

A “Transformative” Reading of Hegel’s Philosophy of Right?

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Abstract: The wide range of interpretations and reception of Hegel's *Philosophy of Right*, can be divided into hermeneutic, creative or transformative approaches. In this essay, a transformative reading is defended. The argument focuses on Hegel's concepts of "Right" and "Objective Spirit" both of which bear on present debates in social ontology and legal philosophy. The first concept ("Right") combines a critique of the narrow individualistic and legalistic concepts of Right with a justification of the protective and egalitarian function of law enforcing institutions. The second concept ("Objective Spirit") avoids ontological individualism, as well as the exclusive actuality pertaining to systems, institutions, and collectives. However, Hegel's conception of state sovereignty as an end in-itself, and as the prefiguration of the absolute idea, tarnishes the relevance of his philosophy for social philosophy today. In addition, his teleological concept of nature and history is untenable in view of evolutionary theories and cultural pluralism. To release the potential of the *Philosophy of Right* a fundamental transformation is required. Modern social philosophy can work with other aspects of Hegel's philosophy of Spirit: Its normative anthropology, the history of radical experiences, and the theory of mutual recognition.

Keywords: social ontology, idealism, state sovereignty, civil rights, mutual recognition.

Introduction

Hegel's *Philosophy of Right* is one of the most controversial texts in the history of philosophy. The controversy started immediately after its publication 200 years ago¹ and continues till this day. Its history of interpretation (Rezeptionsgeschichte) is tightly connected with its own influence on the history of thought, politics, and law (Wirkungsgeschichte). It triggered radical transformations in Left-Hegelianism, Marx, and has garnered a reputation and place amongst the main sources of both liberalism and communitarianism, and even totalitarianism. The Anglo-Saxon history of interpretation of the *Philosophy of Right* is particularly related to political and ideological developments. The last phase of this interpretation has taken a sharp turn from the postwar criticism in analytic and empiricist philosophy (Popper, Russel) to the recent neo-pragmatist defense (Pinkard, Brandom). Whereas the critics linked Hegel to the history of German authoritarianism, the latter readings place him within the history of democracy, or the common law tradition (Brandom).

Some of these controversies may be overcome by critical editions and annotations of Hegel's texts. However, in the case of the *Philosophy of*

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1 Riedel 1968

Right the edition of the student notes of Hegel's different lectures between 1817 and 1831 even has incited new controversies. Together with biographic and historic investigations, these controversies gave rise to the picture of the "progressive" Hegel of the lectures disguised in the publication in order to pass state censure. I cannot go into the details of this controversy. The evidence for a piece of "persecution and the art of writing" (Leo Strauss) in the book of 1820/21 is unconvincing in my eyes. The student notes may be used as commentaries to help understand the published book, but not read against it. There are enough texts authorized by Hegel, especially in the "Objective spirit" section of the Encyclopedia (third edition 1830!) to confirm the arguments of the book. Hegel is not an apologist of the Prussian state, but not an early liberal constitutionalist either.²

The reasons for the deeper controversies are to be found in the book itself and its place in the Hegelian system. They are principally of two kinds: The first is the tension between the analysis of institutions effective in Hegel's time – one, but not the only meaning of "wirklich" in the preface of the book – and the systematic framework based on fundamental ("logical") principles. By this framework the philosophy of law, morality and ethical life is seen as "proof" of the absolute immanent in every reality³ – the system as a whole. The second tension derives from the character of Hegel's principles itself. Their "self-movement" (Selbstbewegung)⁴ is based on their self-referential negativity. But the "explosive" character of this negativity is used within a holistic system aiming at reconciliation⁵ between man and world, both natural and social. These tensions –allow for a variety of different and opposing readings which cannot simply be swept away – although almost any new interpretation claims to make every preceding one completely inadequate and superfluous.

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2 Regarding his position in the Prussian constitutional debate cf. Lübke-Wolff 1983, for the relation to the constitutional movements of the early 19th century cf. Siep 2015, 2018. The following text draws in an abbreviated form on former and present publications which I therefore take the allowance to refer to.

3 For a stringent explanation of Hegel's conception of the immanent absolute ("All-Einheitslehre") cf. Henrich 1982.

4 Cf. Phenomenology (GW 9, 41) and Science of Logic (GW 11, 8). I quote Hegel from the collected works edition (see bibliography) as GW (with volume no. and pages or §§) and occasionally the "Theorie-Werkausgabe" (TW). I use the abbreviations PR for Philosophy of Right, AW for the English edition by Alan Wood and Enc for Encyclopedia (1817 and 1830). As is well-known the PR was published in 1820 although 1821 is printed on the front page.

5 This task which Hegel set for philosophy since his early writings has not been abandoned in the PR (cf. PR Preface, GW 14.1, 16 and § 360).

1. Ways of reading Hegel today

In order to schematize the diversity and avoid misunderstanding, I distinguish between three types of reading *the Philosophy of Right* which seem to be dominant today. The first I call “hermeneutic” (1.1), the second “creative” (1.2) and the third, containing elements of the other two, “transformative” (1.3). They are all justified, but in my view one should be aware of their relation to each other and to the texts.

1.1 By “hermeneutic” I understand a reconstruction of the arguments presented by the author, based on critically edited and annotated texts. Due to the systematic claims of the book they have to be placed within the framework of the system as a whole. At the same time, following Hegel’s maxim “hic Rhodus, hic saltus”,⁶ the arguments have to be clarified on the background of the historical context (“philosophy in context”). It is evident that Hegel talking to his students is aware of the recent movements, especially the anti-Napoleonic wars with its emerging nationalism and the historic school of jurisprudence (Savigny) linked to Romanticism and Schelling. But, of course, Hegel, like Rousseau, aims at a dialogue with the classic authors as well.

This interpretation aims at understanding the general aims and the particular conceptions of the author, guided by a “principle of charity”, but examining each argument regarding its own conclusiveness. Of course, the modern language used by the interpreter unavoidably shapes the “horizon” of the interpretation. But she/he attempts to “bracket” this bias in order not to mitigate the otherness and “strangeness” of the conceptions analyzed. Only as such the understanding may serve as a critical view on the interpreters own open or hidden premises.

