages was private patrimony.

It is important to discuss these matters here as they have an integral bearing on the historical meaning of the *Reichs-* and *Landstände* in the constitutional development that I am tracing in this section, and on the *Stände* as representational and institutional forms in the *Grundlinien*. It was for this reason for Hegel in the *Verfassungsschrift* that with the disappearance of the feudal political form, 'German freedom was not attained when the princes gained sovereignty, quite the reverse'.<sup>44</sup> It led, following the young Hegel's logic, to the privatisation of the constitution and to the juridical arbitration of the *Reichs-* and *Landstände* which sought to assert their private patrimonial rights at the level of the imperial realm.

The ideal of a political monarchy with an electoral component in the distribution of royal power is a representational form born with the feudal system according to Montesquieu. It places limitations on the sovereign power or 'usurps' the very rights of princes. For Montesquieu, while 'the peoples who came from Germany [were not] the only ones on earth to usurp the rights of princes' – that is, 'history clearly teaches us that other peoples have made attempts against their sovereigns' – such usurpations have 'not been seen to give rise to what has been called the justices of the lords'.<sup>45</sup> According to Hegel in the *Verfassungsschrift*, this was 'the principle of the original German state which had apparently survived in the Imperial Diet', but its actual substance had vanished. One must recognise the contradictory character of Hegel's conception at this stage. He seeks to embody the representative principle and valorises the feudal epoch, but only insofar as to show how later in the *Verfassungsschrift* this tears the empire apart; he shows how the early form of 'freedom' in feudalism, which passed from the political to the legal, led to the intransigence of the electors in the later constitution.

A unique facet of state development as it progressed in Europe was that the highly fragmented distribution of power operative in feudalism or, more precisely, the system of

---

<sup>43</sup> Hegel 1991a, p. 277 (§258).

<sup>44</sup> Hegel 1999, p. 97.

<sup>45</sup> Montesquieu 1989, p. 653.

fiefs [*Lehenswesen*],<sup>46</sup> required a more central body to enact generally agreed legal statutes, determine on economic questions, and to decide on whether to raise troops for the monarch. On the one hand, while this fragmented distribution of power logically resulted in the highly limited character of feudal monarchy, on the other it led to the necessary development of intermediary institutions, like the imperial Diet in the Holy Roman Empire, between the monarch and the lords. It is also here that the *Ständestaat* – as a polity of *Stände* – comes into being.

According to Otto Hintze (1861–1940), in reference to Montesquieu’s natural determinations of climate, what elsewhere fell on fallow ground came to fruition in the Germanic ‘life of the forests’ [*Waldleben*] or ‘primitive culture of the forest’ [*Waldkultur*]. Montesquieu had contrasted the culture of the Mediterranean with that of ‘the great inland [*innenländischen*] river- [*Strom-*] and woodlands [*Waldgebiet*]’ whose ‘social impulse sprung [from] the excessively [*übermäßig*] strong development of lordly [*herrschaftlichen*] factors in state formation [*Staatbildung*] through the connection [*Verbindung*] with religion’.<sup>47</sup> In the feudatory relationship of vassalage the ‘honour’ and ‘status’ of the vassal was not diminished, and this would lead to the formation of ‘an estate-type patrimonialism, a marginal case that contrasts with patriarchal patrimonialism’.<sup>48</sup>

For Max Weber, the *Ständestaat* was brought about by a twofold economic and social change: it was linked to circumstances of military administration and a money economy. Needs could no longer be met by ‘the stereotyped feudal-patrimonial administration’ as large amounts of money were required in competition and conflict with other polities. It was in this circumstance that holders of feudal rights and privileges had to form concrete associations, which were then ‘adapted to new administrative requirements ... [and] developed into an autonomous legal group’.<sup>49</sup> The new

---

<sup>46</sup> ‘Feudalism is a concept that still needs to be clarified and is rather complex. One must ... distinguish it from the genuine system of fiefs. The system of fiefs is a clearly definable legal concept, whereas feudalism is a more sociological type or the collective term for such a type. The system of fiefs is the narrower, feudalism the broader concept... there is no general connection between the feudal system and the system of estates’ (Hintze 1975, p. 310).

<sup>47</sup> Hintze 1931, p. 11.

<sup>48</sup> See Weber 1978, pp. 1072, 1086. Compare Hintze 1975, p. 333: ‘In Germanic law, the status relationship was that of a free man, whose status, through voluntary subordination to a military chief, who looked out for his livelihood, was not lowered but raised, particularly when the chief was a prince or a king’.

<sup>49</sup> Weber 1978, p. 1086.

circumstances demanded a more unified structure than the previous diffusion of power that ‘eventually required a consociation of the individual power-holders in the form of a corporate assembly’.

This very association either included the prince or turned privileged persons into ‘Estates’, and thus changed the mere agreed upon action of the various power-holders and the temporary associations into a permanent structure. Within this structure, however, ever new and impelling administrative tasks created the princely bureaucracy, which was destined in turn to dissolve the *Ständestaat*.<sup>50</sup>

Moreover the ‘estates-system cannot be regarded as a universal and necessary extension of the feudal system’, as elsewhere feudalism involved a far more extensive subordination of the vassal than occurred in Europe.<sup>51</sup> Due to this characteristic no explicit association was developed as the co-bearers of power that would form it were lacking; it was truly unnecessary for the lord to extensively confer with his vassals. The ‘considerable patriarchal authority of the lord’ did not allow for the legal dualism so basic to the system of Estates in the west to develop’.<sup>52</sup> It was the free character of the vassal, their independence from the patrimonial power of the lord, which led to the *Stände* and the legal perpetuation in the *Ständestaat*.<sup>53</sup>

If Hegel can characterise feudalism along the lines of a ‘German drive for freedom’, while in the period of the *Verfassungsschrift* ‘European states have now more or less abandoned the feudal system’,<sup>54</sup> it is because it precisely constitutes a primitive form of constitutional representation, and certainly once it develops into the legal association of *Reichs-* and *Landstände*. Yet as I already noted above, for Hegel this constitutional character was inherently flawed as it was based on the private right of the contract; it led, moreover, to Hegel’s negative characterisation of the constitution of the Holy Roman Empire and his critique of its ‘statelessness’. On the other hand, for Hegel insofar as in feudalism there is a multiplicity of rights, there is no longer a situation where only one is free, which came to characterise his conception of the Roman World in his

---

<sup>50</sup> Weber 1978, p. 1087.

<sup>51</sup> Hintze 1975, p. 334; in reference to feudal development in Japan, see also p. 306: ‘As for the system of estates ... it remains my conviction that they are limited to the cultural realm of the Christian West’.

<sup>52</sup> Hintze 1975, p. 334.

<sup>53</sup> See Weber 1978, pp. 1075ff.

<sup>54</sup> Hegel 1999, p. 30.

later development of the history of freedom.<sup>55</sup>

In the words of the *Grundlinien*, the medieval state was ‘externally’ sovereign in regard to other states, ‘but internally neither the monarch himself nor the state was sovereign’.<sup>56</sup> The same is true in the *Verfassungsschrift* specifically at the level of the imperial constitution where the feudal system of vassalage, now developed into a polity of independent states, operates free of any submission to centralised authority. As I have shown the exception to this development of centralisation occurs territorially in the independence of *Reichs-* and *Landstände* from the imperial centre – in other words, centralisation takes place in the territorial state at the expense of the imperial form.

Indeed it was from feudalism that ‘German Freedom’ first developed, which was now threatened, in the age of absolutism, with the decadence of the *Ständestaat* and the independence of *Reichs-* and *Landstände*, which certainly made the dualistic characteristics of the *Stände* largely disappear or transform into more concentrated bureaucratic elements in the reigning autocracy of the state.<sup>57</sup> During the period of the *Verfassungsschrift*, then, before the complete collapse of the Holy Roman Empire, Germany was neither strictly feudal as Hegel indeed claims, *nor a Ständestaat*; that ‘explicit association’, as ‘that form of political order that stood between feudal and modern’,<sup>58</sup> the explicit legal association of lords (and in some cases commoners), which had been under attack since the Peace of Westphalia and was undone through the

---

<sup>55</sup> See Hintze 1975, p. 339: ‘If at its apogee ancient civilisation failed altogether to produce the category of popular representation, then the institution of slavery surely had a large share in this’. There is a direct equation to be drawn for the young Hegel between ancient Rome and revolutionary France, as he conceives of each as either abolishing the differences between *Stände*, which arguably later he will be unconcerned with, and of abolishing the *Stände* altogether – and this he consistently has a problem with (see Hegel 1999, p. 147).

<sup>56</sup> Hegel 1991, p. 315 (§278).

<sup>57</sup> See Rosenberg, 1958 for an excellent analysis of this transition to bureaucracy that follows the work of Max Weber.

<sup>58</sup> Berdahl 1973, p. 299. Berdahl follows Rosenberg (1958) in asserting a certain persistence of the *Stände* bodies in the transitional period between absolutism and the modern state. Historical evidence bears out the persistence of the *Stände* bodies in Germany up and far into the modern period, as ‘it did not necessarily follow that the centralization of government under dynastic absolutism inevitably destroyed all corporate (*ständisch*) institutions’. While the ‘powers of these corporate institutions were severely limited’ in that ‘in most matters they could never seriously challenge royal authority ... their significance has often been underestimated’ (Berdahl 1973, p. 299). Corporatism endured at the heart of the German state and, despite all overtures to the contrary, it was impossible to entirely resist the dominion, in the case of Prussia, of the *Junker* that, by the French Revolution, moved closer and closer to dominating the state bureaucracy and the centres of power; this *Stand* formed a resistance theory (literally a *Wider-Stand*) to the strict wielding of autocratic power and played a role in undermining and transforming the *Allgemeines Landrecht für die Preußischen Staaten* (see Berdahl 1988; Epstein 1966).

development of monarchical absolutism. What had taken its place in the century after the Thirty Years' War was the ascension of absolutism. In many places in the German-speaking lands 'the dualistic state was abolished, and the princes emerged as absolute rulers'.<sup>59</sup> Epstein goes to the heart of the matter, by stating that the 'fact of absolutism may be defined by the absence (or impotence) of the historic *Stände* bodies, in other words by the elimination of the constitutional dualism between prince and *Stände* which had characterized earlier German government'.<sup>60</sup>

For Hegel the reason why 'Germany' never developed into a state is because it never progressed beyond its 'original character whereby the individual is independent of the universal, i.e. the state'.<sup>61</sup> The *Reichs-* and *Landstände* remained in their 'private-rightly' capacity for Hegel and served the interests of their respective lords and did not progress to a more universal participatory form. At the centre of Hegel's argument is that if a state is to come into being and persist it must not allow 'private right to prevail in full force'.<sup>62</sup> It is precisely this that lies behind the young Hegel's criticism of the Treaty of Westphalia, which he sees as assuring the continued existence of *Reichs-* and *Landstände* as largely absolute powers to the detriment of the Holy Roman Empire. Hegel here equates treaty with the contract: the private-rightly character that I have shown predominated in the 'constitutionalism' of the Middle Ages in this section. Yet as I also showed, Hegel's approach is subtle, as on the other hand he affirms the mediatory institutions that France abolished, which had abandoned representation and the constitutional history of Europe of which the *Stände* played an important part. Hegel thus perceived that Rousseau's general will historically 'converged with the arbitrary conception of political absolutism'.<sup>63</sup> It is in this way that Hegel's historical vision is a history of representation derived from Montesquieu, which compares and contrasts the different constitutional forms that developed in Europe in the *Verfassungsschrift*.

For Hegel in the *Verfassungsschrift* the constitution of the Holy Roman Empire is constructed on the private rightly conception of feudalism [*Lehenswesen*], what

---

<sup>59</sup> Holborn 1982, pp. 20–1.

<sup>60</sup> Epstein 1966, p. 254.

<sup>61</sup> Hegel 1999, p. 66.

<sup>62</sup> Hegel 1999, p. 67.

<sup>63</sup> Marcos 2009, p. 116.



Montesquieu called the ‘civil law of fiefs’.<sup>64</sup> While feudalism for Hegel is considered freedom, it is dismissed in the same gesture as it leads to fragmentation through private interests and the incapacity to form the political unity of the state. Historically, as I have shown in this section, this then led to representational forms such as the *Reichs-* and *Landstände* and the *Ständestaat*; and in the intervening centuries up until Hegel’s time, to the corruption of such forms under absolutism in continental Europe and their revolution (the abolishment of the *états généraux* in France) or their potential reform into concrete institutions based on modern right. The latter is Hegel’s objective in the *Grundlinien*, whereby he gives a new meaning to the *Stände*, but the history of this development in Hegel can already be found in the early period of the *Verfassungsschrift*. This also shows how in Hegel’s conception of the state in the *Grundlinien*, while it affirms the mediatory or institutional capacity of the ‘intermediary powers’, limits these in turn in the construction of a universal political power.

The origins of German ‘fate’ in the *Verfassungsschrift* lay in the medieval feudal regime more generally, and in the genesis of so-called ‘German freedom’, the intransigence of the local lord or ‘the peculiarity of feudal administration that used efficient household arrangements for the conduct of public business’ and prevented the organisation of a universal political authority: the word ‘state’ neither applies to the patrimonial polity nor to *Stände* type patrimonialism.<sup>65</sup> This section has shown how these developments led to the legal formation of the *Stände* that were distinctive to the West. It was the destruction of the *Stände* as ‘co-bearers of power’ moreover that led to monarchical absolutism<sup>66</sup> – to the growth of the *Reichs-* and *Landstände* whereby they themselves were transformed into absolutist states. The nature of the legal relationship of the *Landstände* to the empire for Hegel, then, was ‘not defined by universal laws in the strict sense; on the contrary, the relationship of each *Stände* to the whole is a particular matter ... which took the form of [private] property [having] an essential effect on the nature of political authority’.<sup>67</sup> It is in this sense that I can begin to differentiate the ‘political’ concept of the *Landstände* from the *Stände* more generally considered (*Reichs-*

---

<sup>64</sup> Montesquieu 1989, p. 721.

<sup>65</sup> See Weber 1978, pp. 1085–6.

<sup>66</sup> Hintze 1975, p. 224.

<sup>67</sup> Hegel 1999, p. 66.

and *Landstände*, *états généraux*, *états provinciaux* generally have nothing in common with *Stände* as a description for clergy, nobles, etc. as a '*couche sociale*'), which I will turn to in more detail (II.3 and at the close of this chapter).<sup>68</sup> The significance of having analysed the historical bases of Hegel's argument is that it allows us to now turn to analyse in more detail the complexity of his later arguments in favour of the *Stände*.

## II.2 *The Stände: Hegel's Attempt at a Legitimate Organisational Form*

In the current section I will analyse how Hegel's usage of the *Stände* change in the *Grundlinien* to become a 'socio-political' form that overcomes the isolation of private particularity. This is central to my overall argument. Hegel's usage of the *Stände* provide him with an alternative constitutional arrangement to the by then predominant social contract theory prevalent in modern natural law. This takes us to the core of the matter of concept of the state in Hegel's thought, which is based on the institutional formation of right occurring in modern civil society whereby civil society itself is political. Once this institutionalism takes place initially by way of the *Stände* – before proceeding to other institutions (the administration of justice, the police, and the corporation, which by and large will not be treated in this study), Hegel's alternative becomes apparent. It is important to highlight this in Hegel's politics insofar as he is the first to conceptually establish the division between civil society and the state and at the same time makes very explicit that contractual relations of right cannot be applied to the higher order of the political.<sup>69</sup>

As I showed above (II.1), private contractual relations for Hegel were 'suitable' to a period like the Middle Ages when services and offices were patrimonial, but not to modernity. In this section I will begin to show how Hegel articulates the legitimacy of his concept of the *Stände*. I will also further expand on the historical derivation of the concept of the *Stände*. It is precisely in carrying out this task that I will be able to contrast how the concept appears in the context of the imperial constitution in the *Verfassungsschrift* as a question of private right, and how it then later reappears with a renewed significance by

---

<sup>68</sup> See Oexle, Conze, and Walther 2004, p. 158; compare Stuke 1968, pp. 44ff.

<sup>69</sup> See Hegel 1991a, p. 105 (§75) the contract theorists 'have transferred the determinants of private property to a sphere of a totally different and higher nature'.

developing as a concrete institutional form in the *Grundlinien* (II.3). The *Stände* in Hegel's maturity take over the spheres of personality and abstract right where private particularity and contract once predominated. They give the individual a concrete sphere for social and political action, and if lacking for Hegel would leave the individual depoliticised. Thus in this section I will emphasise the broader significance and importance of the concept for Hegel's political theory.

In the *Lectures On the Philosophy of History* Hegel speaks of the resistant particularity that develops in the Germanic World to Charlemagne's universal political power and the end of the Frankish empire. This begins the period of decline, the 'infinite falsehood' of the Middle Ages, which are noted for their opposition to political universality; indeed, this period knows of no other form of 'politics' than patrimonial *dominium* – the constriction of private right determining the entire structure of 'the political'. It is necessary to put politics and the political in inverted commas here because prevalent social and political categories do not apply to the medieval period. The stress on *dominium* was the patrimonial character of household property. The mature Hegel knew this all too well insofar as his developing conception of the state overcame the traditional *oikonomik* that he originally conflated with modern political economy in his early *Rechtsphilosophie* (1802–4).<sup>70</sup> Hegel came to understand that 'People who possess something they own freely, privately, have quite a different feeling from those who still have over them a master with *dominium*. Servitudes are *jura in re*, but they must have a rational external determination'. And indeed Hegel recognised that 'with the feudal constitution ownership became unfree, and this was one of the causes of the French Revolution'.

With the rise of states no regard was had to the single individual. The field was owned by the family, and the individual had to take the fief from the head of the family what he wanted to cultivate.<sup>71</sup>

Hegel realised that if constitutions do not reform themselves to accord with *reason* then revolution becomes a possibility: the French Revolution thus arose to destroy an *ancien*

---

<sup>70</sup> See Ritter 1984, pp. 124–50.

<sup>71</sup> Hegel 1995a, p. 75 (§26).

*régime* where everything rested on the privilege of the *société des ordres*.<sup>72</sup> Yet Hegel observes with the French Revolution that the progressive dismantling of all institutional and political forms – such as the intermediary communities, guilds and *Stände* – leave the individual depoliticised and separate from state power. This was a process moreover intrinsic to the modern natural right on which the French Republic rested.<sup>73</sup> By contrast, for Hegel the ‘proper strength of states resides in their [internal] communities’ where sovereign, executive, power confronts legitimate interests.<sup>74</sup> The sovereignty of the state itself is thus derived from such institutional organisation. The introduction of modern (‘abstract’ and ‘formal’) individuality for Hegel must be concretised; and the institutions, first and foremost the *Stände* after the natural ethical life of the family, are what make this possible in the mature *Rechtsphilosophie* (1817–31).<sup>75</sup>

The history of freedom for Hegel in the *Verfassungsschrift* is carried forward by the history of representation, and this, as I have shown above, is distinctively related to feudalism, or more specifically the system of fiefs [*Lehenswesen*], that led in Europe to the development of the *Stände* and the *Rechtsstaat* or constitutional state – to the Germanic ideal Hegel took from Montesquieu and contrasts with the development of the French Republic. Yet in Hegel’s mature interpretation of the *Grundlinien*, the subject *becomes* the universal substance of the state only with Rousseau and the French Revolution, which is neither arbitrary nor contingent but built on the principles of modern reason as they had progressed through history. The error of revolutionary France, however, is to have abolished the institutional structures that permitted mediation, but in its attacks on the feudal epoch in which private right had ascended and dominated all political questions it was entirely justified.<sup>76</sup>

---

<sup>72</sup> Hegel consistently held this opinion, and in *On the English Reform Bill* asserted it a last time before his death (1831): ‘...if an opposition were established on a basis hitherto alien to parliament as at present constituted, and if this opposition felt unable to stand up to the opposing party in parliament, it might well be misguided enough to look to the people for its strength, and so inaugurate not a reform but a revolution’ (Hegel 1999, p. 270).

<sup>73</sup> This will be explored more fully in Chapter Three.

<sup>74</sup> Hegel 1991a, p. 331 (§290).

<sup>75</sup> See Hegel 1991a, pp. 220–40 (§§182–208).

<sup>76</sup> It has not been established if Hegel ever read Edmund Burke, but they do have something in common in terms of their appeal to the mediatory institutions in the state in light of the French Revolution (see Suter 1971). It must be admitted, however, that the similarities stop there, insofar as Hegel takes up the modern revolution in right into his philosophy. As is also evidenced by *On English Reform Bill*, the institutions that Burke affirms for Hegel represented unjust privilege.

Here belong the revolutions of recent times. There were *Stände* and individuals who possessed, as purely private rights, rights belonging to the state, especially in regard to taxes (e.g. freedom from taxation) and jurisdiction. And our day has seen a step taken toward the rational existence of the state that has not been taken for a thousand years past: the right of reason has been asserted over against the form of private right.<sup>77</sup>

Yet just as the ‘intermediary powers’ are affirmed by Montesquieu in his appeal to English parliamentarianism and Tacitus’s ‘mores of the Germans’, so too for Hegel the unique character of the Germanic World lies in the representational and constitutional state that developed from the feudal order. Hegel will thus be seen to affirm the explicit association of the *Stände*, in part drawn from the feudal epoch, *once taken beyond the private sphere of the contract and feudal privilege*. On the one hand, the ‘existence of these circles in their own right’ is esteemed against centralising (absolutising) tendencies in the *Grundlinien* while, on the other, Hegel stresses the issue of the incapacity to form a state in the Middle Ages.<sup>78</sup>

As regards Hegel’s changing perspectives on the *Stände*, a shift can be superficially observed between the *Verfassungsschrift* and the *Grundlinien* – the *Reichs-* and *Landstände*, relentlessly critiqued in the early years, return as institutional forms in his maturity. Indeed, there can be no doubt that a large and significant period in Hegel’s development of his *Rechtsphilosophie* separates the *Verfassungsschrift* and the *Grundlinien*. Hegel had only just begun his *Rechtsphilosophie* as he returned one last time to the earlier manuscript.<sup>79</sup> But this misses the point, as Hegel had already affirmed alongside Montesquieu the unique character of the Germanic World at a specific historical period of feudal constitutionalism. It is a peculiarity of the political development of Europe that the state formed as such, and is thus considered ‘unique to the Occident’ with its ‘technical, rational, written constitution, etc. as is capitalism’.<sup>80</sup> Moreover, for Hegel, ‘Europe is a concept that develops not from out of itself but rather

---

<sup>77</sup> Hegel 1995a, p. 225 (§125).

<sup>78</sup> See Hegel 1991a, p. 331 (§290).

<sup>79</sup> See Harris 1983, p. xlix speaking of the development of *System der Sittlichkeit*: ‘But when he reached the problem of public morale, and “the classifications of constitutions” – i.e. the part where the evolution of “Absolute Spirit” had to be considered – Hegel gave up working on the systematic manuscript, and turned back to the political project that had brought him to Jena, but which he had laid aside in the spring of 1801. He now began to revise the manuscript...’

<sup>80</sup> Weber 2005, p. xxxi. Poggi 1990 has nicely framed the occidental prejudice of these ideas.

from out of its essential contrast with Asia.<sup>81</sup> The Greek realm has as its basis Oriental substantiality, which is, however, born out of spirit into spiritual individuality and transfigured into beauty'.<sup>82</sup> The principle of particularity, emergent with Socrates and with the decline of the Platonic or *substantial* state migrates to Rome and ascends with Christianity, mixed with the Germanic freedom of the forests that led to the 'feudal association ... of purely concrete rights and duties'. It amounts 'to a constitutional state [*Rechtsstaat*] on the basis of "subjective" rights [and] not [yet] "objective" law'.<sup>83</sup>

For Hegel, like Montesquieu, the absolutist regime was precisely the opposite of feudal monarchy, and he sees the condition for 'a perfect despotism' precisely in 'absolute rule'. This is intimately connected with Montesquieu's express advocacy that 'privileged corporations and their mediatory functions in a monarchical form of state' must be preserved 'because their destruction inevitably perverts monarchy into despotism'.<sup>84</sup> As a monarchist also proximate to Hobbes however, Hegel recognised that 'the universal will is made to reside in the will of one monarch' in the modern state. Yet 'the arbitrary will of one man' does not 'constitute absolute law, for the universal will is no despotism'; for 'being rational ... it is consistently expressed and determined in laws'.<sup>85</sup>

Hegel, by contrast, sees the issue of the sovereign in Hobbes alongside the general will in Rousseau – and for him both Hobbes and Rousseau retreat into the contingency of individual will, either that of the sovereign or that of the individual. It is precisely for this reason that Hegel appropriates Montesquieu's perspectives on European constitutionalism from a very early period, as I have shown. Hegel's rationalisation of Rousseau's general will conceives of the condition of law along explicitly constitutional lines. For Hegel, moreover, it is embodied in the right and obligations of *Stände*, which in part have their origins in the feudal epoch. This is an incredibly paradoxical vision of the general will insofar as Rousseau had thoroughly rejected 'the idea of representation' as derived from 'feudal government'; he went on to add that 'the moment a people allows itself to be

---

<sup>81</sup> Löwith 1995, p. 173.

<sup>82</sup> Hegel 1995a, p. 311 (§167).

<sup>83</sup> Weber 1978, p. 1099.

<sup>84</sup> Gierke 1934, p. 179.

<sup>85</sup> Hegel 1995b, pp. 318–19.

represented it is no longer free; it no longer exists'.<sup>86</sup> On the one hand, for Hegel, the basis of right in the modern state cannot be reduced to the private nature of the civil, social sphere; on the other, political power should not be opposed to modern civil society. Hegel viewed the latter problem as the inevitable result if all institutions were abolished between modern civil society and the state. This would lead to the individual will of the subject lacking substantiality, just as the modern state would lack its true substance, the individual. For Hegel, 'the state is the actualisation of freedom not in accordance with subjective caprice' – the arbitrariness of the particular will of the individual – 'but in accordance with the concept of the will' as universal, 'the principle of subjectivity itself' reunited with the political where right and freedom exists.<sup>87</sup> This was only possible for Hegel if the modern state took on the principle of the organisation of the general will, however, which existed in the right and obligations of *Stände*.

As I noted at the outset of this chapter, for Hegel Rousseau had 'considered the will only in the determinate form of the *individual* will'.<sup>88</sup> For Hegel, by contrast, the universal or general will is only universal through institutionalism; its 'constitution' as an organic state opposed to the centralism dominant in absolutism that has no 'circles in which particular and universal interests come together'.<sup>89</sup> It is only here that right and duty coincide for Hegel in the modern formation of the state based on self-consciousness (Hobbes), thought and the will (Rousseau), and in Montesquieu's 'philosophical view that the part should be considered only with reference to the whole'.

*Duty* is primarily an attitude *towards* something which, for me, is *substantial* and universal in and for itself. Right, on the other hand, is in general the *existence* [*Dasein*] of this substantial element, and is consequently the latter's *particular* aspect and that of my own *particular* freedom'.<sup>90</sup>

Right and duty thus correspond for the individual in their substantial freedom in the political community for the mature Hegel. This is where discussions on Hegel's

---

<sup>86</sup> Rousseau 2002, pp. 211, 223.

<sup>87</sup> Hegel 1991a, p. 282 (§260).

<sup>88</sup> Hegel 1991a, p. 277 (§258).

<sup>89</sup> Hegel 1991a, p. 331 (§290).

<sup>90</sup> Hegel 1991a, p. 283 (§261) (original emphasis).

institutionalism should be directed, between the correspondence between subjective and objective spirit, which makes for rationality and actuality of the state.<sup>91</sup>

In the *Grundlinien* one can see how the *Stände* are to be conceived along the lines of a public form of power rather than a private, patrimonial one, and are therefore essentially distinguished from the early strata of the medieval period. The *Stände* are firstly spheres of concrete socialisation whereby the initial private interests of the individual merge with communal interest developing from the system of needs and the organisation and division of labour, and precisely through this relation, through their organisation, they become political.<sup>92</sup> For Hegel in the *Grundlinien* this comes down to a question of the division of labour and of authority at each level of the state, and their actuality – ‘the transition from universal to the particular and individual’ spheres. It is precisely here that the organic principle comes to the fore. The question is that of assuring ‘that civil life should be governed in a *concrete* manner from below, where it is concrete’ while, conversely, the danger is that, for sake of ‘speed’ and ‘facility’ ‘everything is again controlled from above by the ministerial power, and that functions are, to use the common expression, centralized’; the ‘difficulty ... is [that of assuring] that they come together again at upper and lower levels’.<sup>93</sup> For Germans writing in the period of the French Revolution and following the Napoleonic Wars (1789–1815) the ‘opposition to absolutism and centralization was one and the same thing’.<sup>94</sup> It is for this reason, as can be seen from the quote above, that Hegel pursues an institutional ideal even if he adds a proviso that these circles ‘gained too great a degree of self-sufficiency in the Middle Ages, when the corporations and communal associations, [the] circles in which particular and universal interests come together, became states within the state and behaved in an obdurate manner like independently established bodies’.<sup>95</sup> For Hegel, modern freedom is only realised in a ‘universal political power’ if it safeguards the subjective moment, if the state is ‘actual’, which was absent in the medieval period. It is thus that he distinguishes his political conception from the reactionary medieval ideal, which I will show in further

---

<sup>91</sup> See Henrich 1983, p. 33.

<sup>92</sup> See Riedel 2004, p. 781; and Chapter Three below.

<sup>93</sup> Hegel 1991a, pp. 330–1 (Nisbet’s additions).

<sup>94</sup> Epstein 1966, p. 407. This references the organisation of the *Stände* in Bohemia against Joseph II (1741–90) in Epstein’s book, but equally fits for Hegel’s later characterisation of Napoleon and the French Revolution. Hegel praises Joseph II in the *Verfassungsschrift* however.

<sup>95</sup> Hegel 1991a, p. 331 (§263, text modified).



detail in the conclusion of this chapter. The French Revolution by contrast, as an inheritor of the antithetically *abstract* ideas of the Enlightenment, led to absolute terror: the disintegration of the universality it was meant to uphold through the abolishment of the *états généraux* and the principle of representation, which the feudal order had originally brought into being. Thus, already in the *Verfassungsschrift*, Hegel sees ‘the causes of France’s misfortune ... in the complete degeneration of the feudal system and the consequent loss of its true character’.<sup>96</sup> The bitter opposition of the French Enlightenment to the medieval period is an extremism that simply leads to the arbitrary domination of abstract ideals as a secular version of the Catholic control over conscience for Hegel.<sup>97</sup> Hegel expressed this most forcefully in his Berlin period in the *Lectures on the Philosophy of History*, where he identified a central distinction between the German and French Enlightenment that related to the confessional character of the *Stände* established with the *ius reformandi*;<sup>98</sup> the former took its lead from theology due to the characteristics of the German history of the Reformation rather than opposition to Catholic Church.<sup>99</sup>

The caution against centralisation quoted above from the *Grundlinien* references the plebiscitary dictatorship of Napoleon; it is moreover a repetition of a theme that already appears in his early period in the *Verfassungsschrift* against the mechanisation and centralisation of the state in the case of Prussia. Such analogy and criticism of the centralised state persists throughout his political writings – and the *Stände* in such instances serve as an organisational form that stands opposite bureaucratic power in the universal *Stand*, the specialisation attained through the examination.<sup>100</sup> Moreover, both Prussia and modern France are mutually inclusive and reciprocally developing political

---

<sup>96</sup> Hegel 1999, p. 65.

<sup>97</sup> This is already the case at the end of the Jena period in the *Phenomenology* (see Hegel 1977, pp. 294 – 363).

<sup>98</sup> The right of reformation established in the Religious Peace of Augsburg (1555), the *cujus regio, ejus religio*, and reaffirmed in the Peace of Westphalia (1648) with the territorial right to determine religious confession. This is what lay at the basis of the development of separate state forms in the German speaking lands. As the young Hegel saw it, religion produced disunity in the empire, which consequently failed to form as a state. By contrast, Hegel in his mature period saw the peculiarity of the religious developments in the Germanic world as leading to freedom and laying the basis for the modern world (see Hegel 1999, pp. 197–224).

<sup>99</sup> See Hegel 1999, pp. 207ff.

<sup>100</sup> See Hegel 1991a, p. 345 (§305). This opposition occurs from above in the form of the landed property of the substantial *Stand* – which has the independence proper for politics insofar as it does not need to live from it. This opposition also occurs from below in terms of the industrial and trade sectors (see Riedel 2004, p. 781).

forms for the young Hegel. This had at least been true since the Great Elector (1620–88), who originally built his standing army on the financial means of Louis XIV’s absolutism. For the Napoleonic period, Rosenberg put it thus: ‘A strange bedfellow gave the Prussia bureaucracy the opportunity for bringing to its climax the struggle to abridge royal prerogatives and to acquire the powers of “cabinet government.” Napoleon Bonaparte, Emperor of France “*par la grâce de Dieu et les constitutions de la République*,” was consolidator of the most effective type of bureaucratized absolutism theretofore known’.<sup>101</sup> H.S. Harris saw in the young Hegel’s preference of Austria over Prussia and France – both of which he perceived as bourgeois societies – ‘the essentially platonic origin of his inspiration’.<sup>102</sup>

The key to understanding Hegel’s mature institutionalism is the correspondence between subjective and objective spirit. This is what leads the individual beyond their private isolation and self-interestedness to participate in the institutions that make up the sovereignty of the state, to become the substance of the state as such. The *Stände* in this case represent the return of the familial and ethical element at the level of civil society, the sphere of individualism, and are meant to lead to a higher level of self-consciousness in the unity of the state. The *Stände* moreover are beyond the natural ethical life of the family and take place in the sphere of spiritual, albeit ‘formal’, liberation that is modern civil society for Hegel. Now that I have explained how Hegel articulates the legitimacy of his concept of the *Stände* and its distinction from the feudal epoch of private right it remains to further expand on its historical derivation, which indeed takes us precisely back to the feudal period once again.

Following Montesquieu, the feudal constitution forms an initial *Rechtsstaat* where, as Max Weber specifies, ‘the idea of the social contract is anticipated in primitive fashion’.<sup>103</sup> It is a “separation of powers”, but unlike Montesquieu’s scheme, which constitutes a qualitative division of labor, it is simply a quantitative division of authority’.<sup>104</sup> Once this ‘system of [feudal] alliances has developed into a chronic condition because of the contractual guarantee of all rights and duties and because of the

---

<sup>101</sup> Rosenberg 1966, p. 202.

<sup>102</sup> Harris 1972, pp. 472–3.

<sup>103</sup> Weber 1978, p. 1086.

<sup>104</sup> Weber 1978, p. 1079.

resulting inelasticity, the existence of a *Ständestaat* [is] unavoidable, which under certain circumstances was legally perpetuated through an explicit association'.<sup>105</sup> This is what led to the *Reichs-* and *Landstände* in the Holy Roman Empire, which in the form of the electors maintained their legal veto on imperial decisions.

But the era of the *Ständestaat* also grew out of a rudimentary form of (albeit limited) medieval 'public power' that had 'gained practical significance and found, to some extent, formal recognition ... serving the collective ends of ... little commonwealths'.<sup>106</sup> It had coincided or risen out of the generalised 'feudal protection relation', according to Hegel in the *Lectures on the Philosophy of History*, which developed with the rise of the city; the latter, along with the Church and together with the king 'had enforced the edicts of peace' [*Landfrieden*] and put an end to private warfare.<sup>107</sup> This was abolished for Hegel, however, in the period of princely reaction that led to absolutism, and in the *Verfassungsschrift* he perceived the continuance of private warfare at the level of the absolutist state system in the Holy Roman Empire.

The change from the right of private warfare [*Faustrecht*] to politics should not be regarded as a transition from anarchy to constitutionalism. The true principle remains the same, and the change is purely superficial. In the days before the prohibition on private warfare [*Landfrieden*], the injured party or anyone bent on conquest simply struck out at his enemies. In politics, on the other hand, calculations are made before battle is joined, and major interests are not put at risk for sake of minor gain; but if this gain seems assured, the opportunity is not missed.<sup>108</sup>

Hegel recognised the importance of the rise of the city in the development of the constitutional history of Europe, and traced the development of the modern state based on representation back, in part, to this phenomenon, which had precisely limited private warfare and throughout the intervening centuries laid the basis for the development of modern civil society.

Representation is so intimately bound up with the essence of the feudal constitution in its further development, in conjunction with the rise of the *Mittelstandes*, that it may be classed as the silliest of illusions to regard it as an invention of recent times.

---

<sup>105</sup> Weber 1978, p. 1082.

<sup>106</sup> Rosenberg 1958, pp. 6–7.

<sup>107</sup> Weber 1978, p. 1084.

<sup>108</sup> Hegel 1999, pp. 48–9.

All modern states exist through representation...<sup>109</sup>

What Hegel expresses is a broader concept of representation than the strict association of lords, the *Herrschaftsstände*. The latter was the *hausväterlich* character of feudal patrimonialism, of which the lord formed a particular part, and that operated on the basis of alliances between lords and Prince. What Hegel refers to above is undoubtedly the municipal associations that gained a degree of independence from the crown and founded loyalty, by contrast, not on the honour of submission to a lord, but on the communal association itself, as Rosenberg has pointed out. This was the ‘triumph of [early] medieval constitutionalism, founded on association and voluntary cooperation from below rather than coercion from above ...’ in which ‘some of the modern ideas of public need and public service’ developed ‘which the thoroughly bureaucratized absolute monarchies applied in their practice of public administration at a later period and in a perverted form’.<sup>110</sup> Even if such *ständische* civil administrations disappeared as quickly as they appeared, their original force was integrated into developing civil bureaucracies that conflicted with and curbed the continuous expansion of royal power.<sup>111</sup> ‘A massive resistance movement against royal encroachments checked the stabilization of monarchical authority which had been sustained by the formation of a civil bureaucracy’.<sup>112</sup> More immediately it led to the formation of ‘a new transitional type of state’, in which the *Stände* were the co-bearers of the central power, as I have shown above. It also led to the very varied constitutional make up of the German speaking lands that Hegel tends to neglect in his analysis in the *Verfassungsschrift*.

Hegel’s view is undoubtedly complex, and it is a danger to insinuate that he ascribes to this ideal of liberal historiography in the rise of the *Stadt*.<sup>113</sup> In the end, however, the importance of labour will become paramount in his development, as I will show in Chapter Three. It will not be the labour founded in the countryside in the patriarchal (‘natural’, ‘substantial’) relations of kinship groups, but the increasing

---

<sup>109</sup> See Hegel 1999, p. 66.

<sup>110</sup> Rosenberg 1966, p. 8.

<sup>111</sup> I have already had occasion to mention examples of such exceptions above, see footnotes 6 and 14.

<sup>112</sup> Rosenberg 1966, p. 8 (text modified).

<sup>113</sup> For a detailed study of the rise of the towns in Germany and their influence on constitutional development, which also includes an extensive discussion of the *Stände* and engages with Hegel’s perspective on this development, see Walker 1998.

development of the system of needs that outstrips the initial relation of Lordship and Bondage. This leads to the history of freedom for Hegel, which distinctively entails the development of modern civil society as he conceives of it in his mature period. In the submission of the serf after the initial struggle a community of needs arises, which contains the principle of universality as well history, freedom and representation. In his early work, in *System der Sittlichkeit* (1802–3) for example, and the Jena period more generally (1801–7), household authority remains dominant as he constructs his vision of the state built on the Greek model of the division between *polis* and *oikos*. But already at this stage, the feudal ideal of representation predominates and does not accord with the slave relations predominant in Greece; it accords rather with the principle of representation.<sup>114</sup> Thus Hegel contrasted the relation of a vassal to a lord to the non-contractual relationship of slavery, which did not form a *Stand* – ‘*Sklavenstand ist kein Stand*’.<sup>115</sup> And in the Jena natural law essay (1802–3) he showed how this led to the destruction of Greek *Sittlichkeit* in Rome where only one was free, which is the return of what he calls ‘oriental despotism’ in the heart of the West.<sup>116</sup>

The rejection of Prussia in the *Verfassungsschrift* as a possible political factor for unification in the *Reich* hinges on this debate as well, as it is a land scoured of art and culture, both of which depended on the rise of the towns – and it remained bound to largely patriarchal patrimonial form of the *Stände* and much has been made of its largely agricultural character.<sup>117</sup> As Max Weber remarks in reflecting on the relation of war to the production of culture: ‘Pure art and literature of a specifically German character did not

---

<sup>114</sup> See Hegel 2002, p. 62 where he discusses service in the household through contract, and for a determined period of time. Moreover, for Hegel, the family is not fully built on the structures of the Greek *oikos* and certainly not of Roman *dominium* insofar as he had affirmed love as its principle since the Frankfurt period – the ‘sentimental’ concept of the family replaces household economics (see Riedel 2011, p. 47).

<sup>115</sup> See Hegel 2002, p. 58. ‘The medieval lord of the manor could be regarded as the natural representative of his bondsmen, but the Roman *possessor* could not be regarded as the representative of his slaves. One can only represent persons, not objects (Hintze 1975, p. 339). See Villey 1975, pp. 142–3 and p. 129 footnote 122 below; compare Finley 1985, pp. 180–1.

<sup>116</sup> See Hegel 1999, p. p. 147.

<sup>117</sup> Yet this argument that the more advance economies of the western Europe produced the stagnated agricultural character of the eastern Europe has been contested by a politicist argument (see Anderson 1974, pp. 196–7). ‘Eastern absolutism was centrally determined by the constraints of the international political system into which the nobilities of the whole region were objectively integrated. It was the price of their survival in a civilisation of unrelenting territorial warfare; the uneven development of feudalism obligated them to match the state structures of the west before they had reached a comparable stage of economic transition to capitalism’ (Anderson 1974, p. 202).

develop in the political *center* of Germany'.<sup>118</sup> This most likely refers to Prussia, not only in terms of the 'political *center*' but also to its lack of the specifically 'German character' in cultural development – French had been the political language of the court circle (even Pufendorf was read in Barbeyrac's French translation by Frederick II), while military organisation was left to the demands of a patrimonial nobility that left the East with few towns and little resistance to their power.<sup>119</sup> The young Hegel holds the same opinion as Weber: 'what life and what aridity rules in another equally controlled state, in Prussia. This stands out as soon as one sets foot in the first village. Prussia shows a complete lack of scientific and artistic genius, not considering the ephemeral energy which a lone genius for a time was known to have forced out of it'.<sup>120</sup> Hegel is here comparing Prussia and the French Republic – the 'lone genius' to whom he refers is Frederick II (1712–86).

The shift in Hegel's valuation of Prussia must be seen in light of the reforms (1806–19) that took place under Stein, Hardenberg and Humboldt. He turns to Prussia, and to a political role in Berlin for himself, insofar as the reforms engendered by defeat at the hands of Napoleon opened the military to a rational – modern – form of organisation, as well as state office, education and the economy (though in the latter respect he expresses his reservations).<sup>121</sup> This cut off the ascension of the hereditary *Stände* to patrimonial inheritance of office in the leadership of the state that, as Hegel noted in the quote at the outset of this section, led to the revolution in France. Hegel himself was also in close proximity to the reformed university system and acquainted with both Wilhelm von Humboldt (1767–1835) and Karl August von Hardenberg (1750–1822). The reformed university by the end of Restoration period (1830) was the main visible trace, other than the rationalisation of the military, of the earlier efforts of these statesmen. The reforms met their end as the intransigent nobility organised in the romanticist-reactionary circle of Frederick IV (1795–1861) sought to restore a medieval ideal of the *Reich* and the *Ständestaat*.<sup>122</sup> The patrimonial character of the *Stände* advocated by the nobility was

---

<sup>118</sup> Weber 1978, p. 926 (original emphasis).

<sup>119</sup> The most extreme form of peasant subjugation *Leibeigenschaft* literally meant 'ownership of the body' while *Erbuntertänigkeit* meant that the serf was tied hereditarily to the land. The lord could make decisions in terms of marriage and vocation, as the serf was an extension of his own household. Clearly this is the traditional characterisation of *oikonomik* (*das ganze Haus*) (see Berdahl 1973, p. 305).

<sup>120</sup> Hegel 2004, pp. 18–19.

<sup>121</sup> See Wood 1991, p. xx.

<sup>122</sup> See Koselleck 1975; Berdahl 1988.

contrary to Hegel's conception, which as has been rightly pointed out was partly influenced by the *Allgemeines Landrecht für die Preußischen Staaten* at this time. This can be seen in the *Lectures on the Philosophy of History* in his positive esteem for the codification and Frederick II, and one might also compare them to the *Stände* as conceived in Hardenberg's reforms.<sup>123</sup>

Hegel's valorisation of the feudal system is based on representation, and hinges on the corporate [*ständische*] form taken by the nobility, the Church and the commoners in the towns. The 'protective relation of feudal protection' between Lord and Bondsman, which Hegel's develops as an originary conflict and substitute for the social contract, had developed into the 'principle of free possession; *i.e.* freedom originated in its direct contrary'. The development of 'municipal rights', however, with the rise of the *Stadt* and the refuge it provided was 'subsequently lost under the rule of feudal governors [and] the citizens, like their rural neighbors, had been reduced to vassalage'.<sup>124</sup> This latter phenomenon eventually led to the 'progressive' right of resistance against monarchical power in the era of 'feudal reaction',<sup>125</sup> where the ruler's authority existed in a reciprocal relation with those of his dependents. Yet this is what led to the private right character of the imperial constitution when the *Reichs* and *Landstände* assumed the status of state forms, as was seen above (II.1). However, as I have shown, the critique of the medieval period is not as straightforward as it at first appears. Indeed it reflects the same subtle ambiguity as Montesquieu's valuation of the period as a form of 'free unification' was always possible even in the separation of medieval polities and the later self-interestedness of the *Reichs* and *Landstände*. In Hegel's contemporary Germany in the *Verfassungsschrift*, by contrast, the separation of *Stände* and their development into 'state powers', into the *Reichs* and *Landstände*, had placed them in fundamental opposition, in contest over the assertion of their private rights in the mere 'empiricism' of the German constitution.<sup>126</sup> The constitution of the empire represented perfectly for Hegel, as I analysed above (II.1), the formation of a 'political' order on the basis of private right – the personality of the electors predominated over the universal interests of the state that Hegel

---

<sup>123</sup> See Hegel 1999, pp. 206ff; and Koselleck 2004b, pp. 75–80. On this topic, I refer the reader to Hočevár 1973.

<sup>124</sup> Hegel 2001, p. 402.

<sup>125</sup> See Rosenberg 1966, p. 8.

<sup>126</sup> Hegel 1999, p. 86.

sought to establish. It represented in his ‘playful’ *Verfassungsgeschichte*<sup>127</sup> of the Frankfurt and Jena period (1800–3) the return of the state of nature at the level of constitutional conflict. The return of the right of private warfare destroyed the original feudal constitution and its original representation as well as hindering the development of the *Städte*. Furthermore, one is no longer dealing with an individual [*Einzelne*] relation such as that of *Herr* and *Knecht*, but the ‘fate’ of German freedom in the machine state, which consolidates its dominion at the expense of lesser powers.<sup>128</sup> In other words, the development of absolutism and princely rule as well as the intransigence of feudal custom and the old law had destroyed the possibility of the freedom provided by the *Städte* that led to a more participatory form of political community for Hegel.

As I have shown in this section, for Hegel the social and political capacity of the institutional organisation of the *Stände* was emphasised in order to provide a concrete formulation of Rousseau’s general will, which in its limitation to the individual will was seen as leading to abstract universality or absolutism. This took the *Stände* well beyond the medieval private patrimonial concept and its absolutist variant (more on this below, in II.3) that Hegel criticised at the outset of this section in the form of *dominium* and the unjust privilege that he saw leading to the modern revolution. In reference to Hobbes, Rousseau, and Montesquieu, it was further shown how Hegel’s solution in his mature *Rechtsphilosophie* (1817–31) was an original ‘eclecticism’ of the modern tradition.

Hegel’s conception of *Stände* was an attempt to establish a reciprocity between the highest and the lowest orders, present in individual duty and right, in the substance and subjectivity of the state in his mature conception – thus dissolving the very hierarchy between such orders and creating the unity of the state in organisation that I will explore further in the conclusion of this study. Hegel developed his concept of the *Stände* as a response to the centralised absolutist state. It is this that differentiates it from the *Reichs-* and *Landstände* in his early analysis insofar as these are absolutist states. This revealed a continuity in Hegel’s perception of political order insofar as he expressed something similar already in the *Verfassungsschrift* when he stated that the ‘inhuman mechanism’ of the absolutist state ‘displays to [its] subjects a conviction of lack of understanding and

---

<sup>127</sup> Maier 2004, p. 208.

<sup>128</sup> See Harris 1972, p. 468.



contempt for their ability to judge and perform what is conducive to their private welfare ... [and] therefore cannot hope for any lively activity or support from the self-confidence of citizens'.<sup>129</sup> It is not without a sense of irony that Hegel retrieved a concept which would institutionalise individual right in precisely those spheres that he had previously rejected, but as I have already begun to note there is a very large differentiation to be drawn between the existence of the *Reichs-* and *Landstände* in the imperial constitution and what Hegel fundamentally affirms in his mature period as an institutional form. This I will continue to distinguish in the remainder of this chapter.

Towards the close of this section I drew on some further aspects of the historical derivation of the concept by way of reference to medieval constitutionalism in the *Verfassungsschrift* and in the *Grundlinien*, and then in particular to the development of the towns, which led to a different type of honour, the relation of the individual to the community and representation. This conception will be explored further below in relation to what Hegel terms *Sittlichkeit* and in the early stage of his development in the *Verfassungsschrift* as 'the mores of the Germans' (II.3).

### II.3 *The Private 'Indirect Powers' of the Landstände*

In this section I will further explore the originality of Hegel's concept in reference to the distinctions I have been drawing in the last two sections (II.1, II.2) between the traditional usage of the *Reichs* and *Landstände* in the imperial context and Hegel's distinctive approach. This will allow me to differentiate further Hegel's mature concept of the *Stände* from the private 'indirect powers', the 'intermediate powers' of the *Reichs* and *Landstände* that undermined the imperial form in the *Verfassungsschrift*. By contrast, I will show how Hegel conceives the *Stände* as the initial concretisation of universality.

As I analysed in Chapter One, Hegel's usage of the *Stände* involved a particular linguistic emphasis whereby he conceived of the reunification of the social and the political; he sought to emphasise how the *Stände* preserved 'the unity they certainly possessed in former times'.<sup>130</sup> This was central to his institutional thought and his opposition to what he declaimed was the one-sidedness of the liberalism that emerged

---

<sup>129</sup> Hegel 1999 p. 24.

<sup>130</sup> Hegel 1991a, p. 344 (§303) (original emphasis).

with modern revolutionary France, which ended with the individual standing isolated and depoliticised in contrast to the political concentration of state power – this was the crisis of civil society and it led to the fundamental dichotomy that marked the crisis of modernity for Hegel.<sup>131</sup> Political life for Hegel was left ‘hanging in the air’ if the spheres – the *Stände* – he identified in modern civil society were fragmented once again into isolated individuals at the level of the state. This reveals the contiguity between the social and political dimensions in Hegel’s thought – insofar as individuals are organised concretely in the social they are structurally concrete in the political. If this were not the case, the state would be turned into a sphere of arbitrariness and contingency as it would leave private opinion determining the political rather than what was ‘stable and legitimate [*berechtigt*] in and for itself’.<sup>132</sup> The young Hegel paradoxically discovers this private opinion in the *Verfassungsschrift* with the *Landstände*, which will allow for a further comparison and contrast to the development of his thought. In so doing, I will be able to distinguish the modern conceptuality of the *Stände* in Hegel’s institutional theory from the early constitutional history to which they are connected.

For Hegel, ‘the great advance made by the modern state’ recognised in the *Grundlinien* – built on the individual will, self-consciousness and thought, following Rousseau – had yet to arrive on German soil when he was writing the *Verfassungsschrift*. The concern of Hegel’s polemical critique of the imperial constitution was to serve as a propaedeutic to such ends. The stark difference between the period of the early manuscript and Hegel’s mature *Rechtsphilosophie*, developed after the collapse of the empire and in the Reform period in Prussia and up and into the Restoration, does not mean that comparisons between them are fruitless. This can be brought out much more clearly: the anarchy of the empire represented a state of nature, a war of all against all, where the private interests of the *Landstände* stood opposed to each other as isolated individuals. In the *Grundlinien* one will discover a similar structure refracted into the civil, social, or abstract spheres of the state. There the *Stände* will take on the form of productive organisational structures that stem social conflict.<sup>133</sup> Thus I can already indicate the central problem of this section, which will involve the distinction of the

---

<sup>131</sup> As I set out in the Introduction, I follow Dieter Henrich in this respect (see Henrich 1983, p. 21).

<sup>132</sup> Hegel 1991a, p. 344 (§303) (original emphasis).

<sup>133</sup> This will be explored in much more depth in Chapter Three.

traditional concepts of the *Reichs-* and *Landstände* from Hegel's late political interpretation of the *Stände* as organisational forms that contrast with private particularity.

For Hegel, a realistic approach to the politics of the empire in the *Verfassungsschrift* involved an analysis of the historical facts of the German constitution and the factors that led to its crisis. This, as I showed above (II.1), involved the history of feudalism that had led to the independence of the *Reichs-* and *Landstände* in the later constitution. Hegel perceived the *Reichs-* and *Landstände* as absolutist states that resulted in the fundamental disunity of the imperial constitution and its non-existence as a modern state form that he measured against the French Republic. For Hegel a constitution was far more than a document as it involved the social and psychological makeup of a people. He again followed Montesquieu (and also Voltaire) here into the realm of climate, manners and custom, reflecting the original methodology of the early social sciences.<sup>134</sup> This permanently marked his characterisation of the state along the lines of custom and ethical life, which would develop far more poignantly in the early *Rechtsphilosophie* (1802–3) in *System der Sittlichkeit*, which, as I showed above, coincided with the final editing of the *Verfassungsschrift*.<sup>135</sup>

The *Verfassungsschrift* belongs alongside Hegel's early reflections on natural religion, which will eventually develop (1802–3) into his distinction between custom [*Sitten*] and morality.<sup>136</sup> In the political context of the Holy Roman Empire, Hegel attempts to breathe life back into *the mores of the Germans*, notably the independence established with the feudal order and its concomitant forms of representation, the corporate life of the *Stände* that I traced above (II.2) in reference to the representation that developed in the communal associations of the towns. Much later in Hegel's Berlin period (1818–31), a similar historical schema of representation can be seen, which is sublated from the medieval period to become the Germanic World in the *Lectures on the Philosophy of History*. At this stage, Hegel has a much more favourable and nuanced interpretation of the Holy Roman Empire and its place in history. He perceives its existence after the Reformation and in the establishment of the Treaty of Westphalia as

---

<sup>134</sup> See Hintze 1931, pp.10–11: Montesquieu ... 'understood natural foundations according to the impact [*Einwirkung*] of what were for him popular [*beliebten*] "climatic" factors, what Karl Marx later would call the "economic structure of society"'.  
<sup>135</sup> See footnote 72 above.

<sup>136</sup> This is famously distinguished for the first time in the Jena natural law essay.

marking the beginning of modernity with the establishment of international law and the rights of conscience. At this early stage in Hegel's development in the *Verfassungsschrift*, however, such independence tragically leads to the 'fate' of German freedom, to the destruction of the Germans as a people in this case.<sup>137</sup> That is to say that for the young Hegel the Reformation and the religious wars leading to the Treaty of Westphalia lead to the decay of the '*Volksgeist*'. For Hegel, the earlier form of feudal independence leads to the fragmentation of the Holy Roman Empire and to the arbitrariness that determines the appearance of the German constitution as a 'legal fiction' based on *Privatrecht* with its 'natural and proper sphere' being clearly that of the courts.<sup>138</sup> It is in this way that the young Hegel asserts that the imperial constitution since 1648 is a 'system of right against the state' – in the interests of the *Reichs*- and *Landstände*.<sup>139</sup>

Thus, if the problem of how Germany can simultaneously be a state and not be a state is to be solved, it must, in so far as it is a state, exist only as a state in thought [*Gedankenstaat*], while its non-existence must possess the reality.<sup>140</sup>

The more reserved tone of the *Grundlinien* should be noted as an attempt to solidify the modern revolution through the mode of a political metaphysics: i.e., 'in right, the human being encounters his own reason; he must therefore consider the rationality of right, and this is the business of our science, in contrast with positive jurisprudence'.<sup>141</sup> The starting point of the *Grundlinien* is already constituted right and the legitimate positive order of law as such – 'insofar as [the] coming into being of the concept of right is concerned, [this] falls outside the science of right'<sup>142</sup> – while the *Verfassungsschrift* is concerned with the constitution of such right, precisely with its 'coming into being'.<sup>143</sup> This is made clear through Hegel's appeal to Machiavelli, which at this stage has more significance than to authors of the natural law tradition. 'The German empire had proved [just as] futile to

---

<sup>137</sup> See Hegel 1999, p. 66.

<sup>138</sup> Harris 1972, p. 462.

<sup>139</sup> Hegel 2004, p. 60.

<sup>140</sup> Hegel 1999, p. 43.

<sup>141</sup> Hegel 1991a, pp. 13–14 (*Preface*, Hotho addition).

<sup>142</sup> Hegel 1991, p. 26 (§2).

<sup>143</sup> Hegel does not remain faithful to this statement at the outset of the *Grundlinien*, and this can be seen clearly in his references to the 'right of heroes' as the founders of the state.

construct ... on the basis of the deductions of natural law'<sup>144</sup> as it had proved impossible to categorise along the lines of the Aristotelian typology of polities. Hegel follows Samuel von Pufendorf in this respect, when he infamously declared the empire a *res publica irregularis*.<sup>145</sup> If the concepts of the *Verfassungsschrift* are largely *existential*, born in the context of civil war and the impending collapse of the empire and aimed at the destruction of the positivity of ancient privilege, those of the *Grundlinien* depart from the identification of right with the state.