1.2 The “creative” view aims at writing texts for the present time, its problems or its longing for “innovative” thought. In general, the “interpreter” is fascinated by more or less implicit concepts which in a new “translation” would be convincing today or a surprising alternative for worn out ways of thinking. Often, more recent authors or texts from different traditions provide the key for such reading. But even supporters of eternal truths are often convinced that the text need only be deciphered in the way familiar from the interpretation of classical or holy scriptures, namely by “going against the grain” of the time-dependent wording. Thus there is a broad spectrum between new readings of the always true “mighty dead”, creative post-modern reformulations (like in modern staging of classical drama) or readings of Hegel as a prophet of modern achievements like democracy, human rights or women’s liberation.

1.3 A transformative reading sticks to the hermeneutic rigor of the first interpretive approach outlined above. But it is explicitly guided

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6 PR 15, AW 21.

by the questions and problems of the present – both philosophical and social. However, the transformative interpretation tries to distinguish how far Hegel can be helpful for solving them and where the limits are, due to the conceptual and historical premises of his thought. To some degree, his thinking, for instance regarding the state, the sexes, the immanent purpose of history, or the claims of spirit against nature⁷ is even considered to belong to the very sources of present problems. His defense of metaphysics, which he tries to reconstruct on a par with the Kantian critique⁸, and of Christianity against the enlightenment generate consequences unacceptable from a modern point of view. A transformational reading of Hegel has to question these conceptions if it wants to make “the rest” prolific for modern philosophical tasks. In this regard, the transformative reading is in accord with the second.

This is only a broad sketch of alternatives requiring much more “fine tuning”. I admit its bias, because I attempt to belong to the third alternative. In the following, I pick out two aspects of the *Philosophy of Right* which I consider suitable for such a transformative reading: Its concept of right (2.1) and the relation between individual and trans-individual objective spirit (2.2).

2. “Right and “objective spirit”: Hegel and modern social philosophy

2.1. Concept and critique of “Right” or “law”

For a reading of Hegel’s text with regard to contemporary problems, Hegel’s very concept of right or law⁹ seems to be of special interest. Regarding it, the most basic hermeneutical questions remain puzzling. Why does Hegel subsume the content of his *Philosophy of Right* under so many different titles: Philosophy of Right, natural law and science of state (subtitle) and objective spirit (title of the Encyclopedia section)? And what about the definition, justification, or deduction of this concept? In the Introduction of the PR (§ 2) Hegel assigns the “proof” or “deduction” of the “concept of Right” to the preceding part of philosophy, namely the Philosophy of Subjective Spirit. As its result, the concept of law is “given” at the start of the PR as comprising the determinate forms of a rational will aiming at its own freedom and its manifestation within the natural and social world (Enc. 1830, § 486). The introduction to the PR summarizes the concept of this will in a way accessible to common

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7 Cf. Siep (forthcoming a).

8 Cf. his remarks regarding the relation between logic and metaphysics in the preface and introduction to the Science of Logic, GW 11, 5-8, 17-19, 22.

9 In the following, I usually choose the translation “right” for “Recht” and “law” for “Gesetz” (only with a capital L for “das Recht”).

experiences with one's own will (§§ 5-7). Hegel relates the moments of (negative) freedom from every particular aim and the necessity of self-binding decisions – without losing this freedom – to the moments of “the” concept: universality, particularity and singularity. In contrast, in the Preface to the PR, Hegel demands of philosophy to understand what is “actual” (wirklich), namely the rational result of the historic development of laws, institutions and constitutions – in opposition to a priori ideas as well as to common feelings about justice, freedom etc.¹⁰ Of course, Hegel's concept of “actuality” as developed in the Science of Logic does not refer to the empirical facts of society and contemporary history. “Actual” is only what can be understood as the self-realization and -explication of reason. In the Preface of the PR he distinguishes “existence” and “actuality” (Wirklichkeit) – the former is the “bark” of contingent variations, the latter the “pulse” of reason's necessary historical self-realization. However, the institutions which Hegel analyzes in the PR belong to the “pulse” or the necessary realization of reason. Thus the formulations concerning reason's actuality (“Wirklichkeit”) in the present (“ist”) or the future tense (“wird”) – as in some of the student notes – is not so important after all.¹¹ It is the model of the contemporary European constitutional monarchy, including variations and future modifications, which represents an advanced state of reason in history.¹² Hegel's late lectures on the philosophy of history indicate problems or “knots” to be solved, but no radical reversals.¹³

The rational reconstruction of the historically realized idea accords to the categories of the Science of Logic – although perhaps not just in the same sequence.¹⁴ At the same time, the order of abstract right – containing private right and some aspects of penal law – morality and ethical life establishes a new systematic order for the contents of natural law, Aristotelian practical philosophy, and Kantian Metaphysics of Morals.

Instead of discussing the relation between the different ways of “deducing” and explaining the concept of Right in the preface and the introduction of the 1821 book, I focus on the meaning of “Right” in the three parts of the PR. What is obvious and interesting for today, is that Hegel uses a “broad” concept of right or law. Not only strict rights fixed in

10The polemic tone of the preface, as is well-known, is primarily aimed at the national-religious doctrine of the spiritual and political leaders of the “Burschenschaften”.

11 But compare Henrich, 1983, 13-17. Hegel stresses the power of reason or the idea to realize itself – even beyond natural necessity – in many instances (cf. GW 13, 114; GW 14.1, 16; GW 18, 153).

12The constitution of the PR seems, however, closer to the German type than to the French (1814) or English. For the German type of constitutional monarchy see Böckenförde (1976).