For the young Hegel it was after the Peace of Westphalia that 'the principle of what was then called German freedom, namely the dissolution of the empire into independent states ... [was] consolidated'.<sup>146</sup> What had occurred in the 'the progressive princely polities of the twelfth and thirteenth centuries', where *public policy* was identified with the *private right* of the sovereign, returns in the seventeenth and eighteenth centuries with autocratic authority.<sup>147</sup> Thus if the imperial constitution operated under the political form of the defunct feudal system for Hegel, it does so in the context of the 'whittling away of the powers of the assemblies of estates [and] in a new era in the history of the ownership, control, and management of the means of political domination'.<sup>148</sup> It is precisely in this sense that there is a contrast to be drawn between the development of the *Landstände* into monarchical state forms based on princely domination and the *Stände* as Hegel develops them in their organisational capacity in the *Grundlinien*. 'Hegel's view was that the old Germany was a community of estates, which could not now become a state precisely because it did now consist of states'.<sup>149</sup> The communal and representational power disappeared along with the possibility of the 'explicit association' of the *Stände*; feudal power remained intransigent and isolated in its private interest wherein which alliances were concretised and the municipal associations of the cities lost any rights they

---

<sup>144</sup> Dilthey 1990, pp. 127–8. Hegel moreover attacks the '*Katheders-Statistiker*' who attempt to classify Germany according to the Aristotelian types of Government (see Hegel 2004, pp. 47–8). Hegel himself, however, comes close to this in arguing for tyranny, which he consistently views as a necessary principle of state-formation. This is even clearer at the close of *System der Sittlichkeit* (1802–3) where Hegel begins to develop the typology of governments following Aristotle (see Hegel 2002, pp. 84–5).

<sup>145</sup> See Pufendorf 2007; Hegel 2004, p. 3; compare pp. 47–8 with reference to Voltaire's description of the 'anarchy' of the constitution.

<sup>146</sup> Hegel 1999, p. 75.

<sup>147</sup> Rosenberg 1966, p. 5 (text modified).

<sup>148</sup> Rosenberg 1966, p. 11.

<sup>149</sup> Harris 1972, p. 452.

had of their own.<sup>150</sup> For Hegel the *Reichs-* and *Landstände* were relatively independent centralised powers, opposed and obstacles to the concentration of power in the imperial centre where the young Hegel sought to develop a modern concept of the state. The *Ständestaat* had been transformed, and the efficacy of its limitations on the caprice of the prince – its ‘co-regency’ – was in large part undone; the notables, as the local rulers in the ‘Estates of the realm’, lost all influence.<sup>151</sup>

After the Peace at Westphalia, and with the consolidation of absolutism, this gave way to the beginnings of modern bureaucracy and centralised power. Thus, while after the Peace of Westphalia Germany was carved up into territorial states, and the empire lost its political authority over events, at the same time absolute autocratic power developed in the decentralised fashion of the sovereign princes on the *Reichs-* and *Landstände*. The *Stände* thus had grown from their original definition when they had ‘detached themselves from the court in the narrow sense and partially emancipated themselves from their ruler’s personal intervention’;<sup>152</sup> for Hegel they were ‘autonomous’ (private) powers that had a ‘civil’ (private) stake in the maintenance of the present German constitution.

The loss of organic unity in the empire for Hegel was the major result of the independence of the individual *Reichs-* and *Landstände*, where each developed its own conception of the general good and, thus, strictly stuck to its particular good as such. ‘As [Hegel] saw it, political life in Germany had decayed into class war because the ‘universal sovereign power’ had disappeared or decayed into partisan force... in [his] view the older natural spontaneous unity of the *Volk* perished in the Thirty Years’ War’.<sup>153</sup> There was no longer anything to hold the empire together other than a constitution that was the sum of private, ‘civil’, right. It followed that since the sovereignty of the empire had disappeared after the Peace of Westphalia, ‘a particular state, *must* not sacrifice itself to a universal

---

<sup>150</sup> I refer the reader again to the exceptions I noted above (II.1, footnotes 6 and 14) and Hegel’s tendency to oversimplify the conditions in the German speaking lands and the significance of the *Landständische Verfassung*. See Dreitzel 1992 for the continuance of the *ständische Verfassung* alongside absolutism that led to the peculiarities of German political theory from Althusius onwards and his invention of politics. I would say Hegel also belongs distinctively to this political tradition in his conflict with absolutism and his affirmation of the *Stände*.

<sup>151</sup> See Rosenberg 1966, pp. 10–11; see Krüger 2003 for an overview of the historical literature on *Landständische Verfassung* over which there are many different opinions.

<sup>152</sup> Rosenberg 1958, p. 6.

<sup>153</sup> Harris 1972, pp. 444, 461.

from which it can expect no help'.<sup>154</sup> The collapse of the political efficacy of the empire ended with the self-interestedness of the various powers, which transformed the constitution into 'nothing other than the sum of the rights which individual parts have extracted from the whole, and this justice, which watches carefully to ensure that no power remains in the hands of the state, is the essence of the constitution'.<sup>155</sup> Individual self-interest and competition among the monarchies of princely absolutism arose, while the 'independence' of the smaller German states was completely reliant on the politics of the two great powers, Austria and Prussia, which vied for political hegemony. Such a danger inhibits the consolidation of universal political power for Hegel insofar as the *Landstände* are already independent powers in their own right. If this 'independence' is more fictive than real it is precisely due to the dominance of Austria and Prussia, where the 'fate' of the other states 'lies directly between the politics of [these] two great powers'.<sup>156</sup>

Germany ... must be regarded not as a state, but as a mass of independent states, the larger of which act independently even in foreign relations, whereas the smaller must follow some broader movement.<sup>157</sup>

For Hegel in the *Verfassungsschrift* feudalism recurs at the higher level of sovereign absolutist states, which subordinate the domestic affairs of smaller and weaker principalities that allow such 'foreign' intervention in order to guarantee their so-called independence. Any fidelity towards the German constitution after 1648 for Hegel is 'established on unjust principles, a relation that does indeed contemplate a legitimate object, but whose import is not a whit the less injustice; for the fidelity of vassals is not an obligation to the commonwealth, but a private one – *ipso facto* therefore subject to the sway of change, caprice, and violence'.<sup>158</sup> The isolation that defines the Middle Ages is rediscovered at the cusp of the modern period in a Germany that has 'never yielded sufficiently for the individual parts to sacrifice their particular characteristics to society, to unite in a universal [whole] and to discover freedom in common, *free* subjection to a

---

<sup>154</sup> Hegel 1999, p. 75.

<sup>155</sup> Hegel 1999, p. 13.

<sup>156</sup> Hegel 1999, p. 90.

<sup>157</sup> Hegel 1999, pp. 58, 90, 39.

<sup>158</sup> Hegel 2001, p. 387.

supreme political authority'.<sup>159</sup> This represents the gravest danger *in the era of absolutism* where it has lost its original form with the rise of absolute princes.

The constitution in such a context was arbitrated by the *Privatrecht* of competing individual powers, and the nature of the legal relationship of the *Landstände* to the constitution 'is not defined by universal laws in the strict sense; on the contrary, the relationship of each estate to the whole is a particular matter – in the same way as civil rights – which takes the form of a [private] property'.<sup>160</sup> This had an essential effect on the nature of the political authority; the imperial constitution can be considered as modelled after the contract that, as I noted above (II.1, II.2), cannot be applied to the higher order of the political for Hegel. The same would be true for Hegel in the *Grundlinien* if the *Stände* were to decay into partisan force as they had in the *Verfassungsschrift*. This would be the state as the understanding envisages it, as made up of oppositional *Stände* opposed to political authority as such, against the very sovereignty they are meant to establish by acting in unity, which led to the sovereignty of the state itself. For Hegel in the *Grundlinien*, 'if this opposition does make its appearance, and if it is not just superficial but actually takes on a substantial character, the state is close to destruction'.<sup>161</sup> Thus the political and the social for Hegel must be ideally fused. The *Stände* are a product of Hegel's logic, a method in which the theorisation of political reality can take a practical form and is embodied in a dialectic of institutions, which 'brings the universal interest into existence not only in itself but also for itself, i.e., the personal insight and the personal will of that sphere which has been described [as] civil society comes *into existence in relation to the state*'.<sup>162</sup>

The private 'indirect powers' of the *Reichs-* and *Landstände* that undermine the imperial form in the *Verfassungsschrift* are thus contrasted in the *Grundlinien* with Hegel's mature concept of the *Stände*, which is conceived as the initial concretisation of universality. The concept of the *Stände* in the later work now realises the particularity of the sphere of difference, civil society that, once organised, becomes political society and makes for the sovereignty of the state. Yet it is important to recognise that the basic

---

<sup>159</sup> Hegel 1999, p. 10. (emphasis added).

<sup>160</sup> Hegel 1999, p. 42 (text modified).

<sup>161</sup> Hegel 1991a, p. 342 (§302).

<sup>162</sup> Hegel 1991a, p. 341 (§301(text modified)).



contours of Hegel's arguments take on the particular form of a critique of modern liberal individualism *and* of an essential hostile opposition of the *Stände* to the 'universal political authority' as such. Thus while it is necessary to recognise Hegel's affirmation of the form of the *Stände* in the *Grundlinien* and elsewhere, it is also important to recognise how he limits these forces through institutional subordination in the state.<sup>163</sup> Thus Hegel develops a structure of reciprocity in unity into what he had built up in the civil, social, sphere as concrete universality, which becomes the sovereignty of the state as such. Yet there must be a restriction on right that comes into contradiction with the state, insofar as 'the *Stände* have their origin in individuality [*Einzelheit*], in the private point of view and in particular interests [and] are inclined to direct their efforts towards these at the expense of the universal interest'.<sup>164</sup> Hegel's solution is to stock the *Stände* with delegates from the executive state power in order to avoid the 'idea with which the ordinary consciousness usually begins... for example, that the *Stände* [are] the delegates of the people, or indeed the people themselves...'. It is in this respect that 'the highest officials are able to do what is best even without the *Stände*'.<sup>165</sup>

To return to the *Verfassungsschrift*, what Hegel analyses is the political situation of the constitution in the Holy Roman Empire at the cusp of the Napoleonic wars, which would soon realise many of his predictions, including the dangers to 'German freedom' – that is, representational and participatory power as he saw it – that both Austria and Prussia posed in the contemporary period. By remaining neutral or in acting in the self-interested fashion that had dichotomised the empire since the Peace of Westphalia, they increased their size and influence through Napoleon's dissolution of the *Ritterschaft*, the Imperial Cities and various smaller principalities in the re-organisation of Germany. This was a perfect example of what Hegel had denoted as the *Privatrecht* of individual *Reichs-*

---

<sup>163</sup> This is a complex problem that cannot be easily solved as Hegel's state is built on the correspondence between subjective and objective spirit, which are conceived of as in unity. Even if a 'moderate institutionalism' can be recognised, as Henrich has noted, 'the principle of institution was not to be achieved as such out of subjective volition'; on the other hand, of course, neither was it to be 'liberated from subjective will or arranged as well on independent principles'. This comes down to the question of actuality; the institutions of the state not only permit, but require the right of the individual, indeed individual right forms their bases; on the other hand, this is to be realised 'without contradiction' (see Henrich 1983, p. 33). This accords with the ancient tradition from Plato of the correspondence of the soul and the *polis* as I noted already in Chapter One.

<sup>164</sup> Hegel 1991, p. 341 (§301).

<sup>165</sup> Ibid.

and *Landstände* that ‘depoliticised’ the workings of the empire: the private independence or gain of a given state was higher than any conception of national unity. Private interests as such dominated political concerns and the constitution appeared as a contract that, for Hegel, realised the independent freedom of the feudal era.

The proximity of the French Republic – not to mention the wars between it and the Holy Roman Empire – influenced the development of the young Hegel’s thought like many other intellectuals of his time. It also significantly shaped his later state theory and mature *Rechtsphilosophie* (1817–31). For example, the very usage of the *Stände* as political forms of institutionalism in his later thought are drawn from circumstances in France, as I have shown consistently throughout this study thus far (see I.1, II.2 above). As far nationalism is concerned, this would have been an entirely new concept to the German-speaking lands, and one that would have been foreign to the interests or ways of thinking of the *Reichs-* and *Landstände*. Yet Hegel measures the Holy Roman Empire, and gauges it in terms of the new state concept as I established already in Chapter One.

Thus, in the war with the French Republic, Germany has found by its own experience that it is no longer a state. Both in the war itself and in the peace which concluded it, it has become aware of its political condition. The following are the tangible results of this peace: some of the finest German territories have been lost, together with several million of the country’s inhabitants; a burden of debt, which weighs more heavily on the southern than on the northern half, prolongs the misery of the war far into the peace; and apart from those states which have come under the rule of the conquerors, and hence also of foreign laws and customs, many will lose what is their highest good, namely their existence as independent states.<sup>166</sup>

But, just as the ‘principle of free possession began to develop itself from the *protective* relation of feudal protection; i.e. freedom originated in its direct contrary’, as Hegel notes in Berlin,<sup>167</sup> so too does the solution to the malaise of the German constitution reveal itself in the present ‘peace’ established after the war with the French Republic.

The French Republic in which power is concentrated as no other country in Europe, forces the old empire on the defensive, manifesting for all to see its lack of power, making it into a ‘*Gedankenstaat*’.<sup>168</sup>

---

<sup>166</sup> Hegel 1999, p. 7.

<sup>167</sup> Hegel 2001, p. 402.

<sup>168</sup> Maier 2004, p. 197.

It is in a precise reflection on current conditions, an acceptance of the fact that what is, is also what must be, that it is as it 'ought to be' if considered in light of the current constitutional system, which established the absolutism and the sovereignty of the princes that will lead to a confrontation with the reality of the post-war situation. For Hegel, this meant a 'consideration [of] the inner causes, or spirit, of these results, which are merely the external and necessary appearances of this spirit'. Arbitrary independence and domination, the feudal form, reveals that the 'German state has not yet accomplished its transition [to civilisation], but has succumbed to the convulsions that accompany it; its members have broken away to complete independence, and the state has dissolved'.<sup>169</sup> Hegel begins the *Verfassungsschrift* with an advocacy for political rationality, an understanding that things are as they are due to historical circumstances and to wish them to be otherwise, to assume the stand point of what 'ought' to be, is to deny the very historical conditions weighing on the present. Moreover, an assessment of the present is a priority for any change to take place in the political order. To do otherwise for Hegel would be to deny the form German freedom and custom took after the Thirty Years' War when it retreated into particular private interest – particularly that of princes – in the consolidation of the absolute states of the empire.

The whole history of the war [with France...] makes it clear not only that Germany is split up into independent states, but also that their interests are completely separate; and while the political bond is as loose as the Middle Ages, no free unification can now be expected.<sup>170</sup>

It is thus already at this very early stage that one can discover Hegel's conception of realism in the political order, and the first instance of the rationality of the actual that will be central to his thought – and later to the substance and subjectivity of the state.

The intellectual context in which the *Verfassungsschrift* is written deals with the historical ramifications of 'Machiavellianism' and 'Spinozism' in the eighteenth century,<sup>171</sup> where 'the modern absolute state' could no longer be brought 'under strict ethical norms' in a very distinct sense insofar as there was an entirely 'new concept of the

---

<sup>169</sup> Hegel 1999, pp. 7, 97.

<sup>170</sup> Hegel 1999, p. 86.

<sup>171</sup> See Hegel 1999, pp. 81–2.

state’ – a state based on power politics and *raison d’état*.<sup>172</sup> Hegel will enter the fray here with his own distinct approach to the intellectual and political context: he will affirm Machiavelli in the *Verfassungsschrift*, but also the undercurrent of custom or *Sitten*, the ‘ethical life’ – or ‘mores of the Germans’ – revealing his relation to Montesquieu and Voltaire, each of who appear in the manuscript and determine the early form of Hegel’s *Rechtsphilosophie* along with Spinoza, Hobbes and Aristotle.<sup>173</sup> For Hegel, political rationality will be grounded on something other than the crass reading of Machiavelli, based on the mere arbitrary will set by a ruler in cases of exigency; it will not be a mere question of how a ruler can proceed of their own accord if the welfare of the state is threatened, but of a ‘universal political power’ that involves the custom and life of a people – its preservation or the foundation of the state as such which then gives way to right.

The character of Hegel’s analysis of Cesare Borgia in the *Verfassungsschrift* already has all of the elements of the cunning of reason that will be explicit in the *Lectures On the Philosophy of History*: these are not really great personages, but forces of nature where the streams of history run together in a given activity unbeknownst to the individual and despite their explicit intentions. For Hegel, a political figure of Cesare Borgia’s type will not be the ideal to bring about a German state (nor will Napoleon either, for that matter). *Raison d’état* will be affirmed only in the demand for the German Theseus who will unite the people in a state with the goal of founding a democratic order or a natural *Volk* religion comparable to the Greeks.

For Hegel in the *Verfassungsschrift* and consistently throughout his work, ‘freedom is only possible when a people is legally united within a state’ and ‘a firm government is necessary for such freedom; but an equally deep impression has been made by the realisation that the people must take part in the making of laws and the most important affairs of the state’. To this end a representative body must be established for ‘the participation of the general will in the most important matters of general concern’.<sup>174</sup> As Hegel put it profoundly in the Heidelberg manuscript (1817–18), it is to this extent that ‘what is rational *must be*, but it has its existence only in the self-consciousness of a

---

<sup>172</sup> Holborn 1982, p. 145.

<sup>173</sup> See Ilting 2006, p. 23.

<sup>174</sup> Hegel 1999, pp. 80, 94.

people'.<sup>175</sup> This 'actuality', the subject's self-consciousness embodied in the institutions of the state as its 'substance', becomes moreover a way to gauge the rationality of a given state. Hegel's mature conception of political rationality has the additional dimension of actuality as the unity of the individual, the particular, and the universal: i.e., in the formation of the state as such, which is represented as an Idea in the *Grundlinien* and contains the former logical moments. The right of Theseus in the *Verfassungsschrift* by contrast is the right of heroes, which gives way to a legal form of association – as it is stated in the *Encyclopaedia* (1817/31):

The trembling of the particular will, the sense of the nothingness of self-seeking, the custom of obedience is a necessary moment in the formation of each man. ... in order to be free, each nation must first undergo the severe discipline of submission to a lord after which lordship becomes redundant. Servitude and tyranny are also a necessary stage in the history of nations and thus something consequentially beneficial.<sup>176</sup>

For Hegel, in the establishment of a state of reason and actuality every means is justified but only as means consequent to an end as the preservation of law and right. It can be contended that with the maturity of the *Encyclopaedia* Hegel departs from his earlier forays into the subject of state foundation where he remained closest to the Spinozistic tradition – for example in the *Verfassungsschrift* and *System der Sittlichkeit* – and that a shift from the logic of political development to an attempt to conceive of lasting political forms occurs. Force can be constitutive of right but is not to be identified with right as such: 'The *violence* [*Gewalt*] which in this appearance is the foundation is [precisely] for this reason not the basis of *right*'. Thus it could be argued that Hegel stands opposite the traditional Weberian interpretation of the state: 'Violence is the external *phenomenal beginning* of states, not their *substantial principle*'.<sup>177</sup> This is significant to the understanding of Hegel's concept of the *Stände* and his institutional thought where the question of reason and actuality are central insofar as the organised institutions (civil society as the state) must provide for and preserve the right of the individual at their foundations. An ambiguity develops, however, on the basis of the limits of such institutionalisation, and *Sittlichkeit* as the custom of the political community complicates

---

<sup>175</sup> Hegel 1995a, p. 247 (emphasis added).

<sup>176</sup> Hegel 1991b, p. 26 (§2); Hegel 1974, p. 225 (§435 *Zusatz*).

<sup>177</sup> Hegel 1974, p. 223 (§433 (original emphasis)); for a contrary interpretation see Ilting 1983, p. 104.

any reading that would like to attribute a radical core to Hegel's politics. Yet part of the ingenuity of Hegel's methodological approach is that what he eventually denotes as 'objective spirit' (*Encyclopaedia* 1817) also encompasses a peculiarly 'subjective' dimension insofar as it is developed out of his subjective psychology (*subjektiver Geist*) even if this is raised to the level of universality, and ideally fused in an identity of opposites. For Hegel this implies the embodiment of the particular in the universal, in social and political institutions where it becomes the 'concrete'. According to this perspective the subject, not the particular but the concrete individual, carries the universal and makes for the *actuality* of the state – however, each are only moments in the development of the absolute.

### *Conclusion*

As Hans Maier has pointed out, the *Verfassungsschrift*, never published in Hegel's lifetime, represents 'a true laboratory of ideas'.<sup>178</sup> One can discover in it much material that will appear in a far more polished form in Hegel's later political reflections; it is above all an attempt to develop a unified political form in the German imperial context and eliminate the pluralism – the 'indirect powers', the *Reichs-* and *Landstände* – that had divided the empire. In a similar way in which Hegel had attempted to form a national unity through his polemic against the constitution and the 'indirect powers' in his defence of Machiavelli in the *Verfassungsschrift*, so too in the *Grundlinien* it has been declared that 'he sought to free the state, with its attributes of sovereignty, from society'.<sup>179</sup> This, however, is a simplification as Hegel sought to construct the very principle of sovereignty on the basis of the *Stände* that developed institutionally in the social, civil spheres, where individuality became concrete and objective, and came to embody the political as such.<sup>180</sup>

The importance of the *Stände* as intermediate institutions is not the central concern of the *Verfassungsschrift*, as I have shown above (II.3). It is concerned with constructing a modern state that implies in its very principle the elimination of the 'indirect powers'. Yet

---

<sup>178</sup> Hans Maier in Hegel 2004, p. 195.

<sup>179</sup> Stolleis 2001, p. 100: 'the freeing of the business sector from absolutistic guardianship, as the liberals envisioned it, was thus not here Hegel's goal'.

<sup>180</sup> See Riedel 2004, p. 781.

in the early Jena period, as I will show in Chapter Three, Hegel's *Stände* appear initially as a functional model of analysis and as a 'socio-political' composition of forces, as an 'appropriate political organisation'. The question is: how they can appear within the same period as the *Verfassungsschrift* as a form of useful stratification, but are damned simultaneously as the *Reichs-* and *Landstände* in their absolutist form as centralised states? Perhaps Otto Hintze can clarify this situation:

Absolutism suppressed what Montesquieu called the intermediary forces; it did not by any means abolish the differences between Estates; on the contrary, it purposely sought to maintain the Estates' social order as a useful basis of the absolute system of government. The preferential position which the nobility and the privileged classes enjoyed, however, was legal and social rather than political.<sup>181</sup>

As I have shown above (II.2), the Hegel of the mature *Rechtsphilosophie* (1817–31) was opposed to these unjust privileges when it came to the place of the nobility as exempt from taxes, with patrimonial *dominium*, etc. On the other hand, however, it is clear that he retains their institutional character as a basis for social and political order. By now it is clear that the 'independence of *Reichs-* and *Landstände*' and the *Stände* as Hegel utilises them later are wholly different from each other. The *Stände* as Hegel utilises them in his mature work are, moreover, to be precisely opposed to the absolutisation that occurred in the *Reichs-* and *Landstände* in the empire. In the early Jena period when he turned back to work on 'the political project',<sup>182</sup> Hegel had already begun to construct the *Stände* as an intermediary social and political form by drawing on the Aristotelian and Platonic hierarchies (this will be explored fully in Chapter Three). Yet on the discovery of the subject (also to be analysed in Chapter Three), the *Stände* will not be a strictly aristocratic body, but a 'concrete universal' or what, following Rousseau, he had termed a 'general will' open to social mobility rather than the feudal strictures of hierarchical organisation, which in the *Grundlinien* he will also oppose to Plato's 'substantial' state. Hegel laments the destruction of the *Generalstände* in the *Verfassungsschrift* as leading to the failure of representation, 'the complete destruction of the feudal principle'; 'its degeneration, i.e. the loss of its true nature, has destroyed France's constitution (though not France as a

---

<sup>181</sup> Hintze 1975, p. 175.

<sup>182</sup> See footnote 72 above with its reference to H.S. Harris.

state)'.<sup>183</sup> As Hegel will later develop it, this will lead to the descent of revolutionary France into abstraction and terror. For Hegel, 'a constitution [is] real, [only if] it exists as objective freedom – the Substantial form of volition – as duty and obligation acknowledged by the subjects themselves'.<sup>184</sup> By referencing a former 'linguistic usage' that 'still preserves the unity which the *Stände* of *civil* society in general and the *Stände* in the political sense possessed in earlier times', Hegel reveals that he saw the function of the *Stände* 'as a reunion of the separate elements of state and society'.<sup>185</sup>

Hegel kept coming back to the *Verfassungsschrift* to incorporate more and more new events, and returned to it during the formation of his early system. As Hans Maier has stated, 'one ought to read the *Verfassungsschrift* more appropriately as a concentrated [*angereichert*] diagnosis of the times [*Zeitdiagnose*] ... [as] it contains in itself so many tensions, inconsistencies [*Ungleichheiten*] and undissolved contradictions'.<sup>186</sup> H.S. Harris speculated that the precise moment Hegel set it aside for the final time was in early 1803. As Wilhelm Dilthey pointed out long ago, the imperial deputation of 25 February 1803 [*Reichsdeputationshauptschluss*] – the last significant law enacted by the Holy Roman Empire – would have given the lie to Hegel's 'solution' that 'the great interest of the people had returned to its source' and was simply waiting to find 'satisfaction in an appropriate political organisation'. When Austria proved no less self-interested than Prussia in the division of territories, Hegel's contrast based on the idea that 'the Emperor's relationship with Germany appears in a different light, very different from that of Prussia', was most definitively put to rest.<sup>187</sup>

What Hegel affirms is not the *ständisch* resistance to central authority *per se*, which resulted in the 'highly limited' character of the medieval polity, nor the anachronistic dreaming of reactionaries for the pre-absolutist *Ständestaat* that was current in the Germany of his age, but the identification of the 'sphere of difference' – civil society – with an 'essential self-consciousness in social institutions as that universal

---

<sup>183</sup> Hegel 1999, p. 66.

<sup>184</sup> Hegel 2001, p. 386.

<sup>185</sup> Hintze 1975, p. 168; Hegel 1991a, p. 344 (§303).

<sup>186</sup> Maier in Hegel 2004, p. 195.

<sup>187</sup> See Dilthey 1990, p. 127; Hegel 1999, p. 96; and Pöggeler 1977 on the relation between Hegel and Austria.



aspect of particular interests'.<sup>188</sup> If for Hegel the feudal system was supposedly destroyed during the French Revolution, this is less present in the direct declaration of the National Assembly of August 11, 1789 than it is perhaps in the abolishment of the *états généraux* as a system of representation. It is in this sense that he responds to the reactionaries of his period: 'there is a great call in recent times for *Stände*, but if these *Stände* were to lack a sense of state, they would bring with them hatred for officials, judges and government. The proper significance of the *Stände* is that it is through them that the state enters into the subjective consciousness of the people, and the people begins to participate in the state'.<sup>189</sup> Hegel had no interest in the anachronism of the *ständische Gesellschaft*, the *société des ordres* that remains fixed in the old honorific hierarchy of rank society, for him the customary barriers of this status society have disappeared. *But he is interested in sublating the honorific form and aspects of the institutional structure of the medieval polity to develop partisanship among the citizens in the modern state.*<sup>190</sup> This appears, albeit at this stage limited to the Aristotelian natural hierarchy, in the first appearance of the *Rechtsphilosophie* in *System der Sittlichkeit* (1802–3) and in the *Verfassungsschrift* in

---

<sup>188</sup> Hegel 1991a, p. 286 (§290).

<sup>189</sup> Hegel 1991a, p. 339 (§301 Hotho's addition).

<sup>190</sup> The 'sublation' – precisely in the technical sense of the term for Hegel, as what is negated *and* preserved – of the medieval period into the modern becomes clearest in the *Vorlesungen* where the development of Hegel's discussion of the modern period entails the Middle Ages, the Reformation, and the French Revolution (compare Nederman 1987). What should be kept in mind is the historical context in which Hegel was lecturing at this time, where reactionaries glorified the medieval period as an age of immediate *Herrschaft* or aligned themselves with an idealistic – albeit only for conservatives – conception of the *Ständestaat*. It is for this reason that, for Hegel, 'the polemical zeal with which [the medieval period's] excellence is contended for [was] one of the absurdities of [his] times' (Hegel 2001, p. 400). Hegel understood the medieval period dialectically, as mired in contradictions, as Montesquieu had also seen in his analysis of the feudal legal system. But it would be an error to assume that we can find Hegel's 'organic' ideal derived from this period, as this is based explicitly for Hegel on the rational organisation of the general will and self-consciousness, and first appears as a contrast with modern natural law derived from Plato (see Wolff 2004 and Harris 1979, pp. 13–14 each see the more explicit source of Hegel's conception of organism in Kant's 'Critique of Teleological Judgement'). What is clear is that Hegel wishes to give an explicitly modern significance to the *Stände* insofar as they represent a solution to political modernity as such – the distinction between the civil and the political – by forming that 'organic element' that is simultaneously a '*mean*' (See Hegel 1991a, p. 342, §302) and operate under the principle where the 'customary barriers to free change of social status' have been 'swept away' (Harris 1972, p. 453). Later in the *Grundlinien* the *Vernunft* will be identified with the state; the *Stände*, on the other hand, belong to civil society, the *Verstandesstaat* – the state as the understanding envisages it. Presumably then, the political form of the *Ständestaat* was the limitation of the medieval period present in the traditional concept of the *civitas*, which is then brought up into the modern liberal age of political economy becoming modern civil society as such, both cannot realise the higher notion of the state as they are based implicitly on the private contractual relations between individuals, and thus their metaphysics are restricted to the *Verstand*.

<sup>190</sup> Hegel 1999, p. 8.

the recognition of the towns as a sphere of communal representation. It is in *System der Sittlichkeit* that one finds the first system of *Stände* and the concept of *Rechtschaffenheit* – virtue or rectitude – which belongs with them.<sup>191</sup> Hegel will couple the political order to the *Stände* and their *Ständeehre*, the honour of belonging to a *Stand*, from *System der Sittlichkeit* onwards as an aspect of the realisation of ethical life, which will eventually develop as consciousness and participation in the modern state as his mature *Rechtsphilosophie* develops. This institutionalism for Hegel is an answer to the inconsistency of the modern political and constitutional traditions that formed the political on the basis of the contract; this developed into the concept of suffrage, which Hegel saw as inevitably leading to the predominance of the private, civil principle, in the modern age over the political order of the state. The predominance of private right Hegel already attacked in what he perceived as the contractual-like basis of the constitution of the Holy Roman Empire where the arbitrariness of private right predominated over the political centre in the form of the *Reichs-* and *Landstände*, and the electoral princes that determined the constitution (II.3).

Like certain ideological forces of conservatism, Hegel does affirm a medieval ideal of sorts, but unlike the latter he conceives of it *as a solution to modernity*, not as the romantic abolition of the modern age as such but as its affirmation. This is indeed part of his contradictory modernity, and his utilisation of the *Stände* at the point where civil society and depoliticisation spread outwards in what he fears will engulf the modern state. I may add that the appropriate ‘universal bond’ he seeks to discover in the *Stände* is *peculiar to modernity* and that his usage of the *Stände* as a way of institutionally providing for this is then modern in turn. Rather than the medieval ideal of the pre-modern *Ständestaat* where the ‘picture of earlier social relations as patriarchal rather than exploitative did more [for] the romantic imagination than ... historical accuracy’,<sup>192</sup> Hegel’s political ideas are more difficult to situate. Moreover, in his advocacy for the monarchical form of government, along with Montesquieu, he is more perceptive than ‘those who criticised monarchy in the name of self-government [and] evoked the reminiscence of the old historic *Stände* [which] could bring them into an ad hoc alliance

---

<sup>191</sup> See Hegel 2002, pp. 54ff.

<sup>192</sup> Epstein 1966, p. 10 (text modified).

with the Reactionary critics of monarchical absolutism whose ideal remained the preabsolutist *Ständestaat*.<sup>193</sup> For Hegel, ‘the essential constituent of a state [remains] a political power governed by a supreme head’; this must be remembered even if the *Stände* appear as a form of social and political organisation that can oppose the reduction of the individual to a mere cog in the political machinery of absolutism (II.3).<sup>194</sup> As I have shown in this chapter, Hegel’s use of the *Stände* is of a peculiar sort and is connected with modern constitutional developments. As I will continue to show in Chapter Three and Chapter Four, it is also integrally linked to an encounter with the modern philosophical and political tradition, and to what Hegel conceives as the crisis of this metaphysical tradition and of civil society.

In this chapter I have shown how Hegel’s concept of the *Stände* is to be significantly differentiated from their traditional function as *Landstände* (II.1, II.3). I analysed this in Hegel’s early critique of the imperial constitution in the *Verfassungsschrift* (1798–1803) throughout this chapter, where he observed the subordination of imperial political power to private legal arbitration in the Holy Roman Empire. This was contrasted with his later affirmation of the *Stände* as a legitimate organisational form in the *Grundlinien* (II.2, II.3) in precisely the opposite sense: where one sees the concept of the *Stände* as a ‘socio-political’ form that overcomes the isolation of private particularity. This lays the basis for now turning this inquiry to questions related more directly to the philosophical tradition, which I will analyse in Chapter Three.

---

<sup>193</sup> Epstein 1966, p. 255.

<sup>194</sup> Hegel 1999, p. 98.

## Chapter Three: Natural Right

*Hegel's polemic against the doctrine of natural law has been lost from the historical context in which it grew; it is seen as an isolated and entirely new event whereby one forgot that the critique of the foundational concepts of natural law, from the state of nature to the social contract was a common feature of every philosophical current.<sup>1</sup>*

In this chapter I examine how the *Stände* are transformed from a natural order in Hegel's Jena essay of 1802–3<sup>2</sup> to a spiritual order in the *Philosophie des Geistes* (1805–6) through the development of the concept of reciprocal recognition. This involves tracing a well-established moment in the Hegel scholarship,<sup>3</sup> whereby Hegel leaves the ethical conceived as 'nature' and as a 'work' behind him and emphasises the relationship of labour and the recognition of right by grasping the individual according to his 'concept'. Prior to the discovery of reciprocal recognition, individuals for Hegel, following on his interpretation of the tradition of Greek Antiquity, were assigned to *Stände*. Indeed the *Stände* are decisively drawn from the Platonic and Aristotelian hierarchies in the young Hegel as an attempt to solve the modern dichotomy of individuality and sovereignty (Hobbes), and the cleft between morality and politics introduced by the Enlightenment and the French Revolution.<sup>4</sup> This resulted in an uncritical appropriation of the hierarchies of the Platonic and Aristotelian philosophies (III.3), which had seen labour as an entirely negative phenomenon, marred by lack and the need from which the original community arose.<sup>5</sup> Just as the soul is valued higher than the body and the one is naturally ruler over the other, so too did the political community 'by nature' rule over those who provided for the necessities of life.<sup>6</sup> For Hegel, the negative and lack of being at the foundation of the natural contingency of humankind leads initially to the development of a system of needs

---

<sup>1</sup> Bobbio 1975, pp. 82–3.

<sup>2</sup> *Über die wissenschaftlichen Behandlungsarten des Naturrechts seine Stelle in der praktischen Philosophie und sein Verhältnis zu den positiven Rechtswissenschaften*.

<sup>3</sup> See Riedel 2011, p. 95.

<sup>4</sup> See Hegel 2002, pp. 3–4; 1999, pp. 147ff in reference to Rome, which can be equated with his vision of contemporary France that destroyed the *Generalstände*, and the principle of representation and constitutionalism as I showed in Chapter Two and, through the introduction of abstract equality, led to the Terror (1792–4).

<sup>5</sup> *Republic* 369b.

<sup>6</sup> *Politics* 1254a29–1254b35.

and to the political community as a higher form of activity, just as it for Aristotle.<sup>7</sup> As K.H. Ilting has shown, this orients Hegel's appropriation of modern political economy.<sup>8</sup> But negativity for Hegel through the eventual development of reciprocal recognition leads to the subordination of the serf whose labour as the negative expands ever outwards to overwhelm stable existence and reduces the lord, most famously in the *Phenomenology* (1807), to a mere catalyst of the true history of freedom that is founded, in its first instance, on subordination (III.3). Negativity becomes the negation of the existing and in turn undoes the hierarchy – established 'according to nature' for Aristotle – of classical *polis* life, of the *Stand* of the free and the *Stand* of the unfree. This leads, some have argued, to modern labour society.<sup>9</sup> I will analyse this below in detail (III.3, III.4).

As I will show in this chapter, the concept and the transformation of the *Naturzustand* is what truly orients Hegel's thinking. This is already the case in his early engagement in the Jena period – in both the Jena natural law essay (1802–3) as well as *System der Sittlichkeit* (1802–3). It was in *System der Sittlichkeit* that he first employed the *Stände* in a truly systematic fashion in response to the modern dichotomy of individuality and sovereignty and the cleft between morality and politics, whereas in the Jena natural law essay the *Stände* as an idealised version of the hierarchy of the Greek *polis* are contrasted with the appearance of 'formal' legal equality in Rome (III.3). Hegel, following Hobbes, often deems equality a state of war or conflict, as a state of nature. He interprets it in the Jena natural law essay for the first time as the historical decay of *polis* through the equalisation of the *Stände*. As I will show below (III.1) a major transformation occurred in the description of the *Naturzustand* when it came into contact with German natural law, and Pufendorf particularly. Pufendorf laid down a real basis for property [*dominium*] and contracts to take place prior to the state and in so doing he maintained the right that Hobbes had found necessary to discard in the formation of the *civitas*. This redescription of natural right in the state of nature as a real sphere of contractual relations led to the development of a natural society. For Pufendorf,

---

<sup>7</sup> See Ilting 2006, pp. 20, 21.

<sup>8</sup> See Ilting 2006, p. 23.

<sup>9</sup> See Ritter 1984, pp. 124–51. The derivation of the *Stände* has been traced to contemporary German conditions (*Allgemeines Landrecht für die Preußischen Staaten*) and to Sir James Steuart (see Hočevár 1968, 1973; Walker 1978; Waszek 1988, p. 171). They firstly appear most explicitly, however, as a '*couche sociale*' in the ordering of the *polis* in Greek antiquity (Hegel 1999, pp. 147ff).

‘sociability’ [*Geselligkeit*] lay at its basis, and this he in turn established as *the* natural law and duty. Once this natural form of society had been conveyed to John Locke (1632–1704), the theoretical foundations for the later revolution in right that led to the French Revolution as a redescription of the – equal – natural rights of man became possible. These natural rights could then be preserved in a positivist fashion at the basis of the modern state in what became modern civil society.

The importance of this discovery is that it lay at the conceptual core of Hegel’s division between civil society and the state.<sup>10</sup> As far as the present study is concerned, this leads to a transformation of the significance of the *Stände* in Hegel’s later work (III.4). Once natural right has been laid down as the basis of modern society, the state of nature is conventionally seen to disappear from political and philosophical discussion.<sup>11</sup> By contrast, I will analyse how for Hegel this leads to the state of nature becoming real for a ‘second time’ as the human being’s ‘spiritual’, ‘second nature’ in civil society – the first time is in the field of international relations and state sovereignty, just as it had been for Hobbes. I will then show how Hegel’s theory of institutionalism is developed as a specific response to what he conceives of as the spiritualised conflict – the ‘remnants of a state of nature’ – that appears at the basis of modern civil society in the *Grundlinien*. It is precisely this conflictual nature of civil society that necessitates Hegel’s development of the organisation of the *Stände*.<sup>12</sup>

Thus in this chapter I will analyse how the redescription of the state of nature as natural rights established in society transforms the concept of the *Stände* in turn and how the *Stände* respond to the new conditions of the crisis of modern civil society. Hegel observes the crisis of modern civil society as a crisis of conflict and self-interest that he places at its foundation alongside the Aristotelian and Platonic origin of the community as a reciprocity of shared needs – both of which lead, for Hegel, to the necessity of

---

<sup>10</sup> See Riedel 2004, pp. 719–800 for an exhaustive treatment of this development, for Hegel’s conceptual innovation and structural transformation of civil society [*bürgerliche Gesellschaft*] see in particular pp. 779–83.

<sup>11</sup> See Hochstrasser 2004, p. 36.

<sup>12</sup> Hegel 1991a, p. 234 (§200). As Ilting has shown in reference to the *Grundlinien* and ‘abstract right’, ‘Hegel makes use of the same method as his predecessors since Hobbes. He abstracts from all conditions of social life which are created by human activity itself. The background of his arguments, then, is the fiction of a state of nature without any form of established society and, above all, without the coercive power of the state’ (Ilting 1971, p. 91).

institutions. I will show how Hegel through the prioritisation of ‘abstract right’ conceives in an original fashion the conflictual basis of individual interests established at the foundation of modern civil society and how the *Stände* come to be conceived as spheres of ‘concrete universality’ and ‘subjective freedom’ leading to *Sittlichkeit* (Chapter Four). I will show how the *Stände* are designed to stem social conflict and receive a new significance as institutional forms in Hegel’s modernity leaving behind the traditional ‘status society’ [*ständische Gesellschaft*] through the prioritisation of labour (III.3). It now remains to outline precisely the five sections in this chapter and to explain their importance, in brief, for its overall argument and of the present study more generally.

After a short introduction situating Hegel in relation to the classical and modern natural law traditions, I will proceed with an analysis of Pufendorf’s theory of natural law (III.1) in order to explain how the central concept of the modern tradition – the state of nature – came to form the structural basis for modern civil society. Hegel’s relationship to Kant’s practical philosophy played the most central role in his development of the ‘concrete’ institutionalisation of the merely ‘formal’ will from a very early period (Frankfurt 1797–1801). This section (III.2) will thus show this formative influence of Kant on Hegel’s developing theory of the *Stände* and natural law, which lead him back to the Greeks and *Volksreligion*. Hegel’s discovers dimensions similar to the *Stände* in the Greek conception of hierarchy and appropriates them in response to Kant’s formal will and the French Revolution. I will show how this leads to the development of a ‘status’ society, which placed Hegel in proximity to the German natural law tradition as well as Roman law despite his criticisms during the early Jena period (1801–4) (III.3). The question of how the *Stände* are transformed from a natural to a spiritual order through the process of reciprocal recognition will then be analysed (III.4), and how this is connected to a revaluation of labour in Hegel’s political theory. I will show how the *Stände* are a distinctive attempt to answer the ‘defectiveness’ of modern civil society (III.4), which implies a revaluation of the concept of the state of nature, and how Hegel leave his hierarchical conceptions fundamentally behind (III.3). In the conclusion of this chapter I will reflect on Hegel’s ‘philosophical science of right’, which implies a distinctive method that will transform the conceptualisation of the *Stände* in Hegel’s politics from his early period onwards.

The failure to treat the entire development of modern natural law in the consideration of Hegel's philosophical position, or to isolate simply the development from Kant and Fichte insofar as it concerns his youth has been considered highly problematic in the scholarship.<sup>13</sup> 'It is characteristic of the final phase of rational natural law that Hegel initially must travel a very long way in order to generally approach it, and then to find [and] integrate it into his systematic conception'.<sup>14</sup> Hegel recognised in antiquity that natural law as well as the classical conception of economy [*oikonomik*] – the needs of the household – began from the community and only later did personality and individuality become central in explicit contrast to the modern tradition begun by Hobbes and radicalised metaphysically in Kant.<sup>15</sup> The young Hegel prioritises the whole or the ethical community (here following Aristotle closely) over the part, or the individual. 'For a state is not a mere aggregate of persons, but, as we say, a union of them sufficing for the purposes of life... A state then should be framed with a view to the fulfilment of these functions'.<sup>16</sup> Indeed, the young Hegel follows Aristotle to the letter in the Jena natural law essay of 1802–3, dividing the various functions of the political community between those who labour, the classical artisans, and those oriented towards death – respectively, the *Stände* of relative and absolute ethical life.<sup>17</sup> This colours Hegel's initial encounter with the modern political tradition, and particularly with Hobbes in his attempt to develop a rational method to account for the individual *and* the community – and indeed by the time of the *Philosophie des Geistes* (1805–6) he discovers this in his reinterpretation of the

---

<sup>13</sup> See Bobbio 1975, p. 82.

<sup>14</sup> Ilting 1983, p. 103.

<sup>15</sup> See below (III.2) for a more extensive treatment of this discussion.

<sup>16</sup> Aristotle 1328b15–1328b22. The political community is then divided by Aristotle into various status groups – farmers, artisans, a warring and wealthy class, priests and judges. The other significant reference for Hegel is Plato; his trichotomy remains in form the basis from this early stage to the mature work. As I will show below, however, with the addition of self-consciousness the *Republic* becomes a very limited ideal.

<sup>17</sup> See Hegel 1999, p. 147. Hegel refers to Plato in this context and the capacity of the philosophical and warring *Stände*, in relation to *Sittlichkeit*.



state of nature *as a relation* whereby right is initially established and consciousness as a concept truly emerges.<sup>18</sup>

Yet once political economy is foregrounded in his political analysis, the originary Greek ideal of a hierarchy of beings comes apart at the seams, and his historical interpretation of freedom emerges. This is true even if Hegel still maintains in the development of the system of needs a thorough orientation on the classical model of Plato and Aristotle, which conceived of the ends of the community as the final objective orienting the economy as well as providing the basis for human gathering.<sup>19</sup> For Hegel, this is driven by an interpretation of the division of labour and the negative, and he conceives of history as the realisation of freedom in his expansive historical account – a history of the development of thought that made ‘the unity of freedom and man’s being ... the principle of world history’.<sup>20</sup> To a large degree the concrete conception that Hegel provides in his developing political theory is developed from precisely the mediating institutions that the French Revolution had completely destroyed.<sup>21</sup> What I showed at a largely historical level in Chapter Two I will now discuss at a philosophical (natural-legal) level. The concept of the *Stände* will play a central role here as embodied spheres of right in the institutional organisation of the civil – a distinct response to the French Revolution and to Rousseau, who ‘rejected entirely any idea of the corporative articulation of the state, on the ground that it would falsify the general will’, and to Fichte, who saw ‘civil society [as] simply an aggregate of so many associated individuals’.<sup>22</sup>

Even if there will be a fundamental shift in the early idealisation of Greek ethical life, Hegel will continue to affirm the *ständische* form of organisation harking back to its linguistic associations of re-uniting the social and the political as I analysed in Chapter

---

<sup>18</sup> Again this will be stated with the most clarity in the *Encyclopaedia* where Hegel speaks of how in order to be free each nation must first undergo the severe discipline of subordination to a lord after which lordship becomes redundant. The forming principle of a state can be violence, but law is its *substantial* principle insofar as the subject recognises itself therein: ‘In the state the spirit of the nation are the customs, the laws the rulers’ (Hegel 1974, p. 221 (§423 *Zusatz*)). Hegel contrasts Hobbes here for whom ‘Aristotle and others... by reason of humane infirmity, suppose the Supreme Power be committed to the laws onely’ (Hobbes 1983, p. 149). Yet in the recognition of right with custom as a higher law, Hegel harkens back to a tradition prior to Plato and Socrates (see Ilting 1983, p. 246) as I noted already in the Introduction.

<sup>19</sup> Ilting 2006, p. 23; see *Politics* 1291a1–1291a30, 1328b15–1328b22 and Hegel 1991a, p. 219 (§181) and pp. 227, 233 (§§189, 199) on how subjective need and satisfaction leads to a system of needs and social labour.

<sup>20</sup> Ritter 1984, p. 50.

<sup>21</sup> See Pöggeler 1995, p. 36 (emphasis added).

<sup>22</sup> Gierke 1934, pp. 363, 131; compare Hegel 1991a, p. 277 (§258).

Two (II.3), and thus conflating the very differentiation between its political and social description.

Hegel opposes the *Stände* to the emergence, arguably with Hobbes (and then Rousseau, Kant and Fichte), of what he sees as the foundational principle of modern practical philosophy: ‘atomism’, or ‘the abstraction of man’, in which, as he put it in the Jena essay of 1802–3, ‘the isolated energies of the ethical realm must be thought of as embroiled in a war of mutual annihilation’.<sup>23</sup> According to some commentators, when Hegel stated that the absolute ‘ethical totality is nothing other than a people’ the dissolution of modern rational natural law theory began, which saw ‘*individuated* reason’ as the ‘only recognised authority capable of producing right and law’.<sup>24</sup> Thus the common good of the classical natural law model – best exemplified in Aristotle – will for the young Hegel once again become the only true aim of the individual who at this stage is conceived of as a negative in respect to the community. Hegel would eventually develop this as foreign and hostile to the Greek conception in his final theorisation that opposes the modernity of ‘self-sufficient particularity’ – the product of modern civil society – to Plato’s ‘substantial state’. ‘Hegel is the first (and the last) to merge the [classical and modern] models in his system. His system of practical philosophy is a synthesis because it tries to mediate between, or more precisely, not to drop the classical as well as the modern tradition of political philosophy’.<sup>25</sup> Hegel breaks with the tradition entirely and definitively brings it to conclusion, while opening up a new epoch.

In [a] paradoxical way Hegel’s philosophy of right is portrayed as the negation of all systems of natural law [and] at the same time also as the last and most complete system of natural law, which, as the *last*, the *end*, and as the most absolute [is] portrayed as the completion of what precedes him. ... [O]ne cannot [however] think of Hegel’s philosophy of right [*Rechtsphilosophie*] without having the tradition of natural law in sight.<sup>26</sup>

---

<sup>23</sup> Hegel 1999, p. 112.

<sup>24</sup> See Bobbio 1975, p. 86; Scattola 2003, p. 15 (emphasis added).

<sup>25</sup> Bobbio 1989, p. 24. Bobbio’s perspective here is a simplification, and entirely neglects the German natural law tradition and eclecticism. It is more precise to say that Hegel is the last, but even this may be an exaggeration. Riedel 2011, p. 9 has made much of the renewed proximity to Aristotle. I will discuss this at greater length below (III.2).

<sup>26</sup> Bobbio 1975, p. 81 (original emphasis). Clearly – and certainly insofar as Hegel’s expansive historical perspective is taken into account – his work is a complex philosophical engagement with both ‘tradition’ – the classical philosophy of Socrates, Plato, and Aristotle and the German political tradition – and ‘revolution’ – ‘the political realization of freedom [which] the Revolution raised to the “intellectual principle of the state”’ and the Industrial Revolution in England (Ritter 1984, p. 47).

The modernity of the French Revolution fully realised modern natural law and the ‘separation of the social contract from the contract of submission’ that Pufendorf established, ‘[which] had the meaning that the people themselves [were] constituted as subjects of right [*Rechtssubjekt*]’.<sup>27</sup> Hobbes had introduced natural right as the basis of the state – or ‘civil society’ as he termed it, insofar as the scholastic terminology of the *societas civilis* was still predominant – but the people disappeared in the formation of the contract and natural right was assimilated through sovereignty and limitless rule. It only reappeared for Hobbes insofar as ‘the law of nations and the law of nature is the same thing’.<sup>28</sup> Natural right, therefore, was synonymous for Hobbes with the natural condition; and he made a point of distinguishing right [*ius*] and law [*lex*].

Whereas the *societas civilis* for Hobbes was radically distinguished from the state of nature, in the intervening century this was transformed. The German natural law tradition begun by Pufendorf turned this state of nature into a nascent society with its corresponding rights and duties. Locke and the Scottish moral philosophers and economists took this even further.<sup>29</sup> Contracts no longer required the use of the sword to be made valid, but could be completed by private individuals themselves in this ‘natural’ and ‘social’ state. But this also went beyond the realm of the contract as such as it implied as well a sphere where needs and reciprocal exchange developed. In the following section (III.1) I will show how this gives Hegel the object for his later conceptual distinction between modern civil society and the state. It is necessary at this stage to consider this development more extensively in order to grasp the extent and significance of Hegel’s equation of civil society with the *Naturzustand*. This will be the backdrop of much of the present chapter and my arguments for the theoretical potential of Hegel’s institutional theory. This will allow me to show how Hegel’s concept of the *Stände* develops in an original fashion by relating them to the discovery of society as a natural object. By analysing how the state of nature and a nascent society coincide, I will be able to show how Hegel is able to equate civil society and the state of nature once again in the

---

<sup>27</sup> Denzer 1979.

<sup>28</sup> Hobbes 1651, p. 217. As Hegel put it, ‘civil society, the state, is to Hobbes absolutely preeminent’ (Hegel 1995b, p. 316).

<sup>29</sup> For an extensive treatment of both of these schools of thought and the ‘natural history’ of civil society, see Medick 1973.

Hobbesian fashion as a site of conflict. In so doing it will also become possible to distinguish Hegel from the German natural legal tradition more generally.

### III.1 Geselligkeit: *Pufendorf's socialisation of Hobbes's Naturzustand*

Prior to the Kantian revolution, which thoroughly shifted the emphasis to metaphysics, the pre-critical German natural law model was close to Aristotle. The German political tradition as seen for example in Christian Wolff (1679–1754) and Johann Gottlieb Heineccius (1681–1741)<sup>30</sup> continued to view the creation of the *civitas* along the lines of its central foundation in the domestic life of the household economy, just as Aristotle and the Roman concept of household rule by the *paterfamilias* had: i.e., the *politische Gesellschaft* was based on the accepted notion of domestic society, the *oikos*, the *Hausstand* and its corresponding *Hausgewalt* [*patria potestas*].<sup>31</sup> The appearance of the Aristotelian economic model alongside the conceptual one innovated in Hobbes reveals the German natural law model's proximity to the Scholastic tradition, which had been conveyed by way of the Protestant Aristotelianism of Phillip Melanchthon (1497–1560). Yet even for Hobbes the *civitas* stands in immediate political relation to *oikonomik* insofar as it is understood according to the unity of many households.<sup>32</sup> This appearance alongside the 'modern' conceptual model of natural law is a contradiction in Hobbes, and one that might be considered a mere matter of convention.<sup>33</sup> For when Hobbes founded

---

<sup>30</sup> Heineccius was a student of Christian Thomasius who combined the conceptual model of natural law in his investigation of Roman law. He is a significant source for Hegel's understanding of Roman law as can be seen, for example, in the *Grundlinien* (see Hegel 1991a, p. 34, 71 (§§3, 40); 1986, pp. 42–6 (§3 Zusatz)).

<sup>31</sup> See Finley 1985, p. 19; Stuke 1968, p. 38.

<sup>32</sup> See Riedel 2004, pp. 722, 734.

<sup>33</sup> Bodin and Hobbes should be compared here: '... the definition of a Commonweale by us set downe, concerneth a Familie, which is the true ... beginning of every Commonweale...' (Bodin 1606, p. 8). 'For to be a king, is nothing else but to have Dominion over many Persons; and thus a Great Family is a Kingdom, and a little kingdome a family' (Hobbes 1983, p. 117). Bodin maintained the indissoluble character of the family as an immanently *natural* community and sovereign power as *governed* society. He thus remained within Aristotle's definition of the state when the latter conceived that 'the state comes into existence, originating in the bare needs of life, and continues in existence for the sake of a good life' (*Politics* 1252b28–1252b31). It can thus be seen how domestic society grew into the *civitas* in Aristotle as the unity of many houses. Yet Aristotle, in contrast to Roman law, criticises those who see in the state a mere extension of the rule over the household (*Politics* 1252a9–1252a13). Hobbes's *Naturzustand* on the contrary 'designates the break with the natural horizon of classical conceptual theory... civil society here has no "natural" origin, but a derived being [*Dasein*], it is the result of a process that begins with the particular individual' (Riedel 2004, pp. 737, 734). The concern here and in the following exposition will be to show how the German political tradition, by way of a proximity to Aristotle and the original *oikonomik*, begins to conceive of the *Naturzustand* as a place where the originary formations of association take place. The state

natural law on the individual will he did so on the basis of the contract, whereby the absolute power of the sovereign mirrored the individual in a state of nature pre-existing both social and domestic association. For Pufendorf, and in explicit contrast to Hobbes, ‘natural law theory is not a theory of the inalienable rights of the individual, but a theory of duties’.<sup>34</sup> Firstly there is the divine obligation to sociability, and only then do rights follow. Thus German natural law remained in close proximity to Aristotle and Roman law developing ‘status’ in particular (with Wolff and Heineccius) as *the* social mark and legal distinction of the person. Hegel is no less different in this regard in his demand that an individual have a *Stand*. Yet for Hegel once he has abandoned his early Greek ideal this is not based on hierarchy or rank, but on vocation and the determination of particularity – the individual must become enter the sphere of concrete universality.<sup>35</sup>

As I have already mentioned the Protestant Aristotelianism stemming from Melanchthon complicated the development of natural law in Germany, but so did the combined influence of the classical Greek tradition and Roman law. Each of these elements were, moreover, directly beneficial to the social hierarchy and enforced the traditional forms of stratification in the German speaking lands. Germany was in part far more amiable to Platonic and Aristotelian ideas of social hierarchy than elsewhere. Protestantism subsequent to the Peasants’ War had placed positive law in the hands of territorial rulers, while Luther and Melanchthon’s *Dreiständelehre* (theory of the three estates) had a normalising function on society, reinforcing traditional rule. Aristotle’s natural law played well into this scenario as it legitimated the lord’s rule over the serf.<sup>36</sup> It is thus understandable that the starting point for German natural law is not the individual, but *the social* and the individual’s designated place, obligations, and duties within it. Thus ‘Pufendorf’s natural law theory is based upon an anthropology in which individualist and social traits are completely and mutually determined’.<sup>37</sup> Society and rule at this historical

---

of nature thus becomes an originary sphere of social relations whereby the structures of rule – *Hausstand* and *Stand* – are re-naturalised. I will thus show how Pufendorf adapts Hobbes’s theory to the German context by firmly placing the origin of *dominium* in the *Naturzustand* – establishing the primacy of the property relation and domestic society with a view to *socialitas* [*Geselligkeit*] (see Pufendorf 1994, pp. 89, 134). Pufendorf, however, in this way distinguishes ownership and sovereignty: ‘Authority over one’s own things is called *dominium*... Authority over other persons is called sovereignty’ (Pufendorf 1991, p. 134).