13 Cf. TW 12, 534.

14 “Spirit” in general corresponds to the subjective logic (Begriffslogik), but Hegel employs categories from all parts of the Logic in the PR (“Dasein”, “Wirklichkeit”, “negatives Urteil” etc.).

laws and sanctioned by legal force – deriving from these laws themselves – belong to the concept of Right (or Law). This concept includes claims to institutional support for welfare and respect for the freedom of conscience (as in “morality”) as well as the psychological, sociological, or administrative (“Rechtspflege”) conditions of a stable culture of Law. The very expression of “abstract” – meaning in Hegel’s terminology one-sided and isolated from a semantic or institutional whole – retains his early criticism of the insufficiency of legal relations.¹⁵

However, since his Jena writings, he claims to have demonstrated that the pre-modern relations of fighting for honor, possession and domination are justly overcome by the rule of Law. And as the true claims of “abstract right” in the PR are “conserved” in its sublation into the following parts, so is the right of the person to property and unforced contractual exchange. As an expression of the “idea” in Hegel’s sense of a self-realizing concept, however, right has to be firmly rooted in the customs, mentalities (“Gesinnungen”) and dispositions of the people. Yet in contrast to the necessary realization of reason “in the long run”, there are unavoidable risks for the stability of the rule of Law in modern societies: contemporary market societies are bound to undergo economic and social crises undermining loyalty to the Law.

What is the place of the concept of right in this analysis of the crises of civil society and its overcoming? The relations of private law are, of course, among the conditions of them. On the other hand, extreme economic crises touch the stability and justification of right or Law itself. Due to mass production, selling crises and unemployment, loyalty to the law erodes at both extremes of society. The extremely wealthy can “buy” the law. On the other side, among the poor without the chance to live a decent life by respecting the law, legal obedience may vanish. The poor are even justified in their disobedience and state punishment loses its meaning.¹⁶ But the “dialectic” of civil society does not result in a new form of economy or solidarity beyond legal relations. A single society may be driven beyond its borders into colonialism (PR § 248) or even collapse. The institutions which philosophy identifies and reconstructs in their rationality, instead of morally demanding or foreseeing them, partly prevent the crises and partly sublimate the “spirit” of civil society. For Hegel, the social (corporations) and political institutions (“Polizey”, ethical state) are not in principle unable to prevent the crises of civil society. But their permanent possibility indicates the necessity of a higher spirit, that of the ethical state.¹⁷

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15 Cf. GW 2, 201-204 (Frankfurt manuscripts), GW 4, 415- 485 (On the scientific treatments of natural law) or the Phenomenology chapter on the “condition of right or legal status”.

16 Cf. PR § 245, GW 26,1, 450 and Henrich 1983, S. 196.

17 In PR § 256 Hegel calls the development from family solidarity through the “diremption” of civil society to its sublation into the ethical state the “scientific proof” of the latter’s concept.

To the strength of the modern state belongs, however, to give room for the “extreme” of “subjective particularity”, that is the choice of life-plans and the private pursuit of interests (§ 260). It integrates conflicts between the claims of individuals and groups with the common good in different ways: by invisible hand processes as well as by “directing their will to a universal end”.¹⁸ The latter is the task of the corporations and the institutions of the social and ethical state. Civil society needs to be embedded within an “ethical” state which is worth inclusive personal sacrifices. This is not only required by Hegel’s concept of the modern state as supreme legal authority.¹⁹ It is also founded in a critique of the modern social contract state by a collective meaningful identity in the sense of the classical polis.

The “ethical”²⁰ relation towards the state overcoming the merely legal relations of civil society, however, limits Hegel’s actuality: namely the citizens’ willingness to find their last purpose and highest “freedom” in the ethical state as “unmoved end in itself” (§258). This end is worth offering all one’s rights and interests (including one’s life), if necessary to defend the state’s sovereignty (§ 323) in wars.²¹ Nota bene: *not* primarily for the protection of (contemporary and future) citizens’ rights, but for the manifestation of state sovereignty as embodiment of the absolute idea.²² To be sure, for Hegel this demands no enthusiastic patriotism, but “only” the habitual semi-conscious knowing that the state can ask for the sacrifice of any right. But its significance within Hegel’s concept of objective spirit is often underestimated: It not only realizes (“idealizes”) the limits of all particular rights by negation (“nullity”) but also transforms the necessity of natural death into a “work of freedom, something ethical in character” (§ 324, W 361).

The strengths and limits of Hegel’s concept of right from a modern point of view may be resumed in the following way: *firstly*, a broadening of the concept enabling science and politics to be aware of conflicts between different types and “layers” – for instance in the modern terminology

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18 PR § 260, AW 282, cf. also Enc (1830) § 537.

19 This is Hegel’s permanent tenor against the relation between the state and the particular forces as a private law relation since his early manuscripts on the ancient German empire – compare Max Weber’s concept of the “expropriation” of all separate authorities by the modern state (as “Anstalt” – Weber 1988, 510 f.).

20 Regarding the underlying interpretation of “ethical” and the relation between state and religion see Siep 2015, 2017.

21 If the dispensation of these rights manifests sovereignty, they are, of course, no effective limitation of it. They are rather an appeal, not a takeover of a piece of sovereignty (as intended in the revolutionary 18th declarations, cf. Hunt 2007, 114-116).

22 Many recent defenses of Hegel’s theory of war (for instance Wood, 1991, XXVI) overlook its function for ontological “idealism” (§ 278) and secularized theodicy (“justification of providence” § 324). This, however, marks the difference to modern theories of “just war” – namely justified only by the defense of (present and future) citizens’ rights.

between subjective and objective rights, individual and group claims (“cultural” rights, public goods etc.), protecting versus enabling rights (social, or today ecological rights). The contemporary conflicts between different “generations” of human rights or the debate of their individualistic or Western bias may profit from such a perspective.

Secondly, Hegel thinks that the deficiency of every form of legal relation has to be compensated. Not only by informal ways of mediation,²³ but more importantly by moral and ethical bonds. Customs, habits, and emotional sensibility allow for the recognition of irreducible individuality (as in moral conscience or private life plans) and the forming of emotional and rational relations of solidarity and trust.²⁴

The reasons for Hegel’s critique of the isolation and dominance of legal relations – especially concerning private law – are far from being obsolete. Not only the history of the relation between the state and private enterprise in colonialism and imperialism testify the dominance of “abstract right” and the freedom of “subjective particularity”. Modern forms of “possessive individualism” or corporate snatch to global power and political influence still confirm such trends. On the other hand, the turn against the protection of individual rights or the rule of law – including the total abnegation of “enlightenment” – in authoritarian and totalitarian states of the 20th century led to forms of arbitrary rule with previously unimaginable degradations of human dignity.