<sup>34</sup> Denzer 1979, p. 65.

<sup>35</sup> See Hegel 1995a, p. 187 in reference to the *Ständelehre* as an aspect of ethical life.

<sup>36</sup> See Riedel 2004, p. 725.

<sup>37</sup> Denzer 1979, p. 63.

stage were moreover entirely cohesive, and the traditional basis of domination remained untouched by the apparently individualistic premises of Hobbesian natural law.<sup>38</sup> Indeed, individualism in Pufendorf was restrained by the divine compulsion to cultivate society, which not only left the traditional structures of domination unaffected, but also could explicitly reinforce them.

[For] thinkers in the Leibnizian tradition and especially for Wolff, law and politics were essentially concerned with the perfectibility of human nature as part of the general system of the world. In contrast, for those in the Pufendorffian line, and Thomasius in particular, law and politics were concerned with restraining and pacifying a human nature that was inherently passionate and tended to be ungovernable.<sup>39</sup>

In this respect Pufendorf directly followed Hobbes, but by giving a social and pre-historical content to the *Naturzustand* the traditional structure of rule was more or less laid down as the foundation. For Pufendorf, the family and the *Hausstand* were seen to pre-exist the political and thus there was a continuity between the *dominium* of the household community and the political order.

For Aristotle, the state was not an aggregate of persons, but their unification; the self-sufficiency of the community that described the social whole framed as the fulfilment of particular functions.<sup>40</sup> This went along with a discrete ‘natural’ hierarchy, and for Aristotle an immanently teleological order of domination. ‘The stability of [such] practical philosophy follows from its non-speculative nature, i.e., its independence from the premises of “first philosophy”’.<sup>41</sup> Modern natural law by contrast introduced a new set of concepts that were foreign to the classical model, principally, the concept of the state of nature. This developed individual natural right, as in Hobbes, prior to social differentiation and thus could potentially break with the traditional order of society. With Hobbes, the principle of first philosophy in politics ‘could find nothing apparently so solid and indubitable as individual human nature’ wherein which humanity was reduced to a purely physical existence,<sup>42</sup> while rationality ‘consisted in the mechanical capability

---

<sup>38</sup> See Riedel 2004, pp. 729–32, 740, 741.

<sup>39</sup> Haakonssen 2006, p. 260.

<sup>40</sup> See *Politics* 1254a29–1254b35.

<sup>41</sup> Riedel 2011, p. 6.

<sup>42</sup> Sabine 1973, p. 475.

of inferring true conclusions from true premises'.<sup>43</sup> This conceptual model of natural law, moreover, had developed an epistemology of the body politic based on a pessimistic anthropology of individual voluntarism, which, according to Leo Strauss, had been substituted for the Aristotelian teleological conception.

The experiment with extreme skepticism was then guided by the anticipation of a new type of dogmatism... The mere fact that the only certain knowledge which was available is not concerned with ends but consists in comparing figures and motions only created a prejudice against any teleological view or a prejudice in favor of the mechanistic view'. ... what later on came to be called 'epistemology' becomes the substitute for teleological cosmology.<sup>44</sup>

The distinction between modern rational natural law and the classical formulation, while not lost on the German natural law school begun with Pufendorf, was complicated due to the eclectic approach which historicised morality and took all older conceptions (such as Stoicism and humanism) into its theoretical (and developing academic) discourse, while retaining a certain continuity with the Aristotelian scholastic tradition. The eclectic approach, moreover, was taken up in explicit contrast to Hobbes in an attempt to mediate between the new theories stemming from the concepts of the state of nature and sovereignty and classical natural law, a mixture that was most easily accessed in the classical references of Grotius's writings that could once convey a normative and moral character in the direction of politics.<sup>45</sup> It was in Grotius, moreover, that a different emphasis on the division between *ius* and *lex* than that of Hobbes had come into being. Grotius had 'transformed the concept of *ius* as it was found in Roman law and Aquinas. Instead of being something that an action or state of affairs or a category of these *is* when it is in accordance with law (*in casu*, natural law), *ius* is seen by Grotius as something a person has. The concept becomes "subjectivised", centred on the person'.<sup>46</sup> The ancient

---

<sup>43</sup> Scattola 2003, p. 14.

<sup>44</sup> Strauss's insight here (Strauss 1965, pp. 171, 177) on the contradiction between Aristotelian teleology and the new anthropology only holds insofar as Hobbes and Locke are concerned, as already Pufendorf saw, with the obligation to cultivate sociability [*Geselligkeit*], 'the aspiration of human nature after perfection which [he] based on the Aristotelian-Thomastic tradition' (Denzer 1979, pp. 65–6); even if Pufendorf remains, following Hobbes, mired in a thoroughgoing pessimism. As soon as figures such as Leibniz and Wolff are considered with their 'Neo-Scholasticism', and with the teleological drive to *Glückseligkeit*, the issue becomes even more complicated.

<sup>45</sup> See Stein 1999, p. 108.

<sup>46</sup> Haakonssen 1985, p. 240. I am not making the claim here, however, that Grotius was the founder of the modern tradition of natural law; that honour belongs to Hobbes, who was simultaneously the destroyer of

natural law accessed through Grotius's writing could not, however, like modern natural law, 'be an academic discipline and could not offer any philosophical foundations'.<sup>47</sup> It was primarily conceived as a law in practice and as a general set of rules;<sup>48</sup> it was neither universally binding, nor was it concerned with deducing the political order. By contrast, modern natural law set out to explain the origin of rule prior to the *civitas* or how the *civitas* as such came into existence. It thus set out to justify the order of rule on the basis of a corrupted form of the will in the state of nature. To this extent civil and positive law were only deduced subsequent to the formation of the political order, which became the primary subject of natural law and its theory of the state of nature. From this perspective 'natural law theory is essentially a moral theory, not a legal theory'.<sup>49</sup> The legal foundation of the political community in the modern era moreover reveals how 'theory permeates the structure of practical philosophy, and practical philosophy advances the same claim to universal validity found in the modern notion of scientific method'.<sup>50</sup>

In the context of Roman law and Stoicism from which the tradition stemmed in Grotius, '*ius naturale* is not considered ... a juristic conception denoting a special sphere of law, a particular category of law, or a system of legal norms. Nor do the occasional "definitions" of the *ius naturale*, found in the sources, give the picture of a certain uniformity of the conception, although the influence of Greek philosophy is evident'.<sup>51</sup> While Pufendorf's natural law model emphasised the sociability [*Geselligkeit*] he discovered by way of Grotius, he founded such sociability on the innate weakness of the human creature existing in a corrupted state. Pufendorf's eclecticism, through its historicisation of morality, set about giving a systematic order to classical natural law discourse and in turn set this beside its 'redescription of natural law as subjective natural rights' taken from Grotius. This eventually 'brought with it a change in focus from the metaphysical understanding of the world to the anthropological understanding of the

---

the classical natural law tradition as he 'initially attempted on the basis and with the tools of natural law [*Naturrechts*] to blow apart [*zu sprengen*] natural law itself' (see Gierke 1880, p. 300 quoted in Ilting 1983, p. 75).

<sup>47</sup> Scattola 2003, p. 2.

<sup>48</sup> Ibid.

<sup>49</sup> Berman 2003, p. 98.

<sup>50</sup> Riedel 2011, p. 6.

<sup>51</sup> Berger 1953, p. 530.



individual’.<sup>52</sup> German natural law thus bridged the gap between the modern and classical frameworks, but in this sense was explicitly modern itself insofar as it turned this into an academic discipline guided by a historically constructive method, which prioritised the origin of the ruler’s power by way of the universally deductive principle of the state of nature.

Reflecting its growing political and legal importance, natural law became institutionalised. It became a major field of study. ... As is common when an area of study acquires “disciplinary” status, natural law received its own historiography, which was commonly used as an introduction to the topic.<sup>53</sup>

Its significance lay in the formation of the civil service,<sup>54</sup> and the positivisation of law that led eventually to the codification process. Natural law circumscribed the purely political theory of state and established juridical uniformity between ruler and ruled. Moreover, it ‘provided a theoretical justification for the historical process under which territories were unified, governments centralised, law systematised, and all individuals within the state made subject to the sovereign’s political power.’<sup>55</sup>

The state was conceived for Pufendorf as ‘a composite moral person’, whereas for Hobbes ‘the *societas civilis* is *persona civilis*, because it has no unity in itself’.<sup>56</sup> While Hobbes’s state of nature was immanently asocial, Pufendorf had ‘posited the sociality of man as the foundation of universal natural law...’.<sup>57</sup> To this extent, Pufendorf did not require a *fictive persona* to bind individuals together as Hobbes had. On the contrary, he developed a real basis for the common will in the *persona moralis* conceived of as ‘either single individuals or those joined together into one system by a moral bond, considered

---

<sup>52</sup> Hochstrasser 2004, p. 5.

<sup>53</sup> Haakonssen 2006, p. 258

<sup>54</sup> The non-confessional aspect of modern natural law lent it a character of broad applicability, and it was given a scientific status through its analysis of the origin of the *civitas* derived from the state of nature; it thus encapsulated the shift from metaphysics to a (negative) anthropology and served as an academic discipline in the instruction of civil servants. As Hochstrasser shows in reference to Christian Wolff, ‘the doctrine of the self-perfection of the individual within the state or community is used to breathe new life into the Aristotelian conception of the potential that lies within the *polis* for development to perfection; but with the difference here that the perfection may be effected through the intervention of state officials and bureaucrats enforcing a concept of duty. Both Hellmuth and Klippel have demonstrated how Wolff’s belief that the individual most nearly achieved perfection within the community was transmuted into a bureaucratic ethic of service that anticipated elements of Kant’s subjugation of public dissent to the greater public good’ (Hochstrasser 2004, p. 175).

<sup>55</sup> Canale 2009, p. 144.

<sup>56</sup> Riedel 2004, p. 735.

<sup>57</sup> Pufendorf 1994, p. 97.

with their *status* or *function* in communal life'.<sup>58</sup> The individual and their reciprocal relationship or dependence on a larger communal and social whole led to a concept of society that was rooted in the particular status or function. The *status civilis* was taken over and modified from Roman law whereby the individual was conceived in relation to a larger social or political whole. By contrast, in order to form the idea of the unity of the will the *fictive persona* for Hobbes required an absolute form of violence. Only by this means could the reality of the fictive unity of the represented person in the *civitas* be realised. The *societas civilis* up until Hobbes had been determined by 'the authoritative [*herrschaftlich*] corporate unification of free *pater familias*'.<sup>59</sup> Similarly, Pufendorf's theory of the *persona moralis* conceived of the state as coming into existence through the pacts of families and associations, which were also considered moral persons.

By referring to Hobbes's attempt to refute the Aristotelian idea of man as, by *nature*, a political animal, one can discover the fundamental distinction between Hobbes and the German model. Insofar as Hobbes understood it, 'Man is made fit for Society not by Nature, but by Education' – man, on the contrary, is by nature a wolf to man [*homo homini lupus*]. 'The foundation which therefore I have laid firm, I demonstrate in the first place, that the state of men without civil society ... is nothing else but a meere war of all against all'.<sup>60</sup> The foundation of the political community was thus based on the mutual fear each individual felt towards the other in the state of nature. It is in this sense that Hobbes 'had given the practical philosophy of the modern period a fundamentally inconclusive truth in a similar way as Descartes had attempted for theoretical philosophy with his axiom *Cogito ergo sum*'.<sup>61</sup> By way of contrast, Pufendorf stated that 'The meaning of that threadbare saying, "Man is by nature a social animal", is this: Man is destined *by nature* for the society of those similar to himself, and this society is to the highest degree congruent with and useful to him'.<sup>62</sup>

---

<sup>58</sup> Pufendorf 1994, p. 103 (emphasis added); in speaking of duty and obligation, social status and function, it is possible to trace how this form of natural law theory could lead to positive prescription with Thomasius and the later codification movements.

<sup>59</sup> See Riedel 2004, p. 735 – I am following Riedel's analysis very closely on these points.

<sup>60</sup> Hobbes 1983, pp. 44, 34.

<sup>61</sup> Ilting 1983, p. 77.

<sup>62</sup> Pufendorf 1994, p. 81 (emphasis added).

Thus Pufendorf's 'fiction of the state of nature... is a conceptual model for the free decision of the individual to interpersonal contractual relations and social union'.<sup>63</sup> This is an important distinction from the Hobbesian model as I have just shown insofar as it permits a sphere of natural social relations to develop prior to the state. This is what lays the foundation for modern civil society as a sphere of economic relations as well as the naturalisation of property. This appeared even more pronounced in Locke whereby the state of nature 'changed into a natural society; that is to say, into an actual pre-political society which comprises all social relationships, which the individual is established under independent of public coercion and prior to the origin of the state'.<sup>64</sup> Pufendorf grounded the social as an imposition on the natural order as such: i.e., 'there is no such thing among men as a common universal war of all against all, since that follows upon the state of beasts. Such would be the state of men if they had not been obligated through the law of nature to cultivate society'.<sup>65</sup> In the emphasis on sociability and the necessary need of human beings for community, Pufendorf follows to a large degree the classical tradition for which social needs were the origin of community. Yet Pufendorf moreover complicates the modern dichotomy between nature and history through the concept of a society that overlaps the natural order as such and comes to form the basis of modern natural right as human subjective rights, as rights by *dominium* existing prior to the state. He articulates these in the state of nature as such, and through a similar model of deduction to that of Hobbes that was utterly foreign to the classical tradition. This essentially coincides with an uncritical enrichment of stoic natural law where all are conceived of as equal and free – no longer as political, but as social beings – which, by Locke's time, is interpreted as an unqualified right to private property.<sup>66</sup> For Pufendorf *dominium*, however, carries with it no objective moral standard of justice and thus inequality or absolute equality – war – is laid down at the foundation as it was in Hobbes. From the pessimistic conception of the state of nature, the necessity of the absolutist state logically follows. Natural liberty must be subject to constraint, even if the force of the

---

<sup>63</sup> Denzer 1979, p. 63.

<sup>64</sup> Bobbio 1975, p. 97.

<sup>65</sup> Pufendorf 1994, pp. 103, 37.

<sup>66</sup> Ilting 1983, p. 84.

*civitas* (the political order) is designed to preserve natural property rights as such and society.<sup>67</sup>

What remains true for both Hobbes and Pufendorf is the deductive principle of the state of nature whereby ‘only when one transcends all societies and imagines the state of man outside of them (namely when one hypothesises a state of nature) [does] one succeed in grasping all the elements which make up civil society’.<sup>68</sup> Just as Hobbes had placed the basis of the state [*civitas*] in the will rather than in the order of creation, which was both asocial and apolitical,<sup>69</sup> so too had Pufendorf subordinated the principle of creation to the individual will – but only subsequent to the divine imposition to cultivate society whereby the civil condition as a state of peace and order is maintained. Pufendorf thus reinvented a normative theory of natural law that, while likewise derived from anthropological pessimism, set about giving a moral content to the state of nature. ‘Morality for us, for the dependent being, for man, exists only through imposition. This is the central content of Pufendorf’s so-called voluntarism’.<sup>70</sup>

The shift that occurs with Pufendorf’s transference of social primacy to the state of nature where ‘the preservation of social life is deservedly laid down as a foundation for the laws of nature and indeed not secondarily assumed to be something that men have been compelled to take up by accident...’<sup>71</sup> allows for a divinely ordained sphere of obligations and duties to develop prior to the establishment of the political order. This by consequence also permits the preservation of a traditional society based on the private rights of the household [*dominium*]. Such rights moreover need not necessarily be relinquished on the formation of the state. On the progressive side of things, the same will be true of individual natural rights for Pufendorf in the formation of the social contract.<sup>72</sup> In other words, a sphere of natural social relations develops prior to the *civitas* that has individual right as its basis.

The continuance of classical political theory alongside the modern conceptual doctrine of natural right is clear with Pufendorf’s obligation to sociability that re-

---

<sup>67</sup> See Hochstrasser 2004, p. 36.

<sup>68</sup> Palladini 2008, p. 19.

<sup>69</sup> See Ilting 1983, p. 82.

<sup>70</sup> Korkman 2003, p. 205.

<sup>71</sup> Pufendorf 1994, p. 84.

<sup>72</sup> Denzer 1979, p. 66.

emphasises the priority of the whole rather than the parts insofar as the individual ‘has been destined by the creator to cultivate society with other men...’.<sup>73</sup> It is precisely in this way that Pufendorf’s modern natural law theory could be mixed with a traditional hierarchy of domination and, according to Leibniz, ‘left no room for a universal criterion with which to judge the justice or injustice of the acts of God’.<sup>74</sup> Natural law, that is, developed as a form of positive coercion on the basis of a corrupted human nature, which would come to be elaborated over the ensuing century in positive law. Thereby it is apparent that the individual’s duty to preserve society is higher than the individual as such: i.e., ‘it is indeed appropriate that he care for and preserve himself as much as he can, but that he so temper his care for himself that he does not become unsociable with others or disturb society among men. This very thing is what we call the law of nature’.<sup>75</sup>

With the foundational norms of natural law Pufendorf had connected all of the essential experiences of natural legal reflection from Plato to Hobbes and subordinated each to the other with the previously inaccessible aim of providing a natural jurisprudence that was at once non-utilitarian and theologically neutral.<sup>76</sup> In contrast to Hobbes, who had seen liberty as the absence of physical impediments to motion, Pufendorf had conceived of freedom on the basis of capable action. For Hobbes freedom was conceived on a negative basis, while for Pufendorf it grew rather from positive foundations and norms. The basis of the contract of submission [*Herrschaftsvertrag*] that had emerged with Hobbes, which demanded the absoluteness of the sovereign to unify the *civitas* in the *fictive persona*, had transformed in the eighteenth century into the social contract [*Gesellschaftsvertrag*]. This was certainly contingent on the elaboration of the concept of the *Naturzustand* into a nascent society that Pufendorf had developed, which provided another deductive principle whereby the construction of the political order could be envisioned. For Hobbes, ‘each constraint on the right to subjective freedom needed a justification, which eventually the individual must restore through an act of his own will’ insofar as the individual will – or right – lies at the basis of the covenant.<sup>77</sup> For Pufendorf, by contrast, with the obligation to sociability and the preservation of society implicit in

---

<sup>73</sup> Korkman 2003, pp. 198.

<sup>74</sup> Korkman 2003, pp. 207.

<sup>75</sup> Pufendorf 1994, p. 83; compare Rousseau 2002, p. 252 where he reveals his proximity to Pufendorf.

<sup>76</sup> See Ilting 1983, p. 87.

<sup>77</sup> Ilting 1983, p. 76, note 198; see Hobbes 1983, p. 167.

the *Naturzustand*, the claims to right could be inscribed in a traditional order. Any right of resistance [*Widerstandsrecht*] can only be practiced through designated bodies: *Volksrat*, *Senat*, or *Stände*.<sup>78</sup> Even if Pufendorf began ‘his account of human nature ...by conceiving a single individual outside society’, self-preservation drove individuals to associate.<sup>79</sup> Therefore the claims of individual right must take place through such institutions of society, and society comes to pre-exist the formation of the state. Pufendorf ‘had no desire to argue, as against Hobbes, that the consequences of man’s paradoxical nature needed no regulation through a system of obligations. But these “plain” obligations now had their own separate foundation in man’s sociability, rather than in state power founded upon contract’.<sup>80</sup> To this extent a social order of rank could precede the formation of the *civitas*. For Pufendorf right was a consequence of the divine compulsion to sociability of man, whereas for Hobbes, by contrast, right was surrendered in the formation of the state.

As I have shown in this section, Pufendorf solidified a ‘natural’ sphere of social relations prior to the political. This would lay the basis for later economic determinations of the state of nature and lead in the end to its eventual re-description as ‘civil society’ – the preservation of a separate economic sphere prior to the coercion of the state. This followed from Pufendorf’s introduction of a ‘principle of differentiation... between a natural and normative order that proved to be the foundation of the differentiation between a kingdom of nature and a kingdom of freedom in Leibniz, Kant and Hegel’.<sup>81</sup> What this means is that Pufendorf retained natural right, which he asserted could not be fully abandoned in the creation of the community.<sup>82</sup> It is to this extent that Pufendorf lays the conceptual basis for the subsequent political developments in Europe insofar as he made natural rights into concrete rights that led to the French Revolution, the rights of man and human rights.<sup>83</sup> The French Revolution occurred against the backdrop of this shift from a natural right abandoned in the formation of the political and the establishment of coercive positive law, to a society of natural rights that should not be abandoned but

---

<sup>78</sup> See Denzer 1979, p. 67.

<sup>79</sup> Hont 1990, p. 266.

<sup>80</sup> Hont 1990, p. 265.

<sup>81</sup> Ilting 1983, p. 85.

<sup>82</sup> See Denzer 1979, p. 66.

<sup>83</sup> See Denzer 1979.

indeed maintained in and by the creation of the state. Thus rights of nature ‘instead of being human attributes surrendered at the creation of civil society became current moral and political claims *in* society’.<sup>84</sup> This lay at the basis of modern civil society as Hegel came to understand it in light of the French Revolution and the rights of man.

The necessity which, for example, the institution ‘state’ acquires in relationship to the individual no longer means that it is a law of nature for the individual to live in the state; the ethical necessity of the state rests instead on the law of freedom, given not by an immutable nature, but by the concept itself – dependent in its dialectic on the historical realization in institutions.<sup>85</sup>

In this section I have shown how the modern natural law model begun with Hobbes is to be differentiated from the German natural law tradition that, through the sociability taken over from Grotius and the Protestant Aristotelian tradition, formed a theory of natural rights in a natural society. This not only led to the prioritisation of the duty and function of the individual in preserving such society, but to the maintenance of this as *the* natural law. This was shown to take place already in the state of nature prior to the formation of the *civitas*, which in the century after Pufendorf can be seen to develop into a nascent society that coincides with the obligation and compulsion to preserve it. This directly conflicted with Hobbes’s view, and he had attempted to deflect such criticisms already in *De Cive*: ‘what’s objected by some, that the propriety of goods, even before the constitution of Cities, was found in the Fathers of Families, that objection is vaine’.<sup>86</sup> By contrast, Pufendorf attempted directly to ‘show the falsity of Hobbes’s claim ... that justice, no less than dominion over other things, owes its ultimate existence to states’.<sup>87</sup> By way of his continual assertion that a stage of sociality [*Geselligkeit*] pre-existed the political, Pufendorf laid the foundation for a natural society and the primacy of the property qualification that would likewise come to be viewed as natural.<sup>88</sup> Pufendorf had shown how sociality as an original natural law for human beings at the basis of the community – shared natural needs led, in an Aristotelian fashion, to common needs and to the political. This was designed to refute the Hobbesian conflict-based model whereby

---

<sup>84</sup> Hochstrasser 2004, p. 6 (emphasis added).

<sup>85</sup> Riedel 2011, p. 37.

<sup>86</sup> Hobbes 1983, p. 100.

<sup>87</sup> Pufendorf 1994, p. 134.

<sup>88</sup> See Medick 1973, pp. 40–63.

natural right was replaced by positive law, natural ‘society’ (war) by artificial society (peace). Yet sociability was a compulsion for Pufendorf that lay at the basis of social order.<sup>89</sup> This led to a transformation throughout the seventeenth century that would lead to other figures such as Locke, and from him the way was opened to influence the Scottish Enlightenment.

The independence of property and exchange slowly transformed into an established fact (Locke), which then led to the market relations that were at the basis of the thinkers of the Scottish Enlightenment such as Sir James Steuart and Adam Smith. In the external administration of the new natural social order, it has already been clearly established in the Hegel scholarship how Hegel in his division of the *Stände* comes very close to James Steuart.<sup>90</sup> This influence has been traced back to Hegel’s earliest period when he began to construct his first systematic *Rechtsphilosophie* (1802–6).<sup>91</sup> Indeed it was at this time that Hegel divided his ‘state’ – what he refers to in Jena as *Gemeinwesen* or *Gemeinsamkeit des Lebens* – into *Stände*. For the purposes of this dissertation, however, I will stress how Hegel essentially maintained the organisation of the Aristotelian community at the basis of his philosophy as ‘originating in the bare needs of life, and continuing in existence for the sake of a good life’.<sup>92</sup> This will be fully analysed below (III.3, III.4). In the following section, however, I must first examine Hegel’s relationship to Kant as it fundamentally orients his developing institutional theory and underlies its objectives, as Dieter Henrich has pointed out.<sup>93</sup> I will show how Hegel consistently viewed Kant’s formalism of the will as leading to the isolation of individuals and how this led Hegel to his early concepts and solutions in natural law, religion and *Sittlichkeit*. Kant took over the insights of ‘empirical’ natural law (Grotius, Hobbes, Pufendorf, Rousseau), as Hegel termed it in Jena (1802–3), but placed them on strictly metaphysical formal foundations. In so doing the material world was transformed into dead matter, and formal individualism was posited as absolute. This significantly shaped the young Hegel’s

---

<sup>89</sup> It goes beyond the confines of this study to analyse the true similarity between Pufendorf and Hobbes. For a nuanced discussion, see Palladini 2008.

<sup>90</sup> See Waszek 1988 authoritative study, in particular pp. 142–228; compare Caboret 2003, pp. 57–75). I have already noted the significance of Adam Smith in the Introduction.

<sup>91</sup> See Harris 1972, pp. 434–6, Rosenkranz was the first to document this speaking of Hegel’s commentary (now lost) on a translation of Steuart’s *Political Economy*.

<sup>92</sup> *Politics* 1252b28–1252b31.

<sup>93</sup> Henrich 1983, p. 17.



developing theory of natural law, which led to the convergence of the Greek *oikonomik* and ancient practical philosophical with modern political economy. Thus I need to analyse Kant first before I turn to a substantive discussion of the Greeks.

### III.2 *Hegel and Kant*

In this section I will analyse how Hegel's concern with natural law develops in relation to Kant's practical philosophy, and how his criticism of Kant significantly shapes his concrete conception of the will in institutions (through love, religion and spirit). It is important to undertake this discussion here because it will lead us through to the subsequent analyses of the ancients and labour – and the transformative capacity of the latter (III.3, III.4). My discussion of Kant here will show moreover how the young Hegel originally arrives at this return to the Greeks and *Volksreligion*, which will foreground *Sittlichkeit* in his work and set the stage for the subsequent discussions in Chapter Four. It is also in this way, in the original *rapprochement* to the Greeks alongside modern political economy, as I have shown above, that Hegel's theory of the *Stände* can be initially understood. In this way I will be able to show their relation as an initial polemical concept in relation to Kant's practical philosophy before turning in the subsequent sections (III.3, III.4) to how they are transformed from this initial context. This will lead the argument to the essential shift in Hegel thinking of the *Stände* from a 'natural' (Greek) hierarchy of being or derivation to a spiritual one by way of recognition, which implies the distinctive development of Hegel's metaphysics and a fundamental transformation of the *Naturzustand* as I will analyse below (III.4).

As Dieter Henrich has pointed out, it was Kantian moral philosophy that informed the development and independence of Hegel's thought more than any other factor. He also indicated, as I will do throughout this chapter, that Hegel's 'conclusion' – already articulated in the Frankfurt years (1797–1800) – was that Kant's 'principle of "formal" autonomy must be subordinate to a higher principle, which fulfils the meaning of freedom'.

This principle Hegel initially calls love, then life and eventually spirit. It is conceived in the 'philosophy of right' as '*Sittlichkeit*' and the relationship of right

actualising itself will be brought together in a system of institutions and forms of life, which gains its sense of unity and its differentiation out of what Hegel calls the becoming objective of the 'Idea'. Only in this relationship shall the Kantian freedom of the good will thus be fully defined, and saved from its uncontrollable antinomies and threatened position.<sup>94</sup>

Hegel's concern with natural law – or what frames his later discussions in the Jena period (1801–7) – stretches back to the 1790s in his preoccupation with the *Volksreligion* and *Volksgeist* of the Greeks that he adapted to the concepts of Kant's *Critique of Practical Reason* and Christianity.<sup>95</sup> Only with the publication of Kant's *Metaphysics of Morals* (1797) did Hegel depart from Kant's practical philosophy, which no longer allowed him to mix the ideas of ancient republicanism and duty 'since it offered no foothold for transplanting the idea of autonomy into the sphere of politics'.<sup>96</sup> In so doing, for Hegel Kant's philosophy relegated duty to the isolated subject by way of 'purely moral commands which are incapable of becoming civil ones' and consigned 'the philosophical element in philosophy ... exclusively to metaphysics, [while] the sciences have been allowed little share in it [and] have been kept independent of the Idea'.<sup>97</sup> Thus the critical philosophy of Kant, and subsequently of Fichte, have 'had the important negative effect on the theoretical sciences of demonstrating that the scientific element within them is not something objective, but belongs to the intermediate realm between nothingness and reality, to a mixture of being and not-being, inducing them to confess that they are [engaged] only in empirical conjecture'.<sup>98</sup> Thus for Hegel, the critical philosophy of Kant pre-eminently represents a 'formal science', and had retreated so far into the purely ideal that it was absolutely opposed to the empirical, to the real; in its complete isolation in metaphysics, however, it (contradictorily) led axiomatically to 'the absolute principle of empiricism' itself: modern positivism.<sup>99</sup>

As the new practical philosophy is based solely in metaphysics and remains isolated with no interest in politics, economics, and ethics, which belong merely 'to the

---

<sup>94</sup> Henrich 1983, p. 17; compare Ilting 1983, p. 27 who also recognised the importance of institutions in the construction of autonomy; and Riedel 2011, pp. 31–53.

<sup>95</sup> See Riedel 2011, p. 10.

<sup>96</sup> See Riedel 2011, p. 10 (I follow the development of his work closely here).

<sup>97</sup> Hegel 1996, p. 210, and 1999, p. 102.

<sup>98</sup> Hegel 1999, p. 104.

<sup>99</sup> Hegel 1999, p. 106. This marks Hegel's negative view of codification at this early stage (1802–3).

world of empirical experience', divided from 'the inner working of moral subjectivity',<sup>100</sup> the logic of purely empirical intuition 'vainly attempts to arrive at positive organisation' whereby a singular determinant – an individual detail such as the correction of the accused, the reforming capacity of punishment – is made into the essence of the juridical as such and raised to the status of the absolute; this 'transformation which takes place unconsciously in empirical knowledge ... is accomplished by the critical philosophy with reflection and as absolute reason and duty'.<sup>101</sup> It is thus that the formal and empirical sciences are unified insofar as practical reason has nothing to say 'beyond the pure concept' while empirical science has nothing to say beyond what is both 'real and universal', or of 'a unity of differences', and 'must not embrace pure qualities but relations, whether negative ones like the drive for self-preservation or positive ones like love and hate, sociability, and the like'.<sup>102</sup> Whereas Kant represents the absolute purity of the abstraction of the concept, the empirical scientists – Grotius, Hobbes, Pufendorf – also divide the moral and political realms; this leads, with Thomasius, to the 'positive science of right', to the *ius internum* – the jurisdiction of conscience – and the *ius externum*, the positive constraint of legal order that had been thoroughly laid down by Hobbes. It is in this context – to anticipate and point ahead to the discussions of Chapter Four – that the *Stände* will be conceived that develop between the formal absolute and the isolated individual in the transition to consciousness, which I will show is present in embryonic form in *System der Sittlichkeit* (1802–3).

For Hegel, Kant's abstraction 'is completely lacking in any content... it can do no more than make the formal appropriateness [*Form der Tauglichkeit*] of the will's maxim into a supreme law'. This leads to a fundamental dichotomy: 'the will's maxim has a content and includes a determinacy; the pure will, on the other hand, is free from such determinacies'.<sup>103</sup> Either the absolute ideal is posited as with Kant and the retreat of the will into a pure formalism with no content other than the will's own self-grounding, or the absolute principle of empiricism predominates and is raised to the infinite in 'the absoluteness of the subject' in 'those systems which are described as anti-socialistic and

---

<sup>100</sup> Riedel 2011, pp. 8, 18.

<sup>101</sup> Hegel 1999, p. 108.

<sup>102</sup> Hegel 1999, pp. 105–6.

<sup>103</sup> Hegel 1999, p. 123.

which posit the being of the individual as the primary and supreme value’ – Hobbes, Spinoza and, provisionally, Pufendorf whose thought, despite the divine imposition to *Geselligkeit*, ‘is shifted in its entire span onto the traces of Hobbesian problems’.<sup>104</sup> Pure practical reason is purely theoretical rather than practical, purely metaphysical and no longer real, while pure empiricism ends in the absolute determination of singular details in the positive order of right, coercion, and raises these to the absolute ideal. Thus in the former, ‘known as practical reason, one can recognise only the *formal* Idea of the identity of the ideal and the real, and this Idea ... does not escape from difference [*Differenz*], and the ideal does not attain reality’;<sup>105</sup> while in the latter ‘this conceptual limitation, the fixing of determinacies and the elevation of one selected aspect of appearance to universality so as to give it precedence over others, is what in recent times has described itself not just as theory, but as philosophy and as metaphysics’.<sup>106</sup>

Thus the Hegel of the Jena essay of 1802–3 is left to abandon his original synthesis of ancient republicanism and Kant, yet the shift remains incomplete. It is only towards the end of the Jena period that Hegel discovers that ‘political economy is in the eminent sense a “practical” science ... [and] therefore it replaces the old economics...’<sup>107</sup> – the *oikos*. Aristotle’s dichotomy domestic society – political society was only slowly replaced by the Hobbesian one of state of nature – civil society, and in the final analysis the two forms were mixed insofar as the *civitas*, as the recognised sphere of politics, was modelled on the *oikos* of the *pater familias* subsequent to the state of nature as was emphasised through the lasting impact of Roman law on the development of modernity. These conceptualisations of the state form conceiving of sovereignty along the lines of the *pater familias* were thus maintained alongside the Aristotelian formulation of the *oikos* as I showed above (III.1).<sup>108</sup> In considering natural law in immediate reference to the ethical, Hegel bypasses the autonomy of the will in metaphysical speculation that the mature Kant laid down as the basis for practical philosophy, and is an intrinsic element in Hegel’s understanding of ‘practical philosophy’ and the dissolution of the dichotomy between

---

<sup>104</sup> Hegel 1999, p. 118; Palladini 2008, p. 35.

<sup>105</sup> Hegel 1999, p. 119.

<sup>106</sup> Hegel 1999, p. 116.

<sup>107</sup> Riedel 2011, p. 16.

<sup>108</sup> See the exhaustive treatment of these issues in Riedel 2004.

politics and morality that, along with natural law, now ‘fall under the concept of “ethical life” understood in fundamentally political terms’.<sup>109</sup>

If the historical and theological studies of the Bern and Frankfurt periods ‘foreshadow’ the return to classical political philosophy when Hegel is in Jena, they do so with an important addition: the critique of Mosaic law as it emerges in *Der Geist des Christentums und sein Schicksal* (1798–1800). The conception of God as a mere command opposed to inclination appears here and coincides with Hegel’s famous criticism of Kant’s foundation of the pure will and obligation, which he overcomes through Christian love. It is here that Hegel’s critique of the dichotomy between the autonomy of the will isolated in morality and the real as expressed in nature – and in history and in politics – emerges for the first time. For Hegel, the particular will and autonomy must receive ethical concreteness and this will be accomplished by way of the *Stände* not in Frankfurt, however, but in Jena (1802–3). It is in this way that the natural law model in Hegel’s hands leads towards an institutionalisation. What can be seen in this development is that Hegel comes to abandon love as a way of overcoming Kant and the moral law as it originally appeared to him in Jesus’s Sermon on the Mount. Love did not fully overcome the dichotomy (arguably historically) as it remained solely in the inner sphere of conscience and the heart, it was not yet spirit externalised in the institutions of the world (the later significance of a ‘second Reformation’ for Hegel). As K.H. Ilting has pointed out,

Although in love all contradictions are overcome love still completes itself contrary to everything that is alien to it and thus stands in contradiction towards the outer [*Äußeres*]. This contradiction can only be negated after Hegel’s interpretation of a community of beings [*Gemeinsamkeit des Lebens*] in which an equality of law is arrived at through his determined and strongly drawn expression [*Äußerung*] of consciousness.<sup>110</sup>

This will significantly shape the discussions in Chapter Four when I turn to analyse Hegel’s *Sittlichkeit* as the externalisation of conscience – the inner – into self-consciousness in institutions. At this initial stage in the discussion, however, I want to indicate that this critique of Kant by way of Christian love is what lays the foundation for

---

<sup>109</sup> Riedel 2011, p. 16.

<sup>110</sup> Ilting 1983, p. 243.

Hegel's later distinction in the Jena natural law essay between *Moralität* and *Sittlichkeit*, which will engender the later shift from the Greek *polis* to the historical movement of Christianity and Protestantism.<sup>111</sup> Again it is the *Philosophie des Geistes* of 1805–6 that marks the transition, signalling Hegel's definitive departure from Greek ethical life in his realisation that 'Plato did not set up an ideal, but rather grasped the state of his time in its inwardness [*in seinem Innern*] – but this state is past – the Platonic *Republic* is not feasible – because it lacks the principle of absolute individuality [*Einzelheit*]...' <sup>112</sup>

I will soon show how the force of the young Hegel's attempt to overcome the modern dichotomy between morality and politics, theoretical and practical philosophy, leads to the *Stände*, which can be initially seen in his return to Aristotle. It should be stressed, however, how the modern dichotomy orients the young Hegel's re-thinking of the tradition, which certainly found its most extreme metaphysical representative in Kant, and perhaps most politically emblematic ruler in Frederick the Great.

For the young Hegel, Kant's dichotomisation represented in its purest form the very principles of absolutist rule that was perhaps best realised in the personality of Frederick the Great, but could be also found writ large in the natural law theories since Hobbes. The internal order of life – the nascent subject of the civil, social, sphere, of *difference* as I will show in Chapter Four – was disconnected from the overarching force of political constitution. This cleft would lead to Hegel's characterisation of *formalism*, and the understanding of an alien fate standing opposite the subject that was already

---

<sup>111</sup> From the *Philosophie des Geistes* (1805–6) onwards Hegel began to develop a conception of history as the movement of self-consciousness, which implied the rise of particularity that had been interpreted negatively in the Jena 1802–3 essay. This led to his re-interpretation of the genesis of Christianity and of the inward sphere that gave depth to man (firstly with Socrates). This is what re-orientates his thinking on right and his initial negative appraisal of codification. Hegel moreover identified Christianity (and Socrates) with private property, which he conceives in his mature period in the individual will, conscience, and the appropriation of the object (see Hegel 1995a, p. 75 (§26). Plato's substantial state from *Philosophie des Geistes* (1805–6) onwards is seen to set up an ideal to ward off the particularity of the subject that threatens to break in and dissolve the *polis*. Hegel notes in the Heidelberg lectures (1817–18) that this is why Socrates – 'the principle of being for itself with its attendant dangers' – is excluded from Plato's *Republic* (see Hegel 1995a, p. 311 (§167)). It is for this reason that in Hegel's account in the *Grundlinien* civil society – as the emblematic sphere of particularity, of *difference* – is situated logically prior to the state but, in actuality, chronologically follows the foundation of the political order through patriarchy and absolutism. Hegel thus grasped the essence of the historical movement that 'the constitution of the state through a political force of rule is ahead of the formation of civil society' (Riedel 2004, pp. 769–70). Modern civil society viewed in this light is part of the history and freedom of humankind for Hegel, it is the place where particularity and difference are given their due, and private property, love, marriage, and labour are its bases as these come to form the ethical activities of the world.

<sup>112</sup> Hegel 1987, pp. 240–1.

present in the Bern (1793–6) and Frankfurt (1797–1800) periods. ‘So long as internal ideals are kept isolated in principle from external actions, morality must remain individualized with no chance of realization and politics must remain in a real realm of compulsion and necessity. This kind of politics administers a law which has no moral content but only a negative form addressed to the realization of morality...’<sup>113</sup> It is precisely in this sense that Hegel sought to bring natural law under the guiding influence of a newfound ethical science, which would reunite the thoroughly isolated metaphysical subject to the social whole as the ideal of the *polis* had originally done with the freedom and happiness of the Greeks.

The unity formed by the Aristotelian model provided the young Hegel with an ideal, yet the writings of the Jena period often clarify ‘the forced nature of his attempts to submit a mass of materials to concepts often not derived from the material itself and of contrary origin’.<sup>114</sup> Much has been made in the Hegel scholarship of this renewed proximity to Aristotle. The modern critics from Hobbes to Wolff and Kant ‘are all related to Aristotle either at a direct historical distance (Hobbes) or simply obliquely (Wolff and Kant), basing their work on a specific, relatively late, stage of Aristotelian scholasticism, [while] the young Hegel was one of the first people in Germany to study the texts of Aristotle’s *Ethics* and *Politics*, thereby attaining a more accurate picture of the tradition’.<sup>115</sup> This allows Hegel to contrast ‘the primary individualist beginning of practical philosophy in the modern era’, with ‘the memory of the theory of the social

---

<sup>113</sup> Krieger 1972, p. 128. Krieger 1972, p. 128. This reveals the precise function of natural law from Hobbes onwards, which formed an increasingly ‘individualist’ (for Hegel, *privatrechtlich*) form as regards internal policy while it incorporated reason of state – ‘Machiavellianism’ – as the return of the *Naturzustand* in foreign relations. Hobbes had, moreover, made the interior of the conscience into a political rather than a religious subject (see Koselleck 1988, p. 29, note 27: ‘Hobbes’s real historical contribution, given the multiplicity of religious moral teachings, lies precisely in the functionalist reinterpretation of the phenomena of conscience’), which would shape the metaphysics of the age of Enlightenment and Hegel’s discrete politics of actuality as its attempted overcoming (I will analyse this in detail in Chapter Four). Both Hobbes and Pufendorf’s moral voluntarism, while remaining empirical and based on hypothetic imperatives, led logically to Kant’s categorical – and absolute metaphysical-moral – foundation. Hegel understood this in expressing his criticisms of both the empirical and formal sciences in the Jena essay of 1802–3, and saw them to a certain degree on an equal footing: ‘the first consists of relations and mixtures of empirical intuition with the universal, while that of the second is absolute opposition and absolute universality – it is nevertheless self-evident that the ingredients of both, namely empirical intuition and concept, are the same, and that formalism, as it moves from its pure negation to a [specific] content, can likewise arrive at nothing other than relations and relative identities’ (Hegel 1999, p. 106).

<sup>114</sup> Riedel 2011, p. 10.

<sup>115</sup> Riedel 2011, p. 9. The reference is to Christian Garve’s translations that were produced in 1798–1801 (*Ethics*) and 1799–1802 (*Politics*) respectively.

character of humanity in teleological natural law'. It allows Hegel, 'without recourse to the ... social contract, to place the idea of the community again at the centre of a theory of right and the state'.<sup>116</sup> By referring to Aristotle and developing Greek ethical life, Hegel was in a position to unite the practical and theoretical sciences that had been divided since the emergence of the modern rational natural law model and the development of Newtonian and Cartesian science and, as can be safely assumed on reading the Jena natural law essay and *System der Sittlichkeit*, took over the classical distinctions of the *polis* into *Stände*.

When Hegel criticised the Kantian autonomy of the will, he no doubt had the history of Continental absolutism and the Enlightenment on his mind as well as the revolutionary conflagration in France that had spread across Europe and was re-shaping the bases of social and political life. The Enlightenment, as the dialectical opposite of the Middle Ages, led to the 'active fanaticism' of the Terror – the demand for absolute equality that destroyed particular institutions.<sup>117</sup> On the other hand, the moral law took the individual in isolation; it had little to say of custom or the ethical life of communitarian relations, which Hegel, at this early stage, grasped in the Greek ideal of the *polis*. The history of Continental absolutism and the revolutionary demand for abstract equality are reflected clearly in the early Jena natural law essay (1802–3) under the guise of the emergence of formal legal equality in which 'the *real* movement of the concept of legal right began' under the Roman Principate. This signals the moment where 'the *polis* was swept away and everyone became the *property* of one universal Lord'.<sup>118</sup> At this stage, 'it is the relations accepted as "natural" in the *polis*, that are treated as *normal* in Hegel's "natural ethics"'.<sup>119</sup> It is the appearance of labour and the negative that transforms this situation, the 'liberation present in work', the product of an initial subordination, which leads to true freedom and breaks the classical appropriation of the *Stände* based on a natural hierarchy.

...while in the Platonic and Aristotelian philosophy the movement arising out of the negative is directed to pure being [*das reine Sein*] Hegel expands the original

---

<sup>116</sup> Ilting 1983, pp. 106, 105.

<sup>117</sup> For Hegel's mature formulation see Hegel 1991a, p. 39 (§5 Hotho/Griesheim addition).

<sup>118</sup> Harris 1983, p. 121 (original emphasis).

<sup>119</sup> Harris 1983, p. 112 (original emphasis).



negativity always further in order to eventually engulf fixated existence [*Bestehen*] in itself. In Greek metaphysics the negative is a lack of being [*Mangel des Seins*] for Hegel the negation of the existing. This difference emerged most clearly in the foundational concepts in the determination of labour...<sup>120</sup>

What Ilting isolates here is an essential element of the discussion; it shows how Hegel overcomes the classical model by way of antiquity itself, which had introduced a necessary division of labour and common system of needs at the basis of its conception of community. Yet in antiquity's devaluation of labour it sought to restrict the *polis*, and ordered it along the lines of a hierarchy of statuses.<sup>121</sup> This oriented the *polis* towards a restrictive 'higher being'; the Idea and the perfection of the political were limited to the political *Stand*, or what Hegel in his youth terms the *Stand* of absolute ethical life. What emerges at the end of the Jena period (1805–7) is a revaluation of labour, which most clearly can be seen in the dialectic of lord and bondsman in the *Phenomenology* (1807). This overcomes the 'natural intuition' that originally oriented Hegel's appropriation of the Greeks. The difference that emerges here leads Hegel to point to the transformative capacity of labour and the negative, which will in part concern the remainder of my discussions in this chapter.

### III.3 *The Critique of Plato and the Ancients*

The current section will analyse the critique of Plato that appears in the *Philosophie des Geistes* of 1805–6. I already had the occasion to briefly discuss this above (III.2 fn.112). There I analysed how it was taken up into the *Grundlinien* (1820/21) alongside Hegel's transformation of the state of nature as a conceptual and spiritual moment. The following section will thus show how Hegel's valorisation of labour replaces his original Greek ethical ideal drawn from Plato's *Republic*, which he interpreted as having assigned individuals to *Stände*, as well as Aristotle's teleology of *polis* life that divided the slave from the free man according to nature. This will lead me to a discussion of the positivisation of Aristotle's hierarchy in Roman law and Hegel's negative appreciation of it, which, as has been pointed out by insightful commentators, is by and large a misunderstanding brought

---

<sup>120</sup> Ilting 2006, p. 24.

<sup>121</sup> See *Republic* 415b-c.

about by Hegel's historical vision.<sup>122</sup> This however will give me the opportunity to discuss elements that I brought up already at the outset of the chapter (III.1) regarding the positivisation of law as status. I will show in this section how the Roman legal conception of status, of the *status civilis*, which has etymological affinity to the *Stände* in German, developed into a 'status society', and how Hegel's critique of Roman law set out from this tradition that was prevalent in German natural law (Heineccius). It is in this way that I will be able to move towards the conclusion of the present chapter and to the redefinition of the *Stände* that this entails. This will in turn allow me to slowly shift my discussion towards Hegel's revaluation of *Naturzustand* (III.4), breaking with nature as such and reconceiving the hierarchy of beings inherited from the ancients. This will be seen to give new and essential meaning to the *Stände* in a spiritualised version of *Naturzustand* and in the construction of the modern sovereign state built through organisations and institutions. This is signalled by the conceptual development of modern civil society, and conveys the distinctiveness of Hegel's institutional politics as a way of stemming the defectiveness of self-interest that threatens to undermine the political and transform it into partisan conflict.

Prior to Hegel's transformation of the state of nature into a conceptual and spiritual moment a critique of Plato and the ancients appears that is taken up into the *Grundlinien* (1820/21). This gives new meaning to the concept of the *Stände* – a critique of the substantiality of Plato's state with the introduction of the subject and a movement away from the natural ordering of the *Stände* of the free and the unfree according to Hegel's interpretation of Aristotle's division of the *polis*. Hegel's valuation of the relationship between lordship and bondage thus undergoes a reversal, whereby subordination – the subservience [*Unterwürfigkeit*] of the subject – becomes essential. The battle for recognition in the *Phenomenology* is now seen to establish an originary system of needs; it is *the* essential conflict whereby spirit divides itself from nature in the serf's formation of the thing. It was through this process that Hegel eventually 'discovered ... that the

---

<sup>122</sup> See Villey 1975; and Pöggeler 1995. The crux of Hegel's misinterpretation is to have seen Roman law as civil law. This is clear from the first part of the *Grundlinien* on abstract right. Indeed, he had held this opinion of Roman legislation since 1802–3 by equating it with the rise of the bourgeoisie and despotism. 'His "abstract right" is not the Roman law as it appears in the *Digest*, but as it is thought by reason on the way to rational completion' (Villey 1975, p. 142). Moreover, the notion of the slave as an object of subjective domination as the relationship is described in the *Phenomenology* is incorrect, and there is no analysis of the relationship of rule in Roman law – and *dominium* is never confused with absolute power. (see *ibid* – I am paraphrasing his insights here).

concept of the subject of rights, as well as individual freedom and equality contained in the “individual” will’s renunciation of itself in the “general will”, presupposed the liberation from nature by labour’.<sup>123</sup> The lord however attempted to retain his natural relation to the thing and thus, according to Riedel, this describes the ‘historical moment ... [that] concerns the emergence of the polis ethical life’.<sup>124</sup> Therefore,

the nations of antiquity, the Greeks and the Romans, had not yet realised [*erhoben*] the concept of *absolute* freedom since it was not yet recognised that the *human being as such*, as this *universal* I, as a *rational* self-consciousness, is entitled [*berechtigt*] to freedom. For them rather the human being was then only held to be free when he was born as free [*Freier*]. Thus freedom for them was still determined by naturalness. Therefore there was slavery in their free states and a bloody war emerged among the Romans in which the slaves sought to make themselves free to attain eternal human rights [*ewigen Menschenrechte*].<sup>125</sup>

The first critique of Plato in the *Philosophie des Geistes* (1805–6) in *Jenaer Systementwürfe III* repeatedly appears in Hegel’s later political works, and focuses precisely on the problem of ‘the lack [*entbehrt*] of the principle of absolute individuality [*Einzelheit*],’<sup>126</sup> the I, that signals his rejection of traditional relations of authority and marks the decline of the classical ethos with the awakening of self-consciousness in Socrates – a definitive break from the 1802–4 glosses. The rise of ‘private particularity’ destroys the classical *polis* and the *substantiality* of Plato’s *Republic*, which contains the movement of liberation that develops into modern civil society on the basis of the principle of individuality, which Christianity initially brings into being (§185). The attack on Plato, just as that on Roman law, involves the natural determination of freedom that was contingent on birth ‘excluding choice of social position [*des Standes*].’<sup>127</sup>

The novelty of Hegel’s conception of the *Stände* as they develop from the *Philosophie des Geistes* (1805–6) onwards will come to lie in the principle of ‘subjective freedom’, which can be contrasted with Plato’s *Republic* and the feudal system, which were built on restraining particularity.

In Plato’s *Republic*, it is the task of the guardians to allot individuals to their

---

<sup>123</sup> Riedel 2011, p. 24.

<sup>124</sup> See Riedel 2011, p. 21; and Hegel 1974, p. 224 (§434).

<sup>125</sup> Hegel 1974, p. 223, (§433) (original emphasis).

<sup>126</sup> Hegel 1987, pp. 240–1.

<sup>127</sup> Hegel 1991a, p. 222 (§185).

particular *Stände* and to specify what *particular* services they have to perform. In feudal monarchies, the services required of vassals were equally indeterminate ... In these circumstances, what is lacking is the principle of *subjective freedom* whereby the individuals substantial activity ... is mediated by his own *particular will*.<sup>128</sup>

The relation between the political and social dimensions of civil society and state lies in the conception of actuality or the character of ‘*subjectivity* as identical with the substantial will’.<sup>129</sup> For Hegel this stands opposite the Asiatic principle in his philosophy of history, and is an amelioration of his earlier Spinozistic conception that lacked the innovation of the subject and remained in a substantial state prior to the *Phenomenology*, or conceived of ethical life along the lines of a *natural* intuition derived from the Greek *polis*.<sup>130</sup> The ‘simpler form’ of ethical life existent in the substantial state is now ‘sublated’ by the subjectivity of modernity. This follows on Hegel’s revaluation of his interpretation of Greek values in the *Philosophie des Geistes* (1805–6) where he made an about-turn in his interpretation of Plato.<sup>131</sup> The first appearance of reason in the Occident however is the dusk of the dawn that rose in the Orient: i.e., the Greek appropriation of Asiatic cultural and spiritual forms ‘captures the essence of Europe as well ... because individuality is its universal substance’<sup>132</sup> – even if at this stage Plato’s merely substantial state was designed to hinder the development of ‘private particularity’ in private property and with Socrates, this conception begins to break down and leads to the nihilism of Rome and the early Christian era.<sup>133</sup>

---

<sup>128</sup> Hegel 1991a, p. 338 (§299) (original emphasis). The difference between these orders for Hegel, however, lay in the fact that he conceives of the rights of the lords as laying the basis for the religion of the modern age as well as establishing originary contractual relations and the principle of representation as I analysed in Chapter Two above. This was impossible, as he saw, in slave relations (see Hegel 2002, p. 58: ‘*Skavenstand ist kein Stand*’). This should be compared with what he says in the Heidelberg lectures (1817–18) ‘In the *Stand* the *particularity* of human beings receives its right absolutely [*überhaupt*]’ (Hegel 1983a, p. 136).

<sup>129</sup> Hegel 1991, p. 359 (§320).

<sup>130</sup> See Iltting 2006, p. 17. Both the Jena natural law essay (1802–3) and *System der Sittlichkeit* (1802–3) are exemplary here.

<sup>131</sup> See Hegel 1987, pp. 240–1.

<sup>132</sup> Löwith 1995, p. 233.

<sup>133</sup> ‘The mankind of late antiquity, having been reduced to the existence of a colorless mass, begins for a while to revere its lost self in the divine emperor. But the Caesars are no less people of the masses than their subjects are. What Nero has in common with Christianity is his loathing of the world and its people’ (Taubes 2009, p. 65). While Taubes takes this from Ferdinand Christian Bauer, such a negative perception of Rome can actually be found in Hegel’s 1802–3 Jena natural law essay, as an attack on the ascendancy of the bourgeoisie and on Roman law and its ‘abstract universality’ in the codices. ‘Universal debasement’ – the destruction of the differentiation between *Stände* – leads for Hegel to ‘the most comprehensive

The critique of Plato and the substantial state – the state *without subject* – is connected in the *Grundlinien* with Hegel’s critique of the Roman law of persons and of status that, of course, originally distinguished the slave from the free man, or of the German political tradition, the *status civilis* of Wolff and Heineccius, for example, each of whom ‘came to the conclusion that the notion of status should be recognised as having primacy over the notion of an individual’.<sup>134</sup> ‘What is called the *right of persons* in Roman law regards a human being as a person only if he enjoys a certain *status*... hence in Roman law even personality itself, as opposed to slavery, is merely an *estate* [*Stand*] or condition [*Zustand*].’<sup>135</sup> It should be recognised that this latter statement is a complete about-turn from the early essay of 1802 where Greek ethical life was directly contrasted with the rise of Roman ‘private’ law, seen as the genesis of the bourgeoisie and, in fact, as the decline of status differentiation between the slave and the freeman.<sup>136</sup> Hegel has thus amended somewhat the failures of his original interpretation by recognising the contiguity of these two traditions and of the law of status as such, read by way of Heineccius in the *Elemental Juris Civilis*<sup>137</sup> – even if he holds that Roman law is primarily private and not

---

development of legislation’ (see Hegel 1999, pp. 147–50). For Hegel’s interpretation of Roman law see Villey 1975, and on Hegel’s changing perspective as regards codification, see Becchi 2009.

<sup>134</sup> Canale 2009, p. 166.

<sup>135</sup> Hegel 1991a, p. 71 (§40); Hegel also refers explicitly here to Heineccius’s *Elementa iuris civilis* §75 (see following footnote).