Similar consequences were generated by the failure of states or of the rule of law in civil wars – even if legitimate in their beginning. In this light, the codification and enforcing of rights still seems the best way to protect the weak against the powerful. And even parts of the claims beyond “abstract law” have been laid down in voluminous codes for social or environmental law.

They are at least a basis for legal demands and public pressure, especially by the media or social movements. In addition, different from the times of unlimited national sovereignty, social, cultural and ecological rights of individuals and groups are the subject of international law and jurisdiction.

Setting aside Hegel’s anathema against philosophical prophecy, one may try to anticipate at least some future social problems regarding the significance of law or right. Taking climate change and pandemics as examples, the limits of the concept of right and legal procedures seems obvious: the securing of urgent public goods is widely considered to

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23 PR § 223.

24 In contrast to the Phenomenology, unfortunately, Hegel’s discussion of conscience in the PR is much poorer regarding the integration of individual non-conformism in a “learning” community. But different from Robert Brandom I think that his concept of “forgiveness” is neither in the Phenomenology nor in the PR of such an all-understanding, pardoning and improving character as depicted in the “Spirit of Trust” (Brandom 2019). For a similar criticism see Knappik 2020.

justify cutbacks on civil rights and democratic legislation. However, to decree restrictions or distribute benefits – such as hospital beds or vaccination – at random without general rules and a justified prioritization would end up with extreme injustice most likely to the detriment of the weakest. To be sure, a fair distribution in many cases transcends universal legal principles. How to weigh the entitlement to uninterrupted school education for the young against the claim of the elderly to many years of probably healthy aging and the chance to die accompanied by beloved persons? Every step of introducing less formalized procedures – trusting the virtue of administrators, doctors or care-givers – runs the risk of voluntariness and corruption. Control by legal regulation as well as support for a sense of fairness and regard for particulars seems the safest way. The same is true for the second example, the restrictions necessary to maintain the conditions for human – and extra-human – life on earth. Emergency states are the best pretext for authoritarian ambitions. Every step towards such measures has to be considered carefully and put to the tests of legal courts on all levels of jurisdiction.

Thus it seems that Hegel's general concept of right still provides argumentative resources for contemporary problems. It demands universal rules, but at the same time a variety of mediations and compensations correcting their blindness against the particular. Furthermore, it requires extra-legal forms of recognition.²⁵ On the other hand, the expansion of the concept enables him to regard the state's "right" as practically unlimited. And in calling world history the "court" over the conflict between states,²⁶ he allows war to judge over the justification of state constitutions – of course with the certainty of reason ruling world history, which few philosophers share in the 21st century.

2.2 Objective spirit: The relation between individual, community and institutions

A similar conclusion may be drawn regarding the relation between individual person and objective spirit. Hegel's conception addresses problems still virulent in modern social philosophy and sociology. It takes steps in a direction convincing to follow. But the monistic "idealization" of all independent claims into a single "peak" forfeits much of the benefit gained on the way.

In his conception of objective spirit Hegel tries to strike a balance – both in an explanative and a normative sense – regarding the mutual dependence *and* independence between individual and group or institution, even the "material culture" of an organized society. Several

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25 As to modern attempts at transforming Hegel's concept of mutual recognition cf. Honneth 1992 and Siep 2020 a.

26 Cf. PR §§ 334, 341 – and notably strong Enc. 1830 § 550.

modern conceptions in social ontology and political philosophy aim at the same goal. Empirical findings regarding the forming of the human mind by a symbolic order, the shared memory²⁷ and the reign of customs and rituals within a society and beyond its “borders” – often only imaginary – are overwhelming. Cultural habits and identities are not the results of individual decisions nor of contracts between the members. Instead, they emerge from an “unconscious” anticipation or equipoise between the expectations within a group. On the normative level this behavior leads to the ascription of validity to institutions, offices, values (f. e. monetary) etc. Such ascribed normative force outlasts the existence of its investing subjects if it is laid down in scriptures or other media of the cultural memory. For Hegel, these “objective” structures or cultural patterns may even reach a historical stage where philosophy is able to reconstruct them as a conceptually necessary order of “determinations of freedom” (Enc. 1830, § 484).

However, such an order may remain a mechanical “lifeless” system, not adequate to the changing emotions, imaginations, and thoughts of its members. They need to constantly execute, interpret, and modify them. Some such patterns remain a cage for a long time – but short of a biotechnical change of the human being not forever. To avoid such alienation, the objective structure must be recognized and enacted by the players of the game or drama, to put it metaphorically. Hegel calls this the “realization” or reality of objective spirit by individual and collective activities. But this is a mutual realization: without playing a recognized social role the individual is unreal, it has no “state” (Stand). To achieve it, demands the mastery of one’s body and mind and the acquirement of competences to participate in cooperative activities – the subject of Hegel’s anthropology. Such mastery is a constant disposition or habit, in the tradition of Aristotelian virtues. However, it requires opportunities to find a place for one’s gifts in a system of the cooperative meeting of needs – which for Hegel is not guaranteed in a market society. From a contemporary perspective, even passive roles and understandable behavior – if needs be, medically understandable – grants to the individual human status and the basic rights which come with it.

To understand the Hegelian conception, this mutual dependence and independence must be discussed both from an *ontological* and a *normative* perspective. In the ontological perspective, Hegel partly accords with modern theories of collective intentionality, social institutions, public mind or social systems.²⁸ He does not regard objective spirit as “supermind”. It is not a person or an individual will without a body or a material substratum, like a transcendent God. Even world spirit is not such a

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27 Echterhoff et al. 2011.

28 For instance, Searle, Pettit or Luhmann. Cf. Siep 2020.

personified entity governing history like a puppet master. Rather, it is the direction of the tendencies and institutional developments which can be reconstructed as leading to the rational solution of social problems. However, for Hegel this is not, as for Kant, a mere hermeneutical hypothesis. For him, such a “governance” follows not only from a systematic understanding of history, but from the relation of spirit to nature and to the system of categories. Reason has the irresistible force of the “idea”, the unified network of all categories, to unfold and to materialize itself. Thus the philosophy of history can be understood as a secularized theodicy.²⁹ There is little agreement with Hegel in this regard in modern social philosophy and philosophy of history.