<sup>136</sup> See Hegel 1999, p. 148. As Michel Villey has noted with regard to the reference to Gibbon in the natural law essay of 1802–3, for Hegel – within what will eventually develop into the progress of reason in history – Roman law is seen as decadence and decline and as the destruction of Greek ethical life. Hegel’s knowledge of Roman law for Villey stemmed from Kant’s *Metaphysik der Sitten* and the first third of Fichte’s *Naturrecht* that deals with abstract right. For Villey, Hegel thus ‘remains in the legacy of every Romanist from the sixteenth to seventeenth century whose dream it was to rediscover the authentic Roman law on the way to modern reason. ...[T]he pinnacle of the “Roman principle” will represent for him absolute imperial rule. This perspective unfortunately ignores [what was] most original in the framework of the Roman *civitas* – that the remaining republican elements [were] preserved in the Roman *civitas* under the Principate – [as] the resultant [*entstandene*] moment of the development of Roman law’ (Villey 1975, pp. 134, 136, 133). At this stage Hegel identified the rise of the bourgeoisie only as a problem and remained within the horizon of his early ‘class solution’ (Riedel 2011). The genesis of *Privatrecht* in Rome was seen as the destruction of ethicality and the Greek differentiation between *Stände* of the free and the unfree: As Riedel comments here on Hegel’s Jena natural law essay, this is a ‘historical falsity’ as ‘Roman law in its cultivation of the concept of the person in no way annuls the distinction between classes named by Hegel but rather establishes this very distinction in the title *status libertatis*’ (Riedel 2011, p. 115 who refers in note 21 to R. Sohm, *Institutionen des Römischen Rechts*, 4<sup>th</sup> edn (Leipzig, 1891), pp. 100f. and 105 ff.). At this stage in Hegel’s development positive legislation – in the formal aspect of Roman law or codification more generally, and the *Allgemeines Landrecht* and the *droits de l’homme et du citoyen* of 1789 are clearly in the background here – ‘fixes individual being and posits it absolutely’. The codifications are opposed for Hegel at this stage to *Sittlichkeit*, as they are focused strictly on individual right (Hegel 1999, p. 147).

<sup>137</sup> See Hegel 1986a, p. 33 where he quotes Heineccius in the Latin (I quote from the German translation p. 34, note 2). ‘§75 ...The person [*Person*] is considered [*betrachtet*] a human being in a determined status

yet public law. As both Michel Villey and Otto Pöggeler affirm,<sup>138</sup> Hegel misunderstands the nature of Roman law and conceives of it within the horizon of the modern natural law tradition and, specifically, of the Neo-Scholasticism of Leibniz that sought to categorise it along the lines of mathematical deduction.<sup>139</sup> The influence of the modern rational natural law tradition can be felt, moreover, in Hegel's interpretation of abstract right and the contract as based on a theory of voluntarism, whereas in Roman law 'the effect of the act arose from the form, not from the will'.<sup>140</sup> Hegel recognised, however, and as is very clear from the structure of the *Grundlinien* – which, after all, sets out from the law of persons – that Roman law must lay at the foundation of any modern civil and legal science.<sup>141</sup> Aristotelianism formed the basis of Roman law insofar as 'Gaius begins the *Institutes* in the words of Aristotle' and bases the *ius civile* on the *ius gentium* derived from Aristotle.<sup>142</sup> The conception of the person was firmly rooted in the early Roman period in household economics, which slowly transformed into 'comprehensive groups' that 'may have enjoyed an extensive external dependence, and accordingly may be understood to be the forerunners of the state'.<sup>143</sup> Such a situation as that belonging to the early centuries of

---

[*Status*]. §76 Status is a property [*Eigenschaft*] on the basis of those different rights [*Rechte*] people enjoy. §77 The slave is thus human and he is also [a] person insofar as he is considered in the state of nature [*Naturstand*], but with regards to the civil [*bürgerlichen*] condition [*Standes*] he is "faceless" [*ohne Gesicht*]. The inmixing of the modern conceptual model with the Roman legal tradition tends to reveal Heineccius's eclecticism.

<sup>138</sup> See Villey 1975; and Pöggeler 1995.

<sup>139</sup> 'That logical consistency which Leibniz praises is certainly an essential characteristic of the science of right, as of mathematics and every other science of the understanding; but this logical consistency has nothing to do with the satisfaction of the demands of reason and with philosophical science' (Hegel 19991a, p. 34). Again, the extent of the perceived distinctiveness to which Hegel views his conception of reason and method can be seen here – that which divides him from the *Naturrecht* tradition firmly fixes him to it.

<sup>140</sup> Kaser 1968, p. 45. 'This overrating of the will' – stemming from the post classical period, the Eastern Roman school, Hellenic doctrine, and subsequently supported by theological doctrine, according to Kaser – 'caused the nineteenth century doctrine of Continental Common law to be biased in favour of the 'will theory' (Kaser 1968, p. 46).

<sup>141</sup> 'Since his Jena days it was clear to Hegel that it was in Roman law that the categorization of everything as persons was worked out' (Pöggeler 1995, p. 29).

<sup>142</sup> Jolowicz and Nicholas 1972, p. 105.

<sup>143</sup> Kaser 1968, p. 60. See Hegel 1986a, p. 507 (§349) on the 'formal [*formelle*] realisation of the Idea of the state' and the separation of the 'patriarchal condition' [*Zustand*] from the properly political: from nation, constitution, sovereignty, and state form. To this extent the question may be raised to what extent Hegel's understanding of Roman law, as private law is contingent on his historical conception of the modern state – as a distinctly political sphere, as ideally autonomous and severed from private law – with the emergence of civil society. 'Hegel views Roman law in the light of its later accommodation to natural law; in this way he fails to see that Roman law is primarily public law (not, as he stresses, private law). When Hegel portrays and criticizes Roman family law on account of the unethical privileges and rights of possession devolving on man, he disregards the fact that this system stemmed from kinship structures' (Pöggeler 1995, p. 29). On the contrary Hegel views kinship structures as the 'initial stage' of the state form, and when he attacks the

the Roman era ‘did not regard man as an individual, but as a member of the group to which he belonged’ where the ‘state’ was still seen as composed of family households that ‘formed monocratic legal units’.<sup>144</sup> This finds a parallel in the kinship groups of the German speaking lands, which formed themselves into *Stände* in the intervening centuries between the end of the feudal Middle Ages and the beginning of the modern period, but strongly resisted the formation of the state in the coming centuries. Within the codification process as ‘a legitimization of personal differences within society’ such groups saw the continuance of their rulerships in the seventeenth and eighteenth centuries, but had opposed the legal positivisation of their privileges. Such an interpretation accords with the traditional interpretation of the *civitas*, the accepted society of the *ancien régime*: ‘the construction of the law of civil society, formed during the seventeenth and eighteenth centuries, remained dependent on a concept of the contract, which had “property” [*Eigentum*] (dominium) as its prerequisite’, and property was based on the traditional rule and law of the *pater familias*. It is ‘privilege [that] proves itself to be the central category’ that ‘determines the legal-political position of the individual’ in ‘his affiliation to one of the “*Stände*” or “rulerships” [*Herrschaften*]’.<sup>145</sup> By contrast, Hegel conceived of property first and foremost as the freedom of Christian conscience that led to the positing of the will, and interpreted the family on the basis of love already in 1797/1798 which was foreign to the Roman and Greek traditions of household economy.<sup>146</sup>

Roman law imported very precise descriptions in its law of persons that could be linked to status and a social order of rank that, alongside the influence of Aristotelianism, which described the social whole framed as the fulfilment of particular functions,<sup>147</sup> were adopted in the German natural legal tradition. ‘The law of persons (*ius personarum*)

---

*paterfamilias* it is always from within the horizon of his early Christian view of the family as a love relation. Under the *Principate* moreover Augustus viewed his *summa potestas* or *imperium* along the lines of the household *dominium* already thereby conflating the *ius privatum* and *ius publicum*. ‘Even in the context of ordinary representations, we do not describe a patriarchal condition as a constitution, nor do we describe a people living in this condition as a state, or its independence as sovereignty. Consequently, the actual beginning of history is preceded on the one hand by dull innocence which lacks all interest, and on the other by the valour of the formal struggle for recognition and revenge’ (Hegel 1991a, p. 375 (§349)).

<sup>144</sup> Kaser 1968, p. 60 (text modified).

<sup>145</sup> Riedel 2004, pp. 741, 742.

<sup>146</sup> See Löwith 1995, p. 280; Hegel 1996, pp. 302–8.

<sup>147</sup> *Politics* 1254a29–1254a35: ...‘for in all things which form a composite whole and which are made up of parts, whether continuous or discrete, a distinction between the ruling and the subject element comes to light. Such duality exists in living creatures, originating from nature as a whole...’.

consists of those portions of the law which deal with liberty and slavery (*status libertatis*), citizenship (*status civitatis*), family (*status familiae*), marriage, guardianship and curatorship (*personae sui iuris, alieni iuris*).<sup>148</sup> Just as Aristotelianism had prioritised the whole over the part so too did Roman law in its origins within kinship groups and in the transference of such legal right to individual *patres familias* that had *potestas* over the house community.<sup>149</sup> These conceptions were formalised on the basis of the house community in the German speaking lands, the *Hausvater* as *pater familias* and the *oikos*, each of which coincided with the traditional conception of civil society.<sup>150</sup> “*Hausstand*” signified, beyond all moral or religious interpretations, the set [*l’ensemble*] of relationships and human activities that unfold [*déroulant*] in the house, in Greek “*oikos*”, understood as carrying out [*l’accomplissement*] the tasks [*tâches*] that lead to the domestic and rural economy (Otto Brunner). This “*Hausstand*” has a very patriarchal character, [and] is called as well *Häusliche Gesellschaft*...’.<sup>151</sup>

What marks the transition in Hegel’s thinking is when he shifts from understanding the state as a ‘work’ to the emergence of labour as such and taken in its own right. The labouring *Stand* and merchant class [*Klasse*] were duly and justly subordinated to the militarised *Stand* in the ethical totality of *polis* life according to Hegel in the Jena essay (1802–3). This saw the justification of mechanisation and the ‘de-humanisation’ of the labourer in *System der Sittlichkeit* written in the same period as well as the destruction of private property in the total organisation for war, which united the *Stände* into a whole.<sup>152</sup> The development of reciprocal recognition and the subordination of the serf to the lord overturns the hierarchy by placing the active principle on the side of labour and reducing the lord to a natural ethical life – the ‘natural intuition’ that marks Greek ethical life interpreted in a limited sense from the *Philosophie des Geistes* (1805 – 6) onwards. The ancient Greek model of the *polis* and Hegel’s early understanding of ‘socio-political’ stratification go hand in hand as they remain Platonist and Aristotelian

<sup>148</sup> Berger 1953, p. 628; compare Kaser 1968, p. 64: ‘According to the Romans, *persona* was every human being, slaves included, though the post-classical period preferred to style free men *personae*. *Status* did not mean personality but denoted the legal position of the human being in general’.

<sup>149</sup> See Kaser 1968, p. 60.

<sup>150</sup> See Riedel 2004.

<sup>151</sup> Stuke 1968, p. 43. The references are to Brunner 1949, pp. 33ff.

<sup>152</sup> Hegel never departs from this perspective on war as the destruction of bourgeois property as well as the emergence of equality among the *Stände*.



explanations for modern politics and predetermined forms of social interpretation. ‘The “absolute *Stand*” of the “*System der Sittlichkeit*” appears here, with reference to Plato and Aristotle, as the ‘class of free people’ which by nature is independent or “for itself”, and is differentiated from the “*Stand* of unfree people” which “is by nature not its own but another man’s”’.<sup>153</sup> The Jena period is dominated by the shift Manfred Riedel traced in Hegel’s prioritisation of an active and free political *Stände* as a solution to the political problem to the amelioration of labour and the work as the free spirit of a people. Once the will is embodied in conscious labour and recognition social mobility raises its head, individuals still must belong to a *Stand*, but they are free to choose this in distinction from what Hegel perceives as the failings of Plato’s *Republic* and the feudal era where individuals had assigned social status.

The ‘influx of ethical corruption’ into ancient Greek *polis* life is thus signalled precisely by Hegel’s interpretation of the rise of consciousness, which destroys the ‘natural intuition’ of Hegel’s early ideal that ‘could not withstand the division which arose within the latter as self-consciousness became infinitely reflected into itself’.<sup>154</sup> This was already present in the *Philosophie des Geistes* (1805–6). It is thus that labour appears subordinate to the active and free life of the *politeia* in the Jena essay of 1802–3. This becomes the work of spirit and its history, which is intertwined with the development of logic itself. The *subject* – or the principle of particularity that was formerly seen as a purely destructive force in ancient ethical life – is reconceived as the movement of the concept and, once it receives its concrete basis, as the principle moment in the *substance* of the modern state. Thus the naturally intuited social relations of the Greek and feudal ideals disappear through the innovative capacity of labour, which truly brings self-consciousness into being: i.e., what were naturally stratified hierarchies in the late Frankfurt and early Jena periods now become organised through the *spiritual capacities* of labour. This, in the philosophical sense, for Hegel, is the labour of the spirit itself that appears in the movement of the concept in the *Phenomenology* (1807).

Within this early shift from the natural to the spiritual contained within the principle of labour lies the crux of Hegel’s much later overcoming of the separation of the

---

<sup>153</sup> Riedel 2011, p. 15 (translation modified).

<sup>154</sup> Hegel 1991a, p. 222, §185.

civil and the political as it appears in the *Grundlinien* with the ‘discovery’ of modern civil society that left ‘political life hanging, so to speak, in the air’.<sup>155</sup> This movement necessitates the development of reciprocal recognition in the civil, social, sphere and its articulation in the various *Stände*, the honour of belonging to an estate – the *Ständeehre*. Abstract right is therefore to be sublated through the ‘substantial’ aspect of the person ‘discovering their essential self-consciousness in institutions as that universal aspect of their particular interests which has being in itself’,<sup>156</sup> thus entailing a reorganisation of the traditional individualist premise of natural law along the lines of an inter-subjectivist conception of labour. Thus ‘labour is neither only a means to the satisfaction of needs [*Bedürfnisbefriedigung*] nor the purpose [*Zweck*] of this society, but rather a moment in the formation [*Bildung*] of the (formal) universality [*Allgemeinheit*] of individuality, which through it and on its basis [*Boden*] fulfils the shift [*Schritt*] from nature and the inhibition of natural arbitrariness to culture and freedom’.<sup>157</sup>

While the young Hegel’s appropriation of Aristotle allows him to view this matter in a different light, i.e. in his attempt to reunify the theoretical and practical sciences and ‘the scientific ways of treating natural law’ in practical philosophy which were irredeemably cleft by Kant, he still interprets the ‘natural’ ethical life of the Greeks – intuition – as *the* solution. The young Hegel has yet to depart from the mere concept of nature by way of the labour process as an appropriation and transformation of natural as such and the grasping of the individual ‘according to his concept’ which will thoroughly replace the Aristotelian hierarchy ‘according to nature’. While he begins to recognise the importance of political economy he remains tied to the natural hierarchy of the construction of the *polis* in his original idealisation of the philosophical and military *Stand* of the Greeks: i.e., the Greek *polis* was ordered into ‘two *Stände* ... in accordance with the absolute necessity of the ethical’<sup>158</sup> – a society of the free, the nobility, and the unfree, the labourers *or* the traditional division between the active life of *polis* and the labour of the household, the *oikos*.

---

<sup>155</sup> Hegel 1991a, p. 342, §303.

<sup>156</sup> Hegel 1991a, p. 287, §264.

<sup>157</sup> Riedel 2004, p. 780.

<sup>158</sup> Hegel 1999, p. 147.

The importance of Hegel's return to the individual as the negative will be analysed in the following section whereby he grasps right and the individual 'according to its concept'. This coincides with a definitive return to a reading of the modern natural law tradition, which from this moment onwards (1805–6) orients his thinking. I will demonstrate how this transforms the natural basis of the *polis* in his readings of the Greeks and to limit the Greek world historically. This will also set his philosophy firmly in the horizon of the modernity of the French Revolution that had placed natural rights at the basis of modern civil society. Thus Hegel reconceives of his relation to antiquity, while at the same time forming a new relation to modern natural law that he had criticised since his Frankfurt period (1797–1800). This will lead to a significant reformulation of the central concept of the modern natural law tradition – the state of nature – and to a redefinition of the importance of the *Stände* within the context of modern civil society. It is in this way that I will point to the theoretical potential in Hegel's institutional theory and of the importance of the *Stände* as the most significant component to his institutional thought.

#### III.4 *From Nature to Right by way of Labour and Recognition*

In this section I will examine how the *Stände* are transformed from a natural order in the Jena natural law essay of 1802–3 to a spiritual order through the concept of reciprocal recognition as it first appears in the *Philosophie des Geistes* 1805–6, which eventually established a nascent system of needs and a division of labour. I will also show how Hegel reinterpreted civil society in this circumstance, and how the old *societas civilis* was transformed into the modern concept. This is central to showing how the concept of the *Stände* emerges as a unique attempt to answer the problems of a modern society increasingly determined by private interests – formal freedom for Hegel must become concrete in institutions.

The novelty of Hegel's developing conception of the *Stände* – and what I will show underlies their eventual modernity – is the principle of 'subjective freedom'. As a philosophy of *right* Hegel's later politics fully follows the modern tradition and eventually breaks with the classical ethos that, from his mature historical perspective, he

sees as constraining the particularity of the individual. *Natural* law as a law ‘according to nature’ falls to the wayside in turn. Reciprocal recognition replaces the state of nature as the natural; it is a conceptual-spiritual moment of the overcoming of nature as such. In this section of the chapter, I analyse this transformation in Hegel’s thinking through the fundamental shift in the valorisation of labour and the negative in his thought that proceeds by way of reciprocal recognition as a relation of right and leads to a reassessment and reformation of the *Naturzustand*. It is in this context that a new meaning will be given to both the state of nature and the relationship of the *Stände* to it. As I show in the present section, for Hegel the *Stände* answer the ‘formal’ problem of individualism that lay at the basis of the developing modern state. I show how the institutional formation of the *Stände* came into being as a distinctive answer to the progress of the modern natural law tradition and the French Revolution. This allows me to reflect on the peculiarity of Hegel’s approach to modern natural law in the determination of the concept, and to stress the importance of his institutional politics that mediate between the newly cleft dimensions of civil society and state. Moreover, I show how the *Stände* in the *Grundlinien* serve as an organisational form institutionalising individual right into the political community opposed to the private conflict between individuals when isolated in a modern market economy. Hegel arrives at a new concept of the *Stände*, which is now divorced from the tradition and attains its meaning and significance in relation to modernity.

With Hegel’s interpretation of the French Revolution, the principle of abstract equality, which is the state of war, reveals the historical shift from positive coercive law to right as the foundation of the state, and the *Entstehungsgeschichte* of civil society, or at least a sphere of formal (what in the *Grundlinien* is called ‘abstract’) right that he recognised and interpreted in the 1802–3 Jena essay in terms of the legal revolution in Rome where he saw the differentiation between *Stände* disappear.<sup>159</sup> It is not until Hegel significantly prioritises the individual will and freedom that a departure from such an interpretation of the decline of the classical epoch and the affirmation of the Greek *polis* will be transformed; it occurs historically within the context of the movement from law to

---

<sup>159</sup> Hegel’s failure to perceive Roman law correctly is due to his fixation on the historical progress of reason (see footnote 122 above). His use of the concept of the *Stände* in this context, however, is not necessarily anachronistic as Roman society was ordered along the lines of *status civilis* (see footnote 136 above).

right, ‘from the metaphysics of natural law to that of natural rights’, which undoes the hierarchy of the Greek *polis* for Hegel.

[This] process [is] often obscured by the fact that both concepts in German commonly are denoted by the word *Naturrecht*. As the matter was clarified, *Menschenrecht(e)* (human right(s)) became the common word for the subjective concept, no doubt reinforced by the French *droits de l’homme*.<sup>160</sup>

The combined achievement of the Kantian and French revolutions in thought produced natural rights where a ‘logical individualism [was] inevitably impelled to annihilate any idea of the independent existence of the group’.<sup>161</sup> For Hegel, the ‘newer systems of ethics’ in their linguistic preference for *Moralität* rather than *Sittlichkeit*, ‘which make a principle out of individuality and being-for-itself, cannot fail to reveal their allegiance’ which places private interest above the ethico-political order: i.e., ‘There is no other possibility to convince [the individual other] than by appealing to the promptings of his own reason’.<sup>162</sup>

At the centre of Hegel’s conflict with modern natural law is the notion of the contract and rational individualism, which firmly anchors the formation of the state in the arbitrary will of the individual. Since 1793 in *Volksreligion und Christentum* Hegel had been preoccupied with conceiving of the individual in immediate ethical life, in the *ethos* of the (Greek) community rather than in the *morality* (in *Der Geist des Christentums und sein Schicksal* (1798–1800)) of isolated individual actions. This stood in explicit contrast to the modern natural law tradition that had stemmed from Hobbes, recalcitrant in its advocacy of the individual will, which led to the primacy of the property relation in Pufendorf and Locke as I analysed above (III.1), and in Kant was exemplified in his ‘abstract universality’ or the ‘formalism’ of pure reason according to Hegel (III.2), which Hegel will equate with the French Revolution in the *Grundlinien* (1820/21). While Hume’s critique of Locke’s notion of the contract parallels Hegel’s, the former’s was empirical and based on an historical event. On the contrary, Hegel’s critique of the contract will be rational in orientation insofar as he is attacking Rousseau, Kant and

---

<sup>160</sup> Haakonssen 2006, p. 280.

<sup>161</sup> Gierke 1934, p. 114.

<sup>162</sup> Hegel 1999, p. 159 (also see editorial note 97, p. 295); Scattola 2003, p. 15.

Fichte.<sup>163</sup> The very idea of isolated individual actions, and of the deductive principle of reason grounded in a strictly *individual* (formal) understanding are subject to Hegel's criticism and developing conception of *reason* as *dialectical* from the early Jena essay of 1802–3 onwards. It takes on various forms – the family, language, and labour – through which the very notion of reason and the rational will be transformed. Hegel divides the *Verstand* – reason conceived as oppositional or, rather, the understanding – to *Vernunft*, reason as scientific cognition, which conceives of the mediation between opposites, in this case undoing the atomism of the isolated metaphysical subject in relation to the *political*.

When assessing the state of nature in the *Philosophie des Geistes* (1805–6) Hegel arrives at an essential contradiction: the impossibility of discovering the 'pure concept of the person' prior to the construction of the *civitas*,<sup>164</sup> which from Hobbes onwards was formed on the basis of the contract and – *insofar as the societas civilis is the bürgerliche Gesellschaft* for the Hegel of the *Grundlinien* – is founded on the abstract right of the person. This for Hegel is firstly the private person and secondly the sphere of contractual relations, which proceed only by way of the initial recognition that the right I possess also corresponds to the duty to recognise the right of the other. In asking the question of what right and duty are in the *Naturzustand* in the *Philosophie des Geistes* (1805–6), Hegel can only answer in the negative as had Hobbes: 'in this relationship – of the free indifferent being of individuals – [individuals] have no rights or duties towards each other, but obtain them first through leaving [*das Verlassen*] this condition [*desselben*]'.<sup>165</sup> A state of 'pure recognition [*reines Anerkanntsein*]' would mean precisely a non-relation, and the impossibility of forming the association as such – or real recognition, which is the same thing. The beginning of such association therefore must begin with the system of needs – and not with the *Naturzustand* – a step beyond the natural order, and into the spiritualised one of reciprocal recognition between multiple figures of self-consciousness. Thus abstract right for Hegel in the *Grundlinien* will retain the form of a fiction that is structurally possible only after the establishment of the system of needs, even if it comes

---

<sup>163</sup> See Bobbio 1975, p. 88; Kersting 2004, pp. 939–42.

<sup>164</sup> This reflects the contradictory aspect of 'nature' much later in the reflection on *Naturrecht* in the *Encyclopaedia* (§502). Here we find Hegel, at once speaking of nature in the 'immediate natural way' or 'through the nature of the thing, determining itself [according] to the concept' (Hegel 1974, p. 311). The reference is not only to the modern tradition of natural law, but also to Aristotle.

<sup>165</sup> Hegel 1987, p. 197 (text modified).

logically prior in the discussion.<sup>166</sup> Historically speaking, it is also preceded by many different political forms.<sup>167</sup> Hegel thus shows how the system of needs develops as a fundamentally *relational* phenomenon and must be so as simple death brings ‘a new and greater contradiction’ into being whereby recognition is impossible and the natural state continues.<sup>168</sup> Thus freedom is initially established by submission to authority, and then leads to the division of labour and the system of needs and to right that, historically speaking, would be patriarchal or religious at this stage.<sup>169</sup> Hegel thus ends by asserting – most clearly in the *Encyclopaedia* – that

In place of the raw destruction of the object steps the acquisition, preservation and formation of it as the mediation whereby the two extremes of independence and dependence are incorporated – the form of universality in the satisfaction of needs is a constant means and a certain provision for the future.<sup>170</sup>

Thus when Hegel famously poses the question in the *Philosophie des Geistes* (1805–6): ‘*what are right and duty for the individual in the state of nature?*’ He discovers that ‘right is a *relation* [*Beziehung*] to others... or a determination, [a] constraint [*Beschränkung*] on my empty freedom’. Yet the *factum brutum* of nature is complicated insofar as the human being is always already grasped *according to the concept* and not as a mere existence. ‘I consider the human being in his *concept*, that is not in the state of nature... in the state of

---

<sup>166</sup> I refer the reader to Ilting’s discussion mentioned at the outset of this chapter (Ilting 1971, p. 91).

<sup>167</sup> See Riedel’s exhaustive treatment (Riedel 2004, pp. 719–800).

<sup>168</sup> See Hegel 1974, p. 221ff (§432 *Zusatz*) whereby ‘the absolute proof of freedom in the struggle for recognition is death’ by means of which ‘naturalness itself will be negated’ when ‘the I [is] abolished [*aufgelöst*]’. The ‘new and greater contradiction emerges’ as the one who proves his inner freedom cannot be recognised as subordination did not take place, the other combatant is dead. It is to this degree that ‘each submission of the selfishness of the serf forms the beginning of the true freedom of the human being’ – and, as is well known, this is subordination in and through labour. As Goldschmidt 1964, pp. 63–4 notes, the curious status of the dialectic of lordship and bondage is that it is almost entirely lacking from the philosophy of history and, according to him, this is an anomaly that Hegel neglected to solve. We are left aptly turning to the political philosophy – or more precisely the philosophy of *objektiver Geist* – for a possible solution; indeed, insofar as this relation is structured after a fiction, its historical status need not be questioned. I refer the reader to Chapter Two, however, where I spoke of the ‘*protective* relation of feudal protection’. It was this context in the *Lecture on the Philosophy of History* that Hegel spoke of the ‘principle of free possession; *i.e.* freedom originated in its direct contrary’ (Hegel 2001, p. 402). In this sense we see the dialectic of Lord and Bondsman form distinctively in feudalism, the question of subordination of nations in the ‘right of heroes’ may be another matter (see following footnote). Regardless, structural recognition is the Hegelian engine of dialectical development *par excellence* that continually proves its truth in a variety of different conditions.

<sup>169</sup> See Hegel 1974, p. 225 (§435 (*Zusatz*)) where he cites the examples of Solon and Peisistratos in Athens as well as the kings of Rome.

<sup>170</sup> Hegel 1974, p. 224 (§434).

nature he is not in his *concept*, but in his natural essence [*Naturwesen*], in his *existence* [*Dasein*]. For Hegel, it is the movement of thought that, moreover, determines this development.

...this depiction [*Zeigen*] is rendered by me [*fällt in mich*]; it is the movement of my thought, although the content is the free self; – this movement does not let it be what it is – or it is the movement of this concept – right is the *relationship* [*Beziehung*] of the person in its behaviour [*Verhalten*] to another (person) – this universal element of its free being – or the determination [*Bestimmung*], the circumscription [*Beschränkung*] of its empty freedom'.<sup>171</sup>

The ascendancy of the principle of particularity that destroys Greek ethical life Hegel now affirmatively associates with development of self-consciousness and the movement of freedom in history. The battle for recognition leads to an originary division of labour that sets history in motion, rather than the stupidity of (the Lord's) natural satisfaction sunken in desire.

The system of needs as Hegel will eventually come to describe it becomes the object of the developing science of political economy; it provides him with his summary account of civil society in the *Grundlinien* §185 as 'a spectacle of extravagance and misery as well as of the physical and ethical corruption common to both. Within social needs, as a combination of immediate or natural needs and the spiritual needs of representational thought, the spiritual needs, as the universal, predominate. This social moment accordingly contains the aspect of liberation'.<sup>172</sup> Whereas the *Stände* before lay in the context of the natural hierarchical relations of the *polis*, they now appear 'spiritualised', which has become the work of labour when Hegel re-described the state of nature in the *Phenomenology* (1807) as the lord's negation of his own nature through the risk of death in the battle of recognition, which then led to the true negation of nature in

---

<sup>171</sup> Hegel 1987, pp. 196–7 (original emphasis); 1974, p. 225. The importance of this conceptual moment in the *Philosophie des Geistes* (1805–6) truly reorients Hegel's thinking and indicates a new starting point (this was noted firstly by Ilting 2006 and again by Riedel 2011). The disciplinary cleft between the natural and spiritual sciences in Hegel has its origin here: natural law is now conceived as problematic precisely because it starts from a nature that knows no law at least insofar as the human being is considered. As he will put it in his maturity, 'the point of view of the free will, with which right and the science of right begins, is already beyond that false point of view whereby the human being exists as a natural being' (Hegel 1991a, p. 87 (§57)).

<sup>172</sup> Hegel 1991a, pp. 222–3, 230 (§144).



the serf's labour and formation of the thing followed by the system of needs.<sup>173</sup> Thus the development of 'private particularity' in modern civil society with the conflict of recognition represents a 'spiritualisation' of nature, which is liberation from nature as such – even if at this stage such liberation is only 'formal': i.e., not yet incorporated into institutions and the idea of the political community, but involves the return of relational conflict at the level of abstract right. As Hobbes put it, 'all society therefore is either for Gain, or for Glory; not so much for love of our Fellows, as for love of our Selves; but no society can be great, or lasting, which begins from Vain Glory; because that Glory is like honour, if all man hath it no man hath it'.<sup>174</sup> Once Hegel has 'detraditionalised' the conventional *societas civilis* such 'vain glory' lies at its basis, which he explicitly identifies in the *Grundlinien* §289 as the 'crisis of the bourgeois production society' which is indeed founded on such greed and self-interest as it is 'the field of conflict in which the private interests of each comes up against that of everyone else'.<sup>175</sup>

The spirit's objective *right of particularity*, which is contained in the Idea, does not cancel out the inequality of human beings in civil society – an inequality posited by nature, which is the element of inequality – but in fact produces it out of spirit itself and raises it to an inequality of skills, resources, and even intellectual and moral education.<sup>176</sup>

Such conflict will only be stemmed by passing over into the state by way of the rational – read, institutional – organisation of the general will, which will imply the *Stände*. The crisis of modernity then is only the occasion to bring about a higher stage of right, not abstract but concrete. This is precisely how Hegel uses the *Stände*, as Pöggeler suggested,<sup>177</sup> in a new sense, and articulated thoroughly within the horizon of abstract right and with the abstract universality of the Terror in view, as I have been emphasising in the French Revolution's abolishment of the *Generalstände* throughout this study. For Hegel, in taking over the modern distinction *bourgeois* and *citoyen* established by

---

<sup>173</sup> This is where Joachim Ritter's notion of the 'nascent workers' State' (see Ritter 1984, pp. 124–51) belongs. As Max Weber would say, 'each occupation is a *Stand*' (Weber 2010, p. 148). Ritter's notion makes of Hegel's State an organised association of *Berufsstände*, which indeed accords with the organisation stemming from civil society's disintegration of the family and the re-emergence of universality in the *Stände*.

<sup>174</sup> Hobbes 1983, p. 43.

<sup>175</sup> Hegel 1991a, p. 329.

<sup>176</sup> Hegel 1991a, pp. 233–4 (§200).

<sup>177</sup> See Pöggeler 1995, p. 3, whom I quoted from in this respect in the Introduction.

Rousseau, the ‘essential distinction between the citizen and the isolated man [is] similar to that between the parts of an organic body and the parts of an inorganic body’ – the atom is self-subsistent and autonomous, the organic is interrelated to the whole – it thus requires an institutional articulation.<sup>178</sup>

The spheres of abstract right and the contract that mark the opening sections of Hegel’s mature theorisations in the *Grundlinien* are where a philosophical science of right necessarily begins; that is, subsequent to the French Revolution that had realised the shift from the law [*Gesetz*] of the *civitas* in the formation of the *Herrschaftsvertrag* to the right [*Recht*] of the individual as the basis of the *Gesellschaftsvertrag*. Yet for Hegel this shift always left right in a precarious position, and it is for this reason that the right of particularity was always considered ‘abstract’ and not ‘concrete’ until it became organised. Hegel’s concern stems from the danger of what he sees as ‘abstract freedom’, individualism and contract theory that precisely lay at the core of modern natural law theory and at the basis of the new society, which ‘were always liable to transform themselves into social absolutism, just as social absolutism was equally liable to transform itself into individualism’.<sup>179</sup> It can thus be seen that for Hegel civil society never appeared in ‘the unthreatening and stable form of a natural economic order’, whereby the requirement of ‘natural law was interpreted as no more than the principles that underpinned the minimum framework of positive law needed to sustain this natural order’. If ‘civil society and the state of nature were eirenically reunited’,<sup>180</sup> for Hegel the same particularity and rivalry that characterised the first order was sublated into the second. ‘The right of nature is therefore the existence of the strong [*das Dasein der Stärke*] and the reign of violence, and the state of nature is a condition of violence [*Gewalttätigkeit*] and injustice [*Unrechts*]’.<sup>181</sup> Just because Hegel writes at a moment when ‘the redescription of natural law as subjective natural rights’ occurs does not mean

---

<sup>178</sup> Coker 1910, p. 22.

<sup>179</sup> Gierke 1934, p. 114.

<sup>180</sup> Hochstrasser 2004, p. 36.

<sup>181</sup> Hegel 1974, pp. 311–12. As Goldschmidt notes in his excellent essay, Hegel’s condemnation is peculiar as it ‘carries a moral and political judgement on a condition that itself still ignores the difference between good and evil, or, as Rousseau has said, “men in this state cannot be good or bad and have neither vices nor virtues” (see Disc. p. 278)’ (Goldschmidt 1964, p. 47). Hobbes had stated this with clarity, ‘before there was any government, just and unjust had no being’ (Hobbes 1983, p. 146). If one shifts the perspective and sees it as the basis of civil society as I am attempting to do in this chapter the logic of Hegel’s argument can be clarified.

that this ‘removes at a stroke any need for consideration of the “state of nature” as the foundation of humanity...’.<sup>182</sup> What was natural has been made abstract and formal – and is a formal ‘liberation’ as such. For Hegel, in his early reflections on the *Naturzustand* in the *Philosophie des Geistes* (1805–6) the will [*Wille*] is free, but the arbitrariness [*Willkür*] of ‘this freedom is empty, formal [*Formale*] and evil [*Schlechte*]’ – it is only subsequently transformed by language, recognition and consciousness, labour and law: the immediacy of natural existence, and in this case the sphere of ‘formal liberation’ of civil society as the sphere of representation ‘must be cast off’.<sup>183</sup>

This relationship is usually what is referred to as the state of nature; the free indifferent [*gleichgültig*] being of individuals against each other [*gegeneinander*] and natural right [*das Naturrecht*] is believed to [*soll*] answer what rights and obligations [*Pflichten*] individuals have towards one other...

As for Hobbes, so too for Hegel: ‘the state has been formed to end the kind of war that exists in the state of nature’.<sup>184</sup> This conflict will only be stemmed by passing over into the state by way of the rational organisation of the general will, i.e., through institutionalism, which turns the civil into political society. This is the reconciliation of evil with itself as it appears in the *Philosophie des Geistes* (1805–6). Thus just as modern rational natural law replaced the old Aristotelian dichotomy of *oikos* – *polis* with the state of nature – civil society so too Hegel transforms this in turn: into civil society and the state, which he then reunifies by way of the *Stände* as drawn from the logical-dialectical method that refuses the existence of ‘abstract oppositions’. I will turn to a brief discussion of Hegel’s dialectical method and its relation to the tradition at the close of this chapter.

---

<sup>182</sup> Hochstrasser 2004, p. 20.

<sup>183</sup> Hegel 1987, p. 186.

<sup>184</sup> Schmitt 2008, p. 47. If there was ever a concept that could be spoken of in terms of ideological over-determination it is certainly that of *bürgerliche Gesellschaft*. It changed in Germany throughout the eighteenth and nineteenth centuries from representing the traditional order of society to being identified with the modern bourgeoisie’s emancipation from feudalism (see Riedel’s exhaustive treatment in Riedel 2004, pp. 719–800). Hegel’s theory at first appears contradictory insofar as the pre-modern *Stände* subsist alongside the new modern concept of civil society, but insofar as they are constructed along the lines of the modern division of labour this is not an apt description: that is, the novelty of Hegel’s *Stände* lies in the principle of ‘subjective freedom’ which contrasts with Plato’s *Republic* and the feudal order (see §299) as well as the German political tradition of the *Statuslehre* in Wolff and Heineccius. It can easily be seen however that Hegel also had a highly ideological vision of modernity and the split between civil and political that was intrinsic to it, and that the sphere of abstract right (liberalism) must be subordinated to the communitarian forms of institutional organisation in the *Stände*, which I am analysing here in this study.

The modern natural law theorists for Hegel – and most specifically related to the contemporary political conditions of the French Revolution, Locke and Rousseau and, in Germany, Kant and Fichte – radicalised social atomism and the individual to such an extent that they did not allow for any aspect of the *institutional* formation of the will; this was already clear with Hobbes who had conceived of individuals along the lines of atoms and the state as a mechanism. In contrast to the modern natural law tradition, for Hegel, ‘it is extremely important that the masses should be organised, because only then do they constitute a power or force; otherwise they are merely an aggregate, a collection of scattered atoms’.<sup>185</sup>

As I have just asserted, the changing way in which Hegel understands natural law must be seen as leading to his conceptual discovery of *modern* civil society – i.e., to the conceptual discovery of the individual, the individual according to his concept that leads to ‘abstract right’ in the *Grundlinien*. This in turn leads to the rejection of the natural basis of natural law and to reciprocal recognition. For Hegel, modern civil society thus becomes a spiritualisation of the state of nature, which follows on the Hobbesian principles whereby ‘Profit is the measure of Right’ and ‘the state of equality is the state of warre and therefore inequality’<sup>186</sup> as I analysed above when I quoted Hegel speaking of ‘the element of inequality produced out of spirit itself’.<sup>187</sup> The *Naturzustand* is thus now restricted to the context of an emerging modern market economy inside the state itself. The conceptual object here has thus shifted from the merely fictional to a concrete and real object through political economy and the system of needs that ‘provides Hegel with a frame of reference for a completely altered conceptual deduction’.

Labour is a specific mode of action, need is the natural basis of man as a ‘private person’. Hegel’s philosophical achievement in this field consists above all in having the private frame of reference of individuals as publically mediated and grasped their natural basis as a social constant.<sup>188</sup>

The shift to a spiritual order now determines the organisation of a nascent society as I have just shown, which represents an about turn from the natural intuition that dominated Hegel’s interpretation of Greek ethical life and the natural ordering of the *polis*.

---

<sup>185</sup> Hegel 1991a, p. 331 (§290).

<sup>186</sup> Hobbes 1983, pp. 48, 132.

<sup>187</sup> Hegel 1991a, pp. 233–4 (§200).

<sup>188</sup> Riedel 2011, p. 44.

By the end of the Jena period the individuated will emerges as the primary foundation of the community, yet the ‘*will of the individual is a collective will [gemeinsamer Willen]*’; that is to say, ‘the person, the pure being-for-itself is not respected as an individual will separating itself from the collective will, but only as collective [do] I become compelled to be a person’.<sup>189</sup> It is thus that one can discover the basis for Hegel’s concrete conception of individuality arising in institutions, on the one hand, out of needs and reciprocal exchange and, on the other, out of liberal individualism itself by way of the reciprocal recognition and the relation of myself as a subject of right recognising the other as a subject of right as well. The *Stände*, as *institutional* forms, are maintained although significantly transformed from a natural order – of hierarchical intuition that accords with the classical tradition – to a conceptual schema based on the division of labour, recognition and self-consciousness.<sup>190</sup>

The *Realphilosophie* of 1805–6 gives as this basis the I, which is intelligence and will; it thus becomes possible to think the ethical spirit no longer merely as nature, but as the other of nature, which is itself formed through reciprocal recognition of its own self through the other. This gives new significance to the motives of modern natural right and of the Kantian-Fichtean philosophy. In the *Ständelehre* the foundations of the ethical life of the polis of antiquity are lost: the lower *Ständen* (farmers, professionals [*Gewerbe-*] and traders) confront the universal *Stand* in which the man of affairs [*Geschäftsmann*] (that is, above all the administrative civil servant [*Verwaltungsbeamte*]) exist alongside the scholar and the official.<sup>191</sup>

For Hegel the appropriation of nature through the labour process is now the *Entstehungsgeschichte* of freedom, which has its own history through the initial subservience of the serf in the dialectic of lordship and bondage; this is his redescription of the modern ‘fiction’ of the *Naturzustand*. This, moreover, marks the initial move towards the philosophy of spirit and the departure from the natural law model, or the rejection of the foundation of law *in* nature – the division of society into *Stände* now develops along conceptual lines, consequent to the subordination that engenders the labour process and the system of needs. Thus the naturally intuited social relations of the Greek and feudal ideals eventually disappear through the innovative capacity of labour:

<sup>189</sup> Hegel 1987, pp. 209, 211 (original emphasis).

<sup>190</sup> See Riedel 2011 p. 15 who has traced this transformation in Hegel’s thought – from the natural-ethical to the objective-spiritual – in stunning detail.

<sup>191</sup> Pöggeler 1983, p. xxiv.

i.e., what were naturally stratified hierarchies in the late Frankfurt and early Jena periods now become organised through the *spiritual capacities* of labour whereby ‘freedom consists solely in the reflection of the spiritual into itself, its distinction from the latter, and its reflection upon the latter’.<sup>192</sup> This becomes the object of philosophy proper.

The replacement by way of the battle for recognition of the central fiction of the *Naturzustand* of modern natural law clearly begins in the period when Hegel was occupied with the *Philosophie des Geistes* (1805–6), as I have shown above. Such recognition has the character of freedom dialectically originating in its own opposite – subordination, serfdom, and labour eventually develop into right: in sum ‘freedom originated in its direct contrary’.<sup>193</sup> The process of freedom is engendered through subordination to a higher authority (the *Staatsgewalt* at the level of nations that, ‘in order to be free, ... must first undergo the severe discipline of submission to a lord after which lordship itself becomes redundant’),<sup>194</sup> or the battle for recognition as a replacement of the *Herrschaftsvertrag*,<sup>195</sup> as Hegel rejects both the latter and the *Gesellschaftsvertrag* by now envisioning the reciprocal relation as primary. The contract makes no sense for Hegel without the notion of a prior conflict of recognition; this comes before any contractual basis can be laid down, which only then can lead to its validity or dependence through subordination and labour. In patriarchal or feudal society it was not the reciprocal relation of private individuals that predominated, for example, but the instantaneous affiliation to a group and the recognition between groups. Yet such originary recognition also leads to an initial system of needs. This is what Hegel will designate the communal character of property in the *Philosophie des Geistes* 1805–6 within the sphere of the family and love as shared labour.<sup>196</sup> This will eventually, through the development of labour, lead to the modern dynamic that introduces the civil, social, and abstract-rightly condition.

[Thus] labour is neither only a means to the satisfaction of needs nor the aim of this society but a moment of its formation in the (formal) community [*Allgemeinheit*] of

---

<sup>192</sup> Hegel 1991a, p. 231 (§194).

<sup>193</sup> Hegel 2001, p. 402.

<sup>194</sup> Hegel 1974, p. 225 (§435).

<sup>195</sup> See Goldschmidt 1964, p. 45.

<sup>196</sup> Hegel 1987, pp. 194ff.

individuals, which through it and on its basis fulfils the move from nature and the inhibition of natural arbitrariness to culture and freedom.<sup>197</sup>

Only once the conceptual shift from the state of nature to the system of needs, which develops historically with the modern world into civil society for Hegel, ‘which for the first time allows all the determinants of the Idea to attain their rights’, and from civil society to the political state has been made, can he give concrete meaning to the *Naturzustand* as a sphere where the personality of the person necessarily destroys the organic ethical life of the family and the ethical ideal in abstract right.<sup>198</sup> This justifies the division between abstract formal right based on the contract – ‘the pure concept of the person’ which Hegel could not find in the state of nature bequeathed by the modern political tradition – that develops from the dissolution of the family in civil society and the formation of the political community or the ethico-political Idea that sublates such particularity and individuality and concretises it firstly in the universality of the *Stände* by way of the division of labour.<sup>199</sup> Spiritual rather than natural conflict characterises civil society, yet ‘it retains both natural and arbitrary particularity, and hence the remnants of the state of nature’.<sup>200</sup> Liberalism and its principle of individualism is thus the natural order of civil society, and is inherently conflictual and opposed to the political ends of the community if it does not lead to the concrete associations in the *Stände* and the other institutions of civil society. The recognition that grows out of the spiritualised conflict between particular individuals that sets up the rudimentary system of needs transforms into civil society.

Needs and means, as existing in reality, become a *being* for *others* by whose needs and work their satisfaction is mutually conditioned. ... This universality, as the *quality of being recognised*, is the moment which makes isolated and abstract needs, means, and modes of satisfaction into *concrete*, i.e. *social* ones.<sup>201</sup>

As Hegel puts it elsewhere, ‘the family is the primary basis of the state, the *Stände* are the second’.<sup>202</sup>

---

<sup>197</sup> Riedel 2004, p. 780.

<sup>198</sup> Hegel 1991a, p. 219 (§181).

<sup>199</sup> Hegel 1991a, p. 232 (§198).

<sup>200</sup> Hegel 1991a, p. 234 (§200).

<sup>201</sup> Hegel 1991a, p. 229 (§192).

<sup>202</sup> Hegel 1991a, p. 234 (§201) (Hotho addition).

The *Naturzustand* of foreign relations for the late Hegel has as its correlate the ‘remnant of the state or nature’ in civil society as a sphere of arbitrariness and contingency, which gives meaning to the legitimate organisation of social and political power. The abstract sphere of personality in the *Grundlinien* is not connected with the *Stände*, but on the contrary signals the destruction of ethical relations (both at the level of the family and the state insofar as the abstract person exists in the contractual field of right as a private person). In the Jena essay of 1802–3 the downfall of the ancient ethical order, ‘immediately introduced the formal legal relationship which fixes individual being and posits it absolutely’. This is the genesis of ‘universal private life’ and the abstract person. Hegel subordinates ‘relative ethical life’ here – the labouring classes – to the absolute ethical *Stand* while in the *Grundlinien* the person becomes concrete by way of the division of labour in the institutions of modern society. It is thus ‘in the *Stand* that human *particularity* receives its right’.<sup>203</sup> Thus one can see in the maturity of the *Grundlinien* that Hegel begins with the abstract right of the person and furthermore in the *Encyclopaedia* states that ‘right and all of its determinations [*Bestimmungen*] are based on *free personality* alone, a *self-determination* [*Selbstbestimmung*]’ which is rather the opposite of the *natural determination* [*Naturbestimmung*]’.<sup>204</sup>

As Hegel moves from natural law to develop his philosophical science of right from 1805 onwards, it is in increasing proximity to the moderns rather than the classical tradition. The *Stände* have thus in turn transformed from the natural order of the Aristotelian and Platonic hierarchies to associations based on labour and need and the spiritual division that occurs by way of reciprocal recognition. This in turn will allow for representation between the social and the political, and their reunification through the ethical. The *Grundlinien* divides the *Stände* into ‘legitimate powers’ that act contrary to the atomistic principle of the social aggregate (§301). The *Stände* thus appear firstly as classical forms – or the persistence of local legal bodies proximate to the Enlightenment tradition stemming from Pufendorf, Wolff and Heineccius – yet are, with the removal of their fixed status, inculcated to a modern conception of the will following Rousseau,

---

<sup>203</sup> Hegel 1999, p. 149; 1995a, p. 186 (translation modified).

<sup>204</sup> Hegel 1974, p. 311 (§502) (original emphasis).



which for Hegel is also freedom of self-consciousness.<sup>205</sup> Therefore Hegel continues his explicit reference to the *Stände* in his later analyses, but they have lost their classical colouring or the form they had in the German natural law tradition. Clearly, the will and institutionalism are not to be directly opposed as it is only through institutions that the will takes on concrete organic form. By Hegel's later period, the one-sidedness of the French Revolution in its abolishment of the *Generalstände*, and the conflict with Rousseau and social contract theory more generally is contrasted with an 'organic' conception of the political embodied in the concrete universality of the *Stände* perceived 'as a rationally organized expression of the general will'.<sup>206</sup>

The Jena essay of 1802–3 contains an idealised version of the feudal arrangement and the military *Stand*, and is precisely opposed to the rise of the bourgeoisie, “the languid indifference of private life” as Hegel quotes from Gibbon, which leads to ‘a state of affairs in which the people consists solely of a second *Stand*’.<sup>207</sup> Yet the essay attempts to take into account a much broader conception of social-political relations given through the introduction of labour, a problematic that Hegel solves in an anachronistic fashion by referring to Aristotle and Plato and the negativity introduced through universal legislation, which is conceived historically as leading to bourgeois society as I showed above (III.3). Lordship and bondage appear here in a classical form, as *a dichotomy without mediation* that reflects the antique division of Greek ethical life into the *polis* and the *oikos*. On the one hand, there is the military *Stand*, ‘which is directed not towards the nullification of individual determinacies, but towards death, and whose product is again not something individual, but the being and preservation of the whole of the ethical organisation’; on the other, ‘there is the *Stand* of those who are not free, and which has its being in the differentiation of need and work and in the right and justice of possession and property; its work deals with matter of detail and consequently does not entail the danger of death’.<sup>208</sup>

Hegel had here opposed the classical natural law model to that which emerged with Hobbes, and was further radicalised by Kant and Fichte to the point where the

---

<sup>205</sup> Hegel 1991a, p. (§258)

<sup>206</sup> Coker 1910, p. 29.

<sup>207</sup> Hegel 1999, p.149.

<sup>208</sup> Hegel 1999, p.147.

phenomenal and noumenal realms became utterly opposed, which led, as I analysed above (III.2), to the positive science of law. The original strength of the classical model for Hegel in the Jena essay lies in its *natural-intuitive* understanding of socio-political relations and the unity of the pre-scientific order rather than in the technical-analytical deduction of the body politic as it first appeared in Hobbes in light of the emergence of Galilean and Cartesian science. He sought in ‘the old and utterly inconsistent empiricism ... a great and pure intuition [that] can in this way express the genuinely ethical in the purely architectonic qualities of its exposition’.<sup>209</sup> Essentially, in the movement from natural intuition to the concept as I showed above (III.4), Hegel’s eventual ‘conceptual innovation’ of modern civil society became possible; this underlay Hegel’s break with the inherited model of the *civitas* – both the classical Greek and German traditions of practical philosophy and the *status civilis* in Roman law (III.3). It was precisely in this way that he was able to enact a ‘speculative dissolution of the relation of production (*poiesis*) and activity (*praxis*)’ in which political economy is consequently transformed into *the* practical science.<sup>210</sup> Such a shift clarifies how Hegel’s thinking develops, from his struggle to maintain the classical tradition alongside an increasingly profound understanding of modern political economy to his significant rejection of the natural law model on the basis of the principle of ‘nature’.

As I have shown, individuality for Hegel emerges into its own only with the later privileging of labour – initially, the state had appeared as a ‘work’ and labour was seen as subordinate to the ethical life of the *polis*. It might also be added how the outer fabric of the political community mediates the inner conscience of the subject dialectically in Hegel’s developing theory of language and his conception of right as recognition. It is not until the *Phenomenology*, however, that the truly essential moment of transition emerges insofar as Hegel finally shifts definitively away from his strictly Spinozistic conception of the *natural* ethical community as *substantial being* and introduces the notion of the *subject*. Indeed the use of Spinoza’s substance and Aristotle inhibited the discovery of the subject, as self-consciousness and individual will.<sup>211</sup> Hegel comes to prioritise labour but

---

<sup>209</sup> Hegel 1999, p. 115.

<sup>210</sup> See Riedel 2011, pp. 8–9, 16.

<sup>211</sup> See Ilting 2006, p. 36: ...‘the Spinozistic basis of Hegel’s political theory dissolves in the *Phenomenology* and that it is the first time the dialectic of Lordship and Bondage develops is a certain

now, in the dialectic of lord and bondsman, firmly privileges the active aspect of labour over the mere *status civilis*, ‘the *Stand* of the free’ which had dominated the natural law essay in its proximity to the German and Greek traditions as well as *System der Sittlichkeit*. Already in this early period, Hegel’s initial theorisation of the state of nature appeared and proposed – along Platonistic or Aristotelian lines – the necessary inherent organisation of the various *Stände*. Yet at this point in Hegel’s encounter with natural law, it is more appropriate to speak of the *Stände* – and certainly contrary to Hegel’s references in the essay – in terms of the Roman ‘law of status’, which forms the basis of his later criticisms in the *Grundlinien*. Only once labour and self-consciousness have been prioritised can Hegel arrive at his mature formulation of actuality as the subject, the substance and substantiality of the state:

The principle of modern states has enormous strength and depth because it allows the principle of subjectivity to attain fulfilment in the *self-sufficient extreme* of personal particularity, while at the same time *bringing it back to substantial unity* and so preserving this unity in the principle of subjectivity itself.<sup>212</sup>

From here the articulation of the *Stände* as ‘concrete universality’ can be truly derived on the basis of the subjective freedom of the individual.

### *Conclusion*

A disciplinary shift from natural law to systematic philosophical science determined the academic productions of Hegel’s time.<sup>213</sup> Philosophy as a systematic science was the aim of the Neo-Scholasticism of Christian Wolff who had moreover attempted to reduce right to philosophy, which prepared the ground for the German Idealism of Kant, Fichte and Hegel.<sup>214</sup> Hegel identified Wolff’s system in the *Encyclopaedia Logic* as part of the

---

indication because it marks the *Entstehungsgeschichte* of the Hegelian system and ultimately the justification of the individual and his “continued existence” [*Bleibens*].

<sup>212</sup> Hegel 1991a, p. 282 (§260).

<sup>213</sup> See Meist 2002, pp. xxxi–xxxix, which Meist mentions in passing in relation to the systematic character of *System der Sittlichkeit*. Compare Harris 1979, pp. 3–7 who emphasises the latter manuscript’s systematic character as a philosophical demand of the period and as an example of Hegel’s continual attempt to develop a textbook for his students, which would have precipitated his ability to attain salaried employment at the university.

<sup>214</sup> Thomann 1979, p. 126. See Harris 1972, p. 78 – Hegel had studied Wolff’s metaphysics since he was twelve.

‘metaphysics of the most recent past’ – a metaphysics, moreover, that he himself sought to supplant in the development of his dialectical logic. This metaphysics, for Hegel, however, ‘*belongs to the past...* only in relation to the history of philosophy’.<sup>215</sup> Wolff’s ‘insistence that philosophy alone possessed a rational deductive method of demonstration’ expressed the claim ‘that the unique ability of philosophy ... should entitle it to lead the other faculties’.<sup>216</sup> Wolff’s assertion, moreover, that ‘the truth is nothing other than the world of reason’ and his notion that ‘its content is not only disclosed through the logic [but that] it *is* the logic itself, because the laws [*Gesetze*] of right are analogous with the laws of human reason’<sup>217</sup> would find a distinct echo in Hegel’s work. Even if Hegel rejects what he sees as the one-sided theorisation of Wolff’s philosophy, his own system can be seen as directly deriving from the new emphasis on the disciplinary structure of philosophy *as right* that Wolff established. Hegel’s conception of reason as dialectics, moreover, places philosophy in the leading role in the most systematic fashion as it proceeds from the logic (form) to the other disciplines (content). Hegel discussed this at the outset of the *Grundlinien*:

*form* in its most concrete significance is reason as conceptual cognition, and *content* is reason as the substantial essence of both ethical and natural actuality; the conscious identity of the two is the philosophical Idea.<sup>218</sup>

As he expressed it in the *Preface* to the 1817 *Encyclopaedia*:

The present exposition ... sets out a new elaboration of philosophy, according to a method that will, I hope, be recognised eventually as the only genuine one, the only method that is identical with its content.<sup>219</sup>

---

<sup>215</sup> See Hegel 1991b, p. 65 (§ 32) (original emphasis, text modified).

<sup>216</sup> Hochstrasser 2004, p. 33. This position Kant moreover pursued with characteristic rigour in his *Contest of the Faculties*, see Hochstrasser 2004, pp. 189–97.

<sup>217</sup> Thomann 1979, p. 126 (emphasis added).

<sup>218</sup> Hegel 1991a, p. 22. The four branches of metaphysics – ontology, cosmology, psychology, rational theology – set out in §§33–6 of the *Encyclopaedia Logic* are taken from Wolff’s school philosophy (see translators note 25 Hegel 1991b, p. 314). As Hegel states, his ‘Speculative Logic contains the older logic and metaphysics, it preserves the same forms of thought, laws, and ob-jects, but develops and transforms them with further categories’ – i.e., it ‘sublates’ them via the dialectical-logical method (Hegel 1991b, p. 33, §9 Remark). As early as the 1802–3 Jena essay, Hegel explicitly asserts the necessity of philosophy, and emphasises the other sciences as parts of it in an attempt to bring them back to philosophy, which had become isolated in metaphysical speculation since Kant and Fichte as I analysed above (III.2).

<sup>219</sup> Hegel 1991b, p. 1.

The social-historical position of philosophy as Christian Wolff had expressed it can already be seen in Hegel's attempt to integrate the empirical sciences and bring natural law as well as positive law back under the guidance of a unifying philosophical method in the Jena 1802–3 natural law essay. This provides evidence of a distinct continuity in the concerns that mark the philosophical epoch of the young and mature Hegel – the demand for a definitive philosophical system expressed from within the horizon of the Neo-Scholastic paradigm of German natural law.

According to the young Hegel as I analysed above (III.2), the sciences had been cleft by Kant's formalism and the critical philosophy, which failed to restore the 'theoretical sciences' to philosophy.<sup>220</sup> Hegel's perspective was guided by a *rapprochement* to Greeks, in an attempt to consolidate once again the theoretical and practical sciences.<sup>221</sup> At this stage Hegel begins to critique and reject 'the earlier ways of treating natural law' that will be part and parcel to his development throughout the Jena period and culminate in the *Philosophie des Geistes* (1805–6). The premise of such rejection is a failure in their methods, which cannot claim to be genuinely scientific insofar as they do not understand 'opposition and negativity as absolute negativity or infinity, which alone is appropriate to science'.<sup>222</sup> Hegel ultimately rejects natural law in the 1805–6 glosses on the basis of the development of the *concept*,<sup>223</sup> which no longer corresponds to the natural order. Hegel thus reformulates his position, which will eventually determine the later cleft between the philosophy of nature and subjective and objective spirit. Yet, in rejecting the earlier ways of treating natural law – *and in explicit accordance with the modern rational natural law tradition* – Hegel comes to define his philosophical science of right as a negative or dialectical science and thus takes over

---

<sup>220</sup> Hegel 1999, p. 104.

<sup>221</sup> Hegel 1999, p. 115.

<sup>222</sup> Hegel 1999, p. 105.

<sup>223</sup> The final and conclusive formulation of Hegel's *Naturrecht* appears in the *Philosophie des Geistes* (1805–6) (compare to the *Encyclopaedia* §502 and *Grundlinien* §57). It now conflicts with the conceptual form of right as a speculative science and must be abandoned. Yet it is clear that *Naturrecht* is maintained, at least formally as a title. The late Hegel directly equates 'natural law' with the *Naturzustand* and foreign relations between states and develops a 'spiritualised' conception of the state of nature in modern civil society as I analysed above (III.3, III.4). *Naturrecht* appears alongside *Staatswissenschaft* in the original title – *Naturrecht und Staatswissenschaft* – which only later came to be known by its subtitle: *Grundlinien der Philosophie des Rechts*. This is important as Ilting has pointed out as it directly equates political science with natural law (see Ilting 1983, p. 106) – the political as the organisation of right is the concretisation of civil society, the stemming of the *Naturzustand* as 'spiritualised' for Hegel and its eventual externalisation into the conflict between states, which in turn develops into history.

one of the fundamental aspects characterising the rational natural law school: a *nova methodus discendae docendae aequae jurisprudentiae*, a new method for learning and teaching legal science, a method that leads to a systematic construction or reconstruction of law.<sup>224</sup>

This reconstruction of law along the lines of a ‘speculative science’ or ‘speculative knowledge’ directly extends to the determination of the concepts of the *Grundlinien*, and is explicitly stated by Hegel in the outset of the ‘textbook’. I want to note here that Hegel makes a remark on this in the *Introduction* to the *Grundlinien*: ‘Since I have developed the nature of speculative knowledge in my *Science of Logic*, I have only occasionally added an explanatory comment on procedure and method in the present outline’.<sup>225</sup> Thus what marks Hegel’s interpretation of political modernity is not only the emergence of civil society as a concept differentiated from the political order of the state, but also this distinctive logical form that breaks with ‘the metaphysics of the most recent past’, which, for Hegel, was essentially a form of ‘dogmatism [that] consisted in adhering to one-sided determinations of the understanding whilst excluding their opposites’.<sup>226</sup> It is safe to say, following what I have quoted from Hegel above, that metaphysical problems are also *to be understood politically*, which consequently permits Hegel a very distinctive approach to modernity. It is thus that questions of method will to an equal extent determine the *content* of Hegel’s concepts, and the *Stände* will be no different in this respect. Civil society and the state accordingly must not be regarded ‘as separated from one another by an infinite abyss’ as ‘determinations that stand opposed to one another never able to reach each other’:

On the contrary, what is genuine and speculative is precisely what does not have any such one-sided determination in it, and is therefore not exhausted by it; on the contrary, being a totality, it contains the determinations that dogmatism holds to be fixed and true in a state of separation from one another united within itself.<sup>227</sup>

It is thus that the organisation of the *Stände* in civil society can express the political sovereignty of the state. And indeed for Hegel they must do so in order to prevent the

---

<sup>224</sup> See Pattaro 2009, p. xvi. This refers to the title of a book by Leibniz, but adequately expresses Hegel’s conception of dialectics applied as a new method in treating the juridical as well as the empirical and natural sciences and deriving a new basis for practical philosophy.

<sup>225</sup> Hegel 1991a, p. 10.

<sup>226</sup> Hegel 1991b, p. 70 (§32 Addition).

<sup>227</sup> Hegel 1991b, p. 70 (§32, addition).

dissolution brought about by the dialectic of poverty and wealth that threatens to dissolve the system of right and freedom into a society of classes [*Klassengesellschaft*]. This state of nature, which I discussed above (III.4), reveals itself for Hegel not only as a system of inequality, but also ‘that, despite an *excess of wealth*, civil society is *not wealthy enough...*’.<sup>228</sup>

The ‘state’ as ‘civil society’ [*bürgerliche Gesellschaft*] becomes the ‘political state’, the actuality of concrete freedom, in which the history of the emancipation of humanity comes to a standstill – from the society of citizens [*Bürgergesellschaft*] of the Greek *polis* and Roman *civitas*, in which only one is considered to be free, right up to the civil society [*bürgerliche Gesellschaft*] of the modern legal [*Rechts-*] and constitutional state [*Verfassungsstaates*] which guarantees the freedom of all.<sup>229</sup>

Hegel explicitly appeals to the logic in his remark to §302 in order to reunify civil society and the state by way of the *Stände*. The ‘dialectic in institutions’ belongs precisely to the ‘attempt to overcome spiritually and speculatively the revolution occurring with the emergence of civil society’ that ‘is the driving force of political revolution [that] brings dichotomy into history’.<sup>230</sup> Hegel’s conceptual redeployment of the *Stände* as a ‘mediating organ’ can also be understood in this sense, as derived from ‘one of the most important insights of the logic: that a specific moment which, when it stands in opposition, has the position of an extreme, loses this quality and becomes an *organic* moment by being simultaneously a *mean*’.<sup>231</sup>

As I have shown in this chapter, Hegel’s early concept of the *Stände* – in its proximity to the ancients – is to be contrasted with how it appears in his maturity, a maturity I might add that lay in its nascent state at the close of the Jena period in the *Philosophie des Geistes* (1805–6) just before the appearance of the *Phenomenology* (1807), that contentious introduction to the system. This is furthermore shown through Hegel’s encounter with the modern tradition of natural law that develops by way of his interpretation of the crisis of modern civil society as seen in the spiritualised version of the state of nature. It is important to note that while Hegel slowly rejects the ancients in

---

<sup>228</sup> Hegel 1991a, p. 267 (§245).

<sup>229</sup> Riedel 2004, p. 781.

<sup>230</sup> Ritter 1984, pp. 103, 76.

<sup>231</sup> Hegel 1991a, §302 (original emphasis).

his development of a theory of labour, the complex of ethical life is maintained, but in the developmental context of history as a distinctive political form and as integral to the philosophical science of right. Indeed *Sittlichkeit*, in part, distinguishes Hegel's *Naturrecht* from earlier theories. To a certain degree, through his rejection of the contract and his specific institutional formation of right, Hegel's reformulates 'the entire tradition of modern natural law, [which saw in] the justification of state sovereignty and its compatibility with the postulate of the autonomy of each individual the central problem, which must be solved with the model of a treaty [*Staatsvertrag*]'.<sup>232</sup> Yet to be fair to Hegel it is not as if he denied this tradition its full significance; it simply took on a new meaning for him in the transformed context of modern civil society, where 'abstract right' and the contract had their proper place just as they had previously for Pufendorf in the state of nature. The basis for the political order for the mature Hegel is reliant on the individual will becoming concrete in institutions – in this way the general will also attains its actuality. It was there that *Sittlichkeit* took root, developing in the self-consciousness of the individual that recognised its right in the form of law and institutions, as I will analyse in detail in Chapter Four. This consciousness has a history, which Hegel traced through the theory of reciprocal recognition, of the development of self-consciousness and of law as the substance of the individual. In Chapter Four I will trace the theory of the *Stände* in the context of *Sittlichkeit* that implies the overcoming of the dichotomy of the interiority of the individual's conscience and the external order of the state by way of self-consciousness. This will add an additional dimension to the concept of the *Stände* that involves Hegel's universal history of freedom – the necessity of institutions in which the subjective spirit of the individual can come into correspondence with objective spirit of the community.

---

<sup>232</sup> Ilting 1983, p. 108.



## Chapter Four: Ethical Life

*There is no outer thing that  
drawn into this movement  
could not forthwith become  
the most inward.<sup>1</sup>*

The aim of the present chapter is to analyse Hegel's usage of the *Stände* in the framework of his theory of *Sittlichkeit*, which I will show is his attempt to dissolve the dichotomy of inner and outer introduced into the modern tradition by Thomas Hobbes (1588–1679) and then carried into the metaphysical domain by Immanuel Kant (1724–1804). The development of this dichotomy has an important history, and eventually leads to the distinction between morality and politics that will further lay the basis for the development of modern civil society and the state. I will analyse both Hobbes and Kant and some other major figures, most notably Christian Thomasius (1655–1728), and the historical significance of these developments. This will in turn allow me to analyse Hegel's developing political theory of the *Stände* in more detail and how they form and shape his concept of *Sittlichkeit* from a very early period (Jena 1802–3), and to further highlight how they seek to respond in a novel and distinctive fashion to the problems posed by the modern political tradition.

The present chapter will be divided into three parts. For practical purposes, however, I will divide the first and second sections (IV.1, IV.2) into subsections ( $\alpha$ ,  $\beta$ ,  $\gamma$ ). The first subsection of section one ( $\alpha$ ) deals with the introduction of the dichotomy of inner and outer as it appears in the modern tradition with Hobbes and the unity of morality and politics in his thought. I will then show how this is essentially transformed in the ensuing century, notably by Thomasius, into a cleft between morality and politics ( $\beta$ ) through the developing independence of conscience. This will lead directly to a discussion of the divide between the public and private use of reason and the developing metaphysical tradition as it appears with Kant ( $\gamma$ ). In the second section of this chapter (IV.2) I will analyse Hegel's *Sittlichkeit* and the institutional form of his politics as it takes shape in the *Stände*, which make their first appearance as a form of conceptual stratification in *System*

---

<sup>1</sup> Barth 1973, p. 405.

*der Sittlichkeit* [*Critik des Fichteschen Naturrechts*] (1802–3).<sup>2</sup> In the first subsection of section two (α) I will show how Hegel’s concept of the *Stände* is initially shaped and formed as a specific response to what I will have by then already laid out in some detail. This introduction and context to *System der Sittlichkeit* will be framed by the perspective of the modern dichotomy of inner and outer, of morality and politics, and the metaphysical tradition that Kant introduced as a ‘formal’ moral autonomy that acted as a ‘compulsion’ on the ‘sensuously effected will’.<sup>3</sup> I will also situate *System der Sittlichkeit* in this section in the broader horizon of Hegel’s early work. After having introduced and contextualised this early Jena manuscript, I will then (β) discuss Hegel’s shift away from the Christian religion as a response to Kant’s *Metaphysik der Sitten* (1797), the development of the Greek influence on the young Hegel in the context of the house community in *System der Sittlichkeit*, and his developing conception of love as a family relation. It is essential to trace this moment as the family has a central bearing on the *Stände*, which are conceived as the return of the familial element at the level of the civil in Hegel’s maturity. This analysis of the family in *System der Sittlichkeit* will lead to an analysis of Hegel’s early conception of Lordship and Bondage, which will lead me to the final subsection. The third subsection (γ) deals with the structure of rule in *System der Sittlichkeit*, which involves the development of Hegel’s conception consciousness, subject-objectivity, the *Stände* and the organic state. I will show how a rejection of the early Jena period in the structuration of right and recognition (1805–6) in Hegel’s development makes a proper understanding of his institutional thought impossible. Thus I will stress the importance and significance of *System der Sittlichkeit* and its introduction of the *Stände* in Hegel’s development alongside his return to modern ‘individualist’ natural law. After having analysed *System der Sittlichkeit* in some detail in the second part of this chapter (IV.2), I will be in a position to critically approach debates in the existing literature and reframe the emphasis on Hegel’s politics with specific attention to the

---

<sup>2</sup> For a critical edition see Hegel 2002; see Meist 2002 pp. ix–xxxix on Karl Rosenkranz’s error of judgement [*Fehleinschätzung*] on the dating and placement of *System der Sittlichkeit* in the Frankfurt period, and the former’s ‘fictional reconstruction’ of the manuscript prior to Hegel’s teaching in Jena. The manuscript’s proper placement and value is as a systematic critique of Fichte’s theory of natural law, which Hegel was studying and intended to lecture on. Based on the study of Hegel’s handwriting undertaken by Heinz Kimmerle, this manuscript now appears to have been composed in winter 1802 or spring 1803, after he had composed the Jena natural law essay.

<sup>3</sup> See Ilting 1983, pp. 230ff.

question of the *Naturzustand*, which significantly oriented my discussion of the modernity of Hegel's institutional articulation of the *Stände* in Chapter Three. In so doing, I will analyse Hegel's mature *Rechtsphilosophie* from the perspective of *System der Sittlichkeit*, and relate how the attempt to overcome the divide between inner and outer, morality and politics, civil society and state still relies in part on the earlier conceptions of *Sittlichkeit* and the *Stände*, which in this case leads to a recognition of the individual in the positive order of law in the state. This will lead to the final section of this chapter (IV.3), which concludes my discussion by showing how *Sittlichkeit* eventually comes to replace – or transform – the traditional discussion of civil religion as it had appeared in Hobbes and Rousseau and is formative of the distinctiveness of Hegel's late ideological approach. *Sittlichkeit* for Hegel is nothing other than the customs, laws and institutions of the political community, thus the *Stände* are implied here as a central element.

The approach I will develop to this early period of Hegel's development has not as yet been explored in the existing literature. By continuing to clarify the objectivity of the *Stände* for Hegel as an institutional form within the context of the modern political tradition – in this case in the introduction of the distinction between the inner and the outer – I will stress how Hegel conceived of the *Stände* in a novel fashion related to what he came to conceptualise as the history of the freedom of self-consciousness. The general trajectory of this chapter will analyse how the development of Hegel's political thought is characterised by how the individual will and consciousness become concretely organised in the institutions of the state, and how the inwardness of the subject is identified with the substantiality of the external positive order of law and politics. The way in which Hegel goes about this differs in extremes, and entails tracing the development of his early thought specifically that entails an original appropriation of the *Stände* as an institutional solution to the problems of the absolutist state and the French Revolution, as many of these ideas are largely absent in the early manuscripts or appear as specific problems that he seeks to solve. It is my general contention, however, and I will show this in detail in this final chapter, that Hegel's late institutionalism is in no way comprehensible without taking the early Jena period developments fully into account. It is thus central to study the conceptualisation of the *Stände* in *System der Sittlichkeit* as the first example of Hegel's

rigorous institutional thought. Thus the novelty of Hegel's *Stände* will be seen to lie in their derivation and transformation of the tradition of classical political thought.

#### IV.1 *From Forum Externum to Forum Internum*

The present section will be subdivided into the three major figures concerning my discussion (Hobbes, Thomasius, and Kant). At this initial stage, I will be largely unconcerned with a substantial textual analysis of Hegel's work but rather more focused on tracing certain intellectual developments leading up to Hegel's period that will be pertinent to my later discussions (IV.2). The central problem will be to establish how the dichotomy of inner and outer becomes a central conviction of the classical epoch, a process that on a philosophical level took hold through the dissemination of the political philosophy of Thomas Hobbes who correctly perceived that the interest in conscience must be excluded from the political question, which had marked both civil obedience and civil disobedience since the Reformation (1517–1648). I will analyse why and how the ensuing century of Enlightenment will substantially invert Hobbes's original intention and how this leads to a cleft between morality and politics, which, in its condemnation of political power, lays in part at the basis of the French Revolution.<sup>4</sup> I will show how Hegel fully comprehended this process and the particular history that underlay it in both the history of philosophy and politics, and how Christian Thomasius figures centrally in these debates. This will then lead me to a discussion of Kant, firstly by way of his cleft between public and private reason and, secondly, in terms of his late metaphysics in the context of the young Hegel's early conception of *Sittlichkeit*. This will lead to an initial study of Hegel's *Der Geist des Christentums und sein Schicksal* (1798–1800), which will then situate my subsequent discussion that shifts to a more substantive textual analysis of Hegel's works (IV.2) and *System der Sittlichkeit* in particular and the role the *Stände* play in this early manuscript.

##### α) *Thomas Hobbes* (1588–1679)

---

<sup>4</sup> See Koselleck 1988, whose analysis I follow his closely in this respect.

It has been perceptively noted that Hobbes's state theory is not only an English but also a European-wide phenomenon. Living in exile in France, Hobbes was immersed in the political developments on the continent. The religious civil wars of the period were not unique to his homeland but also widespread on the continent. Thus his theory may also be said to reflect on political events there. Indeed, he was also formed by the period he spent in emigration as he shaped the future tenets of his political doctrine.<sup>5</sup> The inner rights of conscience consequently found their way into his political philosophy as the only peaceful answer to the religious conflicts; it was thus determined, and took its shape, from the ideas that broke into history with the Reformation. Hobbes perceived correctly that the law erred when it extended beyond 'the rule of actions to the very thoughts and consciences of men by examination and inquisition of what they hold'.<sup>6</sup> Consequently conscience slowly became a question of natural right, of the internal reason of the subject, while law became identical with the positive order of the state and was juridically limited to the external behaviour of human beings. In order to restrict the religious conflicts an inner moral sphere autonomous from the political structure developed, which, however lay at its foundation. This is the 'logical paradox' of Hobbes's notion of the origin of the state 'arising from a contract pre-ordained in time'.<sup>7</sup> Moreover, it underlies the inconsistency of Hobbes's discussion of the possibility of forming contracts in the state of nature and the contractual origin of the state as such.

The logical paradox lies in the fact that the State owes its existence to a contract, and that it then exists as an autonomous formation. It takes Leviathan to be a State which is at once the cause and effect of its foundation. Thus Hobbes did away with the supposed priority of inner individual resolutions so as to elucidate that each fulfillable morality was just as originally dependent on the State order.<sup>8</sup>

It is precisely to this extent that Leo Strauss identified Hobbes's theory of self-preservation with morality and the peaceable attitude whereby 'natural law and moral

---

<sup>5</sup> 'Unequivocally, Hobbes's doctrine of the State grew out of the historical situation of civil war. For Hobbes, who had experienced the formation of the Absolutist State in France, having been there when Henry IV was assassinated, and again when La Rochelle surrendered to the troops of Richelieu – for Hobbes there could be no other goal than to prevent the civil war he saw impending in England, or, once it had broken out, to bring it to an end' (Koselleck 1988, p. 23; compare Schmitt 2008, p. 79). Hobbes's old friend Henry Hammond also asserted the overlapping of his political ideas with the development of continental politics (see Tuck 2004, p. 122).

<sup>6</sup> Hobbes 1651, p. 427.

<sup>7</sup> Koselleck 1988, p. 32.

<sup>8</sup> Ibid.

philosophy are essentially the same' – self-preservation 'compels to assuring the future, to peace and to the state'.<sup>9</sup> Thus the possibility of civil war is the premise of the sovereignty of the state. It is important to note that this logical paradox for Hegel occurs also insofar as 'the expression nature has a double significance' for Hobbes: 'in the first place the nature of man signifies his spiritual and rational Being' in the second, it is the condition in which 'man conducts himself according to his natural impulses'.<sup>10</sup> Hobbes's acuity lies precisely in the confluence of the state of nature with the realm of opinion, religious conflict, and desire – each of which arouse strife.<sup>11</sup> Thus the natural state is preserved at the core of Hobbes's philosophy, and not only at the pinnacle of the state with the sovereign but also in the inward sphere of conscience where formerly externalised (confessional) conflict is subjectivised. Hegel understood this process in his youth in the *Verfassungsschrift* at a time when he was reading Hobbes,<sup>12</sup> but equated it directly with the Reformation and the establishment of the European states system.

The German character seized upon the innermost being [*das Innerste*] of man, upon religion and conscience, and firmly established the isolation [of individuals] on this basis; the separation of the external realm [*das Äußeren*] into states was merely a consequence of this.<sup>13</sup>

Therefore in the creation of inwardness, in the toleration and developing neutrality of the state form towards questions of conscience, an aspect of nature is preserved at the foundation: the morality of self-preservation leads to the inwardness of the human being formally separated from the external realm of legal actions. Hobbes's radicality lay in the fact that both the inwardness of conscience and the externality of action need not or must not conform to each other. There are no precepts to the law that would regulate internal thought or behaviour, but only a positive content by which each subject must externally abide. Hobbes thus fully separated himself from the confessional aspect of conscience and its coercion that had dominated European politics since the Reformation. He was interested in law insofar as it preserved peace, and natural law was a mere moral means to

---

<sup>9</sup> Strauss 1982, p. 229.

<sup>10</sup> Hegel 1995b, p. 318.

<sup>11</sup> See Hobbes 1651, pp. 40, 41.

<sup>12</sup> See Rosenkranz 1844, pp. 156–9 where this influence is documented in the Hegel's *Habilitationsdisputation* 27 August 1801 – precisely during the period when he was still occupied with the concerns of the *Verfassungsschrift*. I owe this reference to Ilting 2006, p. 27.

<sup>13</sup> Hegel 1999, p. 51.

this end; indeed, it was a positive law that was paramount as concretised in the will of the sovereign ruler.<sup>14</sup> And in order to enable its legality

in a neutral, supra-partisan, religiously indifferent fashion, Hobbes continuously cited the very difference once derived from historical reality, that between inner inclination and outward action, which according to his analysis would stroke the flames of civil war, so as to make it serve public order... Hobbes's cogitative achievement lay in shifting the cleft between conscience and politics.<sup>15</sup>

At the bottom of Hobbes's 'functionalist reinterpretation of conscience' lay his justification for the supremacy of state sovereignty, and his desire to bring unity back once more to the political order.<sup>16</sup> The outer order of the state could remain undivided so long as individuals had jurisdiction over their inner life. Thus precisely at the point where Hobbes established the unity of religion and politics, he distinguished *fides* and *confessio* 'from which everything else was logically derived in the century that ensued until the rise of the liberal constitutional state'.<sup>17</sup> The positive law of the sovereign could be established precisely by way of the removal of confessional questions, from their 'detraditionalisation' or 'depoliticisation' – the shift from their centrality in political conflict to a question of individual conscience and eventually personal choice. Consequently, the individual was divided into the human being and the citizen.<sup>18</sup> Thus the primacy of the political was established in the same instance as private, internal (natural) right. So long as the Church possessed both temporal and spiritual power the internal and external were unified or, more precisely, conceptually indistinct; the confessional conflict of the Reformation truly marks the beginning of their disunity.<sup>19</sup> The demand for a less external conception of the Church and the more inward one of the predestined community first arose with John Wycliffe, and 'so prepared the way for that German Reformation which at this very point broke thoroughly away from the medieval idea of unity'.<sup>20</sup>

---

<sup>14</sup> See Bobbio 1989, p. 115: 'Hobbes belongs, *de jure*, to the history of legal positivism'.

<sup>15</sup> Koselleck 1988, pp. 35–6.

<sup>16</sup> See Koselleck 1988, p. 29, footnote 27 on Hobbes's 'functionalist reinterpretation of conscience'.

<sup>17</sup> Schmitt 2008, p. 56.

<sup>18</sup> Hobbes's division of the individual here of course transforms in the ensuing centuries once the state of nature is identified with the embryonic relationships that lead to modern economy and society – into Rousseau's famous division of *bourgeois* and *citoyen*. Also see my discussion in Chapter Three (III.1) relating this development to Pufendorf.

<sup>19</sup> Koselleck 1988, p. 29, footnote 27.

<sup>20</sup> Gierke 1922, p. 19.

The Middle Ages had possessed a uniform culture, which even the Reformation had not destroyed. What did destroy it was the relentless progress of the intellectual movement of the Renaissance, of the seventeenth and eighteenth centuries. The emancipation of culture from the Church which compelled the Church's emancipation from culture seemed an accomplished fact. The entire intellectual surge of the Enlightenment, but the struggle against the Enlightenment too, had had the effect of widening this rift.<sup>21</sup>

The integrity of Hobbes's political theory of the *Leviathan* was accomplished only through the unification of church and state. But this came at the cost of a contradiction insofar as 'the Christian religion was and is not a cult consecrating a national culture but a transcendent faith in a future redemption'.<sup>22</sup> Christianity therefore was in essence contrary to civil religion as in its origins it had little or no concern for the world. Thus Hobbes, according to Rousseau (1712–88), 'ought to have seen that the domineering spirit of Christianity was incompatible with his system, and that the interest of the priest would always be stronger than that of the state'.<sup>23</sup> Spinoza (1632–77) had also recognised the principle of the Christian religion as fundamentally one of privacy and of secrecy, which would return in the secular priesthood with the Enlightenment in the following century as morality turned into a political weapon directed at absolutism.<sup>24</sup> For Hegel, Roman Christianity inherited a spiritualisation totally alienated from the world. And from Constantine onwards this was placed inside the imperial Church, which in turn 'negated sensuousness [and] did not know how to be ethical'.<sup>25</sup>

An epochal turning inward [*Epochale Einkehr in sich selbst*] grips mankind in antiquity, as people turn away from the state and its organisations because it has

---

<sup>21</sup> Barth 1973, p. 410. 'Hegel wanted to do justice to both sides, with an equity and a circumspection such as none had summoned before him. He wanted to be a modern man, without forsaking or conceding anything, and we must also credit his other desire, his wish to be a Christian, and indeed a Lutheran Christian, without forsaking or conceding anything (1973, p. 411).

<sup>22</sup> Löwith 1949, p. 30.

<sup>23</sup> Rousseau 2002, pp. 248–9.

<sup>24</sup> See Spinoza 2004, p. 254; and see Koselleck 1988, p. 39 footnote 50 on the awareness of the Enlightenment as successor of the clergy. Koselleck has traced the secrecy in the secular cults of morality, in the Masonic lodges and societies in the eighteenth century (mainly in France). The contours of Koselleck's argument and the basis for his overarching historical analysis are to be found in Schmitt 2008, pp. 60–2.

<sup>25</sup> Hegel 1999, p. 199. The shift for Hegel, as I will show in the conclusion of this chapter, occurs with the Reformation – the becoming worldly of the ethical in the family (love, procreation, education), trade and industry (labour) and, for the early Hegel, the unity of the church with the state ('the actuality of the kingdom of heaven [*Himmelreichs*]' – Hegel 1987, p. 259 (original emphasis)).



nothing spiritual to offer. This creates a longing for something beyond doubt, something which would survive the collapse of the old order.<sup>26</sup>

The eschatological aspect of Christianity took centre stage in Hobbes's political philosophy, and he used it in order to bolster his political argument for supremacy of state sovereignty. In so doing, he reduced the essence of Christianity to

simply the acceptance of the truth of [the] prophetic history that Christ will return to earth in a corporeal form, and will rule over the resurrected saints. In the meantime, death means extinction, the soul has no existence after death, nor does the spiritual realm intrude on the present physical world.

Therefore in Hobbes's scenario the role played by the subject was that of merely 'waiting submissively for the return of Christ'.<sup>27</sup> In the meantime the temporal state took over the role traditionally assigned to Roman (in essence imperial) Christianity as restraining the Anti-Christ (*Katechon*), but was limited, since 1648, to the internal borders of the juridically defined inner space of the state. As far as doctrinal dispute was concerned this, according to Hobbes in *Leviathan*, was wholly in the jurisdiction of the sovereign; it was no longer to be decided by a mere established clergy as this proved to lead to the disunity of the civil.<sup>28</sup> Yet the idea of a national Christian church, as Rousseau rightly perceived, would always be as tenuous as the concentration of absolute power, religious and political, in the hands of the sovereign. The unity that Hobbes asserted for his state was constructed on the basis of a religion that was fundamentally unsuitable for such purposes. And, in the words of Rousseau, Christianity brought with it 'a perpetual conflict of jurisdiction, which has rendered any good polity impossible in Christian states'.<sup>29</sup> Hobbes had merely shifted the lines of the conflict, and the sovereign still had no jurisdiction over the other world.

As Reinhart Koselleck notes, Hobbes 'did not argue from inside outwards but the reverse, from the outside in' thus introducing 'the state as a structure in which private

---

<sup>26</sup> Taubes 2009, p. 59.

<sup>27</sup> Tuck 2004, p. 121. Tuck references Pocock's interpretation that 'by putting forward this particular eschatology, Hobbes was able to refute the assertions of those who claimed spiritual authority prior to the risen Christ'. And adds that 'the clear desire to refute *all* claims to spiritual authority only appears in Hobbes's work at the same time as the eschatology itself – that is, in the *Leviathan*' (ibid).

<sup>28</sup> See Tuck 2004, pp. 120–38 on the transformation in Hobbes's thinking from an established clergy interpreting scripture to the sovereign's right to interpretation as such.

<sup>29</sup> Rousseau 2002, p. 248.

mentalities are deprived of their political effect'.<sup>30</sup> The success of Hobbes's political theory of sovereignty on the continent, however – and particularly in the Holy Roman Empire – entailed a reversal of the traditional dichotomy of inner and outer, of morality and politics. The construction of modern state was now derived on the basis of inner rightly conviction, on the absolute autonomy of morality. As I will show in far more detail below (IV.2, IV.3) Hegel's development of *Sittlichkeit* attempted to abolish the dichotomy. And it did so by first returning to the thought world of the Greeks alongside Spinoza's doctrine of substance. As I will show in the conclusion, the later Hegel saw this in a different light and, by contrast, affirmed certain aspects of the very historical developments that had led to the dichotomy in the first place, specifically those that dealt with the growth of Protestantism and the German *Aufklärung* in the Berlin *Lectures on the Philosophy of History* (1827–31). For Hegel this now entailed the history of the freedom of self-consciousness, which represented 'the momentous transition of the inner to the outer, that incorporation [*Einbildung*] of reason into reality which the whole of world history has worked to achieve'.<sup>31</sup>

β) *Christian Thomasius* (1655–1728)

Hegel was fully aware of the reversal of the traditional dichotomy of inner and outer, of morality and politics. This was writ large in his interpretation of Hobbes and Pufendorf in his *Lectures on the History of Philosophy*.<sup>32</sup> His interpretation of Hobbes is marked not only by the 'phenomenon of consciousness', which he imputes to Hobbes as laying at the basis of the state, but also 'the passive obedience of subjects, the divine authority of rulers, whose will is absolute law – without appeal as regards law and positive religion and their external relations'.<sup>33</sup> By contrast, while Pufendorf recognises the divine constitution of authority for Hegel

---

<sup>30</sup> Koselleck 1988, pp. 29, 30.

<sup>31</sup> Hegel 1991a, p. 294 (§270).

<sup>32</sup> The Michelet volume was based on the original Jena notebooks (1805–6) that Hegel used in his lectures; these were combined and edited by Michelet with a fragment of Hegel's on the history of philosophy from Heidelberg (1816–18), Hegel's introductory lectures (1820), and several sets of lecture notes: Michelet (1823–4), J.F.C. Kampe (1829–30), and Griesheim (1825–6).

<sup>33</sup> Hegel 1995b, p. 316; compare 1991a, p. 277 (§258) where Rousseau is spoken of in similar terms, and in distinction from the mere 'form' of the 'social instinct' (Grotius and Pufendorf) and 'divine authority'

the impulses and necessities present in mankind were now considered as well. These were regarded as *the inward principles for private and political law*, and *from them the duties both of the government and of rulers were deduced*, so that the freedom of mankind might not be interfered with. The basis of the state in Pufendorf's view is the social instinct: the highest end of the state is the peace and security of social life *through the transformation of inward duties as prescribed by conscience into external duties as compelled by law*.<sup>34</sup>

Carl Schmitt later developed a similar insight, yet with the important addition of Christian Thomasius: 'Through Pufendorf and Christian Thomasius, Hobbes's theory emerged victorious on the continent, but only at the expense of the relationship between outer and inner which was reversed'.<sup>35</sup> Hegel, however, does not neglect Thomasius, who appears in a far less condescending light in the Berlin *Lectures on the Philosophy of History* (1827–31) than in the *Lectures on the History of Philosophy*. In the latter he appears in the entry on Wolff, where his philosophy is discussed in terms of its 'superficial character' and 'empty universality'.<sup>36</sup>

The persistence of Hobbes's ideas and the political efficacy of his theory in the German-speaking lands have been traced adeptly by many scholars.<sup>37</sup> Hobbes's theory answered the peculiar political conditions established since the religious peace of 1555 with the territorial *ius reformandi*, but did so by providing a secular basis that shifted the emphasis from theological dispute and confessional conflict to jurisprudence.<sup>38</sup> Rather than the independence of the churches advocated by John Locke in his *Letter on Toleration* (1689), Hobbes advocated the subordination of church to the state.<sup>39</sup> Due to the multiplicity of confessional divides in the struggle for the consolidation of princely power on the territorial state, Hobbes's impact in Germany – and particularly on Prussia – was more pronounced than Locke's.<sup>40</sup> The latter's theory of toleration saw the congregation of

---

(Hobbes). 'Rousseau put forward the *will* as the principle of the state', which was '*thought*' as its 'form' and '*thinking*' as its 'content' (ibid).

<sup>34</sup> Hegel 1995b, p. 322 (emphasis added).

<sup>35</sup> Schmitt 2008, p. 58. Thomasius was Pufendorf's most important follower.

<sup>36</sup> Hegel 1995b, p. 349.

<sup>37</sup> See for example Dreitzel 2003; Palladini 2008; Schröder 1997 and 2001.

<sup>38</sup> This process is particularly acute in Thomasius and his development of secular jurisprudence that conflicted with the Lutheran clergy at the university in Halle.

<sup>39</sup> See Hobbes 1651, pp. 107–13, 205–17.

<sup>40</sup> See Schmitt 2008, p. 97; compare Schröder 1997, p. 61.

churches as ‘absolutely separate and distinct from the commonwealth’,<sup>41</sup> which was the exact opposite of the reigning state of affairs in the Holy Roman Empire since Martin Luther.<sup>42</sup> By contrast, Hobbes’s doctrine of the absolute sovereignty and the external cult of the state were more generally applicable in the German-speaking lands.

Hobbes’s emphasis on Jesus’s teaching that his kingdom was not of this world can be corroborated to the true church in Pietism that, insofar as it is invisible, ‘opens itself to state rule’.<sup>43</sup> From this moment onwards, according to Christian Thomasius, ‘the state power limits itself to watch over the public peace’ – it becomes a *pouvoir neutre*.<sup>44</sup> In the telling reversal of the Hobbesian paradigm, ‘Thomasius wants to protect not only inner conviction as such, but to exclude from all external efforts that which would impair the freedom of the individual’s decision’.<sup>45</sup> This leads to a fundamental cleft between right and morality: on the one hand, to the positivisation of all law whereby ‘obligation is now based on the force and intelligence of the ruler rather than voluntary agreement’; and, on the other, to “the refusal of natural law as a law by Thomasius and the recognition of the positivity of all right”.<sup>46</sup> It is thus that natural right is transformed from a normative theory to a mere compliment of political absolutism; it is represented as an inner virtue while the external compulsion of positive law rules in the field of the state.<sup>47</sup> Thus what Hobbes had done for politics in freeing it from the constraints of religion Thomasius had done for jurisprudence by creating an independent sphere for human law.<sup>48</sup>

In the *Lectures on the Philosophy of History* (1827–31), Hegel praises Thomasius as having first given ‘the *secular* aspect’ to conscience and law opening space for ‘the rise

---

<sup>41</sup> Locke quoted in Schröder 1997, p. 61.

<sup>42</sup> The ‘final goal of Luther’s efforts’ was ‘the reforming despots of the *Aufklärung*’ (Figgis 1999, p. 54) and this eventually led to secularism in the field of the state.

<sup>43</sup> Rüping 1979, p. 80.

<sup>44</sup> Rüping 1979, p. 80. Compare Schmitt 2008, p. 44: ‘When Frederick the Great said in his political testament of 1752: “*Je suis neutre entre Rome et Genève*”, he was alluding to his pride in the perfection of the Prussian state rather than his “philosophical” attitude toward taking sides in theological controversies. What is discernable in his statement is neutrality in the technical-political (*staatlichen*) sense rather than tolerance or personal skepticism’. The quote from Bluntschli that the work of Thomasius constitutes “the learned preparatory course for the state of Frederick the Great” (Schmitt 2008, p. 58) is corroborated by Hegel.

<sup>45</sup> Rüping 1979, p. 80.

<sup>46</sup> Ilting 1983, p. 92; Welzel quoted in Ilting 1983, p. 92, note 283.

<sup>47</sup> Rüping 1979, p. 83.

<sup>48</sup> See Schröder 1997, p. 72.

of the universal, the growing consciousness of universal laws of freedom'.<sup>49</sup> 'Historically speaking, Thomasius was primarily concerned with the secularization of politics and with establishing it as an autonomous activity in clearly specific fields'.<sup>50</sup> Hegel's reappraisal of Thomasius in comparison to his denigrating caricature in the *Lectures on the History of Philosophy* coincides with changing perspective on Frederick II who is now 'named as the ruler under whom the new era attained actuality, the era in which the actual *political interest* acquired its universality and supreme justification. He deserves particular emphasis because he grasped the universal end of the state by means of thought'.<sup>51</sup> Hegel uses the same terminology in speaking of Frederick II's rule as he does in his interpretation of Locke, Grotius, Hobbes, Pufendorf and, pre-eminently Rousseau in the *Grundlinien* where thought and consciousness become paramount.

If 'the main thrust of Hobbes political writings was to free politics from religion',<sup>52</sup> the same can be said of Thomasius, but with an important addition: he also freed morality – the inner life of the subject – completely from political jurisdiction and deduced the basis of the laws of the state from morality following Pufendorf. Hobbes's infamous *Auctoritas non Veritas facit legem* held the authority of the sovereign above the confessional conflict over religious truth; in so doing he was able to reduce confessional conflict and confine it to the newly established inner sphere of conscience. Yet insofar as Hobbes argued for the supremacy of the external cult of the sovereign in the arbitration of religious matters, the *adiaphora*,<sup>53</sup> the indifferent things of religion that were seen as unnecessary for salvation fell under the positive laws of the state and 'the sovereign's competence for the sake of peace and security of the commonwealth'.<sup>54</sup> On the contrary, what arose with Thomasius was an extension of the inner space of conscience into the field of the state itself insofar as the *adiaphora* were limited neither by sovereign power

---

<sup>49</sup> Hegel 1999, p. 207.

<sup>50</sup> Barnard 1965, p. 437.

<sup>51</sup> Hegel 1999, p. 209 (original emphasis), 'thought' is a trope for Hegel's definition of modernity.

<sup>52</sup> Schröder 1997, p. 70. Compare Tuck 2004, pp. 124ff who has shown an added complication to this in Hobbes's development in *De Cive* where 'the sovereign is under the duty to use apostolically ordained clergymen in deciding doctrine'.

<sup>53</sup> A concept derived from Stoic philosophy meaning those things lying outside of the moral law to which it is indifferent – in Christianity, what is inessential to faith. For Thomasius, 'according to natural religion all external worship of God is an indifferent matter' (Thomasius 2007, p. 50). I will have the opportunity below in the conclusion to analyse this in the context of §270 of the *Grundlinien*, which reveals Hegel's proximity to Thomasius and Hobbes in these debates.

<sup>54</sup> Schröder 1997, p. 71. I am following Schröder's argument to the letter here.

nor by the clergy. ‘Unlike Hobbes, [Thomasius] attributed the sphere of *adiaphora* to the individual scope of the subject. What the prince could do however, was to enforce such circumstances where religious tenets would obviously disturb the tranquillity of the state’.<sup>55</sup> The external cult became redundant insofar as Thomasius perceived that the ‘external ecclesiastical ceremonies and practices in themselves are not divine worship, nor an essential part of it’.<sup>56</sup> In the following century the power of society is constituted on the basis of the free proclamation of conscience, of public opinion. Hobbes had already reduced conscience to opinion, and Locke in turn transformed it ‘into constant acts of judgement by the rising society ... by virtually requiring citizens to proclaim their private opinions to be generally binding laws’.<sup>57</sup> – A nascent sphere of publicity was therefore seen to arise by means of private reason, which leads us to the path later taken by Kant and, inadvertently, to the development of modern civil society. I will turn to analyse Kant, for the time being however I will pursue Thomasius’s reversal of the Hobbesian dichotomy of the inner and the outer to its logical conclusion, which indeed lays the basis for Kant.

As evident in Hobbes, the moral inner space that had been excised from the State and reserved for man as human being meant (even rudimentarily) a source of the unrest that was originally exclusive to the Absolutist system. The authority of conscience remained an unconquered remnant of the state of nature, protruding into the formally perfected state. The neutralisation of conscience by politics assisted with the secularisation of morality. ... A morality striving to become political would be the great theme of the eighteenth century.<sup>58</sup>

The consequence of the secularisation of morality following on its separation from politics led to a genuine sphere of moral autonomy. Thomasius pursued the externality of obedience Hobbes had established to a rigorous protection of the internal belief of the subject. He opened up a realm for moral autonomy and faith that would be pursued and established on a metaphysical plane by Kant through the continual exclusion of religious

---

<sup>55</sup> Schröder 1997, p. 71.

<sup>56</sup> Thomasius 2007, p. 49.

<sup>57</sup> ‘The Law is the publique Conscience – private Consciences ... are but private opinions’ (Hobbes *Elements of Law* II, 31 quoted in Koselleck 1988, p. 37). Koselleck 1988, p. 57. ‘Hobbes was not privy to the present day distinction between conscience and consciousness’ (see Koselleck 1988, pp. 26–7, footnote 17); he moreover reduces conscience to said facts and opinions and mutual influence and, above all, to secret thoughts (see Hobbes 1651, pp. 40–1).

<sup>58</sup> Koselleck 1988, p. 39.

irrationalism from politics and the valorisation of human reason in judgment. Just as Pufendorf attempted to ‘show the falsity of Hobbes’s claim ... that justice, no less than dominion over other things, owes its ultimate existence to states’ that,<sup>59</sup> as I analysed above (III.1), led to a nascent ‘natural’ sphere of social relations so too had Thomasius furthered the extension of the jurisdiction of the *ius internum* to the *adiaphora* carving out an even larger inner space wholly separate from sovereign jurisdiction and the *dominium* of the *ius externum*. Thomasius thereby reversed the Hobbesian paradigm and approach – ‘the sovereign is [no longer] the head of the church and therefore the ultimate authority in settling religious conflicts’.<sup>60</sup> ‘Our reason cannot but conclude that there is nothing in the nature of God that commands us to worship him in an external way’.<sup>61</sup> Originally following Pufendorf by commenting on and defending the latter’s work in his *Institutiones* (firstly in 1688),<sup>62</sup> Thomasius subsequently parted ways with him in the *Fundamenta juris naturae et gentium* (1705).<sup>63</sup> ‘Although outwardly appearing as an addition and improvement of the *Institutiones*, there lies in the separation of right from ethics [*Ethik*] and morals [*Sitte*] [something] essentially new’.<sup>64</sup> Whereas for Pufendorf the concept of a ‘commanding God’ is at the basis of every morality, for Thomasius only the law of the state can be considered law in its proper sense – right had become thoroughly positive.<sup>65</sup>

Since Thomasius, the separation of right and morality has become a standard theory and a *communis opinio* of jurists and politicians. By contrasting juristic heteronomy and moral autonomy Kant, in his theory of right and the state, undertook to present a summary of such views in the eighteenth century, which was meant perhaps to rebalance but not annul the fundamental separation of inner

---

<sup>59</sup> Pufendorf 1994, p. 134.

<sup>60</sup> Schröder 1997, p. 70.

<sup>61</sup> Thomasius 2007, p. 54. Rousseau, following on the tenets of Pufendorf’s compulsion to sociability [*Geselligkeit*], secularised the external cult into ‘a purely civil profession of faith, the articles of which it is the duty of the sovereign to determine, not exactly as dogmas of religion, but as sentiments of sociability, without which it is impossible to be a good citizen or a faithful subject. Without having the power to compel anyone to believe them, the sovereign may banish from the state whoever does not believe them... not as impious, but as unsociable’ (Rousseau 2002, p. 252).

<sup>62</sup> *Institutionum jurisprudentiae divinae libri tres: in quibus fundamenta juris naturalis secundum hypotheses illustris Pufendorffi perspicue demonstrantur, et ab obiectionibus dissentientum... liberantur.*

<sup>63</sup> Rüping 1979, pp. 88, 82.

<sup>64</sup> Rüping 1979, p. 82.

<sup>65</sup> Korkman 2003, p. 216. See also Barnard 1965, p. 435: ‘Natural law, therefore, has no binding or compelling force other than that of a moral precept’. For Ilting 1983, p. 209 Hobbes anticipated Thomasius’s division between right and morality half a century later in his reduction of the moral obligations of natural law.

and outer, the state remaining, for the time being intolerant. For example, Christian Wolff proposed the banning of pietists and opted for strict censorship; Kant decisively rejected the right to resist. In retrospect, however, such variations are not decisive for the comprehensive development of constitutional law. What is of significance is the seed planted by Hobbes regarding his reservation about private belief and outer confession. As it unfolded, it became an irresistible and all-governing conviction.<sup>66</sup>

γ) Immanuel Kant (1724–1804)

The extent of the reversal most proximate to Hegel's time is revealed in Kant's *Was heißt Aufklärung?* (1784). In this essay, the public use of reason assumes the form of what appears to be, paradoxically, private; that is, derived from the reflections of the inner space of conscience, which has now become publicity itself. By contrast, the holding of a public office is associated with the private use of reason, of mere obedience to command. Hobbes had not identified the inner realm with the right of *public* opinion, 'for disobedience may lawfully be punished in them that against the laws teach even true philosophy ... let them be silenced, and the teachers punished, by virtue of his power to whom the care of public quiet is committed, which is the authority of the civil'.<sup>67</sup> Rousseau followed similar principles in the exclusion of those 'unsociables' who refused to confess the civil religion.<sup>68</sup> Hobbes goes further still in the subordination of the private individual to the constraint of the positive laws: 'a private man, without the authority of the commonwealth; that is to say, without permission from the representant thereof to interpret the law by his own spirit, is another error in the politics'.<sup>69</sup> Kant clearly and precisely expresses the opposite tendency in his concept of the reforming capacity of public (internal *cum* external) reason as the 'use that one makes thereof as a *scholar* before the *reading world*'.<sup>70</sup>

What can be seen with the *Frühaufklärung* and *Aufklärung* is how 'political absence in the name of morality turns out to be an indirect political presence'.<sup>71</sup> What this

---

<sup>66</sup> Schmitt 2008, p. 59.

<sup>67</sup> Hobbes 1651, p. 430.

<sup>68</sup> Rousseau 2002, p. 252, see footnote 61 above.

<sup>69</sup> Hobbes 1651, p. 428.

<sup>70</sup> Kant 2006, p. 19. This was certainly a consequence of the freedom associated with the *Gelehrtenrepublik* that represents in essence the emergence of the new world.

<sup>71</sup> Koselleck 1988, p. 83.



means is that the moral denunciation of absolutist politics was in turn politicised during the seventeenth century and historically, if not logically, led to the French Revolution.<sup>72</sup> In his Berlin *Lectures on the Philosophy of History* (1827–31) Hegel isolated this as the core of the revolutionary politics that had taken place in France. Morality, the formerly neutralised sphere of conscience, became political inside the state and led to the renewal of civil war whereby ‘*the aim of society is itself political, the aim of the state*’.<sup>73</sup> For Hegel, the aims of society with the French Revolution had overturned the former political regime. The sole purpose of the state established with the French Revolution was ‘to uphold *natural rights*; but natural right is *freedom*, whose further determination is *equality* of rights before the law’.<sup>74</sup> One can thus see the full extent of the reversal of the classical epoch: natural right, which was to be left behind in the formation of the sovereign absolutist state in the formation of the political community, but which I showed had retreated into the inner sphere of conscience, now was to be maintained as the foundation and principle of the modern state. I have already discussed at length (III.2, III.4) Hegel’s criticisms of the issue of equality and ‘abstract right’ or freedom that lay at the basis of the French Revolution and how this formed and shaped his institutional politics. Now I will go into further detail on the relationship between Kant and the revolutionary developments for Hegel, and Kant’s further shifting of the debate between internal and external jurisdiction whereby the metaphysical is given priority over any empirical derivation of the law.

For Kant, it is the ‘*duty*’ of the sovereign ‘to dictate nothing to men in matters of religion, but rather to ensure them perfect freedom in such matters’.<sup>75</sup> And Frederick the Great ‘deserves to be praised both by the grateful world of the present, and by posterity, as the one who first freed the human race from the side of government, from immaturity and let everyone be free to make use of his own reason in all matter of conscience’.<sup>76</sup> This should be compared to the minimal character of ‘toleration’ in Hobbes grounded on the mere fact that ‘internall Faith is in its own nature invisible, and consequently exempted

---

<sup>72</sup> See Koselleck 1988 for an exhaustive treatment of these developments, particularly concerning the French rather than the German Enlightenment.

<sup>73</sup> Hegel 1999, p. 212 (emphasis added) speaking in reference to the *Droits de l’homme et du citoyen* of 1791.

<sup>74</sup> Hegel 1999, p. 212 (original emphasis).

<sup>75</sup> Kant 2006, p. 22 (original emphasis).

<sup>76</sup> Ibid.

from all humane jurisdiction'.<sup>77</sup> There is no question here of the legislating capacity of what, for Hobbes, remains the fundamentally internal and 'private', the sphere of conscience, faith and reason. For Kant, by contrast, the free use of reason is also a '*spirit of freedom [that] extends outward*, even to where it must struggle with the external obstacles presented by a government that misunderstands itself'.<sup>78</sup> From this statement it is clear that the *Aufklärung* represents the great reversal of the Hobbesian *recta ratio* of sovereign decision; the 'remnant' of the *Naturzustand* that lay in the interior of conscience and subjectivity – mirroring the sovereign's absolute supremacy in directing the internal life of the state – now emerged as social power. This also points in the direction of the formal will for Hegel that, due to its '*abstract indeterminacy*' of 'duty for duty's sake', can 'justify any wrong or immoral mode of action'.<sup>79</sup> It is for this reason that Hegel perceives the French Revolution in the Berlin *Lectures on the Philosophy of History* (1827–31) as the victory of Kantian philosophy. For which

the simple unity of self-consciousness, the 'I', is inviolable and utterly independent freedom and the source of all universal determinations (i.e. determinations of thought), namely theoretical reason, and likewise the highest of all practical determinations, namely practical reason as free and pure will; and the rationality of will consists simply in maintaining itself in pure freedom, in willing only the latter in all particular instances, in willing right and duty purely for the sake of duty.<sup>80</sup>

But to return more directly to Kant, it can be clearly seen how a shift thus takes place here, which moves from toleration considered a matter of reform to freedom of conscience as a natural right and inherently moral principle. This signals a shift from an absolute form of sovereignty to the constitutional state, to the externalisation of inner freedom, which will come to constrain the external polity: i.e., 'the demand for the legal protection of this individual right of private judgment in religious matters finally led to the abandonment of the notion of toleration and the demand for constitutional reform'.<sup>81</sup> And the latter shift is

---

<sup>77</sup> Hobbes 1651, p. 285.

<sup>78</sup> Kant 2006, p. 22 (emphasis added).

<sup>79</sup> Hegel 1991a, p. 162 (§135).

<sup>80</sup> Hegel 1999, pp. 212–13.

<sup>81</sup> Zurbuchen 2006, pp. 782, 779; see Gierke 1934, pp. 138–9 on the conflict between the *Rechtsstaat* and sovereignty.

apparent in Kant's esteem for Frederick II, 'a prince who thus himself rejects the arrogant name of *tolerance*'.<sup>82</sup>

What Kant terms 'the century of Frederick' expresses in its most extreme form the dichotomy of politics and morality that the Enlightenment had brought to a head. The core of Frederick the Great's rule is marked by this dichotomy as is his personality, divided between the philosopher clothed in Enlightenment ideals and the monarch practicing reason of state. The former envisions himself as *rex natura*, conceiving of Prussia as 'based on a nature rightly foundation of the state through a contract between ruler and ruled' while 'nature rightly principles find no application in the relationships between states'.<sup>83</sup> As Frederick II himself saw it, 'the policy of the great monarchies has always been the same. Their fundamental principle has constantly been to grasp at everything in order to increase their territory continually... It is a question of their ostensible glory; in a word they must increase their size'.<sup>84</sup> As Friedrich Meinecke (1862–1954) comments on this passage, 'what did the humanitarian department of the Enlightenment say to this crude conclusion reached by its causality department? Here one sees the complete helplessness and powerlessness of one with regard to the other'.<sup>85</sup> This was moreover the same Frederick who said 'I recognise God through the light of reason; his law is written in my heart ... and this law [*Gesetz*] is the law of nature, which teaches me my duties'.<sup>86</sup>

The hidden current behind Kant's position in *Was heißt Aufklärung?* may indeed be the renascent Spinozism that was at the centre of controversy surrounding Lessing's death in 1781 (the *Pantheismusstreit*). This was the same Spinoza that Frederick II had execrated in his youth as '*sapa les fondements de la foi, et ne tendait pas moins qu'à renverser toute la religion*'.<sup>87</sup> And, I might add, execrated alongside Machiavelli, who '*corrompt la politique, et entreprenait de détruire les préceptes de la saine morale*'.<sup>88</sup> Indeed, Kant's essay follows very precisely the principles Spinoza laid down in his *Theological-Political Treatise* Chapters 19 and 20 where 'the object of government is not to change men from rational beings into beasts or puppets, but to enable them to develop

---

<sup>82</sup> Kant 2006, p. 22 (original emphasis).

<sup>83</sup> Baumgart 1979, pp. 146, 150.

<sup>84</sup> Frederick II quoted in Meinecke 1998, p. 288.

<sup>85</sup> Meinecke 1998, pp. 288–9.

<sup>86</sup> Frederick quoted in Baumgart 1979, pp. 144–5.

<sup>87</sup> Frederick II 1941, p. 97.

<sup>88</sup> Ibid.

their minds and bodies in security, and to employ their reason unshackled'. For Spinoza, moreover, 'the true aim of government is liberty'.<sup>89</sup> As Karl Barth put it, Spinoza was 'the secret patron saint of all enlightened opponents to the Enlightenment'.<sup>90</sup> It was Spinoza who developed the public capacity of reason. And it was in this way that Kant was able to emphasise its reforming capacity in *Was heißt Aufklärung?* (1784). Rather than the mere obedience to the external cult, the light of reason was seen along the lines of its possible reforming power. Kant paraphrases Spinoza on the use of public reason, and also on the necessity of the individual to be subordinate in the private use of reason as a functionary of the state or as a member of the commonwealth. Here the obedience to command or the duty to obey the sovereign power is conceived as paramount.<sup>91</sup> Thus for Spinoza as for Kant, 'the best government will allow freedom of philosophical speculation'.<sup>92</sup> And in so doing Spinoza lay the basis for the extension of the inner space itself into the field of the sovereign state; the capacity of conscience transforms into a truly public function with Kant and free thought and its cultivation becomes a principle of a truly enlightened absolutism.<sup>93</sup>

Such an early version of Kant before his truly metaphysical turn in practical philosophy would not have been objectionable to Hegel. Indeed in the discussion of Frederick II and Thomasius in the Berlin *Lectures on the History of Philosophy* (1827–31) Hegel mirrors Kant's praise in many respects.<sup>94</sup> This is to be opposed to his youth when he is closest to Spinoza and Machiavelli and where he conceives of the 'mechanistic hierarchy' of absolutism, 'highly ingenious and dedicated to noble ends', as extending 'no

---

<sup>89</sup> Spinoza 2004, p. 259; compare Hobbes 1651, p. 178, 'civil law is obligation, and takes from us the liberty which the law of nature gave us'.

<sup>90</sup> Barth 1973, p. 394.

<sup>91</sup> See Kant 2006, p. 19; compare Spinoza 2004, p. 259.

<sup>92</sup> Spinoza 2004, p. 261.

<sup>93</sup> See Spinoza 2004, p. 265. Carl Schmitt (1938) traced the origin of the reversal of the Hobbesian paradigm to Spinoza, which he then followed through to Pufendorf, Thomasius, Kant and Moses Mendelssohn (see Schmitt 2008, pp. 57, 61). The latter provides the link to the nascent Spinozism in the German *Aufklärung*. Kant's response ended with a note on Mendelssohn's reply, which he had not been able to consult 'otherwise', in his own words, 'I would have withheld the present observations, which I offer here only in order to see to what extent chance might yield a unanimity of thoughts' (Kant 2006, p. 23). According to Schröder, 'Thomasius was explicitly not prepared to give room for Spinozism' (Schröder 1997, p. 78 footnote 88). As Ilting has pointed out, the fundamental agreement between Thomasius and Spinoza is broken in 'that for Thomasius God was in no way pantheistic but in a similar fashion to Pufendorf theistic and indeed grasped substantially in the sense of Protestant Scholasticism' (Ilting 1983, pp. 215–16; compare Gawlick 1989, pp. 256–73).