Another difference to modern philosophy is Hegel’s view of different degrees of “reality” – which in part relativizes the thesis about the dependence of objective spirit on human individuals and nature. In the Platonic tradition, Hegel holds a gradual concept of reality and truth (ontological truth). It is most explicit in the philosophy of nature, where the higher levels (“Stufen”) use the lower as its material and represent a more real and true existence. Hegel claims spirit to be the “truth” and underlying reality of nature. The latter’s purpose and “determination” is to serve spirits self-understanding and free actions.³⁰ On the level of animal life, the individual serves the reproduction of the species without a concept or awareness of it. In contrast, the spiritual (human) individual is able to know and take a stance – affirmative and critical – towards the community and its institutions. However, the universal will embodied in permanent institutions represents a higher manifestation of the idea than the normal mortal and particular individual.³¹ This will itself is individualized (“we as I”) in the particular sovereign state and its highest representative, the constitutional monarch (PR § 279). The institutional unification (“Vereinigung” § 258) is a higher form of reality and truth than the singular mortal individual.³² As we have seen (above p. <6>), this does not exclude the state’s duty to protect individual rights but justifies its higher dignity and priority of rights.

Ontologically, such a Platonic teleology of being and truth has lost its plausibility. Ontologies of emergence and supervenience³³ are much more in accordance with the modern sciences, especially the view of evolution as a non-teleological process, This does not require to go back

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29 Cf. TW 12, 540; in the same direction: GW 13, 114; GW 14.1. 16.

30 Although spirit depends on (or “presupposes”) nature both cognitively – as its prefiguration and opposition – and practically, as condition for social activity. Regarding the “neo-platonic” aspects in the relation between objective spirit and nature see Siep (forthcoming a).

31 For a critique of Hegel’s „strong institutionalism“ cf. also Henrich 1983, 32-34.

32 Cf. GW 26, 3. 405 (confirming §§ 258 and 323 of the PR).

33 Cf. for instance Collier 1994.

to reductive naturalism. But it allows for the independence of the “lower” strata, including the “vanishing” individuals, as against the more complex and more permanent entities. Neither permanence nor universality justifies higher ontological dignity. Unity, universality, and eternity are metaphysical criteria of traditional ontologies not convincing in a world of contingency, change and pluralism.

As to the *normative* dimension, Hegel’s attempt to take into account the mutual dependence and support of “moments” and the whole remains attractive for modern social and practical philosophy. But this conception, too, is flawed by the lack of symmetry and reciprocity between element and whole, individual, and institutionalized community. Hegel’s key term for this relation is “mutual recognition”. According to its general conceptual scheme it is characterized by a reciprocal and symmetric structure pertaining both to the recognition between individuals and between individual and group (“I” and “We”).³⁴ Following Fichte, the development of recognition is a (“transcendental”) condition of individual and collective self-consciousness. For Hegel, however, recognition is not an a-priori principle. It comprises stages of socialization and historical institutions. Especially in Hegel’s Jena writings, the “movement of recognition” functions as explanation, as “motor” – for instance in struggles – and as normative criterion. The latter is due to its – for Hegel – teleological character: social integration is the realization of an implicit goal, the free mutual recognition and the mutual support which he calls – with Kant – “organic”. The flourishing and the interests of the members are the purpose of the whole and vice versa.

For modern social philosophy both the “transcendental” and the “teleological” character of mutual recognition are doubtful.³⁵ But given the socio-psychological evidence for the striving for recognition and the pathologies caused by its failure in all kinds of social environment, the concept is still fruitful. This holds both on the level of explanation and normative judgement. Despite the plurality of life-plans and self-designs, it seems necessary for a self-reliant being to be recognized in different forms of emotional and institutional “embedding” – even an outsider aims at being taken seriously. And for the modern mind the criteria of recognition have to be approved not only by the shared culture but also from one’s own point of view.

Hegel himself, however, remains not true to the supposed symmetric character of mutual recognition. Although he requires the self-negation and release of otherness on all levels, the highest stages of objective spirit clearly present an asymmetric priority of the institutionalized and individualized common spirit. Whereas in his earlier

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34 Compare the exposition of the “movement of recognition” at the beginning of chapter IV (self-consciousness) of the *Phenomenology and Quante* 2018.

35 Cf. Siep 2014, 22-26.

manuscripts he talks of a self-offering of the state in his recognition of its citizens,³⁶ the philosophy of right speaks of a recognition demanding self-sacrifice only on the side of the citizens (§ 324).³⁷ And the state may not only sacrifice individual rights but the civil existence – not only in the material sense, but also in the “ethical” of habits and mentality– of whole groups (the “Pöbel”).³⁸ Modern constitutional theory, recognizing a right to resistance in cases of severe violations of human rights or of the attempt to overthrow the constitution, turns away from this asymmetry. At the same time, a pluralistic legal philosophy abandons Hegel’s concept of an “ethical” state, the identification with which gives individual life its meaning.³⁹ To be sure, Hegel’s intention to discover a non-private, non-egocentric secular communal spirit did not lose its significance. But its direction towards the state is more than problematic.

This is obvious not only with regard to the nationalist, colonialist and totalitarian past, but also to new forms of national-religious or theocratic cultures. Feeling in harmony and recognition by the group and its most important representatives is demanded and considered worth abandoning one’s independent reasoning (“sacrificium intellectus”). Unquestioned obedience, unswaying loyalty and readiness for personal sacrifice are often regarded as the highest virtues demanded by trusted membership. In religious groups or their secular offspring doubting still counts as sinful or treacherous. The division of labor between the spiritual experts (priests, political party elite etc.) and their virtuous followers is willingly accepted. Precious and everlasting compensations have always been promised for such sacrifices.

For Hegel such self-disclaiming is irreconcilable with the human spirit and the strife for autonomy of thought and will. This striving is the key for a systematic understanding of the functions and capacities of the human spirit (subjective spirit) and history. Whoever wants to preserve this view of recognition without Hegel’s strong metaphysical principles and asymmetric consequences is in need of a different anthropology and theory of historical experiences (cf. below p <16-18>).

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36 GW 8, 254, 255 (philosophy of spirit 1805/06): the universal “sacrificing itself to let me have my own”. Although the institutional examples are preserved in the PR (welfare expenses, extra-legal mediation and pardon after the death penalty) Hegel here affirms the general symmetry between universal and individual self-negation.

37 This asymmetry can be found in other aspects of the philosophy of right, namely penal right, as well, cf. Siep 2017a.

38 Cf. Ruda 2011.

39 Absolute spirit, especially religion and philosophy, are more “full-blown” sources of meaning. But only insofar as they are in harmony with (and justify) the principles of the constitutional state.

3. Why transformation?

The critical look on a “classical” philosophical text has different reasons and consequences. The hermeneutic reader, if it grants the culture and philosophy of the present time any justification at all, will try to arrange a “charitable” reading with some of rather uncontroversial modern institutions. Most of the modern readers share the conviction that, for instance, some form of limited sovereignty and of democracy, the equality of gender and of non-religious convictions etc. are justified. They tend to detect the prefiguration of these principles and institutions in Hegel’s text. Or else they attribute alternative institutions not to the core of his legal philosophy but to the spirit of his time – if not to a dissimulation in front of state or church power. For a creative reading these deficits are without importance, because its interests concern only the promising aspects for new directions – like logical or social dialectics, historical semantics, social epistemology etc. For a transformational access, in contrast to both, it is necessary to understand how deep the unacceptable consequences are rooted in Hegel’s thought. And on the other side, by what philosophical means his fruitful insights may be conserved and redirected.

3.1 The insufficiency of the Hegelian framework

The “transformative” stance assumes, with Hegel, that philosophy is the conceptualization of its own time (“ihre Zeit in Gedanken gefaßt”). However, the deficits of Hegel’s conception of Right and objective spirit are not to be ascribed to his “accommodation” with historical circumstances. To the contrary, they are a consequence of his most basic ideas of philosophy (“science”) and of an absolute as immanent in all reality. A transformation, therefore, must touch the basics of Hegel’s system. This can be demonstrated both regarding the philosophy of right (1) and of the sciences (2).

(1) For Hegel, in his “idealistic” transformation of Spinozism there is one single self-realizing, self-differentiating and self-understanding thought (“Idea”) constitutive for the true reality of nature and society. The sovereign state is a high-level expression of this differentiating and unifying force, confirmed by Hegel still at the beginning of the “Idea” chapter of the Science of Logic.⁴⁰ In the PR he explains the “personality” of the state in the same terms as those of the absolute idea in the Science of Logic, namely as a concentration and idealization of all determinations in one single self.⁴¹ The result is the “absolute right” and “self-certainty” of the state and its representative (§ 278).

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40 GW 12, 175 sq.

41 PR § 278, cf. Science of Logic, GW 12, 251 “pure personality ...containing everything (alles) in itself”.

(2) In the Platonic tradition, Hegel understands philosophy as a system of concepts to be the true “science” and setting the standards for scientific truth claims. To be sure, he accepts the empirical sciences as the point of depart for philosophy both regarding nature and history.⁴² “Point of depart” however, is not the same as criterion of truth. Hegel compares the relation to that of digestion: The material has to be radically converted in order to fit in a system of self-explicating concepts.⁴³ These concepts may have to be adjusted to the progress of science and new cultural life forms – requiring an amendment of Hegel’s *Science of Logic*. But the criterion for valuable science is, in the end, whether the results and categories can be interpreted by such a philosophic system. Given the diversity of scientific results, their permanent adjustment and the role of contingency in natural and historical processes, an explanation by a self-closing holistic conceptual systems is not guaranteed. To be reconstructed according to the criteria of a philosophical system laid out by Hegel’s method of conceptual self-differentiation and re-integration seems too narrow to be a selective criterion. Today, rational justification must do with lesser syllogistic stringency⁴⁴ than demanded by the Hegelian model.

3.2 Outlines for transformation

The constitutional history after Hegel has seen both the extreme growth of state power and sovereignty as well as movements to limit it by constitutional restrictions, new forms of division of power and human rights. Of course, there are still arguments for a “strong” state able to limit the ambitions of both the liberal market society and religions.⁴⁵ But the conception of the state as the ultimate end in itself has had terrible historical repercussions. A state-absolutism, of course far away from Hegel’s constitutionalism, led to the overcoming of the Rule of Law altogether and to incredible crimes against humanity. The controversies about the limits of single state sovereignty in constitutional and international law are far from over.⁴⁶ But if such overstretching of sovereignty is to be averted, human rights must be protected against it⁴⁷ –

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42 Cf. Enc.1830, §§ 7, 12, 38, 246.

43 Enc. 1830 §§ 14, 15 (cf. Enc.1817 § 10: “What is true in a science, is true because of and due to philosophy”).

44 Even if the syllogistic relation between the concepts is understood as “making explicit” in the sense of Brandom (1994). The process has to come “full circle” in the Hegelian model (Enc. 1830, § 15).

45 Regarding this reason for strengthening state authority see Siep 2015, esp. 227-231.

46The “responsibility to protect” is not universally accepted in international law. However, there is still support for the formula “protection of a population against severe crimes of its own government” (Kreß 2019).

47 According to Martin Kriele, the history of human rights can only be understood by their opposition to sovereignty (Kriele 1973).

not be negated in order to manifest its superiority. This requires different constitutional instruments which Hegel rejects, ultimately due to his ontological monism.

Why should the fundamental changes with regard to Hegelian premises still be called “transformation” and not simply a replacement by an empiricist epistemology, contract theory, historicism etc.? Because, in my view, the necessary alterations can be paralleled with those parts of the Hegelian system which are the sources of his philosophy of right, namely his philosophy of subjective spirit (1) and of history (2). Also, the concept of the inner structure and formative process of objective spirit, namely mutual recognition, may be reconstructed in a less asymmetric and teleological way (3).

3.2.1 Subjective Spirit and normative anthropology

Hegel’s philosophy of subjective spirit combines anthropology with a theory of mind – including the emotions – and epistemology.⁴⁸

The anthropology is exemplary both regarding its psychosomatic character and the awareness of the social roots of the individual. The “phenomenology” recollects the development⁴⁹ from a “Cartesian” difference between consciousness and external world to a concept of self-conscious reason in the natural and social world – that is, a rationally accessible nature and a common institutionalized will. The “psychology” explains the purposive function of the cognitive, emotional and volitional faculties. This purpose is “true” knowledge aiming at individual and collective well-being (“Glück”) and autonomy.