<sup>94</sup> Hegel 1999, pp. 207, 209.

trust whatsoever towards its citizens, and therefore cannot expect any from them in return.<sup>95</sup> Indeed, the freedom of opinion Kant praised in the Prussian state and the neutrality of its state machinery was as empty for the young Hegel as it was his forerunner Lessing who, writing to Nicolai on August 25, 1769, stated:

Please do not talk to me about your Berlin freedom; it is really confined to the single freedom of bringing to market scurrilous anti-religious pamphlets to one's heart's content... Just wait until someone should appear at Berlin to raise his voice for the rights of subjects and against exploitation and despotism, as happens now in countries like France and Denmark – you will then see what country in Europe is in fact characterized by the worst slavery at the present day.<sup>96</sup>

It is the appearance of Kant's *Metaphysik der Sitten* (1797) that transforms Hegel's early period, which had blended the ideals of ancient constitutionalism, the ethical life of the Greek *polis*, with Kant's *Critique of Practical Reason* (1788).<sup>97</sup> By the Frankfurt period (1797–1800) the conflict with Kant in *Der Geist des Christentums und sein Schicksal* (1798–1800) appears. For Hegel, Kant's most recent conception of morals was a destructive and alien force dominating over the individual and nature, which was transformed into lifeless and dead matter. He became preoccupied with countering this conception of morality, which was indeed the result of the preceding philosophical developments, notably Wolff's separation of philosophy into a rational and empirical part.<sup>98</sup> As I will show in more detail below (α, β), Hegel set out to solve this initially by way of Christianity and the development of a *Volksreligion*. It will be part and parcel of my discussions below how this becomes insufficient for him by *System der Sittlichkeit*.

An example of Kant's metaphysical formalism is formulated very precisely in his political philosophy where the legal equality of all citizens before the law – developing the classical liberal concept of civil society – is developed on moral-metaphysical grounds. By identifying freedom with universal human rights, he 'thereby introduced and justified

---

<sup>95</sup> Hegel 1999, p. 24. Is it any wonder that Hegel's opposes Frederick II in the *Verfassungsschrift* and his *l'Anti-machiavel*? Hegel was studying Machiavelli at the time, mediated by way of Spinoza whose works he was editing with his Jena colleague Paulus (1802) in comparison with the French edition. Whereas Machiavelli is quoted explicitly in the *Verfassungsschrift*, Spinoza remains but a cryptic reference behind Hegel's first formulation of actuality (see Hegel 2004, p. 5). As Ilting has adeptly shown, Spinoza lay at the basis of *System der Sittlichkeit* of the same period (see Ilting 2006, p. 16 footnote 9 who lists the letters of Hegel referring to Spinoza during this period).

<sup>96</sup> Lessing quoted in Epstein 1966, p. 350.

<sup>97</sup> See Riedel 2011, pp. 10–11, for this by now classic interpretation.

<sup>98</sup> See Riedel 2011, p. 6.

the political emancipation of the bourgeoisie out of the continuity of European history and philosophy'.<sup>99</sup> Nevertheless, this all comes to nothing due to the fact that political emancipation is connected to rule, freedom to domination.<sup>100</sup> Thus what one sees here is a moral 'ought' forced to revert to the old feudal forms of stratification in order to relieve itself of the problem of actualisation.<sup>101</sup> Such a late version of Kant – i.e., after the French Revolution and its fervour – can be compared nonetheless to the Kant who esteems Frederick the Great's *aufgeklärter Absolutismus*, where the theoretical and practical divide becomes emblematic of his political morality of world civil society, which he saw as leading to the possibility of perpetual peace: a universal state of freedom between nations and states based on the rights of individuals. However, he realised too late that he required a transcendental ground for this practical philosophy. Thus while 'the absolute obligation of foundational norms is undoubtedly given, he teaches, in an experience similar to Hobbes, Thomasius, or Rousseau that right in the full sense is given first on the basis of state order'.<sup>102</sup>

In the theory of Kant, the principle of popular sovereignty is still retained in its full integrity, as a theoretical basis, but it is transformed for practical purposes into a mere 'idea of reason' [or logical presupposition]. As such, it *ought* to guide the possessor of political authority, but it involves no diminution of the formal rights inherent in a sovereignty of the ruler which finds its justification in the fact of historical growth'.<sup>103</sup>

It was thus that the 'optimism and perfectionism of the Enlightenment was compensated by human imperfection in the field of the state [and the] preservation of the law was the only ground, which the people induced, to give to the superior; because it meant the preservation of the origin of the ruler's power'.<sup>104</sup> This also meant the continuance of traditional society as the originary equality of all men that formed the basis of the contract had nothing to say of the differences of duty and obligation, which were applied subsequently. Thus Kant's moral 'formalism' – indeed he had used this as a description of

---

<sup>99</sup> Riedel 2004, p. 762.

<sup>100</sup> See Riedel 2004, p. 763.

<sup>101</sup> See Riedel 2004, p. 762: 'Kant's experience obliges him to apply the concept of civil society conventionally again, because the systematic place of its principle is the "right of the household society" which he treated under the title of "on the thingly types of personal right"'.  
<sup>102</sup> Ilting 1983, p. 98.

<sup>103</sup> Gierke 1934, p. 153 (emphasis added); compare Kouvelakis 2003, pp. 12–27.

<sup>104</sup> Baumgart 1979, p. 147.

his own conception of the metaphysics of the understanding opposed to the ‘facts of experience’ and the ‘material’ world since 1786 – was essentially the result of an interpretation of original sin; that is to say, his moral philosophy was above all oriented by the radical evil of human nature and was steeped in Manichean, Augustinian, Lutheran, and Pietistic roots.<sup>105</sup> In this he was not at all a radical, but accorded with the Wolffian framework of teleological perfectionism. This was evident in Kant’s emphasis on the immortality of the soul and the countervailing righteousness of the beyond. And he was not so far from a Pufendorffian stoic or neo-stoic shaped conception either where ‘the cause and the constitution of state will become still clearer if we reflect that no other means would have been adequate to restrain the evil in man’.<sup>106</sup> The difference lies in the derivation of the latter systems from an element of nature as such; they are far too empirical when considered alongside Kant’s categorical imperative, which he had so utterly alienated from any particular property of human nature. For Kant, this underlies the very basis of the validity and the universality of the moral law.

Thus he wanted to initially and above all make distinct that the type of obligation, which we attribute rightly to moral claims, cannot be derived from the facts of experience [*Erfahrungstatsachen*]. Each attempt to ground *Sittlichkeit* anthropologically, perhaps after the striving after happiness ... proves to be insufficient. But also each return to the God of Christian revelation misses its target.<sup>107</sup>

In so doing the categorical imperative became subjectively identifiable *only in the inward life of the individual*. The principle of its universality was that it could be similarly recognised as such by every individual. In so doing Kant transformed the tradition in turn, leaving esteem for this inward reflection of the law as the only way of deducing and organising ethical life.

Therefore if in Kant’s analysis of *Sittlichkeit* the divine will is interpreted as a command of practical reason so too does moral obligation still remain for him a fact of inner experience, (‘a fact of reason’), which has no immediate relation to another person: the doer remains (expressed religiously) answerable alone to his conscience and regarded for that reason as free.<sup>108</sup>

---

<sup>105</sup> Ilting 1983, p. 231.

<sup>106</sup> Pufendorf 1991, p. 134.

<sup>107</sup> Ilting 1983, p. 227.

<sup>108</sup> Ilting 1983, p. 232.

Before proceeding with the subsequent discussion of the following section (IV.2) that will concern in part the young Hegel's conflict with the inner determination of the moral law in Kant, it is necessary to firstly review what I have traced thus far in this first section and its subsections on Hobbes, Thomasius, and Kant. I set out by analysing how due to the religious civil wars in Europe a very specific political development occurred, whereby confessional conflict retreated into the inner realms of conscience – and how conscience was transformed into a neutral sphere as such. This led in turn to a shift from the predominance of religion unifying the state to politics, and eventually to the development of a separate sphere of morality. Hobbes was the first to grasp and formulate the necessary division between the *forum externum* and *forum internum*, between politics and conscience. Moreover, morality for Hobbes was a morality of self-preservation and thus could be identified with obedience to positive law in the organisation of the *civitas*.<sup>109</sup> In this way, Hobbes had levelled the significance of the traditional norms of natural law, which now had no binding force opposite political power. In this he 'anticipated the differentiation between right and morality that Christian Thomasius came to terminologically define half a century later, and which was to predominate over all discussions in Germany until the end of the eighteenth century'.<sup>110</sup> I then analysed the inversion of the Hobbesian paradigm in Germany, whereby the internal came to predominate over the external. The Enlightenment was shown to lead to the condemnation of princely absolutism and, ultimately, to the French Revolution where, as Hegel saw it, society became political. I will have a chance to develop this theme more generally throughout the remainder of this chapter. At the end of the present section I analysed how the division between morality and politics underwent a metaphysical transformation with Kant, and how he articulated the new horizon of the inner and the outer current by the young Hegel's time (1797). In the following section I will have the opportunity of showing how Hegel initially attempted to counter Kant in his Frankfurt period (1797–1800) with the development of Christianity and a *Volksreligion* and how this grew into his formulation of *Sittlichkeit* and *Stände*.

---

<sup>109</sup> See Ilting 1983, p. 208; compare Koselleck 1988; and Strauss 1963, p. 15.

<sup>110</sup> Ilting 1983, p. 209.



#### IV.2 *The Development of the Stände in System der Sittlichkeit*

In the present section, I will analyse *Sittlichkeit* and how the *Stände* are shaped in the institutional form of Hegel's politics in *System der Sittlichkeit*. By now I have sufficiently traced the background in the preceding section for what I will show consistently underlies the logic of the distinctive institutional form of the young Hegel's politics in this early Jena manuscript (1802–3). At the outset of *System der Sittlichkeit*, Hegel references the dichotomy of the inner and the outer in the modern tradition and his full intention to solve this 'formalism' through the 'absolute concept or absolute movement' – a development that will proceed through various levels [*Potenzen*] and to the definitive early formulation of the *Stände* and *Sittlichkeit*.<sup>111</sup> I will show how this is at once a clear reference to Hobbes and is also linked to Kant by way of Fichte in the discussion of formalism. As K.H. Ilting put it, 'since the *Differenzschrift* (1801) Hegel had known Fichte's state philosophy as little more than the ideal of a "genuinely free community of living relationships"; in the theory of natural *Sittlichkeit* this ideal receives a real foundation'.<sup>112</sup> In the first subsection ( $\alpha$ ) here I will comment more broadly on the influences and context of *System der Sittlichkeit*. I will show how Hegel is engaged, given the broad range of influences on his thought, in reworking the modern political tradition partly by way of the classical model. This will supply a framework for the following discussions and establish the foundations for the two remaining subsections. The first ( $\beta$ ) of which will analyse the theory of natural *Sittlichkeit* as it appears in the first part of Hegel's manuscript. Thus showing how Fichte's ideal receives a real foundation in the institutions Hegel develops. The second ( $\gamma$ ) will analyse the structure of rule that Hegel is developing and the individual's place within it and his definitive formulation of *Sittlichkeit*.

An approach to Hegel's thought by way of the modern dichotomy of the inner and the outer is currently lacking in the literature. While Norberto Bobbio mentions it,<sup>113</sup> he neither pursues its implications in any depth nor analyses how it orients Hegel's thinking from a very early period onwards, right up into his mature thinking in the Berlin period (1818–31). In so doing I will also be able to point towards how this continually shapes

---

<sup>111</sup> Hegel 2002, p. 4.

<sup>112</sup> Ilting 2006, p. 23.

<sup>113</sup> See Bobbio 1975, p. 91.

Hegel's engagement with the modern tradition that I have been analysing in this study, and how it informs his approach to the crisis of modern civil society. As Manfred Riedel pointed out long ago, 'the dialectical method completes what was left undone by the geometrical, rational, and transcendental methods: the dissolution of the tradition'.<sup>114</sup> It is within the context of this method that the ramifications of Hegel's dissolution of the inner and the outer in his developing institutional thought are first fully felt. But this must be also placed within the horizon of the development of Hegel's thinking more generally. Central to my discussion as I will analyse in detail is that it is only by way of a combination of the institutional perspective – firstly developed with the *Stände* in the early Jena period (1801–4) – with the return to individualist natural law (1805–6), which had initially preoccupied Hegel in Frankfurt (1797–1800), that one can arrive at the full comprehension of his mature political thought. Essentially, the development of Hegel's concept of 'ethical life' in the Jena period cannot be reduced to a one-sided interpretation, which strictly prioritises the return to individualist natural law in the *Philosophie des Geistes* (1805–6). In the end a position that strictly prioritises the Hegel of the late Jena period (1805–7) is a limited one, which will become evident in the remaining sections of this chapter. For Riedel, however – who is evidently at the core of my polemic here – this Hegel made

his way back to the view of natural law found in Rousseau, Kant, and Fichte, which he had supported once before during the 1790s with the recognition of 'law' as the immediacy of ethical life and its assimilation into the concept, the moment of individuality after the vacillations of the early Jena period.<sup>115</sup>

What I will stress throughout the remainder of this chapter is that Hegel did not make his way back to the individualist perspective by wholly negating the 'vacillations' of the period in question (1801–4). Indeed, as I will show, this period thoroughly transformed and reoriented his thinking and led directly to the institutional perspective of his politics. That is to say, Hegel made his way back to the individualist view of natural law informed by his concept of the *Stände* and, consequently, by the theoretical potential of his newly formed institutional thought. Moreover, *Sittlichkeit* is never an *immediate* relation between the individual and the political community strictly speaking. Even if the

---

<sup>114</sup> Riedel 2011, p. 8.

<sup>115</sup> Riedel 2011, p. 95 (text modified).

individual appears under the form of the negative in *System der Sittlichkeit* to be absorbed by the positive conception of the community Hegel, nevertheless, retains the *Stände* first elaborated in the early Jena period albeit within the horizon of the freedom of individual self-consciousness that orients his thinking from the *Phenomenology* (1807) onwards, which I analysed in Chapter Three in the context of labour and the state of nature (III.4). ‘The doctrine of *thought* as law’ developed in the *Grundlinien* (1820/21) implies more than simply the ‘formal’ Kantian subject contemplating the social substance from an abstract arbitrary point of view; on the contrary, it involves the *mediation* in ‘*laws and institutions which have being in and for themselves*’.<sup>116</sup> In the end, it seems rather an open question as to whether Hegel ever truly departed from *Sittlichkeit* as ‘the “*sittliches Ganzes*” of a people with which particular individuals are completely at unity’.<sup>117</sup>

Even if *System der Sittlichkeit* does not form an ‘early and first systematic conception [*Systemkonzeption*] of the functional role of “objective spirit”’,<sup>118</sup> a clear shift occurs in the manuscript towards an emphasis on the institutionalisation of politics by way of the family and the *Stände* that continue to have a bearing on Hegel’s later political thought once subjective and objective spirit have been prioritised. Since the *Stände* owe their systematic existence in Hegel’s thought to this early Jena period manuscript it is essential to analyse *System der Sittlichkeit* in depth. Manfred Riedel has shown the proper development of objective spirit and how it breaks from Hegel’s earlier conception of practical philosophy.<sup>119</sup> Yet even if one does not find a direct link to the development of objective spirit in *System der Sittlichkeit*, as I will show in the following discussion, this neither excludes drawing parallels nor indicating substantive similarities in theoretical

---

<sup>116</sup> See Hegel 1991a, p. 294, 189 (§§270, 144) (original emphasis). The abstract good of morality (Kant) becomes concrete in ethics in the transition between morality and ethical life in the *Grundlinien*.

<sup>117</sup> Ilting 1983, p. 244. ‘The ethical substance, as containing self-consciousness which has being for itself and is united with its concept, is the actual spirit of a family and a people’ (Hegel 1991a, p. 197 (§156)). This calls Riedel’s assertion that Hegel quickly rejected the notion ‘of the placement of ethical life in a “people”’ into question (see Riedel 2011, p. 88), even if the ‘nature’ of law has been almost wholly exchanged for the ‘spiritual’ relations of right already in the *Philosophie des Geistes* 1805–6 as I analysed above (III.3, III.4). Yet the ethical relations of the family in the *Grundlinien*, as the ‘*immediate substantiality* of spirit has as its determination the spirit’s *feeling* [*Empfindung*] of its own unity, which is love’ – feeling is ‘ethical life in its natural form’ (Hegel 1991a, p. 199 (§158) (original emphasis) the latter part of the quotation comes from the addition Hotho/Griesheim). As I will show below (β) Hegel develops this natural ethical life fully in *System der Sittlichkeit*.

<sup>118</sup> See Meist 2002, p. x criticising Rosenkranz’s conviction and ‘fictional reconstruction’ of the manuscript.

<sup>119</sup> See Riedel 2011, pp. 3–30; compare Bienenstock 2001 who has criticised Riedel’s perspective as out dated, and framed her own discussion by way of Charles Taylor.

content and practical purpose. Moreover, as I will analyse, this permits a tracing of the proper development of Hegel's institutional thought. It is an essential aspect of my argument in this study that the early Jena period (1801–4), where the *Stände* first appear, forms an important transitional phase in Hegel's thinking where, as I will show below, the theoretical potential of his institutional thought in the development of *Sittlichkeit* is first expressed with the utmost clarity. It is not by leaving aside the discoveries of this period that Hegel formulates the position of his mature *Rechtsphilosophie* (1817–31), but, on the contrary, by sublating these early developments in turn to formulise his final philosophical perspectives. As far as speculative foundations are concerned, according to Ilting in *System der Sittlichkeit* 'Hegel undertook the attempt to produce a type of synthesis of the naturalist conception of natural law in Spinoza and the teleological natural law theory of Aristotle [that] was to roughly anticipate his later philosophy of right'<sup>120</sup> It is with this in mind that I will now turn to an analysis of *System der Sittlichkeit*.

#### α) *The Contents and Contexts of System der Sittlichkeit*

In this short introduction to *System der Sittlichkeit*, I will initially point out the political and philosophical context that Hegel seeks to respond to in the manuscript. This will set up the subsequent discussion, which proceeds by way of an exegetical analysis of the manuscript itself. It is important to highlight the circumstances in which *System der Sittlichkeit* was written and I will touch on this as well by comparing the manuscript to aspects of the *Verfassungsschrift* that I fully explored in Chapter Two. I will also frame my subsequent discussion by pointing to the insights other scholars have made on the manuscript – notably H.S. Harris and K.H. Ilting.

The structure of sovereignty apparent in the Hobbesian mortal god had represented the way political absolutism had progressed on the Continent from the seventeenth century onwards, not only in theory but also in practice.<sup>121</sup> By the time the young Hegel was writing *System der Sittlichkeit* a great reversal had taken place, which could be fully

<sup>120</sup> Ilting 1983, p. 104; see 2006, pp. 11–35 for Ilting's definitive treatment of this subject.

<sup>121</sup> The importance of the variations in political form in Holy Roman Empire was pointed out long ago by Gierke, which led to federal descriptions and in some cases to limitations on absolutism (see Gierke 1934, and more recently Dreitzel 1991). On Hobbes influence, see Dreitzel 2003; Schröder 1997; and on his predominance in Prussian absolutism, Schmitt 2008.

perceived in the Enlightenment and the eruption of the French Revolution where moral judgment condemned the politics of princely sovereignty. Morality, the formerly neutralised sphere of conscience became political inside the state and led to the renewal of civil war. For Hegel, the aims of society with the French Revolution had overtaken the state. As he expressed it in his Berlin period (1818–31), the state's sole purpose subsequent to the French Revolution was to maintain the *natural rights* of humanity; he then framed this critically by understanding natural right as strictly freedom (undoubtedly a reference to modern natural law), whose determination was simply the 'equality of rights before the law'.<sup>122</sup> This freedom for Hegel consistently remained 'abstract' and, as I have been showing throughout this study, it is to this that the development of the *Stände* was meant to respond. The central issue is that the individual in society now stood opposite the political order and directly determined and judged the constitution of the state from the abstract point of view of his own private opinion. This appears to be a direct inversion of Hegel's contention with Hobbes in *System der Sittlichkeit*, where the sovereign of the absolutist state as a *persona ficta* 'hovered' over the individual. But it is important to note and it will be analysed in more detail below (β) that the same was true for Hegel with the 'formal' and 'abstract' character of equality in constructions of the general will (Fichte and Rousseau). Each of these influences can be seen in the following quotation:

In this subsumption then [of intuition under the concept whereby intuition remains the unity of the inner] the intuition of *Sittlichkeit*, which is a people [*Volk*], is a manifold reality or an individual [*Einzelheit*], an individual person [*Mensch*] and thereby the absolute withdrawal [*Zurücknehmen*] of nature into itself as something hovering over this individual or something formal because the formal is precisely unity, which is not in itself absolute concept or absolute movement.<sup>123</sup>

As H.S. Harris has noted, Hegel was determined 'to bring Hobbes and Fichte together, and to criticize them both at once'. This was already 'strongly suggested by a reading of the *Natural Law* essay, and confirmed by the later evolution of Hegel's philosophy of spirit'.<sup>124</sup> K.H. Ilting was of a similar opinion in the transition from the *Verfassungsschrift*

---

<sup>122</sup> Hegel 1999, p. 212.

<sup>123</sup> Hegel 2002, pp. 3–4.

<sup>124</sup> Harris 1983, p. 110.

(1800–3) to *System der Sittlichkeit*.<sup>125</sup> According to Ilting ‘the depth of Hobbes’s influence – direct and through the mediation of Spinoza – had been exerted on [Hegel] in his youth’.<sup>126</sup>

*System der Sittlichkeit* indeed sets out from a conflict with the modern political tradition, and no doubt most clearly with Hobbes and Fichte in the passage quoted above. The general will in Fichte’s metaphysics took on an even more abstract character and he ‘was a professed adherent of Rousseau’s theory of popular sovereignty’ but was ‘pledged to an even more radical form of individualism’.<sup>127</sup> Hegel’s main concern in this Jena manuscript is to develop the relation between the individual and the political by way of the ‘absolute concept and absolute movement’ that, as I will analyse, leads to the development of the *Stände*. This is what will allow Hegel to problematise the lack of concrete structure in the general will (Rousseau and Fichte) as well as the Hobbesian conception of the *fictive persona* along the lines of the alien power that confronts the individual as in the quotation above, which can be seen to reflect the absolutist political order. On the other hand, the isolated individual of Kant’s ‘formalism’ is divorced entirely from reality and indifferent to the ‘facts of experience’; Hegel will respond to this one-sided metaphysics in turn. Each of these influences can be seen as central to *System der Sittlichkeit*. And undoubtedly the political problems dealt with in the *Verfassungsschrift* (1800–3), from a much more purely pragmatic angle, also found their way into this first systematic manuscript of Hegel’s *Rechtsphilosophie* (1802–3) – indeed, the work on each of these manuscripts converged.<sup>128</sup>

I remind the reader of the quote from the *Verfassungsschrift* that I cited at the outset of this chapter (IV.1α). There Hegel spoke of how the division of conscience in the religious realm that led to the division of individuals was the same process that led to separate state formation after the Peace of Westphalia (1648). Hegel here has further grasped the ‘fate’ of Christianity, this time in the political context after the Reformation (moreover the *Verfassungsschrift* coincided with the completion of *Der Geist des*

---

<sup>125</sup> See Ilting 2006, p. 27.

<sup>126</sup> Ilting 1994, p. 199. Michelet’s *Lectures on the History of Philosophy* reveals the extent of this influence where Hobbes is favoured over Spinoza as founding the origin of society on individual fear, thus making it into ‘a phenomenon of consciousness’ (Hegel 1995b, p. 317).

<sup>127</sup> Gierke 1934, pp. 131ff.

<sup>128</sup> See Harris 1983, p. xlix for a commentary on this development.

*Christentums und sein Schicksal* (1798–1800)). Hobbes's *persona ficta* with its atomistic isolation of individual conscience and seat of sovereign authority was made possible by the Reformation, which undid 'the synthesis of reason and faith [that] underlay the Roman Catholic doctrine of natural law'.<sup>129</sup> *Sittlichkeit* and the problem of morality fell away from the Church and Aristotelian scholastic practical philosophy, retreating into the conscience of human beings. For Hobbes, as I showed above, this was absolutely necessary as the confessional conflict led to civil war. At the same time as the individual's relationship with God transformed so too did the individual's relationship to political power. As Ilting put it, 'the individual found himself immediately opposite his God and could no longer understand himself primarily as a collective entity [*Gemeinschaftswesen*]'.<sup>130</sup>

In *Der Geist des Christentums*, Hegel compared Kant's new practical philosophy with the Mosaic Law as an absolute positive command that rules over the individual and their 'nature' – inclination, the will, drives and desire – as an alien form of compulsion. The moral law was bound to the strictures of an interior sphere of conscience – negating the natural and essentially constricting the will of the subject while simultaneously being its autonomous foundation: i.e. its metaphysical realisation as the 'formal' will. The comparison with Mosaic Law for Hegel was that the God of the Jewish religion was alien to its people and, on the other hand, appeared as the external coercion of a theocratic political order directing every activity of the subject. For the young Hegel, both were identified with 'the command of an external power' – and the latter reflects the subordination to the external cult that was writ large in Hobbes's mature political philosophy.<sup>131</sup>

The isolation of the individual in the Christian religion becomes a political problem in the *Verfassungsschrift* in the isolation of absolutist states in the realm. Citizens moreover are treated like atoms by the 'illiberal jealousy' of the 'political authority' that 'has dressed itself up in the guise of rational principles'. According to this model, 'a state is a machine with a single spring which imparts movement to all the rest of its infinite mechanism, and all the institutions which the essential nature of society brings with it

---

<sup>129</sup> Berman 2006, p. 94.

<sup>130</sup> Ilting 1983, p. 203.

<sup>131</sup> See Hobbes 1651, pp. 228ff.

should emanate from the supreme political authority and be regulated, commanded, supervised, and directed by it'.<sup>132</sup> I am quoting from the *Verfassungsschrift* here as it will become clear in the following discussion that the same terrain is being staked out in Hegel's early speculative language in *System der Sittlichkeit*. In order to grasp Hegel's organic model of the *Stände* in the organisation of the political community in *System der Sittlichkeit* it is worth quoting Hegel at length in the *Verfassungsschrift*, where his solution is conceived in a far more direct fashion.

Given the size of modern states, it is quite impossible to realise the ideal of giving all free men a share in the discussion and resolution of universal political issues. Political authority must be concentrated in one centre, both for the implementation [of decisions] by the government, and for the decisions themselves. If popular respect ensures that this centre is secure in itself and immutably sanctified in the person of a monarch chosen by birth in accordance with natural law, the political authority can freely allow the subordinate systems and bodies, without fear or jealousy, to regulate a large part of the relationships which arise in society, and to maintain them in accordance with the laws; and every *Stand*, city, village, commune, etc. can enjoy the freedom to do and implement for itself what lies within its province.<sup>133</sup>

What is important to note with this quotation is the mixed form of Hegel's politics. At once 'centralised', but also appearing 'federated'.<sup>134</sup> Once I turn to discuss natural ethical life in *System der Sittlichkeit* in more detail ( $\beta$ ) and its construction of the constitution ( $\gamma$ ), I will be able to show the consistency of Hegel's political perspective. It is important to note already at this stage how Hegel's political structure is *mediated* – *between* centralism and federalism, as is evident in the above quotation from the *Verfassungsschrift*. This has as its analogue Hegel's non-conventional identity philosophy in the early *Rechtsphilosophie*, whereby differences are maintained – albeit in unity – but are not necessarily dissolved. The latter is something that I will have to explore more fully below ( $\beta$ ,  $\gamma$ ).

The eventual solution to the problem of the 'formalism' of the absolute that Hegel arrives at in his *Rechtsphilosophie* more generally – the primacy of conceptual mediation, consciousness as recognition in right as a relation in the concept of law – has been

---

<sup>132</sup> Hegel 1999, p. 22.

<sup>133</sup> Hegel 1999, p. 21.

<sup>134</sup> For Hegel's 'federalism' and the predominance of the representational form particularly in the *Verfassungsschrift*, see Maier 2004, p. 210 and also Chapter Two above.



differentiated from the first steps in this direction in the early Jena period (1801–4). This is clear insofar as Hegel’s mature concept affirmed the rights of particularity as ‘contained in ethical substantiality, for particularity is the mode of outward appearance in which the ethical exists’.<sup>135</sup> By contrast, the individual is almost entirely negative in relation to the positivity of the whole in *System der Sittlichkeit* insofar as ‘all existing individualities dissolve in the pure infinity of the absolute’.<sup>136</sup> Yet the contrast with the early Jena period may not be as clear as it has been presented in the scholarship, and my analysis will show the existence of aspects of continuity to Hegel thinking in this respect thus problematizing some largely predominant interpretations.<sup>137</sup> What Hegel called variously ‘natural intuition’ or ‘the spirit of the people’ in the Jena natural law essay and *System der Sittlichkeit* (1802–3) has been related to the destruction of the individual as such – and Hegel’s language has not helped to clarify the situation in this respect.<sup>138</sup> Rather than the subordination of particularity, of individuality to substantial nature, the identity of consciousness in institutions and laws is developed by way of education in the *Grundlinien*; this takes the place of the earlier formation of Hegel’s concept of *Sittlichkeit* where ‘he evoked [*erinnert*] Spinoza’s doctrine of substance [*Substanzlehre*] and ultimately with explicit reference to Aristotle’s “*Volk*”:

Spinoza’s doctrine of substance will be apparently [and] unscrupulously identified with Aristotle’s theory [*Lehre*] of the political community so that after Hegel the positive process [*Vorgang des Positiven*] or the people [*Volkes*] are only based on

---

<sup>135</sup> Hegel 1991a, pp. 197 (§154).

<sup>136</sup> Ilting 2006, p. 33. Hegel did continue to conceive of the totality as pre-existing and determinative of the part into his mature period, and indeed this was consistent with the Aristotelian approach used in *System der Sittlichkeit* (see Hegel 1991a, p. 197 (§156 Hotho addition)). Yet he employed the notion of totality only within the context of his mature conception of dialectical mediation whereby particularity was seen as central element in ‘the substance and true subjectivity of the concept’ – the ‘animating soul of the state is subjectivity’ (Hegel 1991a, pp. 286, 303 (§§278, 270)). If the actuality of the transition were to be traced, we may see his departure from the mixture of Spinoza’s doctrine of substance with Aristotle’s prioritisation of the whole in the *Phenomenology*: ‘That the True is actual only as system, or that Substance is essentially Subject’ (Hegel 1977, p. 14). See also Ilting 2006, pp. 17, 34–5 for a similar discussion where he shows how Hegel departs from Spinoza already in the Jena lectures on the history of philosophy in 1805–6 where Hegel uses Aristotle’s critique of the Eleatics to undermine Spinoza’s doctrine of substance.

<sup>137</sup> Notable in this respect is Ilting’s study of *System der Sittlichkeit* (2006), which Riedel 2011 in turn follows to the letter.

<sup>138</sup> See most infamously Hegel 2002, p. 35: ... ‘murder does away with the life of the individual subject, but *Sittlichkeit* does this as well’. Hegel, however, goes on to qualify this and this will be central to the ensuing discussion.

the opposite of the negative or the individual [*dem Einzelnen*] ‘according to nature’.<sup>139</sup>

What Ilting points to is what he sees as the unresolved character of Hegel’s metaphysics at this stage, which in its tendency towards totalisation completely abolishes the individual (the negative) as such in the natural substance (the positive) of the political community. ‘In affirming this equivalence and final identity of things within and things without, of ego and non-ego, of familiar and unfamiliar, Hegel affirms the insight of Romanticism’.<sup>140</sup> And it is precisely at this time (1801–3) that Hegel is also closest to Friedrich Schelling (1775–1854). Yet as Ilting has remarked in this respect: ‘what is initially most conspicuous might indeed have the least significance – Hegel’s dependence on Schelling’s language [*den Sprachgebrauch Schellings*]’.<sup>141</sup> Indeed I will follow Ilting in this respect, and leave any possible ‘insights of Romanticism’ to the side as inessential to my argument. It is my contention that what *is* essential is to identify how the development of Hegel’s political thought in this period is characterised by the problem of the individual, and how this entails organisation before thought and consciousness are fully developed as mediation by the end of the Jena period (1805–7), which, as conceptual elements of mediation, will allow Hegel to more fully elaborate how the inwardness of the subject can be fully identified with the substantiality of the external positive order of law and politics.

In the next subsection I will analyse the beginning of Hegel’s manuscript that, as an encounter with the modern tradition, develops from his encounter with Kant in *Der Geist des Christentums und sein Schicksal* (1798–1800). I will show how the insufficiencies of reconciliation with the law in the Christian religion for Hegel reaches its limit by the beginning of the Jena period, and how the taking up of the classical tradition of Plato and Aristotle and the principle of love in the family leads Hegel to a reformulation of the bases of the modern political tradition. I will then show how by prioritising activity and the lack of self-subsistence Hegel, following the ancients is led to a novel description of the house community and a higher good ( $\beta$ ) – the teleological unfolding of the political and of *Sittlichkeit* that will determine his mature *Rechtsphilosophie* (1817–31). This

---

<sup>139</sup> Ilting 2006, pp. 15–16; compare Riedel 2011, pp. 82–3.

<sup>140</sup> Barth 1973, p. 392.

<sup>141</sup> Ilting 2006, p. 23.

follows logically from the doctrine of potentialities [*Potenzen-lehre*] (or levels) in *System der Sittlichkeit* that Hegel develops to show how the ethical community is organised,<sup>142</sup> which will imply the substantive development of the *Stände* at level of the constitution.<sup>143</sup> Thus far in this short introduction I have introduced some of the context and contents that will shape *System der Sittlichkeit*. In the final subsection ( $\gamma$ ), I will substantively analyse the structure of rule in this early manuscript in detail. This will in turn critically frame my approach to the individualist natural law question that returns at the close of the Jena period (1805–7) and that I will engage with more substantively in the final part of this chapter (IV.3).

#### $\beta$ ) *From Love as Reconciliation to the House Community*

The significance of the religion of early Christianity for the young Hegel in the Frankfurt period (1797–1800) is attested to in *Der Geist des Christentums und sein Schicksal* (1798–1800). What is essential to take away from Hegel's explication is how love overcomes the opposition between the (Kantian) law and the individual (will), which he conceives at this stage as their 'fulfilment'. The example of love that overcomes the moral command and the law in *Der Geist des Christentums* is Jesus's Sermon on the Mount, thus giving weight to the infamous statement by Taubes that 'Kant is the Old Testament and Hegel the New Testament of German Idealism'.<sup>144</sup> For the young Hegel, love overcomes the external form of the law, because it 'is', as he terms it, 'which is the synthesis of subject and object, in which subject and object have lost their opposition ... while in the Kantian conception of virtue this opposition remains, and the universal becomes the master and the particular the mastered'.<sup>145</sup>

In the 'fulfilment' of both the laws and duty, their concomitant, however, the moral disposition, etc., ceases to be the universal opposed to inclination, and inclination ceases to be particular, opposed to the law, and therefore this correspondence of law and inclination is life and, as the relation of differentials to one another, love; i.e., it is an 'is' which expressed as ( $\alpha$ ) concept, as law, is of necessity congruent with

<sup>142</sup> Indeed the doctrine of potentialities is a perfect example of Hegel's use of Schelling's language (see Schmidt 2004, pp. 116ff).

<sup>143</sup> See Hegel 2002, pp. 51–70.

<sup>144</sup> Taubes 2009, p. 149.

<sup>145</sup> Hegel 1996, p. 214.

law, i.e., with itself, or as ( $\beta$ ) reality, as inclination opposed to the concept, is likewise congruent with itself, with inclination.<sup>146</sup>

Already in this early manuscript one can get an inkling of what will lead Hegel to conceive the identity of individual right in the positive laws of the ethical community insofar as right and duty are recognised in the form of life and as real whereby the individual and law become unopposed and are reconciled. Thus from this very early period onwards, for many commentators, the eventual shape, formation, and significance of *Sittlichkeit* in Hegel's mature work can be grasped.<sup>147</sup> In the space of a few years from *Der Geist des Christentums und sein Schicksal* (1798–1800), Hegel transformed his individualist approach to natural law and the Christian solution of love as overcoming the Kantian/Mosaic law. According to the interpretation I will put forward in this subsection the inner reconciliation of the subject with the law present in the Frankfurt manuscript must turn outwards for Hegel and it is precisely this that he foregrounds in his interpretation of *Sittlichkeit* in the early Jena period (1801–4).

As I already pointed out above (III.2) in reference to K.H. Ilting, Hegel's early concept of love as a solution to the Kantian moral law as it emerged in *Der Geist des Christentums* was one-sided and thus a limited ideal.<sup>148</sup> This is apparently the case even if it lay at the basis of Hegel's development of *Sittlichkeit*, firstly as love, then as life, and finally as spirit. The reconciliation of the will and inclination through love rather than the moral command remained *internal* to the subject, emancipation was strictly in the heart and stood opposite the becoming worldly of the Christian,<sup>149</sup> which accorded with Hegel's later historical interpretation of spirit. By contrast, 'a healthy folk-religion is necessarily a public religion; it invests and embraces all the normal activities and institutions of a healthy public life, i.e. a political society of free citizens'.<sup>150</sup> Thus for Hegel in *System der Sittlichkeit* the dichotomy of the *inner* and the *outer* must come undone. This he attempts to do in the manuscript in the cleft from the natural continuum by way of the doctrine of

---

<sup>146</sup> Hegel 1996, p. 215.

<sup>147</sup> See Ilting 1983, pp. 244ff for this interpretation of the importance of the Frankfurt period and its relation to Hegel's mature concept of *Sittlichkeit*; compare Henrich 1983, p. 17; and Riedel 2011, p. 95 each of whom also see the importance of this early moment, and for the latter of a return to its individualist bases subsequent to the early Jena period as I noted above at the outset of this section.

<sup>148</sup> See Ilting 1983, p. 243.

<sup>149</sup> See Hegel 1999, pp. 197–224 for Hegel's Berlin (1827–31) interpretation.

<sup>150</sup> Harris 1972, p. xxiv.

potentialities – in tool, language, labour, etc. – or in concrete organisations – family, house community, *Stände*, administration of justice, etc. – and the absolute movement of the concept, whereby dichotomy itself disappears. This is the significance *Sittlichkeit* takes on in Hegel's early *Rechtsphilosophie*.

Absolute life remains something inner because it is not absolute concept, thus inner life [*Inneres*] does not appear together under the form of its opposite [*Entgegensetzung*], the outer [*Äußern*]. And for the very same reason absolute intuition does not exist [*vorhanden*] for the subject in this relationship as such, and thus its identity cannot be absolute.<sup>151</sup>

The more proximate ideal of love's relation to *Sittlichkeit* is present in the Frankfurt fragment on religion and love (1797/98) where Hegel develops the concept as an initial communal bond that 'excludes all oppositions', and through the generation of the child leads to the immortality of the people.<sup>152</sup> The bases for the later development of the family in *System der Sittlichkeit* (1802–3) and the relation between parents and children, which I will analyse, is originally established in the fragment. Thus love now remains a principle internal to the family, which is *Sittlichkeit* constructed on natural (spiritual) feeling, and *not* morality, which Hegel interprets from the Jena natural law essay onwards (1802–3) as inherently individualised.<sup>153</sup> This is an important distinction for Hegel, which would lead him to assert the primacy of *Sittlichkeit* as the customs of a people over morality as a passing stage – indeed a lower stage – in the movement towards the political community.<sup>154</sup> It is the forcefulness of this development, which breaks out in an embryonic fashion in the latter half of the Jena natural law essay as an interpretation of morality as a declining form of ethical life, as the decay of the attic *polis* as it appears with the rise of absolute individuality and equality in his interpretation of the development of universal legislation in Rome (see III.3). Yet, as Ilting has noted,

this presupposition becomes questionable for him by the end of the Jena period once he began the historical unfolding of individual self-consciousness through

---

<sup>151</sup> Hegel 2002, pp. 4–5.

<sup>152</sup> See Hegel 1996, pp. 306, 307. This will be the 'empirical' (natural) limitation of the family as a model for *Sittlichkeit* at the close of the first part of *System der Sittlichkeit*, I will examine this below; it will also determine Hegel's mature interpretation in the *Grundlinien* §158 (Hegel 1991a, p. 199).

<sup>153</sup> See Hegel 1999, p. 159; and Ilting 1983, pp. 242ff.

<sup>154</sup> This remains true for Hegel from the Jena natural law essay onwards.

which the original ethical unity of the Greeks would be destroyed, not strictly as a moment of decay but also due to a higher stage of human self-understanding.<sup>155</sup>

That is to say, once Hegel had foregrounded the history of self-consciousness as freedom in the *Phenomenology* (1807), the attic *polis* became an equally limited ideal just as Christianity and its restriction to the internal sphere. The significance of the Reformation for Hegel – and also its eventual failing as it also does not turn fully outwards – lies in the becoming worldly of the ethical in the family (love, procreation, education), trade and industry (labour).<sup>156</sup> What I initially want to note here is that while morality may be a declining form of consciousness for Hegel, the natural (spiritual) *Sittlichkeit* of family love is not. (I will analyse its natural and spiritual dimensions). Hegel continues into his maturity in the *Grundlinien* (1820/21) to maintain the natural (spiritual) family as the root structure of ethical life. And the concept of the *Stände* is also preserved along similar lines and the other institutions of modern civil society and the state as well.<sup>157</sup> I will be able to draw larger conclusions from analysing the natural (spiritual) family as the root structure of ethical life when I turn to analyse the house community in *System der Sittlichkeit* in more detail. But this will also lead to broader consequences in the interpretation of Hegel's larger political project as an attempt to reformulate the bases of the modern political tradition throughout the remainder of the chapter.

Following Aristotle, for Hegel lack and human need lay at the basis of the tendency to human association: from the organisation of the house and its common activities, to the higher good of activity in the political community. Ilting noted the significance of this for Hegel's appropriation of modern political economy. Indeed the *Grundlinien* (1820/21) also proceeded along the same bases of lack, needs, and common labour in the section on the 'system of needs', which in turn led to the distinctive institutions of Hegel's conception of the modern state. Yet in the *Grundlinien* an important difference is to be noted, Hegel began at least in a conventionally 'modern' fashion from the fiction of a state of nature, from 'abstract right'.<sup>158</sup> By contrast Hegel's attempt to develop distinctive

---

<sup>155</sup> Ilting 1983, p. 244.

<sup>156</sup> See Hegel 1999, pp. 197–224. Each of these aspects is also identifiable in *System der Sittlichkeit* as I will analyse.

<sup>157</sup> See Hegel 1991a, pp. 272–3 (§255).

<sup>158</sup> See Ilting 1971, p. 91; see *Politics* 1291a1–1291a30, 1328b15–1328b22; Hegel 1991a, pp. 219, 227, 233 (§§181, 189, 199) on how subjective need and satisfaction leads to a system of needs and common labour.

forms of mediation in *System der Sittlichkeit* began with the natural continuum as it had for Aristotle. In the first part of the manuscript this proceeds through various levels or potentialities on the basis of the discovery of the tool (in its appropriation of the object, the annihilation of the immediate), need and enjoyment, memory and speech (the tools of reason), (family and mechanical) labour, etc. Indeed, with the latter modern political economy makes an appearance alongside traditional Greek (and German) *oikonomik*, while (Christian) family love structures the ethical relations of the household.<sup>159</sup> From the very outset of the manuscript it is a question of the dissolution of the relation between the inwardness of the individual and the external, empirical, order, whether that takes the form of nourishment through need, and proceeds by way of all of the other levels in their totality. As the title of the first part of the manuscript indicates, *Sittlichkeit* here is to be understood *as a relation* between the inner and the outer;<sup>160</sup> it is not yet the totalisation of the inner and the outer as it will appear in the final part of the manuscript where *Sittlichkeit* becomes truly absolute. For at this stage,

absolute ethical life appears as nature, because nature itself is nothing other than the subsumption of intuition under the concept; intuition also remains the unity of the inner, whereby the multiplicity [*Mannigfaltigkeit*] of the concept and its absolute movement rises to the surface.<sup>161</sup>

For Hegel in natural *Sittlichkeit* – the first part of the manuscript – it will a question of tracing this absolute movement as it rises and then recedes in the different *Potenzen*. Love will appear paramount in this context, dissolving the dichotomous relation of internal and external most completely insofar as it is raised from a natural to a spiritual dimension in the generation of the concept of the child wherein which the parents see the common product of their love. The ‘oneness of nature’ existent in love separate from ethical life is ‘nullified’ in ‘the relation of *parents* and *children*’.<sup>162</sup> From this point onwards it is the family then – the family as the sphere of love – that forms the nucleus of ethical life and, along with education [*Bildung*], will come to be a central aspect of Hegel’s later conception of the political community. Yet Hegel already conceives of the separation of

---

<sup>159</sup> See Brunner 1949, pp. 33–61 for the traditional description of the economics of the household and its distinction from the modern.

<sup>160</sup> Hegel 2002, p. 4.

<sup>161</sup> Hegel 2002, p. 3.

<sup>162</sup> Hegel 2002 pp. 12–13.

parent and child in *System der Sittlichkeit* as reconciled in the common labour of the house community, which is an aspect of the ‘universal interaction [*Wechselwirkung*] and education of humanity’.<sup>163</sup> To contrast once more Hegel’s development of the family to the earlier Frankfurt version of love overcoming the law (1798–1800), another important difference in love should be noted in respect to *System der Sittlichkeit* – love now leads to a complex of the broader needs of the house community, it is a reciprocal *relation* between parents and dependents, which are then in turn related to the broader sphere of the system of needs; that is to say, love is no longer an isolated internal phenomenon, but a dissolution of the dichotomy through the ethical relation. As Hegel says in this early Jena manuscript,

The absolute unity of both [parents and children] immediately divides itself in the relation [*Verhältnis*]; the child is man subjective but in such a way that this particularity is ideal [and] is only an external form. The parents are the universal and the work of nature realises the negation of this relationship just as the work of the parent does, which continually negates the external negativity of the child and in so doing therefore establish a greater inner negativity and thereby a higher individuality.<sup>164</sup>

Family love in *System der Sittlichkeit* appears as a moment of ‘real rationality’ and as a ‘living substance’ through the ‘middle’ of the child. It is ‘the highest, individual feeling of nature [*Naturgefühl*], a feeling such as the totality of the living sexes that are whole in the child so that he is thus also absolutely real, individual and real for himself’.<sup>165</sup> Hegel points to the fact that insofar as the marriage remains one of nature it does not yet truly belong to ethical life, but ‘the unity of nature is abolished in a completely opposite individuality’ in the generation of the child.<sup>166</sup> Insofar as Hegel largely conceived of labour at this nascent stage of human activity in *System der Sittlichkeit* within the classical horizon of Aristotle’s *Politics*, as *oikonomik*, he thus speaks of ‘the totality of labour’ at the next level [*Potenz*] as the communal labour of the family as an *individual*.<sup>167</sup> The family now represents the overcoming of feeling as well as desire and need and exists in

---

<sup>163</sup> Hegel 2002 p. 13 (original emphasis).

<sup>164</sup> Ibid.

<sup>165</sup> Hegel 2002, p. 14.

<sup>166</sup> Hegel 2002, p. 13 (original emphasis).

<sup>167</sup> Ibid.



separation from nature even if it grew out of natural feeling.<sup>168</sup> By way of reference to the central element of activity in Plato and Aristotle, Hegel is complicating the moral autonomy that had ended in a metaphysical absolute in Kant's *Metaphysik der Sitten* thus challenging the notion of autonomy as such at the level of natural need and enjoyment. On the other hand, in beginning with the house community, he has also undone what he saw as the fallacy of the Hobbesian atomistic model that began with the isolated individual in the state of nature. The reliance on the ancients in Hegel's inspiration for *Sittlichkeit* is further revealed in the character of his solutions in the emergence of economic inequality.<sup>169</sup>

At this point in my discussion it is necessary to make some summarising remarks on what I have been laying out in terms of *System der Sittlichkeit* and the few other manuscripts I have referred to in this subsection before moving on to its conclusion and indicating, in brief, what will follow, and how it is tied to the present concerns. The central issue of this subsection has been to trace the dissolution of the inner and outer in terms of the love relation existent in the household, which led to the generation of the child and to ethical life as a relation. I also briefly listed some other examples from *System der Sittlichkeit* each of which were designed to act as 'middle terms' mediating between the individual and the natural milieu. I focused on the family precisely because it emerged from the natural relation and was raised to the spiritual. Through exploring how this developed on the basis of human need and activity by way of the foundational influence of Plato and Aristotle, Hegel has been able to provide a concrete description of common organisation that could lead to the political even if it is not yet in view. This will be at the centre of my concerns in the remainder of this subsection, which will lead into the more elaborate discussions involving the *Stände* and the structure of rule below ( $\gamma$ ).

---

<sup>168</sup> Compare Hegel 1991a, p. 199 (§158).

<sup>169</sup> See Hegel 2002, pp. 78ff and his reference to the Athenian law for the defrayment of festival expenses (p. 79 footnote 1), which once more reveals the proximity to Aristotle (see *Politics* 1330a12). Hegel's solution at this part of manuscript for the 'necessary inequality' established between the *Stände*, the intervention of the state in the economy, remains a consistent character in his political thought. According to Michael Wolff's reading of the organic state in Hegel, its universal 'purpose ultimately cannot consist in anything else other than the "union" of the members of civil society that tend to disintegrate into a plurality of classes [sic!] (§258). The final end and purpose of the state is consequently the union of the various classes [sic!] with one another' (Wolff 2004, p. 307).

Clearly a concrete description of common organisation that could lead to the political was Hegel's intention all along. I noted this at the beginning of this section ( $\alpha$ ) when I quoted from the very outset of *System der Sittlichkeit* where Hegel had referred cryptically to the Hobbesian structure of sovereignty in the absolutist state that 'hovered' over the individual. Yet by speaking of its 'formalism', the target of the polemic was also shown to be clearly Fichte (Kant and Rousseau).<sup>170</sup> For Hegel, the problem of Hobbes's *fictive persona* is precisely that, it is *fictive* and not *real*: 'before the *populus* only the *multitudo* exists [*gibt es*] for Hobbes, which is apparent in the *pactum unionis*, and this *populus*, which begins in the *civitas* ... is a *persona moralis* – that is to say, a fictive entity [*Wesen*]'.<sup>171</sup> By contrast, it can be clearly seen how powerful the classical tradition has become in Hegel's hands in answering a modern political problem – the individual isolated opposite state power or the power of the state founded on the fiction of isolated individuals in the state of nature. By way of the foundational reference to activity as the ordering principle of human community, Hegel has established a real being in his doctrine of potentialities. As I will show below ( $\gamma$ ), the political community will now receive the structure it was lacking in actuality if only on a theoretical plane.<sup>172</sup> Indeed, as H.S. Harris stated, Hegel set the manuscript aside and returned to the *Verfassungsschrift* at precisely the moment when he began to articulate the Aristotelian forms of government.<sup>173</sup> This reveals the contiguity of these manuscripts as well as their common concern and political philosophical aim – the formation of a political community and how it may be brought into being.

In *System der Sittlichkeit* – as well as in *Philosophie des Geistes* (1803–4) – recognition takes place between patriarchal households in conflict with each other. In the former manuscript this takes place prior to the organisation of the *Stände* in the section on *Die Staatsverfassung* – by contrast, the *Stände* are absent from the *Philosophie des*

---

<sup>170</sup> Hegel 2002, pp. 3–4. I refer the reader to the insightful remarks by H.S. Harris and K.H. Ilting the subsection above ( $\alpha$ ) on the relation between Hobbes and Fichte at this stage in Hegel's development.

<sup>171</sup> Bobbio 1975, p. 86.

<sup>172</sup> I refer the reader to the outset of the *Verfassungsschrift* where Hegel appeals (cryptically) to the authority of Spinoza from the outset of his *Political Treatise* to affirm his political realism. And, precisely, contra Kant and what 'ought to be' (see Hegel 2004, pp. 3, 4).

<sup>173</sup> See Harris 1983, p. xlix.

*Geistes* (1803–4).<sup>174</sup> Hegel will later recognise the patriarchal condition as ‘an initial stage’ when a ‘nation [*Volk*] is not a state’.<sup>175</sup> It is the addition of law that makes the difference here, which as I will show emerges near the end of *System der Sittlichkeit*, but which Hegel still conceives of as ‘abstract’, ‘mechanical’, and ‘arbitrary’.<sup>176</sup> Even if it is a question of consciousness, it is not yet identified with spirit and with movement. This will first appear in the *Philosophie des Geistes* (1803–4), while right will be identified with conceptual recognition only in *Philosophie des Geistes* (1805–6). For Hegel in the *Grundlinien*, the domestic association may be constructed on custom, but

it lacks the objectivity of possessing a universally valid existence [*Dasein*] for itself and others in laws as determinations of thought, and is therefore not recognized; since its independence has no objective legality or firmly established rationality for itself, it is merely formal and does not amount to sovereignty.<sup>177</sup>

Something similar is also the case in *System der Sittlichkeit*, where the domestic association in the battle for recognition is only rudimentary form as it is based on a series of private patrimonial relationships.<sup>178</sup> War at this stage is merely another one of those private relationships. Indeed, Hegel distinguishes war at the level of the state as ‘not a war of family against family, but of nation [*Volk*] against nation’.<sup>179</sup> But in the articulation of the conflict between house communities he points to the genetic origin of the state. But this is to jump too far ahead in the manuscript, as Hegel articulates the potentialities in a much slower and more methodical fashion. Indeed, he already limits the universality of the family in a similar way in which he did to the formalism of the *persona ficta* that ‘hovered’ over the individual. He does this at the outset of the ‘Second Potentiality of the

---

<sup>174</sup> Hegel 2002, p. 57. This follows on the principle of the transition between domestic to political society in Aristotle: ‘And therefore, if earlier forms of society are natural, so is the state, for it is the end of them, and the nature of a thing is its end’ (*Politics* 1252b 28–35).

<sup>175</sup> Hegel 1991a, p. 105 (§75); it is also a context in which he rejects the *Herrschafts-* and *Gesellschaftsvertrag*.

<sup>176</sup> Hegel 2002, 83.

<sup>177</sup> Hegel 1991a, p. 375 (§349).

<sup>178</sup> Hegel 2002, p. 62.

<sup>179</sup> Hegel 2002, p. 54. Hegel distinguishes war proper as ‘indifferent’ and ‘free of all personality’, the war of family against family is rather characterised by the blood feud and revenge – see also his infamous discussion here on the ‘indifferent’, ‘non-personal’, and ‘universal’ character of death appearing with the invention of firearms.

Infinite: Ideality [*Idealität*] in the Formal [*Formellen*] or in the Relation'.<sup>180</sup> The family is now seen to remain 'purely ideal, because this potentiality is itself a formalism [*formelle*].

The ideal is only the abstraction of the ideal; there is as of yet no question [*Rede*] that it would be constituted for itself as such, and become a totality. Just as in the preceding level [*Potenz*] where the individual [*Einzelne*] ruled so too here the universal is dominant. At the first level this remained hidden, an inner and there speech itself was only considered an individual, in its abstraction. In this subsumption individuality [*Einzelheit*] immediately ceases.<sup>181</sup>

Thus Hegel discusses once again how the formal concept 'hovers' over the individual that has now, however, become a 'fixed relationship' in the 'living natural relation' – it has negated the individual as such through the primacy of the house community.<sup>182</sup> These potentialities now in turn remain isolated from universality, which is no longer opposed to them, as it had been at the first level. These relations of love, the child, education [*Bildung*], etc. must now be reunited with the universal. This is the case insofar as the universal no longer negates their particularity, but indeed preserves them through the 'equality set up [*gesetzt*] among them, or the universal that appears in them'.<sup>183</sup> What Hegel is tracing here is how the legal relationship slowly replaces patriarchy, and leads to a 'society' – the relations of surplus labour, price, etc. that now come to the forefront of his discussion in the 'Second Potentiality of the Infinite: Ideality [*Idealität*] in the Formal [*Formellen*] or in the Relation'.<sup>184</sup> What Hegel points to in his discussion is development of a situation that will eventually lead to equality before the law [*Gesetz*] in the manuscript, but which appears here at the level of natural *Sittlichkeit* in the form the various households participating in a common community that preserves their right to property.<sup>185</sup> These levels will also, however, be limited – mere stages in the construction of the community – as legal right remains an abstraction: 'The individual is a property owner, yet legal ownership is not absolute in and for itself'.<sup>186</sup> Indeed, it leads to the

---

<sup>180</sup> Hegel 2002, p. 19.

<sup>181</sup> Ibid.

<sup>182</sup> Ibid.

<sup>183</sup> Hegel 2002, p. 20.

<sup>184</sup> Hegel 2002, p. 19.

<sup>185</sup> See Hegel 2002, p. 61 where he discusses how 'personal injury was infinite at the natural level, a thing of honour and of the whole person'. By contrast, 'in the real system of reality it becomes this determined abstraction of injury' – i.e. it leads to a legal system whereby injury becomes abstract and indifferent at the level of absolute *Sittlichkeit*: legislation.

<sup>186</sup> Hegel 2002, p. 21.

negative (abstract) freedom of the individual that establishes itself opposite the universal in a conflict with it. Hegel's discussion proceeds from the property relation to surplus labour and the 'pure abstraction, or endlessness' – what becomes a false infinity – of 'possession in right as property'; he shows how individuality is an abstraction at this stage of legal right, and how it constitutes itself as the negative of the universal.<sup>187</sup>

Hegel's relationship to a philosophy of nature at this stage is implicit in his attack on empiricism and formalism in modern natural law<sup>188</sup> – in the relationship of natural right as property and individual equality that lay at the foundation of the new modern society. And this becomes incredibly clear when he speaks of the ideal connection in the property relation as a (false) infinite of legal right and surplus possession and 'the real relationship [*Beziehung*] of use and need'.

The separation is severe, but for that very reason so too the drive for unification [*der Trieb der Vereinigung*]. Just as the magnet holds its poles apart without this drive to reunite them so too, when it is severed, their identity being cancelled, [we have] electricity, a more severe separation, a real antithesis, a drive for unification.<sup>189</sup>

The dialectic reappears here as it had in the relationship of family love and the relation of parents to the child, yet at the level of what Hegel calls 'difference in movement'.<sup>190</sup> It is only slowly throughout Hegel's development that the modern fiction of the state of nature 'assumes the features of society in which a network of elemental economic relations develops (so much so that Hegel calls it "bourgeois" or "civil society")'.<sup>191</sup> Yet such elemental economic relations are traced in *System der Sittlichkeit* and precisely as a place of surplus labour, possession, use and need, which in turn lead to legal right and the establishment of value; this is 'equality as abstraction, the ideal measure' actually found empirically ...[as] *price*'.<sup>192</sup> This will lead Hegel to discuss property as a relation that leads to recognition in exchange and the development of the contract, which he in turn undoes as a real basis by way of the relationship of lordship and bondage where 'living individual confronts living individual' – obviously now a contrast to the limitations of the

---

<sup>187</sup> Hegel 2002, p. 23.

<sup>188</sup> See Harris 1983, p. 110, footnote 2.

<sup>189</sup> Hegel 2002, p. 23.

<sup>190</sup> Ibid.

<sup>191</sup> Bobbio 1989, p. 14.

<sup>192</sup> Hegel 2002, p. 24.

‘formal’ relation of right established at the preceding level.<sup>193</sup> I have traced lordship and bondage in some detail above (III.4), yet in the present discussion I want to relate it to the dichotomy of the inner and the outer: i.e. by way of the logic in which Hegel’s arguments in *System der Sittlichkeit* proceed through the various potentialities in the construction of the real bases of ethical life. This will allow me to transition to the next stage of my own argument insofar as Hegel limits the relation of lordship and bondage in turn as one of ‘absolute identity’.

Hegel’s discussion is structured in a similar fashion as the transition from the sphere of needs (the *oikos*) to the higher activity of the *polis*. What is not present here is the fully developed dialectic that will be established later whereby the labour relation as the true negative overcomes the lord through the production of the thing. Yet the distinction between *indifference* and *difference* for Hegel in *System der Sittlichkeit* will lead to the necessary conceptual genesis of the *Stände* – the labouring, property owning, and merchant *Stände* as a system of organised inequalities, of differences,<sup>194</sup> which will be at unity in the later conception of the ethical life in the manuscript as I will show below (γ). The relationship of lordship and bondage as Hegel proposes it here is moreover precisely opposed to ‘abstract equality and the formal thought of life [which occurred] at the first level, a purely ideal thought without reality’.<sup>195</sup> Hegel leads his discussion back again to what had appeared at the first level, the problem of the formal structure of

---

<sup>193</sup> See Hegel 2002, pp. 26ff.

<sup>194</sup> See Hegel 2002, 51 where the first inkling of the organic structuration of absolute *Sittlichkeit* appears and will be related firstly to the virtue of ‘the ethical life of individual’, which will in turn lead to the distinction between *Stände*. The *Stände* are not explicitly mentioned in this section of the manuscript. They are directly related, however, insofar as Hegel has been discussing property, contract, and the individual as a legal person, which will later lead to the division of labour in the manuscript (Hegel 2002, pp. 51–62). What can be seen in this instance is the subject-cause in the first part to the institution-consequence in the last part of the manuscript where *Sittlichkeit* is discussed in the system of needs, the administration of justice, and the system of government (Hegel 2002, pp. 47–84). There is a problem here, however, insofar as Hegel is discussing natural and not absolute *Sittlichkeit* where the *Stände* appear. Later when he turns to the explicit discussion of the *Stände*, ‘difference’ will characterise the *Stände* of labour, possession, acquisition and ownership and will in turn be related to ‘righteousness’ [*Rechtschaffenheit*] (see Hegel 2002, pp. 55, 59). See my discussion below (γ) on this in relation to the legal question.

<sup>195</sup> Everything I am discussing here should be closely compared to the *Grundlinien* §§302–7 where the necessary inequality of *Stände* reappears at the political level. Hegel shows how the universal *Stand* develops and is derived from the sphere of *difference*, of civil society and thus the market and tends towards professionalism and careerism in politics. This is opposed to the *substantial Stand* that, insofar as it has independence of property, develops the proper perspective for political leadership (*indifference* in *System der Sittlichkeit*) (Hegel 1991a, pp. 345–6).

sovereignty that ‘hovered’ over the individual, which he now interprets as the ‘equality of abstraction’, as a ‘formal thought of life’ lacking in ‘reality’.

The plurality is here the plurality of individuals because, at the first level, absolute individuality had been posited in the formality of life; [it was] posited as the form of the inner, since life is the form of external indifference [*der äußern Indifferenz ist*]. And where there is a plurality of individuals, there is a relation between them, and this relation is lordship and bondage.<sup>196</sup>

From here Hegel will be able to develop indifference as the principle of the political leadership in *System der Sittlichkeit*. This, however, allows for the continuance of the spheres of difference and relies on them as structuring elements of the community even if they are subordinate systems in the entire organism.<sup>197</sup> The relationship of lordship and bondage provides Hegel with an initial conceptual tool whereby he can transmute the abstraction of a mechanistic equality dominant in formal absolutism – which led *either* to the chaotic multitude of revolutionary France (Fichte, Rousseau) *or* the sovereign (Hobbes) of traditional continent absolutism – into an organic, concrete and real structure: a ‘totality that can only be the unity of essence and form’.<sup>198</sup> The reason why the relationship of lordship and bondage is central for Hegel is because feudalism was an originary means to the resistance to absolutism, which will later be formed into the *Stände*. Yet lordship and bondage will be limited in turn as it is based on the private patrimonial relationship. For Hegel in *System der Sittlichkeit*, the indifference of the free being that subordinated the bondsman through a trial of might or power entered into the inner life of the latter. There it was ‘concealed’ and left to relative identity and could not be reconciled externally due to the nature of the subordination. In this can be seen an inkling of Hegel’s later radical inversion of the relationship insofar as here the bondsman is the one to have truly understood what has taken place and it leaves something unsettled in the dialectic. Thus for Hegel lordship and bondage also become ‘formal’, ‘hovering’ over the individual as a legal right: i.e. as feudal privilege and arbitrary *dominium*.<sup>199</sup>

At the end of ‘Absolute Ethical Life According to the Relation’, the first part of *System der Sittlichkeit* that I have been analysing, Hegel is led back to the family as the

---

<sup>196</sup> Hegel 2002, p. 29.

<sup>197</sup> Hegel 2002, p. 64.

<sup>198</sup> Hegel 2002, p. 63.

<sup>199</sup> Hegel 2002, p. 30; compare, pp. 61–2.

universal, as the relationship of needs, of parents to children that I traced in detail above. He opposed this relation of love now to both property and contract and the Kantian contractual basis of marriage in *Metaphysik der Sitten* (1797).<sup>200</sup> Yet even if the family was ‘the ultimate totality nature was capable of’ it too remained ‘merely inner’.<sup>201</sup> The form of its ‘externality’, the bearing and education of children was strictly ‘empirical’ and, by contrast, in the ‘true totality form is in absolute unity with the essence’.<sup>202</sup> It is to this discussion at the level of the structure of rule – *Sittlichkeit*, *Die Staatsverfassung* – that I will now turn. As for Aristotle so too for Hegel, natural ethical life, the originary customs of the house community led to the higher form of association in the political community where, as he put it in the contemporaneous Jena natural law essay (1802–3) ‘it is the nature of absolute ethical life [*Sittlichkeit*] to be a universal or an *ethos* [*Sitten*]’.<sup>203</sup>

#### γ) *The Structure of Rule and Freedom – The System of Sittlichkeit*

In the present subsection I will engage substantively with Hegel’s conception of ethical life as an attempted solution to the modern dichotomy of inner and outer that had dominated the absolutist structure of rule once Hobbes had introduced it at the core of his political theory. I have already been engaging in this issue in the two previous subsections (α, β), but now I will focus on the institutions of *Sittlichkeit* that move beyond the family, and which Hegel envisions as a system of real relations ‘at rest’ and in ‘*absolute movement*’.<sup>204</sup> This involves analysing the elements that make up the ethical community in *System der Sittlichkeit* as well as the place of the individual within them. The latter is of central concern for my argument on the importance of the early Jena period (1801–4) in Hegel’s formation and the existence of the *Stände* that receive their first systematic treatment in this manuscript and will be a constant feature of Hegel’s *Rechtsphilosophie* from this point onwards.<sup>205</sup> As I have shown above Hegel faces the modern political

<sup>200</sup> See Hegel 2002, pp. 26ff. This can be traced at least all of the way to the *Grundlinien*, see Hegel 1991a, pp. 201, 203 (§161 Griesheim addition (1822/23), §163).

<sup>201</sup> Hegel 2002, pp. 32–3.

<sup>202</sup> Ibid.

<sup>203</sup> Hegel 1999, p. 159.

<sup>204</sup> See Hegel 2002, pp. 51, 63.

<sup>205</sup> I have already mentioned (β) the important exception of the *Philosophie des Geistes* 1804–5. I will have the opportunity to make more of this below, following H.S. Harris.



tradition in this early period through an appeal to the classical tradition of natural law, which conceived of the political community as by nature prior to the individual and as a higher order of perfection. For the modern political tradition since Hobbes, the entirety of its efficacy pivoted on individualism and natural right in the construction of the political community. It was thus clearly an inversion of the classical paradigm. And I have shown this most substantively already in Chapter Three.<sup>206</sup> By contrast, Hegel was able to reorient the modern fiction of the isolated individual and to turn the house community into the central basis of his developing theory of ethical life through the primacy that the classical tradition received in his hands. As I have shown ( $\beta$ ), he did this by way of human activity – the emergence of the human being from the natural continuum – and the meeting of the common needs of the household combined with the Christian conception of love taken over and expanded from his Frankfurt period (1787–1800). In this sense for the young Hegel, unlike the modern political tradition the individual in no way preceded the totality but was essentially its consequence. I proved this most emphatically through Hegel’s discussion of the generation of the child proceeding from the love relationship of the parents, and then through the development of common law between families in order to assure their continued existence ( $\beta$ ). This was the beginning of a development whereby the inner became the outer in an, albeit at this stage, ‘empirical’ or ‘natural’ fashion – and thus Hegel came to limit it to the strictly inward in turn. The following discussion will concern the way in which *Sittlichkeit* is ‘accordingly determined by the fact that the living individual is equal with the absolute concept’.<sup>207</sup> This involves the transition from ‘empirical’ to ‘absolute’ consciousness, to real *Sittlichkeit* whereby ‘the individual exists [*ist*] in a perpetual mode [*ewige Weise*’].<sup>208</sup> It is in this way that Hegel will be seen to re-establish a relationship to the tradition of *Sittlichkeit*, which had been determined in a one-sided fashion since the ‘epochal turning inward’ of the Christian religion whereby the individual lost their direct identity with the collective character of the community.<sup>209</sup>

At the outset of the section on *Sittlichkeit* in *System der Sittlichkeit* Hegel refers to the limitations of the principle of the family as a model for the ethical community. The

<sup>206</sup> In the present chapter I can refer the reader to the discussion of the ‘logical paradox’ in the construction of the *civitas* above (IV.1  $\alpha$ ) (in this I referenced Koselleck 1988, p. 32).

<sup>207</sup> Hegel 2002, p. 48.

<sup>208</sup> Ibid.

<sup>209</sup> See Ilting 1983, p. 203; Taubes 2009, p. 59 both of whom I have already quoted above (IV.1  $\alpha$ , IV.2  $\beta$ ).

problem was that it remained *in a relation* – even if it was a totality. The central issue was the determining character of *difference*, which had led to a formal type of equality that, in his words, was determined by the levels of nature [*Naturpotenzen*] and thus ‘remained something [*eine*] inner, not born outwards [*nicht herausgeborene*], and unexpressed’.<sup>210</sup> In his conception of the dialectic, he refers to its one-sidedness; this indeed I have traced above (β) through the various potentialities of natural ethical life, which came to express themselves sequentially. Moreover Hegel showed how each passed into formalism and had to be discarded in turn, as being unrepresentative of the ethical. By contrast what he conceives of as truly ethical is present in the rational as ‘absolute concept’ without relation, which is the cancellation of both sides; it is a universality that precludes further cancellation. It is what he already calls at this stage *the Idea*, which in his mature *Rechtsphilosophie* is the coincidence of form and content.<sup>211</sup>

What underlies Hegel’s rejection of the previous levels in *System der Sittlichkeit* in which he showed the transition of the inner into outer and its relapse into the formal, its return to the inward or merely ideal in opposition to the real, was that in these relationships ‘the absolute nature is in no way in spiritual form and thus is not existent as ethical life’.<sup>212</sup> It was in this way that he came to reject the family as an ideal for ethical life. And perhaps in this respect he once again followed Aristotle.<sup>213</sup> In the tradition of the identity philosophy, Hegel now says that ‘*Sittlichkeit* must be the absolute identity of intelligence, with the sheer annihilation of particularity and of relative identity which is all that the natural relation is capable of’.<sup>214</sup> Indeed, given such stark language it is difficult to reconcile such a conception with his later notion of the subject as the substance and subjectivity of the state – or of the accordance of subjective and objective spirit. Here Hegel has expressed the severity of his institutional ideal in its harshest form. As I have already noted above in reference to Kurt Rainer Meist and Manfred Riedel, the concepts of subjective and objective spirit were non-existent at this stage in Hegel’s development.

---

<sup>210</sup> Hegel 2002, p. 47.

<sup>211</sup> See Hegel 1991a, p. 22; 1991b, p. 1; and Chapter Three, conclusion.

<sup>212</sup> Hegel 2002, p. 47.

<sup>213</sup> See *Politics* 1252a9–1252a13. Yet, as Ilting indicated, there is a fundamental difficulty here in that Hegel treated the political community in terms of *absolute* ethical life in the third part of the manuscript and not in terms of the immediacy of natural ethical life as it appeared in the first (see Ilting 2006, p. 25). Thus while for Aristotle the political community was by ‘nature prior’ for Hegel, by contrast, it was absolutely prior.

<sup>214</sup> Ibid.

Yet Hegel speaks of a ‘complete equalisation’ in *System der Sittlichkeit* whereby accordance exists between the empirical consciousness (the individual) and the absolute consciousness (the totality) whereby each is transformed in turn. And it is necessary as concerns my argument here to analyse this structure in detail and how it is made real in and through the contingent character of subjectivity. That is to say, how subjectivity is transformed in Hegel’s hands from the isolated ‘conscience’ which is ‘only something inner’ and ‘not inner and outer simultaneously’ – i.e. ‘something subjective [but] not objective at the same time’ – to ‘the individual subsuming absolute ethical life under himself’ so that ‘it appears to him as his individuality’.<sup>215</sup> This is ‘because the ethical is the essence, the inner of the subject’.<sup>216</sup> This is what Hegel designates as *virtue*, as ‘subject-objectivity’ whereby ‘consciousness is the infinite, the absolute concept in the form of unity’ no longer as a relation but as the being of ‘opposites in the concept’.<sup>217</sup> It is only in understanding this process and the importance of the subjective moment already at this stage in Hegel’s early system, that his work can be sufficiently distinguished from Fichte; that is, to appear different and distinct from the coercion that Hegel himself rejected in the Jena natural law essay (1802–3).<sup>218</sup> It was there that Hegel had realised how coercion from above had its corollary in the identification of the abstract moral principle from below and its ascent to the absolute, precisely that contradictory character of absolutism that he isolated at the outset of *System der Sittlichkeit*.

It is important to note that not only does Hegel relate conscience to inwardness in *System der Sittlichkeit* and restrict it to the inner, just as Hobbes had most definitively done before him in his political construction of the *civitas*, but that he also relates consciousness to the apprehension of the absolute.<sup>219</sup> This absolute appears as ‘concept’ and is related precisely to the overcoming of opposition, to the cancellation of both sides (in this case, of inner and outer). Thus conscience and consciousness are to be

---

<sup>215</sup> Hegel 2002, pp. 36, 51 (original emphasis).

<sup>216</sup> Hegel 2002, pp. 51, 54; compare Riedel 2011, pp. 94ff.

<sup>217</sup> Hegel 2002, p. 50.

<sup>218</sup> See Hegel 1999, p. 171; see Fichte 2000, pp. 125–33 (§§14, 15).

<sup>219</sup> See Hegel 2002, p. 51 where he relates the organs – the eyes and arms of Briareus – as the universal object and aim of the individual. Yet Hegel differentiates the organs as ideal objects entering the individual’s consciousness with their absolute apprehension, which transforms individualism as such into its institutional embodiment in the absolute – the virtue that leads to the *Stände* and the organisation of the *gemeinsamkeit des Lebens*.

differentiated on the basis of these qualities; this is something expressed in an original form in *System der Sittlichkeit* and which reappears elsewhere in Hegel's work.<sup>220</sup> The first appearance of consciousness occurs at the beginning of the final part of the manuscript (*Sittlichkeit*), which will in turn be divided into the institutions of ethical life whereas conscience was limited to the early discussion of the phenomenon of guilt in 'The Negative, or Freedom, or Transgression', and was 'only reconciled in the danger of death and ceased in that danger'.<sup>221</sup> By contrast, Hegel introduces 'empirical consciousness', which is not yet ethical, as an essential ground between the particular and the universal that precisely allows for 'absolute identity' that was formerly only 'natural and something inner to come into consciousness' – to emerge as ethical.<sup>222</sup> This is an essential development of the early Jena period insofar as it is precisely by way of the positing of empirical consciousness as a ground of mediation in the manuscript that Hegel is led to the introduction of the innovative 'Idea of ethical life' and 'the form in which it appears in its particular part is the people [*Volk*]'.<sup>223</sup> Hegel requires this level of empirical consciousness in his discussion in order to make the ethical concrete, which is implicit in his ensuing discussion and leads to the distinctive form of his institutionality.

The character of ethical life for Hegel in *System der Sittlichkeit* is that it is intuited by and in the consciousness of the individual. At this stage in Hegel's work, *Sittlichkeit* is no different from the individual's own consciousness. This is what he calls 'subject-objectivity', virtue, or 'the ethical life of the individual', which is the negative.<sup>224</sup> Hegel,

---

<sup>220</sup> See Hegel 1977, pp. 383ff; and Hegel 1991a, pp. 133–86 (§§105–141) where conscience is limited to morality. It is telling that Hegel begins §142 the first section of the third part on ethical life in the *Grundlinien* by stating that 'ethical life is the *Idea of freedom* as the living good which has its knowledge and volition in self-consciousness, and its actuality through self-consciousness' (Hegel 1991a, p. 189). Self-consciousness has sublated morality (the inner) here from the preceding section on morality, and likewise becomes the mediation between oppositions (the inner and the outer) as the *Idea* of freedom in the '*laws and institutions which have being in and for themselves*' (ibid §144). The ethical as it appears here is distinctively related to the process Hegel discusses much later in the *Grundlinien* (§270) of 'the momentous transition of the inner to the outer, that incorporation [*Einbildung*] of reason into reality which the whole of world history has worked to achieve. Through this work educated humanity has actualized and become conscious of rational existence [*Dasein*], political institutions and laws' (Hegel 1991a, p. 294). Hegel's intentions, however, become clearer and far more forceful in terms of the accordance of subjectivity in the institutions of the political community through the addition of 'volition' and 'self' to the mere empirical consciousness of *System der Sittlichkeit*.

<sup>221</sup> Hegel 2002, p. 37.

<sup>222</sup> Hegel 2002, p. 49.

<sup>223</sup> Ibid.

<sup>224</sup> Hegel 2002, pp. 49, 52.

however, has already differentiated his political conception in the manuscript from what appeared in the Jena natural law essay. It is not a natural form of intuition that characterises *Sittlichkeit*, but an absolute one.<sup>225</sup>

The people are living indifference and all natural difference is destroyed, the individual intuits himself as himself in every other individual; he reaches the highest subject-objectivity [*Subjektobjektivität*] and this identity of all is simply for this reason not an abstraction, not an equality of the bourgeois way of life [*Bürgerlichkeit*].<sup>226</sup>

The polemical character of Hegel's concept of subject-objectivity, as becomes clear in the manuscript, is directed at both Rousseau and Fichte. Moreover the formulation of the 'abstract' character of equality reflects Hegel's critique of the French Revolution into his maturity. By emphasising the continuity between particular and universal consciousness, between the identity of individual thought and universality, Hegel is led to the concrete spheres of organisation in which both particular and universal are realised. Freedom for Hegel therefore inheres in the concrete existence in which it finds itself and not in an abstract declaration of natural right. This means that the indifference made possible in and by the ethical community is only plausible also on the basis of differentiation, which Hegel lays out in his subsequent discussion.

What Hegel immediately faces is the structuring of the people, as he is consistently opposed to popular sovereignty from his very early Jena period onwards and this is at the core of his critique of Fichte and Rousseau.<sup>227</sup> He has already been amply supplied with the bases for this in the genesis of the house community in natural ethical life; this already formed an organic relationship of private-patrimonial power that had the inward Christian love relation rather than consciousness as its ground. It is apposite in the present context where I am dealing with properly political power to remind the reader of the quote I used

---

<sup>225</sup> Compare Riedel 2011, p. 88.

<sup>226</sup> Hegel 2002, p. 49.

<sup>227</sup> For the mature rejection of popular sovereignty, which nevertheless retains a concept of the *internal* sovereignty of the people articulated in the organic character of the state, see Hegel 1991a, pp. 318–19 (§279); compare, pp. 339–41 (§301), where he discusses the problem of 'the many' and the need for the *Stände* to 'bring the universal interest [*Angelegenheit*] into existence [*Existenz*] not only *in itself* but also *for itself*, i.e. to bring into existence the moment of subjective *formal freedom*, the public consciousness as the empirical universality of the views and thoughts of the *many* [*die Vielen*]' – Hegel's concepts of the 'in itself' and the 'for itself' in this context are equivalent to the transition from the inner to the outer, formal freedom is their unification in the institutions of the state. The affirmation and rejection of Fichte and Rousseau occurs at §258 and involves the one-sided conception of the will (1991a, p. 277).

from the *Verfassungsschrift* above ( $\alpha$ ); there Hegel had spoken of the impossibility of the realisation of the ideal of giving everyone ‘a share in the discussion and resolution [*Bestimmung*] of universal issues’.<sup>228</sup> In that context he had affirmed a central unified power under monarchical authority, but at the same time rejected the absolutist structure of rule that led to the mechanisation of the state and production of social atomism. His conception was what may be called a politically federated form of centralism, and the same discussion emerges at a more explicitly philosophical level in *System der Sittlichkeit* – representation remains an ideal and he discovers it in the concrete institutions of the state. At the level of absolute *Sittlichkeit*, Hegel must avoid again the same issue that had appeared at the outset of the manuscript, and encounters once again the structure of rule in absolutism. On the one hand, in the abstract morality of the individual – with the French Revolution – that led to an ambiguous identification with the political or its condemnation in the name of what Hegel saw as abstract equality; on the other, to the problem of the *persona ficta* in Hobbes that ‘hovered’ over the individual in the mechanisation of the state. It is worth quoting Hegel at length here to show how this earlier discussion reappears at the point of transition in the manuscript to ‘The Constitution of the State’.

The identity of this intuition and the Idea [must be] recognised – namely [that] the relationship of the people to the multitude [*Mehrheit*] of individuals is established generally and formally. A people are neither an unrelated mass nor a mere plurality. [On the one hand], they are not the former [because] a multitude as such does not establish the relationship present in ethical life – i.e. the subsumption of all under a universal, which has reality for their consciousness, has unity [*eins*] with them and power [*Macht*] and violence [*Gewalt*] over them, and, so far as they proposed to be single individuals, would be identical with them as either friend [*freundlich*] or foe [*feindlich*]. But the multitude is absolute individuality and the concept of the multitude – since they are at unity – have their abstraction external [*fremd*] to them, outside of them. [On the other], they are also not a mere plurality, because the universality in which they are at unity is absolute indifference. [By contrast], plurality is not absolute multiplicity [*Vielheit*] or the display of all differences [*Differenzen*] – it is only through this all-ness [*Allheit*] that indifference can embody [*darstellen*] itself as real and can be a universal.<sup>229</sup>

This excerpt deserves a full explanatory commentary, and I will show here the basic structure that underlies it as can be viewed from where Hegel immediately leads his discussion. What will become apparent is the originality of Hegel’s conception of the

---

<sup>228</sup> Hegel 1999, p. 21.

<sup>229</sup> Hegel 2002, p. 49.

organic state, which will lead my discussion directly to the *Stände* as co-bearers of power, as the internal sovereignty of the state. This will then allow me to go into the intricacies of the structure of rule that predominate the remainder of the manuscript.

As can be seen in the quotation above, Hegel opposes the relation of the individual to the state that had been established with the French Revolution, which he explains here in terms of individuals treated as an unrelated mass. He shows how the structure or rule functions if it is a question of isolated depoliticised individuals and the autonomy of state power. For Hegel, this leads to political regimes that are of no concern to the individual, i.e. it would be ‘identical with them as either friend or foe’, and to the moral absolutism of the individual as such who has no concern for the political structure and has divorced his being from the absolute and retreated into the privacy of the inner sphere. For Hegel, strictly speaking, if individuals are perceived as isolated they have no real way of participating in institutions – they remain *bourgeois* rather not *citoyen*. The second half of the quotation concerns the external sovereignty of the state, whereby the state is posited as the concrete individualisation of the multitude as the unification of their differences in the indifference of the political community, its universality. The abstraction of equality here receives its validation in one state as an organic individual in conflict with another – and in this Hegel follows Hobbes for whom international and the state of nature were equivalent.

As K.H. Ilting has noted, ‘the most important application of Spinoza’s natural law theory for Hegel is international law [*Völkerrecht*]’.<sup>230</sup> For Hegel, as Ilting argued, ‘the power of the real [*Wirklichen*] is the expression of infinite substance (*Natura sive Deus*) whereby history becomes a manifestation of the absolute’.<sup>231</sup> *System der Sittlichkeit* according to this interpretation therefore shows how ‘conflict and power have the same position in Spinoza’s political theory [*Staatlehre*] as work and activity in Platonic and Aristotelian politics’ each of which Hegel combines in this early manuscript.<sup>232</sup> Even if Hegel’s prioritisation of history is not yet present at this stage in his thought, Ilting discovers it in outline in Hegel’s expression of ‘the truth which lies in power’.<sup>233</sup> This will

---

<sup>230</sup> Ilting 2006, p. 28.

<sup>231</sup> Ibid.

<sup>232</sup> Ibid.

<sup>233</sup> Hegel 2002, pp. 29, 30.

appear in the last section of the final part of the *Grundlinien* where the state becomes an individual actor in world history.

[It was] firstly Spinoza who gave a metaphysical foundation to Hobbes's natural law theory by determining being as activity and its unity as power, which is respectively a most limited expression of the infinite power of nature or God.<sup>234</sup>

Ilting's intentions become clearer when his letter to Carl Schmitt of 22 December 1962 is analysed. There he seeks to develop a genealogy of modern natural law that leads to Hegel's conception of history: 'Can one say that for Spinoza instead of the sentence *Jesus is Christ* stands the thought of *Natura sive Deus* and in the place of *Auctoritas, non Veritas* the Spinozistic sentence "Die Weltgeschichte ist das Weltgericht"?'<sup>235</sup> The same interpretation holds true for Norberto Bobbio, who coordinates his analysis of the organicist conception of the people (and of totalitarianism) on the bases of Carl Schmitt's thesis (1938) regarding the total state in Hegel.<sup>236</sup> 'We must go through the German Idealists' organicist conception of the people, in order to arrive at the conception of state-totality. The philosophical premise of the totalitarian state is Hegel's "ethical totality" and not Hobbes's "persona civilis".<sup>237</sup> The affinity among these scholars also extends to Manfred Riedel's interpretation of the *Grundlinien*.

The dimension of history, which Hegel introduces at the end of the *Philosophy of Right*, is the actuality of that idea of the natural condition, which the theorists of natural law placed at the beginning of their systems. The movement which in their case runs from nature to civil society (in the sense of *societas civilis*) and ends there, begins for Hegel when the state does not relate any more to civil society, but to *other states*. This natural condition is a real and not a fictitious one – the movement of history, which the philosophy of right incorporates and whereby it frees itself once more from the abstract natural theory of law and society.<sup>238</sup>

In order to get to the core of the structure of rule and freedom in *System der Sittlichkeit*, I refer to the independence of Dieter Henrich's conceptualisation of Hegel's institutionalism. Henrich has formulated his thesis on Hegel's 'severe institutionalism',

---

<sup>234</sup> Ilting 2006, p. 27.

<sup>235</sup> Ilting to Schmitt 22.12.62 (unpublished correspondence).

<sup>236</sup> See Schmitt 2008, p. 100.

<sup>237</sup> Bobbio 1989, p. 67; compare 1975, p. 93 where Bobbio asserts that Hegel shares Hobbes's thesis that authority, not truth makes the law albeit with the difference that for Hegel this is to be constructed as a willed fact.

<sup>238</sup> Riedel 2011, p. 49.



for example, by showing how the latter is based on the ‘universal-philosophical premises’ of Hegel’s philosophy as such, and ‘in the particular form of a speculative theory of an “Absolute”’,<sup>239</sup> whereby, following Schelling,

the world as such has conceptual form and not only according to its appearance. The logical form of the world permits it to be contemplated in all of [its] actuality [*Wirkliche*] as a well-ordered system of organised individuals [*Einzelne*]. It does not require to think the disappearance of all differences, but is rather centred and differentiated in itself [*in sich selbst*] from other real entities. Under the constant guidance of this principle Hegel could speak in the same breath of the planetary system and of the constitution.<sup>240</sup>

Henrich adds that Hegel was ‘consequently a monarchist in no way out of political inclination, but out of theoretical obligation’.<sup>241</sup> It is this that leads his philosophy directly to sovereign power. The question that concerns the present discussion is essentially which form of institutionalism (‘moderate’ or ‘severe’) is operative in the structure of rule in *System der Sittlichkeit* and what is its import for the mature *Rechtsphilosophie* (1817–31). The scholarship would indicate that in this earliest period Hegel has not yet developed the reciprocity or right *as a relation* in his thinking.<sup>242</sup> Yet the *Stände* and the other institutions Hegel conceptualises in this period are also taken up into his maturity. This needs to be emphasised as it brings out the importance of the manuscript for understanding Hegel’s mature institutionalism and formulation of the *Stände*. What Riedel called the ‘vacillations’ of the early Jena period can be shown to be as equally as central to the understanding of Hegel’s political thought – *both* in terms of institutionalism *and* of the later prioritisation of individualism, which only ever becomes concrete and free within institutions as such. The manuscript reveals the same ambiguities that mark Hegel’s mature institutional thought insofar as we already have a structure of rule, of the absolute, which is represented as freedom insofar as it is organised. Yet in *System der Sittlichkeit* the individual is only ‘the material’, not the ‘true’ but the ‘formal’ absolute.<sup>243</sup> The individual, as a potentiality, is subordinated to the higher levels, the institutions, the *Stände*, in which it has its organised being. The *Stände* become

---

<sup>239</sup> Henrich 1983, p. 29.

<sup>240</sup> Ibid.

<sup>241</sup> Ibid.

<sup>242</sup> Riedel 2011, p. 95.

<sup>243</sup> Hegel 2002, pp. 56ff.

individuals in turn; they are ‘organised totalities’ that ‘carry in themselves the other levels as form’.<sup>244</sup> In other words, the individual reaches its concept only by way of organisation. I have already mentioned the ground of ‘empirical consciousness’ that structures Hegel’s initial discussion of *Sittlichkeit* and the thesis of ‘subject-objectivity’; this also occurs in *System der Sittlichkeit* at the level of the *Stände* and in terms of the administration of justice and law.

For Hegel in *System der Sittlichkeit* ‘the organisational principle is freedom insofar as the ruler [*Regierende*] is himself the ruled [*Regierte*’].<sup>245</sup> This proceeds from Hegel’s insight that the ‘constitution belongs more to the nature of the *Stand* itself and its organic essence [*Wesen*] and not to the government, [which rather] belongs to external constraints [*Beschränkungen*’].<sup>246</sup> It is in this context that Hegel arrives at his early formulation that the utility of the government is the unity of all *Stände* and collapses the distinction between the governing and the governed by way of the organic organisation of the ethical totality. The goal of Hegel’s politics in *System der Sittlichkeit* is to have the external powers of the community consequent to their internal articulation: i.e. the very organisation of the *Stände* is at the same time the universal governing power. Otherwise for Hegel the state relapses into the ‘formal abstraction of equality’, a *persona ficta*, or ethical life according to the relation ( $\beta$ ). It is thus that he says that ‘this separation is ... a formal one’. What must not occur is the intuiting of the ‘single individual’ posited ‘external’ and separate from the ‘organic compound’ [*Organischen Gesetzte*].

Subsumption under the concept would be the abstraction of the relationship of foreign peoples [*Völker*] as individuals against each other [*gegeneinander*]; but the organic process is immediately an ideal cancellation [*Aufheben*] of this difference or the determinacy [*Bestimmtheit*] is immediately the singularity [*eigene*] of a people [*Volk*], a difference in itself, and the living movement cancels it absolutely. Thus there can be no absolute foundational division between internal and external

---

<sup>244</sup> Hegel 2002, p. 56.

<sup>245</sup> Hegel 2002, p. 82.

<sup>246</sup> Hegel 2002, p. 79. Hegel maintains this into his maturity in the *Grundlinien*: ‘We may say that *internal sovereignty* lies with the *people*, but only if we are speaking of the *whole* in general, in keeping with the above demonstration (see §§277 and 278) that sovereignty belongs to the *state* (Hegel 1991a, p. 318 (§279)). Hegel references in §277 the ‘universal and objective qualities of the individual’ and not ‘immediate personality’ – he thus references *their position in institutions*, the universal aspect of their particularity. Hegel references in §278 the fundamentals of his political logic: ‘the particular functions and powers of the state are not self-sufficient and fixed, either on their own account or in the particular will of individuals, but are ultimately rooted in the unity of the state as their simple self’. This, for Hegel, constitutes ‘the *sovereignty of the state*’ as a unity of both internal and external (1991a, pp. 314, 315 (original emphasis)).

government; and neither is an organic system comprehended within the universal as subordinate, but simultaneously independent and organic.<sup>247</sup>

At the level of ruler and ruled it is the differentiation between the *Stände* in the section on absolute government in *System der Sittlichkeit* that becomes essential. Hegel sees the need here to supplement Spinoza's theory of the will to freedom that lies in the acquisition of temporal goods, and equate it with the ordering principle of reason in a nascent division of labour. If the government was to appear simply in the form of Spinoza's opposition between the wise – the priests and the elders of the first *Stand* in Hegel's manuscript – and the multitude as it had for Spinoza this would reintroduce the formalism of oppositional power that is at the centre of Hegel's critique of the absolutist state. It would represent the supreme government 'hovering' from above, which is clearly present in his decisive distinction of the priests and the elders in *System der Sittlichkeit* from the 'ephorate' in Fichte's *Naturrecht*.<sup>248</sup> Everything is contingent, however, on the notion that the individual sees the realisation of their freedom in the organisations of the political community as Hegel had yet to

recognize that under the conditions of the specific historical form of the modern state the application of a non-dialectical concept of politics, by burying the activity of the individual in institutions and depriving him of the possibility of opposition, could only lead in practice to *political absolutism*...<sup>249</sup>

In the final analysis, Hegel has replaced the *persona ficta* of Hobbes with the organic articulation of the political multitude; it has become a real organism, whereby atomistic individuals disappear in the structures of the *Stände*. This multitude has its abstraction not between the isolated individuals existent in the state as these have now become identical with the ethical essence. By contrast, the abstract occurs only in the external relation of the state as an individual in conflict with other states.<sup>250</sup> Hegel uses the same terminology in speaking of the priests and the elders as that of a soul to a body, evidently again returning to Aristotle. The *Stände* represent *difference* in the political community, while

---

<sup>247</sup> Hegel 2002, pp. 72–3.

<sup>248</sup> See Hegel 2002, p. 68 where he refers to this concept in Fichte directly. It is insofar as the indifference of the Idea of supreme government for Hegel that leaves the various *Stände* to their difference and in so doing it is no longer a coercive power.

<sup>249</sup> Riedel 2011, p. 36 (original emphasis).

<sup>250</sup> See Hegel 2002, p. 49; compare Riedel 2011, p. 49.

the priests and the elders sublime *indifference*, yet each are required to complete the absolute Idea of supreme government that

does not affect any form of particularity and determinacy, which is manifest in the ramification of the whole into its subordinate systems. The government does not have to repeat this Idea in these, for otherwise it would be a formal power over them; on the contrary once this difference between *Stände* is established, it proceeds to maintain it.<sup>251</sup>

For Hegel, ‘the external form of this government’s absolute force [*Macht*] is that it belongs to no *Stand* irrespective [of the fact] that it arose out of the first’.<sup>252</sup> It is only by way of the differentiation between the various *Stände* that, moreover, the ethical community will be given a concrete and real structure:

The absolute government is only not formal because it presupposes the differences between *Stände*... without this presupposition the entire force of reality relapses into lump... For the absolute government to be the absolute idea is to posit endless movement absolutely, or the absolute concept. In this there must be differences and they must also, because they are in the concept, be universally infinite; they must therefore be a system.<sup>253</sup>

Clearly the structure of Hegel’s institutionalism at this stage sees all *difference* contingent on the existence of the *Stände*, the individual’s consciousness at one with it and the ethical substance. For Hegel Spinoza’s substance, which appears under the guise of the ethical or spirit of the people, must become certain in the totality, while this is constructed and expressed at each level [*Potenz*] of its existence the absolute overcomes all relation. Yet as H.S. Harris has noted, if the principle elements of mediation – the *Stände* – from *System der Sittlichkeit* that led to the organisation of the political community were inserted at the moment where *Philosophie des Geistes* (1803–4) breaks off, an important insight into the later developments of Hegel’s philosophy of right would come into view.

As soon as we put the theory of natural classes [sic!] in the *System of Ethical Life* into the context of the ‘consciousness’ theory of the first philosophy of Spirit, we can see why [Hegel] always thought of civil society in terms of self-regulating

---

<sup>251</sup> Hegel 2002, pp. 67ff.

<sup>252</sup> See Hegel 2002, pp. 68ff. (Hegel 2002, p. 68).

<sup>253</sup> Hegel 2002, p. 68. The system Hegel implies here is that of the *ständische Gliederungen*, while the ‘relapsing into a lump’ is his interpretation of the chaos of Hobbes’s state of nature, which translates into the ‘abstract and formal equality’ of Fichte (Rousseau) in the more contemporary terms where natural right has been translated into what Hegel perceived as merely abstract freedom.

‘corporations’. These communal systems are the necessary foundation of individual self-awareness.<sup>254</sup>

Harris’s insight into these manuscripts is essential here as once the *Philosophie des Geistes* (1803–4) is analysed alongside *System der Sittlichkeit* the beginning of the modern labour relation becomes evident and its connection to the *Stände*, which leads to the break with the classical ethos.<sup>255</sup> In the *Philosophie des Geistes* (1803–4),

the attempt to develop communal consciousness in the world of machine manufacture and international trade forces Hegel to spell out the enormous difference between the ancient *polis* and the modern state. In a passage which anticipates Marx, he shows quite clearly why the consciousness of a modern labourer must differ *toto coelo* from that of a classical artisan. The economic process of which he is only a vanishing element, replaceable on the instant, is inexorably forcing him back into the bondage of natural need, without even a reasonable hope of natural enjoyments.<sup>256</sup>

Thus on the one hand in *System der Sittlichkeit* the essentials of the form and necessity of institutions in Hegel’s political thought are present, on the other, with the addition of the consciousness of the modern labourer in *Philosophie des Geistes* (1803–4), his later political theory also come into view. In this context it is incredibly tempting to quote the entirety of §264 of the *Grundlinien*, once the subject has been prioritised in Hegel’s thinking where the individual comes to ‘embody a dual moment’,

namely the extreme of *individuality* [*Einzelheit*] which knows and wills *for itself*, and the extreme of *universality* which knows and wills the substantial ... in the second respect, individuals attain actuality by discovering their essential self-consciousness in institutions as that *universal* aspect of their particular interests which has being in itself, and by obtaining through these institutions an occupation and activity directed towards a universal end within a corporation.<sup>257</sup>

It has become a convention in the Hegel scholarship that it is only by way of a renewed approach to the modern concept of the *Naturzustand* that Hegel returns to the modern tradition he had rejected in Frankfurt and at the beginning of the Jena periods (1797–

---

<sup>254</sup> Harris 1979, p. 200. The manuscript broke off, in comparison with the other lecture manuscripts of the period, where Hegel would have articulated the ‘socio-political’ stratification of the state into *Stände*. By adding self-consciousness to the *Stände* of *System der Sittlichkeit* from *Philosophie des Geistes* of 1803–4 or vice versa Hegel’s later institutional, legal, and political form of individual self-consciousness appears.

<sup>255</sup> Compare Pöggeler 1983, p. xxiv. I already cited this above (p. 150), he situates the break in the *Philosophie des Geistes* of 1805–6.

<sup>256</sup> Harris 1979, pp. 199–200.

<sup>257</sup> Hegel 1991a, p. 287 (§264).

1804).<sup>258</sup> It is in this sense that the infamous passage from *Philosophie des Geistes* 1805–6 on right as a relation between individuals has been interpreted.

Right is a *relation* [*Beziehung*] of the person in their relationship [*Verhaltens*] towards others [*anderen*] – the universal element of their free being – or the determination, the limitation of their empty freedom. ... In recognition the self ceases to be this individual; it is legally [*rechtlich*] in recognition, that is to say, no longer in its immediate [natural] being [*Dasein*].<sup>259</sup>

The contrast between *Philosophie des Geistes* (1805–6) and *System der Sittlichkeit* (1802–3) can be brought out on the level of how the ethical itself is conceived, and the level of the relation of the individual to the totality. It is also worth remarking that it is the very character of the relation that Hegel conceived of as problematic in the totalisation of ethical life in *System der Sittlichkeit*. The goal of the absolute was to overcome the relativity of relation. But, as I analysed above, he also formed ‘empirical consciousness’ as the ‘ground’ between the particular and the universal – and thus it is not as clear a rejection as appears at first glance. As Hegel develops it in *System der Sittlichkeit* the dichotomy between inner and outer disappears under the sway of the ethical, ‘because the ethical [*Sittliche*] is the essence, the inner [*das Innere*] ... which is conscious ethical life [and] through this consciousness subjectivity and morality are retained’.<sup>260</sup> What can be seen here is the correspondence between the moral (read the individual) and the conscious with the absolute. A few sections later in the manuscript, Hegel thus conceives

the particular, the individual [*Individuum*], as a particular consciousness is absolutely equal to the universal and this universality, which has absolutely coalesced with particularity itself is the divinity [*Göttlichkeit*] of the people....<sup>261</sup>

At the same time that the *Stände* are affirmed as organisational structures of difference in the identity of the supreme government in *System der Sittlichkeit*, law [*Gesetz*] is posited and appears as a middle term itself in the negation of the particular. The individual must

---

<sup>258</sup> See Riedel 2011, p. 95. I showed the complexity of this relation in Chapter Three above.

<sup>259</sup> Hegel 1987, p. 197; compare Riedel 2011, p. 93 who sees this as the moment where Hegel grasps how ‘the movement of the concept interrupts the previous (“immediate”) relationship of nature, ethical life, and law, and establishes itself, against nature, in law’. He also quotes part of the same passage from the *Philosophie des Geistes* (1805–6). See also Hegel 1987, p. 198 footnote 1 where ‘*recognition is right*’ and p. 217 on the ‘force containing law’ [*das Gewalt habende Gesetz*] where this is recognised as ‘the *substance of the person*’ (original emphasis).

<sup>260</sup> Hegel 2002, p. 54.

<sup>261</sup> Hegel 2002, p. 49.

come to knowledge of the law, which is the limit of his particularity as it opens onto the universal dimension of the community.<sup>262</sup> This manuscript was written directly after the Jena essay (in the winter of 1802 or spring 1803), which attacked the ‘infinite’ character of legislation in Rome by affirming Plato’s perspective that “‘it is unworthy to lay down rules for good and admirable men’”.<sup>263</sup> Law as it appears in *System der Sittlichkeit* is thus neither a question of recognition nor a relation, *nor the substance of the person as such*. Yet a minimal difference can be observed in Hegel’s work on the systematic manuscript and the Jena essay. For the Hegel of the Jena essay the nobility stood independent of legislation; it was divided and free from the *Juristenstand*, which was limited to the possessing *Stand der Besitz* – legislation and rule by law was a bourgeois preoccupation and was recognised as the decline of the ethical in Hegel’s interpretation of ancient Rome.<sup>264</sup> By contrast, in *System der Sittlichkeit*, insofar as the constitution is expanded from the ‘narrow circle’ of the nobility to ‘a totality [*Ganzen*]', a ‘living unity’ is constituted whereby law is considered in terms of equity and not simply in terms of abstraction (legislation). This leads to an emphasis on court procedure in the administration of justice.<sup>265</sup>

The apparent structural similarity between the conception of jurisprudence at the close of *System der Sittlichkeit* and what occurs in the *Philosophie des Geistes* (1805–6) should be approached with caution. In *System der Sittlichkeit* ‘right in the form of consciousness is law [*das Gesetz*]’.<sup>266</sup> Yet this consciousness of right is still subordinate (as it is ‘mechanical’ and ‘arbitrary’ as it is related to ‘individual cases’).<sup>267</sup> What is to be noted is the absence of self-consciousness, and of right *as a relation*, each of which develop from the concept of structural recognition that coincides with Hegel’s return to individualist natural law.<sup>268</sup> Yet the same issue that appeared in the context of ‘empirical consciousness’ that provided the ground for absolute ethical life reappears here in the manuscript. One can begin to see Hegel’s comprehension that ‘as administration of justice it is the totality of all right, but with complete indifference for the interests of the

---

<sup>262</sup> See Hegel 2002, p. 64.

<sup>263</sup> Hegel 1999, p. 150, quoting from the *Republic* 425c–427e.

<sup>264</sup> See Hegel 1999, p. 150. I refer the reader to my discussion of Roman law in Chapter Three, pp. 129–32

<sup>265</sup> Hegel 2002, pp. 81–3.

<sup>266</sup> Hegel 2002, p. 82.

<sup>267</sup> Ibid.

<sup>268</sup> See Riedel 2011, p. 95.

relationship of the thing to the need of this specific [*bestimmten*] individual; for it this individual is a *thoroughly indifferent universal person...*'<sup>269</sup>

It is useful to highlight once again that even if the substantial is predominant in *System der Sittlichkeit*, Hegel in no way understands it as a question of a strict structure of rule (a formalism) over the individual. It is for this reason that he attempts to construct the individual in the relation of natural *Sittlichkeit* in the family in the first part, and why he places the individual in the contexts of institutions (the *Stände*) in his discussion of *Sittlichkeit* in the final part. I remind the reader of what I set out from above (β) when I quoted from *Der Geist des Christentums und sein Schicksal* (1797–1800) where, in opposition to the Kantian structure of the moral law, Hegel spoke of the problem of a fundamental opposition, whereby 'the universal becomes the master and the particular the mastered'.<sup>270</sup> Indeed, this is precisely what has been at the bottom of Hegel's opposition to both the Hobbesian conception of the *persona ficta* and Fichte's conception of 'formal' natural law and Rousseau's general will. Hegel may celebrate 'the truth which lies in power' in *System der Sittlichkeit*,<sup>271</sup> but he conceives of this truth as 'something free which we neither master nor are mastered by'.<sup>272</sup> This leads Hegel in *System der Sittlichkeit* to reduce the external 'arbitrariness of the subject' through an identity with virtue whereby 'the ethical becomes the essence, the inner of the subject'.<sup>273</sup> This is Hegel's continuing attempt to mediate the privacy and inwardness of the Christian religion, which had led to the modern bourgeois world as he had already conceived it in the Jena natural law essay. 'As Jesus had been a "private" person fleeing from life in "the world", so his Church was bound to be a private association'.<sup>274</sup> *System der Sittlichkeit* shows the extent to which Hegel attempted to use the Greeks to answer this problem. The later development of his philosophy, however, makes clear the limits of this solution. The inner and the outer necessitated a logical construction by means of 'conceptual transition' whereby, while the dichotomy was dissolved, each would persist in its difference in the complex institutional relations that became the concrete laws and institutions of the

---

<sup>269</sup> Hegel 2002, p. 82 (emphasis added).

<sup>270</sup> Hegel 1996, p. 214.

<sup>271</sup> See Ilting 2006, p. 26.

<sup>272</sup> Hegel 1996, p. 196.

<sup>273</sup> Hegel 2002, p. 54.

<sup>274</sup> Harris 1972, p. xxviii.



ethical community. The lack of inner life and the uncertain rational spirit leads Hegel to historically limit the Greek epoch. Nevertheless, the structure of ethical life as custom is maintained at the basis of his thinking into his maturity as is the institutional form of the *Stände*. The *Stände* are the concrete spheres of organisation in which the inner is preserved under the form of the outer in the individual's activity as a citizen of the state.

#### IV.3 Hegel's definition of *Sittlichkeit*

*Sittlichkeit* distinguishes Hegel's *Naturrecht* from earlier theories, and he makes this distinction from very early by relating how 'natural law has immediate reference to the ethical'.<sup>275</sup> This is a clear formulation of how Hegel interpreted natural law according to the customs of a people – natural law in this instance being the customs of the political community, the natural relations and laws of the *polis*. This forms an element of continuity in his thinking. What can be noted, however, is that in *System der Sittlichkeit* the relation to the ethical is immediate, while in *Philosophie des Geistes* (1805–6) mediation becomes primary. This is what distinguishes the different interpretations of law that lie at their bases. As I noted already in the Introduction, Ilting isolated the particular aspect of ethical life in Hegel's thought by emphasising its pre-Socratic origin in the *Grundlinien* where he quotes positively from a Pythagorean:

When a father asked him for advice about the best way of educating his son in ethical matters, a Pythagorean replied: '*Make him the citizen of a state with good laws*'.<sup>276</sup>

The task of *System der Sittlichkeit* was to attune the social substance – the state or the *civitas* – to the ethical as the customs of a people. By contrast, Hegel's starting point in the *Grundlinien* is abstract right and morality where the natural and abstract will and conscience already exist – the family emerges only under *Sittlichkeit*. Hegel thus begins the later treatise with already established (abstract) right, with the modern fiction of the

---

<sup>275</sup> Hegel 1999, p. 105.

<sup>276</sup> Hegel 1991a, p. 196 (§153) (original emphasis). The Greek '*nomos* [νόμος], ὁ, νέμω *that which is in habitual practice, use or possession, I. usage, custom*' is equivalent to the Latin *mos*, plural *mores* = customs (Liddell, Scott, Jones, and McKenzie 1996, p. 1180).

state of nature,<sup>277</sup> while the concern of *System der Sittlichkeit* is with the construction of right and the state as such and its coming into being (the state is prior to the individual in a completely modern rational sense by contrast in the *Grundlinien*, upholding the abstract rights of society). As Hegel put it in the Jena natural law essay (1802–3) the state must be an ‘immortal animal, but one whose soul and body are eternally born together’.<sup>278</sup> Hegel’s relationship to a philosophy of nature at this stage is implicit in his attack on empiricism and formalism in modern natural law.<sup>279</sup> This is why he begins *System der Sittlichkeit* with the forms of activity proceeding from ‘human need’: ‘the structural context between the foundational constitution of human beings and their respective goods [which] is the essential task of Aristotle’s practical philosophy’.<sup>280</sup> This leads him from the bases of the human being in nature to the organisation of the house community and the division of labour, and from there to the constitution, which contains the system of needs and the administration of justice. This betrays the definitively limited character of *System der Sittlichkeit* in terms of what Hegel would define later as the conceptual cleft between civil and political insofar as both the administration of justice and the system of needs are limited to modern civil society according to the final *Rechtsphilosophie*. The philosophy of nature as the proper sphere of practical philosophy also disappears in Hegel’s development only to be replaced by spirit – the animal organism becomes a rational *cum* spiritual organism, and the theory of mechanism is limited to the conflict of modern market relations in civil society in the *Grundlinien* (1820/21) – the last refuge of Hobbes’s leviathan.

What leads to Hegel’s late conception of ethical life in the *Grundlinien* where the modern state form as the realisation of conscious freedom rids itself of the internal isolation – atomism – is a continuation of his attempt to break out of the constraints of an external order of domination. This leads him after *System der Sittlichkeit* to realise the importance of the individual, of inwardness and its mediation in the development of the institutions of the political. Yet as I have shown in this chapter his conception at this early stage is not as one-sided as it at first appears. In other words, the ambiguity that marks

---

<sup>277</sup> See Ilting 1971, p. 91.

<sup>278</sup> Hegel 1999, p. 156. The immortal animal Hegel draws from Plato (see *Phaedrus* 246c–246d). It goes without saying that this is a contrast with Hobbes’s ‘mortal god’.

<sup>279</sup> See Harris 1983, p. 110, footnote 2.

<sup>280</sup> Ilting 2006, p. 20.

*System der Sittlichkeit* and the freedom of the individual, the question of its ‘moderate’ or ‘severe’ institutionalism, is also a characteristic trait of Hegel’s later *Rechtsphilosophie*. In *System der Sittlichkeit*, however, Hegel not only follows the Aristotelian notion that the individual ‘when isolated is not self-sufficing’,<sup>281</sup> individualism is also perceived as suffering.<sup>282</sup> The political community in this respect takes on the form of redemption where ‘all difference and grief are abolished’.<sup>283</sup> By contrast, in the *Grundlinien*, the private particularity of individuals must become concrete and in this way the subject becomes an essential moment, the self-consciousness that makes for the substantial character of the state. The *Stände* appear here as distinct institutional forms of self-consciousness, mediating between internal and external, that stem from the original ethical life of the family along with the corporation to dissolve the modern antithesis of civil society and the state. Hegel initially articulated this process in the *Grundlinien* in the movement from ‘formal’ to ‘true conscience’, which led to ethical life and the identification of individual self-consciousness with laws and institutions, which had developed from custom and habit.<sup>284</sup>

For Hegel as for Spinoza the substance of the spiritual is equivalent to the political insofar as there is a ‘necessary connection between the inner freedom of the individual and the external freedom of society and in society, [which] is as certain as the corresponding manifest alliance between spiritual and political order’.<sup>285</sup> As in Spinoza’s version of God, for Hegel the will and spirit as individual consciousness have become one and the same as divine consciousness: ‘the unity of divine and human nature is not only significant in determining human nature, but equally so in determining divine nature’.<sup>286</sup> This is why the eighteenth century perceived Spinozism as atheism,<sup>287</sup> and why the divinisation of the state was seen to make God contingent on the order of humankind and to make individuals wholly subordinate to political power. As God has become nature,

---

<sup>281</sup> *Politics* 1253a 25. See Hegel 1987, pp. 197ff.

<sup>282</sup> Hegel 2002, p. 52.

<sup>283</sup> *Ibid.*

<sup>284</sup> See Hegel 1991a, p. 189 (§144).

<sup>285</sup> Strauss 1982, p. 224.

<sup>286</sup> Hegel quoted in Barth 1973, p. 418 (*Philosophy of Religion*, III, 131).

<sup>287</sup> ‘And yet one would have expected that this century would have recognised in Spinoza’s doctrine of God an expression of its own absolutist tendency achieved at its most decisive point’ (Barth 1973, p. 131).

history has become truly human history – the transcendence of salvation history confined to immanence alone as ‘judgement is contained in the historical process as such’.<sup>288</sup>

For Hegel in the *Grundlinien*, the true universal basis of the state, of a ‘sovereign political power’, must be understood along the lines of ‘the substance and true subjectivity of the concept’<sup>289</sup> – which is at first born with Socrates and the Christian principle of particularity which engenders the decline of the Roman World and is solidified with the Reformation and the epoch of Charles V (1500–58) that begins the essential period of transformation where modernity begins in the Berlin *Lectures on the Philosophy of History* (1827–31). For the mature Hegel, the Reformation initially carries the unrequited freedom represented in the initial Christian principle.<sup>290</sup> The Reformation initially represents ‘the spiritualisation of the world [which] is at the same time a secularization of the spirit; the materialization of the spirit means losing it to the world’.<sup>291</sup> Thus according to Hegel ‘there are two divine kingdoms’, and the Reformation is limited like the medieval period as it retreats into individual conscience, and remains one-sided in orientation, bound strictly to ‘the intellectual in the heart and cognitive faculty’. The second divine kingdom is ‘the socially ethical whose element and sphere is secular existence’.<sup>292</sup> It is for this reason that the necessary accordance of reason with reality entails a so-called ‘second Reformation’.<sup>293</sup> Religious inner freedom must turn outwards and become political freedom. Thus, according to Joachim Ritter, ‘the inner religious and political dimensions belong together in freedom; freedom loses its basis where they are opposed to and separated from one another’.<sup>294</sup>

For Hegel, the history of the development of modernity placed the extreme of individuality in and for itself and that of universality in contradiction. This growing divide had always threatened the fabric of the Europe for Hegel, yet it was an *essential* danger –

---

<sup>288</sup> Löwith 1949, p. 58.

<sup>289</sup> Hegel 1991a, p. 286, (§278).

<sup>290</sup> See Löwith 1995, p. 280.

<sup>291</sup> Taubes 2009, p. 106.

<sup>292</sup> Hegel 1991a, p. 397.

<sup>293</sup> See Hegel 1999, pp. 197–224. Also the editorial notes by Dickey and Nisbet (‘Luther’s is the first of two Reformations, the second of which Hegel was calling for in his own day’ (Hegel 1999, p. 304). ‘Throughout the Berlin period, [Hegel] tries to explain how the development of *Sittlichkeit* in civil society entails fulfilling the ‘doctrine’ of the Reformation in actual ‘life’ (i.e. in the social and political institutions of the world)’ (Hegel 1999, p. 305).