There are several traits of Hegel’s philosophy of subjective spirit, providing the “deduction” of his concept of right (cf. above p. <4>), which should be “conserved” in a modern transformation. The *first* is his “top down” view of the natural conditions of human freedom.⁵⁰ Modern science and philosophical naturalism is used to argue “bottom up” from the biological (today: genetic, evolutionary, neuroscientific) basis of cultural and normative behavior. But it is not obsolete to ask for a “purposive” (zweckmäßig) human condition enabling his “achievements” of autonomy and a social order of equal rights. The human being is dependent and vulnerable, physically as well as regarding emotions and cognitions, but at the same time better equipped than other animals to understand intentions and cooperate on this basis.⁵¹ In addition, a conceptual language and the capabilities for reflection and empathy may well be

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48 Cf. Halbig 2002.

49 Elaborated in the Phenomenology of 1807.

50 Transforming the tradition of Kant’s third critique and Fichte’s Fundaments of Natural Law by a stronger, ‘Aristotelian’, teleology.

51 Tomasello 2016.

understood as directing the human being towards a society of both personal autonomy and social solidarity.

The *second* strength of Hegel's conception is the avoidance of all sorts of common dualisms: between mind and body, individual and group, reason and emotions, essence and history. Although I cannot expand on the full consequences here, that avoids many problems still vexing modern philosophy. In a Hegelian view, both for the individual psyche as for the social cooperation any form of one-sided ("abstract") domination of bodily, emotional or cognitive faculties will prevent balance and possible flourishing. Instead, they must be developed in their own right but at the same time as dispositions for their seeming "other": reason enables a culture of the body and the emotions, their particular (including cognitive) as well as their integrative potential. This includes the inherent epistemology of the Hegelian "psychology": Natural, social and normative sciences have their own rules, but can be judged in view of their potential for human autonomy and flourishing – today, beyond Hegel, for human integration in sustainable natural processes as well.

The *third* point of contact is included in the overcoming of the gap between essence and history. It is most explicit in the *Phenomenology of Spirit* (1807) whereas in the Encyclopedia the tie seems loosened. In the encyclopedic system, the philosophy of history, mostly concerned with the history of objective and to a lesser degree absolute spirit, becomes separated from the *Phenomenology*. How historical experiences shape the human "psychology" of needs, emotions, and concepts of self-estimation, like honor, virtues and collective identities (family, tribe, church or nation) is only hardly discernible within the now reduced *Phenomenology*. In this regard a modern historical anthropology is needed which relates the discovery of human capabilities and ambitions, as well as their denial, to changing social institutions.⁵²

3.2.2 A structured history of historical experiences.

Different from Kant's conception of the moral law and of the principles of right – private, public and international – as based on pure reason, Hegel understands objective spirit as a process of self-discovery by historic reversals or revolutions. The "cultural memory" of the process of learning by these reversals is deposited in the social, moral and legal institutions and constitutions.⁵³ Behind the reversals are, as the *Phenomenology* (1807) demonstrated, processes of isolation of epistemic or normative principles and their re-integration into a holistic network. For Hegel this can be reconstructed by a systematic semantic of "concepts". In his later philosophy of history, the force behind the history of constitutions

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52 A valuable contribution is Frevert 2017.

53 Hegel uses the concept of "constitution" in a broad sense including habitual dispositions and "mentalities" of populations.

and epochal “spirits” – mainly Oriental, Greek, Roman and Christian-Germanic – is the self-differentiation and reflection of freedom. As I have indicated, Hegel’s concept of a necessary self-realization of reason or idea is bound to metaphysical presuppositions and inadequate to reconstruct the history of historical experiences since his time. But it seems possible to conceive a more open history of experiences with institutions and constitutions in the narrow and the broad sense. Regarding the broad sense one may understand Charles Taylor’s history of modernity, Robert Brandom’s “edifying” conception of post-modernity or Axel Honneth’s history of communicative freedom as such attempts.⁵⁴

Closer to Hegel’s philosophy of right it seems possible to reconstruct the history of the relation between individual and collective or institutional rights as such a series of reversals and re-integration. For the “constitutional” principles which are “real” in the sense of widely accepted today – at least “on paper” – this would have to include a history of the “generations” of human rights as well as the history of the social welfare state, the division of power in a constitutional democracy (“Rechtsstaat”) as well as that of secularization and religious pluralism may be reconstructed this way. The history of human rights presents a paradigmatic case for the pattern of isolation, domination and re-integration of rights in need to be balanced and compensated by their “opposite”.⁵⁵ There is, of course, no universally accepted or justified completion of institutional learning processes. And the steps are not governed by a necessary progress of reason. But at least a core of basic human rights can be defended as required by a less stringent “logic” of past experiences and of the moral point of view.

3.2.3 Mutual recognition as an open and symmetric process.

Hegel’s concept of mutual recognition is one of his most fruitful contributions to contemporary philosophy – as the aftermath from Kojève to Habermas, Honneth, Taylor, Ricoeur and Brandom testifies. In Hegel’s implementation, however, it is defective, as becomes obvious in the asymmetric relations between the ethical state and its citizens.

If the rather homogenous society of Hegel’s time – shaped by Christianity and estates – was in need of supra-legal ties of recognition, this is evidently more the case in modern pluralistic societies. Their social cohesion is under more strain. At the same time, they are open for much more cultural diversity and individual options for meaningful life. To realize them, they need dispositions of mutual respect, sufficient solidarity and curiosity. Non-discrimination, non-violence and acceptance of rules for conflicts are but the minimal conditions. The recognition

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54 Taylor 2011, Brandom 2019, Honneth 2011.