<sup>294</sup> Ritter 1984, p. 185.

*even the essence of the Occident* in the historical movement of the freedom of self-consciousness that he came to describe at the close of the Jena period (1807). The individualism of the modern political tradition was thus at once *the* essential political problem for Hegel just as it was a “higher kind of radiance”, namely the radiance of the absolutely free and hence critical spirit, whose dangers and greatness are as yet unknown to the East’.<sup>295</sup> The central issue in the long development of modernity is when inner life is free to develop its own character in distinction from the political order with the proscription that such inwardness – the religious principle – not ‘wear the appearance of being altogether directed outwards and leaving its proper sphere’ as it had in the late Middle Ages. For Hegel this direction of inwardness of conscience to the externality of politics was contained in the doctrine of law in the state. It was self-consciousness in institutions that perfectly mediated the identification of subjects with the positive order of laws.<sup>296</sup> It is the peculiarity of Hegel’s dialectical reasoning that demands such mediation between internal and external, i.e., the rise of self-consciousness and private particularity must now be fully realised in the modern state form.<sup>297</sup> As Hegel put it in *Philosophie des Geistes* (1804–5)

...the absolute concept of consciousness exists as absolute singularity, [it must] exist here as [an] externally [*Äußerliches*] determined concept or as a multiplicity essentially in itself and it must resume [*resümieren*] itself out of both to absolute totality so that it likewise exists as a great universal individual, as the spirit of a people.<sup>298</sup>

As *Sittlichkeit* was shaped and transformed throughout Hegel’s development it came to take on the character of what both Hobbes and Rousseau had indicated in the past; it answered the needs of a civil religion, but it did so on an originally classical basis. The appeal to the Greeks is what allowed Hegel to identify the character of *Sittlichkeit* as the existence of the laws and institutions of the state. It was this centrality of custom that allowed Hegel to make the secular institutions and law of a political community equivalent to a civil religion. This secularity became apparent because it was precisely the institutions and laws of the state in which individuals received their realisation and

<sup>295</sup> Löwith 1995, p. 173.

<sup>296</sup> See Hegel 1991a, pp. 189–98 (§§142–57), 290–304 (§270).

<sup>297</sup> Hegel 2001, p. 361.

<sup>298</sup> Hegel 1986b, p. 187.

freedom. The otherworldliness of the Christian religion, the isolation of the individual in conscience, materialised as present spirit. The divinisation of the state was at the same time the entrance of God into history and his reduction to the action of human beings, which with the capacity for freedom took on the principle of history itself.

As Dieter Henrich has noted, it is unlikely that the ambiguities and tensions of Hegel's political thought can be eliminated. To liberate Hegel's political theory of its ambiguities is to lose its very theoretical foundation and to make it untenable.<sup>299</sup> This is because Hegel's philosophy represents 'one last and independent foundational thought', and one in which 'the world of institutions is primary, but also secondary as it is a mere stage on the way to spirit and its knowledge'.<sup>300</sup>

---

<sup>299</sup> Henrich 1983, p. 35.

<sup>300</sup> Henrich 1983, p. 33.

## Conclusion

As I pointed out in my Introduction, many of the ‘liberal’ interpretations of Hegel have now assumed a canonical place in the literature and are taken as a given point of departure. These presumptions have been increasingly adopted in an unreflective fashion just as other previous (largely dismissive) interpretations assumed paradigmatic status in analysing Hegel’s political thought in the past. The dissertation began by consciously conflicting with the liberal perspectives and the individualism that was at the core of this interpretation of Hegel. What I have stressed throughout the chapters is the necessity of Hegel’s institutional thought and his understanding that the individual becomes a concrete universal only through the organisations of civil society that, by way of such organisation, represents the internal sovereignty of the state. My study took its guidelines from both Joachim Ritter and Manfred Riedel, though only in order to place them in question: firstly, in terms of Hegel’s relation to the modernity of the French Revolution and, secondly, in the interpretation of Hegel’s conceptual discovery of civil society [*bürgerliche Gesellschaft*]. I took Riedel’s method, which had attempted most thoroughly to separate itself from the ideological interpretations of the nineteenth and twentieth centuries, as the methodological starting point. However, I did so in relation to the concept of the *Stände*, which Riedel himself rejected as anachronistic and showed its historical actuality for Hegel’s thought in the context of the modern political tradition and the emergence of modern civil society. Thus I complicated Riedel’s conceptual approach in a new way through the discussion of the *Stände*, introducing the insights of Otto Pöggeler on the concept’s novelty and the theoretical potential of Hegel’s institutionalism introduced by Henrich. Each of these scholars suggested a different approach for research into the concept of the *Stände*, which had not been applied systematically in the existing scholarship. I developed these perspectives systematically throughout the ensuing chapters and analysed Hegel’s institutionalism with a view to his modernity. I traced the genesis of the concept of the *Stände* in Hegel’s thought to the late Frankfurt and early Jena periods (1800–1804), in which I showed how his institutionalism was essentially shaped by an encounter with the modern political tradition. As I showed throughout the dissertation, a more complex periodisation of modernity than Riedel had permitted in his

conceptual study was required to assess Hegel's institutional thought and its particular emphasis on the *Stände*.

I established this more complex periodisation in Chapter One through a brief historical-conceptual introduction to the development of the *Stände* from the perspectives that most influenced Hegel's development of the concept. In so doing I was able to develop an historical approach to Hegel's thought and concepts, which situated him in a broader intellectual constellation as well as historical context. By giving a general historical overview of the *Stände*, I laid the basis for the subsequent chapters whereby Hegel's political theorisations were seen as an attempted response to the problems raised by his epoch and the French Revolution in particular. Hegel's political thought attested to a process of conceptual transformation. This was the direct result of the development of modernity, and emphasised a complex of problems in dealing with the work of an author in a period undergoing conceptual change. I showed the insufficiency of translating Hegel's concept of the *Stände* in terms of 'classes' or in terms of a division between 'social' and 'political' categories. On the one hand, this bypassed the institutional dimension of the term in Hegel's politics; on the other, it maintained the division that Hegel's sought to overcome through the development of the concept. I closed the chapter by asserting that the conceptual interpretation involves more than simple transformations in meaning and linguistic usage and forces the adoption of a much broader referential horizon. Hegel's place within modernity as well as the conceptual resources of his thinking were shown to belong within the horizon of what Reinhart Koselleck has described as the *Sattelzeit* – the understanding that the period from the middle of the eighteenth century saw a profound transformation of the meaning of concepts inherited from the classical epoch. This allowed Hegel to give renewed significance to the institutions of the *Stände* in a period which would fundamentally lead to their demise. The insights of this chapter found a direct application in my historical analysis of the concept of the *Stände* in Chapter Two in Hegel's early critique of the imperial constitution and the traditional function of the *Landstände* in the *Verfassungsschrift* (1798–1803).

Chapter Two traced Hegel's constitutional history of Europe in the *Verfassungsschrift*, which he analysed as a history of representation. Modern political development as Hegel aptly showed owed its origins to 'pre-modern' forms, specifically



to the concept of the *Stände*. I set out to show the logic of Hegel's development and the affinities between his early politics and historical conceptions and his mature theorisations. Hegel's early derivation of the concept of the *Stände*, and his awareness of its historical meaning in constitutional history, clarified his own distinct usage of the concept. The fundamental purpose of analysing Hegel's development in the *Verfassungsschrift* was to show how he conceptualised the epoch and responded to the demands that had been placed in the philosophical and political context since the Enlightenment and the French Revolution. By providing this material I showed how Hegel was able to recast the history of Europe at this very early stage as a history of the development of representation. The force of Hegel's early arguments led to his much later insights into the Germanic World in the Berlin period (1818–31) as the historical ascendancy of representation and individual right. I demonstrated the difference between the traditional concept of the *Reichs-* and *Landstände* in Hegel's early critique and his late political conceptualisation of the *Stände* as an organisational form that contrasts with private particularity. This was necessary as it allowed me to define his use of the concept as a political category far more precisely. This could then be contrasted with Hegel's critique of the contractual form of the imperial constitution with the organisational form of the *Stände* developed in the *Grundlinien* (1820/21). There Hegel had conceived the institutional capacity of the *Stände* in contrast to the dominance of private right. This allowed for the possibility of stressing the importance of the institutional organisation of right and representation for Hegel, and how he would develop this on the basis of common needs as a foundation for political association. This permitted a novel approach to Hegel's early period whereby an emphasis on the political function of the concept was foregrounded. The question of the specific linguistic usage of the concept at play Hegel's maturity in the *Grundlinien* enabled a discussion of the contiguity between social and political dimensions. Hegel's concept was further differentiated from reactionary and conservative circles in the period of Restoration (1815–30) in the call for a return to the *Ständestaat*. This was necessary as this has been part and parcel to the liberal attack on Hegel's work in particular in terms of the concept of the *Stände* from Rudolf Haym onwards.

As I showed in Chapter Three, Hegel's usage of the *Stände* in the early Jena period was equated with the Greek conceptuality of hierarchy and rank in the *polis* with

its negative valorisation of labour. This lay within the horizon of Hegel's attempt to breathe new life into the *polis* and the classical ideal of ethical life as he saw it at this stage. At the same time, or even since the Frankfurt period, as this chapter emphasised, Hegel continued his reading of modern political economy placed alongside the German tradition of natural law stemming from Pufendorf, whereby the state of nature increasingly took on the form of a nascent society of property and exchange relations. I showed how Hegel's concept of the *Stände* received its institutional character and significance in view of the state of nature as a sphere of spiritualised economic conflict between liberal – atomised – individuals. The chapter showed the importance of the later Jena period, as it was there that the *Stände* are first theorised in view of the slow emergence of an economic modernity no longer based on the household [*oikos*], as it had been for the Greeks and the classical epoch stemming from Hobbes. This led Hegel to his rejection of the *status civilis*, where individuals were restricted to strictly defined *Stände* and social strata. I thus showed how an essential transformation took place in Hegel's concept of the *Stände*, which accorded with the theoretical passage from the state of nature as a fiction to its real basis as reciprocal conflict that can only be stemmed through the individual's subjectivity realised in its concrete institutional form – as the substance of the state in its institutions whereby civil society is transformed into the political state. I showed how this took place in a novel fashion through the critique of Plato as it appears in the *Philosophie des Geistes* (1805–6) and how this was taken up into the *Grundlinien* (1820/21) alongside Hegel's transformation of the state of nature as a conceptual and spiritual moment. This was necessary to show how the basis was laid for Hegel's critique of the emergence of the modern market economy as it is fully developed in the *Grundlinien*, a critique that lent to the concept of the *Stände* its significantly modern import as an institutional and organisational form. I was thus able to reframe the importance of the concept in the conceptualisation of Hegel's modernity and to liberate it from its reduction to anachronism.

Chapter Four involved an analysis of the cleft between the inner and the outer that lay at the basis of the modern state from Hobbes onwards and shifted to a metaphysical domain in the development of moral autonomy in the German Idealism of Kant and Fichte. This was central to Hegel's concept of *Sittlichkeit* and the institutional basis of the

*Stände* by which he sought to overcome the dichotomy of inner and outer through the institutional bases of civil-cum-political life. This was already introduced in an explicitly Hobbesian and Fichtean context in *System der Sittlichkeit* (1802–3), which marked Hegel’s first significant development of the concept of the *Stände*. For Hegel, the significance of the Kantian revolution thoroughly transformed the ‘empirical ways of treating natural law’ that had been current in the classical epoch since Hobbes. A central aspect of the Kantian project, as I analysed it, hinged on the metaphysical development of the *forum internum* and the *forum externum*. The originality of these concepts in the context of the modern state form had been originally shaped by Hobbes’s political reflections; Thomasius in turn transformed them in the German tradition of natural law. The concept of the *Stände* as Hegel develops it from his early Jena period in connection with *Sittlichkeit* is directly connected to this discussion. According to my analysis, it was an attempt to answer the crisis of the development of civil society as a sphere of depoliticisation – the cleft between morality and politics. It was from this manuscript that the initial institutionalisation of right in the form of the *Stände* was derived, which led to the mature formalisation of the individual’s actual existence in the state and the existence of the state itself in the *Grundlinien*. In this way Hegel was able to mediate the private inner concerns of the individual with the external order of the state in his developing conception of dialectical politics. As I argued in the conclusion of this chapter, concrete freedom was the mediation between inner and outer life, and the *Stände* were a stage in this development. This led back towards the theory of (self)-consciousness in institutions, which I analysed was first formed on the basis of the family – a concept Hegel had derived from both Christianity and the Aristotelian tradition of the *oikos*. The *Stände* in Hegel’s maturity represent the return of the familial element at the level of civil society and the state, whereby right and consciousness, the inner and the outer, were to be embodied in the institutional structures of ethical life. I showed the essential importance of the early formation of Hegel’s institutional thought, which had been neglected in the scholarship due to the foregrounding of the return to individualist natural law at the end of the Jena period (1805–7). By asserting the centrality of institutions as the mediation between inner and outer I have emphasised the significance of this historical development for the study of Hegel’s political philosophy.

The character of the dissertation, while focusing on the distinctive concept of the *Stände*, at the same time opens onto the broader dimension of Hegel's intellectual formation and historical context. Throughout the study I have reaffirmed the significance of the late Frankfurt and early Jena periods in the development of Hegel's institutionalism, thus introducing a novel aspect to the existing scholarship on this period. By emphasising the *Stände*, I have stressed the modernity of Hegel's institutional thought and his conception of the modern constitutional state and its connection with previous political forms. This has allowed for an essential reframing of the debate on Hegel's modernity, and the liberal form of politics that goes along with it. In so doing I have stressed the importance of context and historical development in Hegel's interpretation and transformation of modernity.

The dissertation detailed the possible formal results of situating Hegel's work through a focus on a singular conceptual development – precisely in a period of transformation in conceptual meaning. It would be useful to extend this analysis further, and to different conceptual materials in Hegel's writing during this early period while at the same time augmenting such studies by highlighting the peculiar context for the development of such concepts – at once a question of intellectual history, but also of the specific historical context of Germany and of Europe during this period. What remains to be done is to compliment this study with other specialised work on different sets of concepts. In particular, the peculiarity of Hegel's concept of civil society and its political ordering by the *Stände* needs to be elaborated within a broader framework of intellectual debates, some of which I have been able to indicate briefly in the current study. The importance of the *Stände* as this study has shown lies in their capacity as a form of mediation in modern civil society. It is in this way that Hegel posits an institutional form of political order.

## Afterword

The significance of the concept of the *Stände* lies in its capacity to stem the emergence of social conflict based on the development of abstract right and formal individualism in political modernity. Hegel shaped and formed his concept of the *Stände* in the context of the modern revolution in right and the development of a modern market economy. What he perceived in each case was how the self-interestedness of isolated individuals had become the primary determining factor in the emergence of modern civil society. Thus Hegel's institutionalism coincided with his re-reading of the *Naturzustand* and clarified the decisive formation of the state as he had defined since the *Philosophie des Geistes* (1805–6). There he spoke of the state as 'cunning' [*List*], 'the reconciliation of evil with itself [*sich selbst Versöhnten*]'.<sup>1</sup> The freedom of the 'endless [*Wollende*] will' as 'the empty, formal [*formale*], [and] evil' must be subordinate to a 'higher principle'.<sup>2</sup> This is what Dieter Henrich perceived as the logic behind Hegel's concept of spirit that 'is entirely oriented to the foundation of a concept of the state in which subjective legal rights [*Rechtsansprüchen*] could have no autonomy [*eigenständig*] from the right of the state itself...'.<sup>3</sup> From this point onwards, Henrich added, 'one can likewise understand why Hegel lets this development end in the theory of world history, which grasped the historical movement from state form to state form...'.<sup>4</sup> The enduring preoccupation of Hegel's political thought is the development of the state organism from which the *Stände* were derived as institutional structures. They represent a 'higher principle' whereby individualism takes on a concrete character as the internal sovereignty of the state. They lead directly to the political (institutional) state, which is also represented according to the 'cunning of reason' in that it is 'the rational destiny [*Bestimmung*] of human beings to live within a state, and even if no state is present reason requires that one be established'.<sup>5</sup> Hegel's institutionalism and the *Stände* were thus the organisational opposite of the development of the rabble [*Pöbel*], which was formed through an excess of wealth that in

---

<sup>1</sup> Hegel 1987, pp. 241, 236; compare 1991a, pp. 157–85 (§§129–41) for Hegel's mature formulations of these ideas.

<sup>2</sup> Hegel 1987, p. 186; Henrich 1983, p. 17.

<sup>3</sup> See Henrich 1983, p. 35.

<sup>4</sup> Ibid.

<sup>5</sup> Hegel 1991a, p. 105, (§75).

turn led to poverty through the economic devaluation of labour.<sup>6</sup> As Werner Conze argued, the daily growth of an underclass led to pauperisation and statistically to overpopulation.<sup>7</sup>

[This furthermore led to] a transitional period, [to] the decline of the attachments to the *Ständegesellschaft* and to the new constitutional shape of industrial society... [Yet] in Germany the old European noble rural life extended into a period in which already the concept of 'industrial society' had been shaped.<sup>8</sup>

The latter explicitly marks Hegel's political philosophy in the *Grundlinien*; he conceived of a 'modern labour society',<sup>9</sup> yet as its opposite posited the 'substantial' character of the peasantry and the 'natural ethical life' of landed property that, 'as far as its livelihood is concerned', is meant to have the independence to practice the art of politics.<sup>10</sup> This he weighed against 'the *possibility of hostile* opposition' of the *Stände* 'in their political capacity' that could lead to the destruction of the state.<sup>11</sup>

The young Marx most clearly recognised this. An essential dimension of his *Critique* of the *Grundlinien* consisted in his assertion that the *Stände*, while 'supposed to be "mediation" between monarch and executive on the one hand and the nation on the other', ... 'are rather the organised political opposite of civil society'.<sup>12</sup> Yet Marx also recognised that Hegel's solution to political modernity, his organic or institutional ideal of the state 'was the most successful attempt yet "to look upon the state from the perspective of human eyes and to develop its natural laws [*Naturgesetzen*] on the basis of reason and experience"'.<sup>13</sup>

But if the earlier philosophical theorists of the state constructed the state on the basis of certain instincts, whether of ambition or sociality, or indeed on the basis of reason, albeit the reason of the individual rather than the reason of society, the more ideal and fundamental perspective of the most recent philosophy [does so] on the basis of the idea of the whole. This perspective regards the state as a great organism in which legal, ethical, and political freedom are to find their actualization, and in which the individual citizen of the state obeys in the laws of

---

<sup>6</sup> See Hegel 1991a, p. 266 (compare §243, addition §244, §245, remark §253). See Ruda 2011, pp. 49–57.

<sup>7</sup> See Conze 1954, pp. 335–6.

<sup>8</sup> Conze 1954, p. 340.

<sup>9</sup> See Ritter 1984, p. 73.

<sup>10</sup> Hegel 1991a, pp. 235ff, 345 (§§203, 305).

<sup>11</sup> Hegel 1991a, p. 344 (§304). Hegel views the attributes of 'immediate', 'substantial', and 'natural' as defining the patriarchal order. By contrast, the *Stände* of trade, industry, and universality are identified with political modernity in their capacity to be 'spiritual' and 'reflective'.

<sup>12</sup> Marx and Engels 1975–2004, vol. 3, p. 92.

<sup>13</sup> Marx quoted in Wolff 2004, p. 294.

the state [Staatsgesetzen ] only the natural laws [Naturgesetzen] of his own reason, of human reason.<sup>14</sup>

Clearly, as Michael Wolff rightly argued, Marx thus did not understand Hegel's philosophy of the organic state to imply 'anti-individualism as such',

but on the contrary [it] allows us, and better than the earlier tradition of natural and rational law was able to do, to ground the freedom of the individual citizen of the state on the autonomous exercise of his own thinking.<sup>15</sup>

The development that led to the formation of the proletariat implied a discrete organisational form. This has been related to Hegel's concept of the *Stand* in the scholarship, rather than that of the rabble [*Pöbel*]. For Carl Schmitt, for example, the formation of the proletariat in Marx and Engels takes on the character of a conflict against Bakunin – of moral education against anarchism.<sup>16</sup> Moreover, Étienne Balibar has highlighted the importance of the universal *Stand* of the civil service and its intellectual character in Hegel's *Grundlinien* for the development of the notion of the proletariat in Marx.

Marx described the proletariat as a 'universal class', a mass situated virtually beyond the condition of class, the particularity of that mass being denied in its very conditions of existence. But he could not have formulated that idea if Hegel had not, in his *Philosophy of Right* of 1821, developed a theory of the 'universal *Stand*'.<sup>17</sup>

The significance of the universal *Stand* has also been argued to have influenced Lenin and the Russian Revolution. J.F. Suter has argued that

while Hegel's conception of the middle class [sic!] as the stabilising element in the state reminds us of Aristotle (*Politics* 1295b), the Hegelian civil servant (conceived as the main instrument of rationality) points to Lenin's professional revolutionary. Hegel's view that the people was unable to rule may have suggested to Lenin the idea that the proletariat, left to itself, would never go beyond trade unionism and would never seize power unless organized by revolutionary leaders.<sup>18</sup>

---

<sup>14</sup> Ibid.

<sup>15</sup> Wolff 2004, p. 294.

<sup>16</sup> See Schmitt 1996, p. 36–7.

<sup>17</sup> See Balibar 2007, p. 51.

<sup>18</sup> Suter 1971, p. 70.

What each of these examples emphasise is the force of Hegel's institutional conception of the *Stände* and the underlying rationality of his formation of the state that influences the organisational structures of political modernity, even if the foundational principle of the absolute in his political philosophy has been rejected.



## Bibliography

- Anderson, Perry 1974, *Lineages of the Absolutist State*, London: New Left Books.
- Arendt, Hannah 1965, *On Revolution*, New York: Viking Press.
- Aretin, Karl Otmar von 1997, *Das Alte Reich 1648–1806, Band 3: Das Reich und der österreichisch-preussische Dualismus (1745–1806)*, Stuttgart: Klett Cotta.
- Avineri, Shlomo 1972, *Hegel's Theory of the Modern State*, Cambridge: Cambridge University Press.
- Balibar, Étienne 2007, *The Philosophy of Marx*, translated by Chris Turner, New York, London: Verso.
- Barnard, Frederick M. 1965, 'Christian Thomasius: Enlightenment and Bureaucracy', *The American Political Science Review*, 59, 2: 430–8.
- Barth, Karl 1973 [1932], *Protestant Theology in the Nineteenth Century: Its Background and History*, Valley Forge: Judson Press.
- Baumgart, Peter 1979, 'Naturrechtliche Vorstellungen in der Staatsauffassung Friedrichs des Großen', in *Humanismus und Naturrecht in Berlin-Brandenburg-Preussen: ein Tagungsbericht*, herausgegeben von Hans Thieme, Veröffentlichungen der Historischen Kommission zu Berlin, Band 48, Berlin: Walter de Gruyter & Co.
- Becchi, Paolo 2009, 'German Legal Science: The Crisis of Natural Law Theory, the Historicisms, and "Conceptual Jurisprudence"', in *A Treatise of Legal Philosophy and General Jurisprudence Volume 9, A History of the Philosophy of Law in the Civil World, 1600–1900*, edited by Canale, Damiano, Paolo Grossi and Hasso Hoffman, London, New York: Springer.
- Berdahl, Robert 1973, 'The Stände and the Origins of Conservatism in Prussia', *Eighteenth-Century Studies*, 6, 6: 298–321.
- 1976, 'Prussian Aristocracy and Conservative Ideology: A Methodological Examination', *Social Science Information*, 15: 583–99.
- 1988, *The Politics of the Prussian Nobility: The Development of a Conservative Ideology*, New Jersey: Princeton University Press.
- Berger, Adolf 1953, 'Encyclopedic Dictionary of Roman Law', *Transactions of the American Philosophical Society*, Volume 42, 2: 330–809.
- Berman, Harold 2006, *Law And Revolution II: The Impact of the Protestant Reformations on the Western Legal Tradition*, Harvard: Harvard University Press.

- Bigler, Robert 1972, *The Politics of German Protestantism: The Rise of the Protestant Church Elite in Prussia, 1815–1848*, Berkeley: University of California Press.
- Bienenstock, Myriam 2001, ‘Qu’est-ce que l’ “esprit objectif” selon Hegel?’, *Revue Germanique Internationale*, 15: 103–26.
- Bobbio, Norberto 1975, ‘Hegel und die Naturrechtslehre’, in *Materialien zu Hegels Rechtsphilosophie Band Zwei*, herausgegeben von Manfred Riedel, Frankfurt am Main : Suhrkamp Verlag.
- 1989, *Thomas Hobbes and the Natural Law Tradition*, translated by Daniela Gobetti, Chicago, London: The University of Chicago Press.
- Bodin, Jean de 1955 [1576], *The Six Books of the Commonwealth*, abridged and translated by M. J. Tooley, Oxford: Basil Blackwell.
- Brady, Thomas A. Jr. 1978, *Ruling Class, Regime, and Reformation at Strasbourg*, Leiden: Brill Academic Publishers.
- Brenner, Robert 1982, ‘The Agrarian Roots of European Capitalism’, *Past and Present*, 97: 16–113.
- Brunner, Otto 1949, *Das ‘Ganze Haus’ und die alteuropäische ‘Ökonomik’*, Tübingen: Mohr Siebeck Verlag.
- Caboret, Dominique 2003 [1999], ‘The Market Economy and Social Classes in James Steuart and G.W.F. Hegel’, in *The Economics of James Steuart*, edited by Ramón Tortajada, New York: Routledge.
- Canale, Domiano 2009, ‘The Many Faces of the Codification of Law in Modern Continental Europe’, in *A Treatise of Legal Philosophy and General Jurisprudence Volume 9, A History of the Philosophy of Law in the Civil World, 1600–1900*, edited by Canale, Damiano, Paolo Grossi and Hasso Hoffman, London, New York: Springer.
- Coker, Francis W. 1910, *Organismic Theories of the State, Nineteenth Century Interpretations of the State as Organism or as Person*, London: Longmans and Green.
- Conze, Werner 1954, ‘Vom “Pöbel” zum “Proletariat”’, in *Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte*, 41, 4: 333–64.
- 1968, ‘Histoire des notions dans le domaine socio-politique (Rapport sur l’élaboration d’un lexique allemand)’, in *Problèmes de stratification sociale, Actes du Colloque*

*International* (1966), publiés par Roland Mousnier, Paris: Presses Universitaires de France.

Crook, John 1978 [1967], *Law and Life of Rome*, Ithaca, New York: Cornell University Press.

Denzer, Horst 1979, 'Pufendorfs Naturrechtslehre und der brandenburgische Staat', in *Humanismus und Naturrecht in Berlin-Brandenburg-Preussen: ein Tagungsbericht*, herausgegeben von Hans Thieme, Veröffentlichungen der Historischen Kommission zu Berlin, Band 48, Berlin: Walter de Gruyter & Co.

Dickey, Laurence 1999, 'General Introduction', in G.W.F Hegel *Political Writings*, edited by Lawrence Dickey and translated by N.B. Nisbet, Cambridge: Cambridge University Press.

Dilthey, Wilhelm 1990, *Die Jugendgeschichte Hegels und andere Abhandlung zur Geschichte des deutschen Idealismus, IV. Band*, Stuttgart: B.G. Teubner Verlagsgesellschaft.

Dreitzel, Horst 1991, *Absolutismus und Ständische Verfassung in Deutschland: Ein Beitrag zu Kontinuität und Diskontinuität der Politischen Theorie in der Frühen Neuzeit*, Mainz: Verlag Philipp von Zabern.

— 2003, 'The Reception of Hobbes in the Early German Enlightenment', *History of European Ideas*, 29, 3: 255–89.

Epstein, Klaus 1966, *The Genesis of German Conservatism*, New Jersey: Princeton University Press.

Fichte, Johann Gottlieb 2000, *Foundations of Natural Right*, edited by Frederick Neuhauser, translated by Michael Baur Cambridge: Cambridge University Press.

Figgis, John Neville 1999 [1907], *Political Thought From Gerson to Grotius: 1414–1625*, Kitchener: Batoche Books.

Frédéric II 1941, 'L'anti-Machiavel de Frédéric II' in Machiavelli, *Le prince*, Paris: Librairie Garnier.

Gawlick, Günter 1989, 'Thomasius und die Denkfreiheit', in *Christian Thomasius 1655–1728, Interpretationen zu Werk und Wirkung, Mit einer Bibliographie der neueren Thomasius-Literatur*, Herausgegeben von Werner Schneiders, Hamburg: Felix Meiner Verlag.

Gierke, Otto von 1922, *Political Theories of the Middle Age*, translated and edited with an introduction by F.W. Maitland, Cambridge: The Syndics of Cambridge University Press.

- 1934, *Natural Law and the Theory of Society 1500 to 1800*, translated and with an introduction by Ernest Barker, Cambridge: Cambridge University Press.
- Goldschmidt, Victor 1964, 'État de nature et pacte de soumission chez Hegel', *Revue Philosophique de la France et de l'Étranger*, T 154, pp. 45–65.
- Gray, Marion 1986, 'Society and Politics under the Stein Reform Ministry of 1808', *Transactions of the American Philosophical Society*, New Series, 76, 1: 1–175.
- Gräff, Heinrich 1846, *Ergänzungen und Erläuterungen der Preussischen Rechtsbücher durch Gesetzgebung und Wissenschaft*, Band 6, Breslau: G. Ph. Aderholz.
- Haakonssen, Knud 1985, 'Hugo Grotius and the History of Political Thought', *Political Theory*, 13, 239–65.
- 2006, 'German Natural Law', in *The Cambridge History of Eighteenth Century Political Thought*, edited by Mark Goldie and Robert Wokler, Cambridge: Cambridge University Press.
- Habermas, Jürgen 1974, *Theory and Practice*, translated by John Viertel, Boston: Beacon University Press.
- Harris, Henry Sifton 1972, *Hegel's Development: Toward the Sunlight 1770–1801*, Oxford: Oxford University Press.
- 1979, 'Introduction to the First Philosophy of Spirit', in G.W.F. Hegel, *System of Ethical Life and First Philosophy of Spirit*, edited and translated by H.S. Harris and T.M. Knox, Albany: State University of New York Press.
- 1983, *Hegel's Development: Night Thoughts (Jena 1801–1806)*, Oxford: Clarendon Press.
- Haym, Rudolf 1972, 'Preußen und die Rechtsphilosophie', in G.W.F. Hegel, *Grundlinien der Philosophie des Rechts oder Naturrecht und Staatswissenschaft im Grundrisse mit Hegels eigenhändigen Notizen und den mündlichen Zusätzen*, Herausgegeben und eingeleitet von Helmut Reichelt, Frankfurt, Berlin: Ullstein Verlag.
- Hegel, G.W.F. 1972, *Grundlinien der Philosophie des Rechts oder Naturrecht und Staatswissenschaft im Grundrisse mit Hegels eigenhändigen Notizen und den mündlichen Zusätzen*, Herausgegeben und eingeleitet von Helmut Reichelt, Frankfurt, Berlin: Ullstein Verlag.
- 1973, *Vorlesungen über Rechtsphilosophie 1818-1831*, Herausgegeben von Karl-Heinz Ilting, 4 Bände, Stuttgart: Frommann-Holzboog.
- 1974, *Enzyklopädie der philosophischen Wissenschaften im Grundrisse (1830), Dritter*

*Teil, Werke 10*, Frankfurt am Main: Suhrkamp Verlag.

- 1975, *Lectures On the Philosophy of World History, Introduction : Reason in History*, translated by H.B. Nisbet, Cambridge: Cambridge University Press.
- 1977, Hegel's *Phenomenology of Spirit*, translated by A.V. Miller with an analysis of the text and foreword by J.N. Findlay, Oxford: Oxford University Press.
- 1979, *System of Ethical Life and First Philosophy of Spirit*, edited and translated by H.S. Harris and T.M. Knox, Albany: State University of New York Press.
- 1983a, *Die Philosophie des Rechts : die Mitschriften Wannenmann (Heidelberg 1817/18) und Homeyer (Berlin 1818/19)*, Herausgegeben von C. Becker, W. Bonsiepen, A. Gethmann-Siefert, F. Hogemann, W. Jaeschke, Ch. Jamme, H.-Ch. Lucas, K.R. Meist, H. Schneider, Hamburg: Felix Meiner Verlag.
- 1983b, *Philosophie des Rechts, Die Vorlesung von 1819/20 in einer Nachschrift*, Herausgegeben von Dieter Henrich, Frankfurt am Main: Suhrkamp Verlag.
- 1985, *The Letters*, translated by Clark Butler and Christiane Seiler, Indiana: Indiana University Press.
- 1986a [1970], *Grundlinien der Philosophie des Rechts oder Naturrecht und Staatswissenschaft im Grundrisse mit Hegels eigenhändigen Notizen und den mündlichen Zusätzen, Werke 7*, Frankfurt am Main: Suhrkamp Verlag.
- 1986b, *Jenaer Systementwürfe I: Das System der spekulativen Philosophie*, Hamburg: Felix Meiner Verlag.
- 1987, *Jenaer Systementwürfe III: Naturphilosophie und Philosophie des Geistes*, Hamburg: Felix Meiner Verlag.
- 1991a, *Elements of the Philosophy of Right*, edited by Allen W. Wood, translated by H.B. Nisbet, Cambridge: Cambridge University Press.
- 1991b, *The Encyclopaedia Logic, Part I of the Encyclopaedia of Philosophical Sciences with the Zusätze*, A new translation with Introduction and notes by T. F. Geraets, W. A. Suchting, and H. S. Harris, Indianapolis/Cambridge: Hackett Publishing Company.
- 1995a, *Lectures on Natural Right and Political Science: The First Philosophy of Right*, edited and translated by J. Michael Stewart, Peter C. Hodgson, and Introduction by Otto Pöggeler, Oxford: Oxford University Press.
- 1995b, *Lectures on the History of Philosophy, Volume 3: Medieval and Modern Philosophy*, Nebraska : University of Nebraska Press.

- 1996, *Early Theological Writings*, translated by T.M. Knox, with an introduction and fragments translated by Richard Kroner, Pennsylvania: University of Pennsylvania Press.
- 1999, *Political Writings*, edited by Lawrence Dickey, Cambridge: Cambridge University Press.
- 2002, *System der Sittlichkeit [Critik des Fichteschen Naturrechts]*, mit einer Einleitung von Kurt Rainer Meist herausgegeben von Horst D. Brandt, Hamburg: Felix Meiner Verlag.
- 2004, *Über die Reichsverfassung, Nach der Textfassung von Kurt Rainer Meist und auf der Grundlage von Bd. 5 der Gesammelten Werke*, herausgegeben von Hans Maier, Hamburg: Felix Meiner Verlag.

Henrich, Dieter 1971 [1967], *Hegel im Kontext*, Frankfurt am Main: Suhrkamp Verlag.

- 1983, 'Vernunft in Verwirklichung', in *Philosophie des Rechts, Die Vorlesung von 1819/20 in einer Nachschrift*, Herausgegeben von Dieter Henrich, Frankfurt am Main: Suhrkamp Verlag.

Heuer, Uwe-Jens 1960, *Allgemeines Landrecht und Klassenkampf. Die Auseinandersetzungen um die Prinzipien des allgemeinen Landrechts Ende des 18. Jahrhunderts als Ausdruck der Krise des Feudalsystems in Preußen*, Berlin: VEB Deutscher Zentralverlag.

Hintze, Otto 1931, 'Weltgeschichtliche Bedingungen der Repräsentativverfassung', *Historische Zeitschrift*, Bd. 143, H 1, 1–47.

- 1975, *The Historical Essays of Otto Hintze*, edited with an Introduction by Felix Gilbert with the assistance of Robert M. Berdahl, New York: Oxford University Press.

Hobbes, Thomas 1651, *Leviathan or the Matter, Forme, and Power of a Common-wealth Ecclesiasticall and Civill*, Hamilton: McMaster University Archive of the History of Economic Thought.

- 1983, *De Cive: the English version entitled in the first edition Philosophicall rudiments concerning government and society*, a critical edition by Howard Warrender, Oxford: Oxford University Press.

Hočevar, Rolf K. 1968, *Stände und Repräsentation beim jungen Hegel: Ein Beitrag zu seiner Staats- und Gesellschaftslehre sowie zur Theorie der Repräsentation*, München: Verlag C.H. Beck.

- 1973, *Hegel und der preussische Staat. Ein Kommentar zur Rechtsphilosophie von*

- 1821, mit einem Geleitwort von Hans Maier, München: Wilhelm Goldmann Verlag.
- Hochstrasser, Tim J. 2004, *Natural Law Theories in the Early Enlightenment*, Cambridge: Cambridge University Press.
- Holborn, Hajo 1982 [1959], *A History of Modern Germany 1648–1840*, New Jersey: Princeton University Press.
- Hölzle, Erwin 1925, 'Die Idee einer altgermanischen Freiheit vor Montesquieu', in *Historische Zeitschrift*, I-III, V, VII–VIII: 1–116.
- Honneth, Axel 1995, *The Struggle for Recognition: The Moral Grammar of Social Conflicts*, translated by Joel Anderson, London: Polity Press.
- Hont, Istvan 1990, 'The Language of Sociability and Commerce: Samuel Pufendorf and the Theoretical Foundations of the "Four-Stages Theory"', in *The Languages of Political Theory in Early Modern Europe*, edited by Anthony Pagden, Cambridge: Cambridge University Press.
- Ilting, Karl Heinz, 1971, 'The Structure of Hegel's "Philosophy of Right"', in *Hegel's Political Philosophy: Problems and Perspectives, A Collection of New Essays*, edited by Z.A. Pelczynski, Cambridge: Cambridge University Press.
- 1983, *Naturrecht und Sittlichkeit: begriffsgeschichtliche Studien*, Stuttgart: Klett-Cotta.
- 1994, *Grundfragen der praktischen Philosophie*, Herausgegeben von Paolo Becchi und Hansgeorg Hoppe, Frankfurt am Main: Suhrkamp.
- 2006 [1963], 'Hegels Auseinandersetzung mit der Aristotelischen Politik', in *Aufsätze über Hegel*, Herausgegeben von Paolo Becchi und Hansgeorg Hoppe, Mit einem Nachwort von Paolo Becchi, Frankfurt am Main: Humanities Online.
- Jolowicz, Herbert Felix and Barry Nicholas 1972 [1932], *Historical Introduction to the Study of Roman Law, Third Edition*, London and Reading: Cambridge University Press.
- Kant, Immanuel 2006, *Toward Perpetual Peace and Other Writings on Politics, Peace, and History*, New Haven: Yale University Press.
- 2011 [1786], *Groundwork of the Metaphysics of Morals, A German-English Edition*, Cambridge: Cambridge University Press.
- Kantorowicz, Hermann U. 1912, 'Volksgeist und historische Rechtsschule', *Historische Zeitschrift*, Bd. 108, H. 2, 295–325.
- Kaser, Max and Rolf Dannenbring 1968 [1965], *Roman Private Law A Translation of Max Kaser's 'Römisches Privatrecht'*, Durban: Hayne and Gibson Limited.

- Kersting, Wolfgang 2004 [1990], 'Vertrag, Gesellschaftsvertrag, Herrschaftsvertrag', in *Geschichtliche Grundbegriffe: Historisches Lexikon zur politische-sozialen Sprache in Deutschland, Band 7*, Otto Brunner, Werner Conze, Reinhart Koselleck (hrsg.), Stuttgart: Klett Cotta.
- Knox, T.M. 1940, 'Hegel and Prussianism', *Philosophy*, 15: 51–63.
- Korkman, Petter 2003, 'Voluntarism and Moral Obligation: Barbeyrac's Defence of Pufendorf Revisited', in *Early Modern Natural Law Theories: Contexts and Strategies in the Early Enlightenment*, edited by Thomas J. Hochstrasser and Peter Schröder, Dordrecht: Kluwer Academic Publishers.
- Koselleck, Reinhart 1975, *Preußen zwischen Reform und Revolution Allgemeines Landrecht, Verwaltung und soziale Bewegung von 1791 bis 1848*, Stuttgart: Klett-Cotta.
- 1988, *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society*, Massachusetts: MIT Press.
- 1989, 'Social History and Conceptual History', *International Journal of Politics, Culture and Society*, 2, 3: 308–25.
- 1995 [1979], *Vergangene Zukunft: zur Semantik geschichtlicher Zeiten*, Frankfurt am Main: Suhrkamp Verlag.
- 2004a [1972], 'Einleitung' in *Geschichtliche Grundbegriffe: Historisches Lexikon zur politische-sozialen Sprache in Deutschland, Band 1*, Otto Brunner, Werner Conze, Reinhart Koselleck (hrsg.), Stuttgart: Klett Cotta.
- 2004b, 'Begriffsgeschichte and Social History', in *Futures Past: On the Semantics of Historical Time*, translated and with an introduction by Keith Tribe, New York: Columbia University Press.
- Kouvelakis, Stathis 2003, *Philosophy and Revolution: From Kant to Marx*, preface by Frederic Jameson, translated by G.M. Goshgarian, London: Verso.
- Krieger, Leopold 1972 [1957], *The German Idea of Freedom: History of a Political Tradition From the Reformation to 1871*, Chicago: The University of Chicago Press.
- Lewis, Charlton T., (ed.) 1915 [1890], *An Elementary Latin Dictionary*, New York: American Book Co.
- Liddell, H. G., Scott, R., Jones, H. S., & McKenzie, R. 1996, *A Greek-English Lexicon*, Oxford: Clarendon Press.



- Losurdo, Domenico 2004, *Hegel and the Freedom of Moderns*, translated by Marella and Jon Morris, Durham and London: Duke University Press.
- Löwith, Karl 1949, *Meaning in History*, Chicago, University of Chicago Press.
- 1995, *Martin Heidegger and European Nihilism*, translated by Gary Steiner, edited by Richard Wolin, Columbia, Columbia University Press.
- Lukács, Georg 1972, *History and Class Consciousness*, translated by Rodney Livingstone, Massachusetts: MIT Press.
- 1975, *The Young Hegel*, translated by Rodney Livingstone, London: Merlin Press.
- Maier, Hans 2004, 'Hegels Schrift über die Reichsverfassung', in G.W.F. Hegel *Über die Reichsverfassung*, herausgegeben von Hans Maier, nach der Textfassung von Kurt Rainer Meist, Hamburg: Felix Meiner Verlag.
- Marcos, Maximiliano Hernández 2009, 'Conceptual Aspects of Legal Enlightenment in Europe', in *A Treatise of Legal Philosophy and General Jurisprudence Volume 9, A History of the Philosophy of Law in the Civil World, 1600–1900*, edited by Canale, Damiano, Paolo Grossi and Hasso Hoffman, London, New York: Springer.
- Marx, Karl and Friedrich Engels 1975–2004, *Collected Works*, New York: International Publishers.
- Medick, Hans 1973, *Naturzustand und Naturgeschichte der bürgerlichen Gesellschaft: Die Ursprünge der bürgerlichen Sozialtheorie als Geschichtsphilosophie und Sozialwissenschaft bei Samuel Pufendorf, John Locke und Adam Smith*, Göttingen: Vandenhoeck and Ruprecht.
- Meinecke, Friedrich 1998 [1957], *Machiavellianism: The Doctrine of Raison d'État and its Place in Modern History*, translated by Douglas Scott with an introduction by Werner Stark, London: Transaction Publishers.
- Meist, Kurt Rainer 2002, 'Einleitung', in G.W.F. Hegel, *System der Sittlichkeit [Critik des Fichteschen Naturrechts]*, herausgegeben von Horst D. Brandt, Hamburg: Felix Meiner Verlag.
- Mohl, Ruth 1962 [1933], *The Three Estates in Medieval Renaissance Literature*, New York: Frederick Ungar Publishing Company.
- Montesquieu, Charles-Louis de Secondat 1989 [1750], *The Spirit of Laws*, translated by Anne M. Cohler, Basia C. Miller, Harold Stone, Cambridge: Cambridge University Press.
- Nederman, Cary 1987, 'Sovereignty, War and the Corporation: Hegel on the Medieval

- Foundations of the Modern State', *The Journal of Politics*, 49, 2: 500–20.
- Neuhouser, Frederick 2000, *Foundations of Hegel's Social Theory*, Cambridge, Massachusetts: Harvard University Press.
- Oexel, Otto Gerhard, Werner Conze and Rudolf Walther 2004, 'Stand, Klasse', in *Geschichtliche Grundbegriffe: Historisches Lexikon zur politische-sozialen Sprache in Deutschland, Band 6*, Otto Brunner, Werner Conze, Reinhart Koselleck (hrsg.), Stuttgart: Klett Cotta.
- Ossowski, Stanislaw 1969 [1963], *Class Structure in the Social Consciousness*, translated by Sheila Patterson, London: Routledge and Kegan Paul.
- Ottmann, Henning 1979, 'Hegels Rechtsphilosophie und das Problem der Akkomodation. Zu Iltings Hegelkritik und seiner Edition der Hegelschen Vorlesungen über Rechtsphilosophie', *Zeitschrift für philosophische Forschung*, 33, 2: 227–43.
- 1984, 'Hegel's Philosophy of Right: Changing Paradigms for its Interpretation', *Clio*, 13, 4: 315–30.
- Palladini, Fiammetta 2008, 'Pufendorf disciple of Hobbes: The nature of man and the state of nature: The doctrine of socialitas', *History of European Ideas*, 34:1, 26–60.
- Pattaro, Enrico 2009 'General Editor's Preface', in *A Treatise of Legal Philosophy and General Jurisprudence Volume 9, A History of the Philosophy of Law in the Civil World, 1600–1900*, edited by Canale, Damiano, Paolo Grossi and Hasso Hoffman, London, New York: Springer.
- Pelczynski, Z. A. 1971, 'The Hegelian Conception of the State', in *Hegel's Political Philosophy: Problems and Perspectives*, edited by Z. A. Pelczynski, London: Cambridge University Press.
- (ed.) 1984, *The State and Civil Society: Studies in Hegel's Political Philosophy*, Cambridge: Cambridge University Press.
- 1998 [1964], 'Introductory Essay' in *Hegel's Political Writings*, translated by T.M. Knox, Oxford: Oxford University Press.
- Pippen, Robert B. 1989, *Hegel's Idealism: The Satisfactions of Self-Consciousness*, Cambridge: Cambridge University Press.
- Pöggeler, Otto 1977, 'Hegels Option für Österreich', in *Hegel Studien* 12: 83 –128.
- 1983, 'Einleitung', in *Die Philosophie des Rechts : die Mitschriften Wannenmann (Heidelberg 1817/18) und Homeyer (Berlin 1818/19)*, Herausgegeben von C. Becker, W. Bonsiepen, A. Gethmann-Siefert, F. Hogemann, W. Jaeschke, Ch. Jamme, H.-Ch. Lucas, K.R. Meist, H. Schneider, Hamburg: Felix Meiner Verlag.

- 1995, 'Editorial Introduction', in *Lectures on Natural Right and Political Science: The First Philosophy of Right*, edited and translated by J. Michael Stewart, Peter C. Hodgson, and Introduction by Otto Pöggeler, Oxford: Oxford University Press
  
- Poggi, Gianfranco 1990, *The State, its Nature, Development and Prospects*, Stanford: Stanford University Press.
  
- 2006, 'Theories of State Formation', in *The Blackwell Companion to Political Sociology*, edited by K. Nash and A. Scott, Oxford: Blackwell.
  
- Pufendorf, Samuel 1991, *On the Duty of Man and Citizen*, Cambridge: Cambridge University Press.
  
- 1994, *The Political Writings Of Samuel Pufendorf*, Edited By Craig L. Carr Translated By Michael J. Seidler, New York: Oxford University Press.
  
- 2007 [1696], *The Present State of Germany*, translated by Edmund Bohun, edited with an introduction by Michael J. Seidler, Indianapolis: Liberty Fund.
  
- Riedel, Manfred 2004 [1975], 'Gesellschaft, bürgerliche', in *Geschichtliche Grundbegriffe: Historisches Lexikon zur politische-sozialen Sprache in Deutschland, Band 2*, Otto Brunner, Werner Conze, Reinhart Koselleck (hrsg.), Stuttgart: Klett Cotta.
  
- 2011 [1984], *Between Tradition and Revolution: The Hegelian Transformation of Political Philosophy*, Cambridge: Cambridge University Press.
  
- Ritter, Joachim 1984, *Hegel and the French Revolution*, Massachusetts: MIT University Press.
  
- Rosenberg, Hans 1966 [1958], *Bureaucracy, Aristocracy and Autocracy: The Prussian Experience 1660–1815*, Boston: Beacon Press.
  
- Rosenkranz, Karl 1844, *Hegels Leben, Supplement zu Hegels Werken*, Berlin: Duncker und Humblot.
  
- Rousseau, Jean-Jacques 2002, *The Social Contract and the First and Second Discourses*, edited and with an introduction by Susan Dunn, New Haven and London: Yale University Press.
  
- Ruda, Frank 2011, *Hegel's Rabble: An Investigation into Hegel's Philosophy of Right*, London: Continuum.
  
- Rüping, Hinrich 1979, 'Thomasius und seine Schüler im brandenburgischen Staat', in *Humanismus und Naturrecht in Berlin-Brandenburg-Preussen: ein Tagungsbericht*,

herausgegeben von Hans Thieme, Veröffentlichungen der Historischen Kommission zu Berlin, Band 48, Berlin: Walter de Gruyter & Co.

Sabine, George 1961 [1937], *A History of Political Theory*, Third Edition, New York: Holt, Rinehart and Winston.

Scattola, Merio 2003, 'Before and After Natural Law: Models of Natural Law in Ancient and Modern Times', in *Early Modern Natural Law Theories: Contexts and Strategies in the Early Enlightenment*, edited by Thomas J. Hochstrasser and Peter Schröder, Dordrecht: Kluwer Academic Publishers.

— 2009, 'Scientia Iuris and Ius Naturae: The Jurisprudence of the Holy Roman Empire in the Seventeenth and Eighteenth Centuries', in *A Treatise of Legal Philosophy and General Jurisprudence Volume 9, A History of the Philosophy of Law in the Civil World, 1600–1900*, edited by Canale, Damiano, Paolo Grossi and Hasso Hoffman, London, New York: Springer.

Schiavone, Aldo 1984, *Alle origini del dritto Borghese: Hegel contro Savigny*, Roma: Biblioteca di Cultura Moderna Laterza.

Schlie, Ulrich 2013, *Das Duell: Der Kampf zwischen Habsburg und Preußen um Deutschland*, Berlin: Propyläen.

Schmidt, Steffen 2004, *Hegels System der Sittlichkeit*, Berlin: Akademie Verlag.

Schmitt, Carl 1996, *Roman Catholicism and Political Form*, translated by G. L. Ulmen, Westport Connecticut: Greenwood Press.

— 2007, *The Concept of the Political*, translated and with an introduction by George Schwab, with a foreword by Tracy B. Strong and notes by Leo Strauss, Chicago: Chicago University Press.

— 2008, *The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Political Symbol*, translated by George Schwab and Erna Hilfstein, with a new foreword by Tracy B. Strong, Chicago: Chicago University Press.

Schröder, Peter 1997, 'Thomas Hobbes, Christian Thomasius and the seventeenth century debate on the church and state', *History of European Ideas*, 23: 2–4, 59–79.

— 2001, *Naturrecht und absolutistisches Staatsrecht: Eine vergleichende Studie zu Thomas Hobbes und Christian Thomasius*, Berlin: Duncker & Humblot.

Scotti-Rosin 1993, 'Ordre, Désordre', in *Handbuch politisch-sozialer Grundbegriffe in Frankreich 1680–1820, H. 14/15*, hrsg. von Rolf Reichardt und Eberhard Schmitt in Verbindung mit Gerd van den Heuvel und Anette Höfer, München: Oldenbourg.

Sewell, William H. Jr. 1974 'État, Corps and Ordre: Some Notes on the Social

Vocabulary of the French Old Regime’, in *Sozialgeschichte Heute: Festschrift für Hans Rosenberg zum 70 Geburtstag*, edited by H. U. Wehler. Göttingen: Vandenhoeck and Ruprecht.

Spinoza, Benedict de 2004, *A Theologico-Political Treatise, A Political Treatise*, translated with an introduction by R.H.M. Elwes, New York: Dover Publications.

Stein, Peter 1999, *Roman Law in European History*, Cambridge: Cambridge University Press.

Stewart, Jon 1996, *The Hegel Myths and Legends*, Illinois: Northwestern University Press.

Stolleis, Michael 2001, *Public Law in Germany, 1800–1914*, New York: Berghahn Books.

Strauss, Leo 1963, *The Political Philosophy of Hobbes: Its Basis and its Genesis*, translated from the German manuscript by E. M. Sinclair, Chicago: The University of Chicago Press.

— 1965 [1953], *Natural Right and History*, Chicago: The University of Chicago Press.

— 1982 [1930], *Spinoza’s Critique of Religion*, translated by E.M. Sinclair, New York: Schocken Books.

Stuke, Horst 1968, ‘La signification du mot ‘Stand’ dans les pays de langue allemande, in *Problèmes de stratification sociale, Actes du Colloque International (1966)*, publiés par Roland Mousnier, Paris: Presses Universitaires de France.

Suter, J.F. 1971, ‘Burke, Hegel, and the French Revolution’, in *Hegel’s Political Philosophy: Problems and Perspectives, A Collection of New Essays*, edited by Z.A. Pelczynski, Cambridge: Cambridge University Press.

Taubes, Jacob 2009, *Occidental Eschatology*, translated by David Ratmoko, Stanford: Stanford University Press.

Thomann, Marcel 1979, ‘Die Bedeutung der Rechtsphilosophie Christian Wolffs in der juristischen und politischen Praxis des 18. Jahrhunderts’, in *Humanismus und Naturrecht in Berlin-Brandenburg-Preussen: ein Tagungsbericht*, herausgegeben von Hans Thieme, Veröffentlichungen der Historischen Kommission zu Berlin, Band 48, Berlin: Walter de Gruyter & Co.

Thomasius, Christian 2007, *Essays on Church, State and Politics*, edited and translated with an introduction by Ian Hunter, Thomas Ahnert and Frank Grunert, Indianapolis: Liberty Fund.

Tönnies, Ferdinand 1972 [1931], ‘Hegels Naturrecht: Zum Gedächtnis an Hegels Tod (am 14. November 1831)’, in G.W.F. Hegel, *Grundlinien der Philosophie des Rechts*

*oder Naturrecht und Staatswissenschaft im Grundrisse mit Hegels eigenhändigen Notizen und den mündlichen Zusätzen*, Herausgegeben und eingeleitet von Helmut Reichelt, Frankfurt, Berlin: Ullstein Verlag.

Tuck, Richard 2004, 'The Civil Religion of Thomas Hobbes', in *Political Discourse in Early Modern Britain*, edited by Nicholas Phillipson and Quentin Skinner, Cambridge: Cambridge University Press.

Villey, Michel 1975, 'Das Römische Rechte in Hegels Rechtsphilosophie', in *Materialien zu Hegels Rechtsphilosophie Band Zwei*, herausgegeben von Manfred Riedel, Frankfurt am Main : Suhrkamp Verlag.

Vincent, Andrew 2004 [1992], 'Conceptions of the State', in *Encyclopedia of Government and Politics*, edited by Mary Hawkesworth and Maurice Kogan, London: Routledge.

Voltaire 1757, *Essai sur l'histoire général et sur les mœurs et l'esprit des nations*, Geneva : Cramer.

Walker, Mack 1978, 'Rights and Functions: The Social Categories of Eighteenth-Century German Jurists and Cameralists', *The Journal of Modern History*, 50, 2: 234–51.

— 1998 [1971], *German Home Towns: Community, State, and General Estate 1648–1817*, with a new foreword by James J. Sheehan New York: Cornell University Press.

Waszek, Norbert 1988, *The Scottish Enlightenment and Hegel's Account of Civil Society*, Dordrecht: Kluwer Academic Publishers.

Weber, Max 1978, *Economy and Society*, Berkeley, Los Angeles: University of California Press.

— 2003 [1994], *Political Writings*, edited by Peter Lassman and Ronald Speirs, Cambridge: Cambridge University Press.

— 2010, 'The Distribution of Power within the Community: Classes, Stände, Parties', *Journal of Classical Sociology*, 10: 137–52.

Weil, Eric 1998 [1950], *Hegel and the State*, translated by Mark A. Cohen, Baltimore and London: John Hopkins University Press.

Weis, Eberhard 1986, 'Enlightenment and Absolutism in the Holy Roman Empire: Thoughts on Enlightened Absolutism in Germany', *The Journal of Modern History*, 58: 181–97.

Weisser-Lohmann, Elisabeth and Dietmar Köhler (Hg.) 2000, *Verfassung und Revolution: Hegels Verfassungskonzeption und die Revolution der Neuzeit, Hegel-Studien*

*Beiheft 42*, Hamburg: Felix Meiner Verlag.

Whitman, James Q 1990, *The Legacy of Roman Law in the German Romantic Era: Historical Vision and Legal Change*, Princeton: Princeton University Press.

Williams, George Huntston 1963, *The Radical Reformation*, Philadelphia: The Westminster Press.

Wolff, Michael 2004, 'Hegel's Organicist Theory of the State: On the Concept and Method of Hegel's "Science of the State"', in Pippen, Robert B. and Ottfried Höffe 2004, *Hegel on Ethics and Politics, The German Philosophical Tradition*, translated by Nicholas Walker, Cambridge: Cambridge University Press.

Zurbuchen, Simone 2006, 'Religion and Society', in *The Cambridge History of Eighteenth-Century Philosophy* edited by Knud Haakonssen, Cambridge: Cambridge University Press.