55 Cf. my attempt in Siep (forthcoming b).

of different forms of life and the acceptance of an equal claim to truth includes demanding forms of emotional and cognitive self-limitation and releasing of “otherness”. Views regarding the interpretation of the common past as well as concerning necessary costs for the solution of problems will remain controversial. To confer experiences of a history not shared by a new generation – partly from radical different cultures – is a difficult task, as the present education in Germany proves. Except for the core of human rights and their protecting and enabling institutions, many social institutions and forms of life – including family or profession – are open to new “definitions”. Mutual recognition is not a process to be closed by a final priority rule or historical form of life.

4. Conclusion

Taken together, such a transformation of different aspects of Hegel’s philosophy of objective spirit “saves” the promising aspects of this conception while avoiding both its strong presuppositions and unacceptable consequences. This implies, however, that some of the present institutions and cultural dispositions are from a philosophical view superior to that of the PR. In what sense? *First*, in the light of the latter’s own concepts of freedom and recognition open to internal criticism. *Second*, in view of the catastrophic losses of freedom and recognition in the following centuries. Present institutions, norms and disposition, “invented” against the recurrence of such catastrophes, seen more appropriate in the light of these experiences. In addition, they are better equipped for societies with more varieties of life-forms for individual and groups.

Such a statement may seem anachronistic since the social, economic and technical developments leading to the aforementioned catastrophes could not be foreseen in Hegel’s time. However, this is only partially true. Hegel was very clear-sighted regarding political and economic processes – such as the crises of the market society, the problems of the upcoming nationalism or the consequences of secularization. But the constitution of the modern Christian European⁵⁶ state which he rationally examined and reconstructed were not only insufficient to solve these problems. Some of them even paved the way – for instance the concept of the state as final purpose or the role of the “universal estate” of state-officials. To justify a reversal of priority as well as an open “experimental” history of symmetric recognition demands the suggested transformations.

The relation between concepts, experiences and institutions

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56The addition (“Zusatz”) to § 258 in the first collected edition (“Freundesvereinsausgabe”) has “developed (ausgebildet) state of our time” (TW 7, 404). The lecture notes Griesheim, from which most of the addition is taken, contain the expression “Christian European state” (GW 26,2, 1406).

certainly maintains essential Hegelian ways of thinking. But the systematic stringency of his philosophy of right is certainly not to be expected by such a transformation. A merely hermeneutic view, instead, either suspends all evidences of modern readers regarding unacceptable institutions or dispositions. Or, if accepting some post-Hegelian traits of modern societies, it projects them back into Hegel's text. But the reconstruction of a modern or postmodern Hegel's not only runs counter to his own claim, that philosophy cannot leap beyond its own time – neither forward nor backwards. More important, it overlooks the deep systematic justification which he attempted to provide them with. Modern relations between individuals and state, or equal gender-relations, are not to be justified by a philosophy of a self-realizing and self-concentrating idea.

Then why not opt for a creative way of reading the *Philosophy of Right*? Why not, for instance, unleash the negativity of spirit, its destructive potential even against its own creations (second nature)? Hegel's way of integrating destructive forces by pushing them to extremes and thereby "sublating" them into a cooperative organic whole certainly has its limits. They are identifiable in his theory of bodily and psychic diseases⁵⁷ as well as that of economic crises or the conflicts between states. But opposite creative readings regarding negativity are possible as well. One may interpret the insoluble conflicts of objective spirit in the tradition of negative theology as requiring the surpassing into absolute spirit.

Those attempts are legitimate if one concedes their liberality regarding many passages in Hegel's texts. In my view, however, they are more congenial to the Jena writings or the *Science of Logic*. Although certainly not the glorification of the actual Prussian state, no other of Hegel's books is so much devoted to understand what is rational and progressive in the institutions and mentalities of a particular period than the philosophy of Right – namely the "modern" European state of the post-revolutionary period.⁵⁸ Hegel is unambiguous that freedom and justice remain empty ideals if they are not spelled out in systems of "determinations of freedom", namely rights.⁵⁹ Codified and enforced they gain the form of necessity, not only conceptually but also as "the reality of a world" (Enc § 484).

Thus the particular institutional and historical content is crucial for the purpose of the book, not just an example for the logical method, for "autonomous negativity" or inferential semantics. This content

57 Which Hegel both conceives as a sort of rebellion of a part (moment) against the whole of the organism or the soul Enc. 1830 §§ 371-373, 408.

58 According to the student notes of his lectures 1817/18 Hegel praises the French constitution decreed by Louis XVIII 1814 as the rational result of the reversals of French constitutions since 1791 (Hegel 1983, 190).

59 PR §§ 3, 4; Enc. 1830 § 484, cf. § 482.

is reconstructed as allowing an unprecedented degree of internal negativity and conflict. However, they do not in principle demolish the institutional framework of a modern state reconciling civil society with a substantial political (in the Greek sense) community. And even if a constitutional revolution or war⁶⁰ is successful, it will be justified only if the new constitution establishes a more complex form of the system of rights reached as yet. As such it will “conserve” crucial elements of its predecessors. For Hegel it certainly has to contain the institutions necessary for the “extreme” of subjective particularity as well as for ethical unity.⁶¹ If not, philosophy would not be able to demonstrate the complementary manifestations of truth in nature, state and science (§ 360).

Trying to further exploit Hegel’s concept of self-negation or turn its critical potential into “negative dialectics”, one should rather resort to the *Science of Logic* – as Marx and Adorno rightly realized. And as for visions of open processes of communication, including oppositions to common morality, the spirit chapter of the *Phenomenology*⁶² seems much more apt. However, this demands neglecting its function in the systematic ascension to a completely self-transparent absolute spirit. Regarding the *Philosophy of Right* and its institutional focus a transformative reading seems to me most promising. It remains true to Hegel’s systematic goal of mediating individual and institutional claims as well as philosophical concepts and historical experience. But it dispenses itself from Hegel’s stronger premises. Regarding methods and aims of interpretation, it tries to save the best intentions of the two alternative types: The attempt to trace the arguments of texts in their own right and to relate them to present philosophical and social problems – both in the affirmative and critical way.

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60 Hegel considers modern wars after the French revolution as attempts to disseminate progressive constitutions.

61 If not the end of history, Hegel considers the outlines of the PR as close to the true system of freedom, cf. Halbig 2013.

62 Especially the chapter “Conscience, beautiful soul, evil and forgiveness” (of crucial importance for Brandom 2019).

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