

HEGEL-STUDIEN

In Verbindung mit Walter Jaeschke (†) und Michael Quante
herausgegeben von Brady Bowman und Birgit Sandkaulen

BAND
57

BOCHUMER HEGEL-VORLESUNG von Axel Honneth

SCHWERPUNKT: Law and Violence in Hegel von Christoph Menke
und Benno Zabel mit Beiträgen von Jean-François Kervégan,
Ana María Miranda Mora und Christian Schmidt

ABHANDLUNGEN von Thomas Kelkel und Achim Wamßler

TEXTE UND DOKUMENTE mit einem Beitrag über die Hegel-Nachschriften
von F. W. Carové von Klaus Vieweg, Christian Illies, Francesca Iannelli
und Marko J. Fuchs

BUCHKRITIK Untersuchungen zur klassischen deutschen Philosophie |
Editionen | Literatur zu Hegel | Neuerscheinungen zu einzelnen
Autoren der klassischen deutschen Philosophie

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BOCHUMER HEGEL-VORLESUNG

Axel Honneth

Hegel und Fichte

Zwei frühe Formen von Kapitalismuskritik

ABSTRACT: In what follows, I attempt to reconstruct Fichte's and Hegel's reasons for developing at almost the same time two very different conceptions of an economic order that deserves to be called 'rational'. Whereas Hegel, on the basis of his objective notion of reason, would recommend that a rational state, founded on the notion of right, should include a strictly confined, socially embedded market economy, Fichte, on the basis of his subjective notion of reason, thought instead that the very same state must adopt an economic order that might well be described as a 'planned economy'. Throughout the article I discuss whether it are the stark differences in their methodological premisses or their very different ideas about the individual freedom to be institutionalized in the economic sphere that helps us understand their very different notions of a rational, freedom-guaranteeing economy.

In den westeuropäischen Ländern zeichnen sich gegen Ende des 18. Jahrhunderts wirtschaftliche Veränderungen ab, die bereits deutlich in Richtung einer kapitalistischen Marktwirtschaft weisen: Die letzten Reste der alten Feudalordnung sind in Auflösung begriffen, auf dem Land beginnen in Folge des gestiegenen Außenhandels agrarkapitalistische Produktionsmethoden um sich zu greifen, in der Gewerbewirtschaft macht sich neben den alteingessenen Betriebsstätten des Handwerks und des Verlagssystems allmählich das bis dahin unbekannte Fabriksystem breit, mit dem der neue Typus des industriellen Lohnarbeiters auf die Bühne tritt. Die rapide wachsende Bevölkerungszahl, die damit einhergehende

Landflucht sowie der expandierende Überseehandel tragen das ihre dazu bei, in der Bevölkerung alsbald den Eindruck entstehen zu lassen, die gesamte Wirtschaft bewege sich auf eine vollkommen neue, durch Industrie, Lohnarbeiterschaft und freies Unternehmertum geprägte Organisationsform zu.¹ Zwar dürfen diese auf den späteren Industriekapitalismus hindeutenden Zeichen wirtschaftlichen Wandels auf keinen Fall überbewertet werden; noch lebt am Ausgang des 18. Jahrhunderts die große Mehrheit der Bevölkerung in Westeuropa weiterhin auf dem Lande und geht dort, häufig bei Nebenerwerbstätigkeiten, den traditionellen Verrichtungen des Ackerbaus und der Viehzucht nach, während die Zahl der freien Lohnarbeiter in der Industrie nur sehr zögerlich steigt (Wehler 1987, 118f.). Aber bereits die wenigen Fabrikhallen, die wie Vorboten der industriellen Revolution am Rand der Städte errichtet werden, reichen aus, um viele Zeitgenossen überzeugt sein zu lassen, es entfalte sich vor ihren Augen und für alle spürbar ein grundsätzlicher Wandel in der wirtschaftlichen Lebensweise.

In den kleindeutschen Staaten vollziehen sich diese Veränderungen aufgrund von industrieller Rückständigkeit und politischer Zerklüftung um einiges langsamer. Aber auch hier wirft die „Great Transformation“, als die Karl Polanyi die damals einsetzende Verselbstständigung des Marktes rund einhundertfünfzig Jahre später bezeichnen sollte (Polanyi 1978), ihre Schatten bereits voraus: Allein in Berlin, der Hauptstadt Preußens, nimmt der Anteil der Lohnabhängigen an der Zivilbevölkerung in den Jahren zwischen 1780 und 1800 um ein Viertel zu, der Prozess der maschinellen Mechanisierung in den Manufakturen und Fabriken schreitet zwar langsam, aber unaufhörlich voran, die Kluft zwischen Arm und Reich wird sowohl auf dem Land wie in den Städten deutlich erkennbar größer, das soziale Schichtungssystem scheint sich insgesamt allmählich von der alten Ständeordnung abzulösen und in eine Klassengesellschaft zu verwandeln (Wehler 1987, 133 – 144). Für Hegel und Fichte, die sich beide um 1800 in Deutschland anschicken, das republikanische Erbe Kants auf der neuen Grundlage eines Vernunftidealismus fortzusetzen, muss diese schleichende Transformation des gesamten Wirtschaftssystems eine immense Herausforderung darstellen; zwar können sie deren Folgen aus eigener Anschauung nur erst an kleinsten Symptomen festmachen – an der schnell explodierenden Bettelei in den größeren Städten, an der Elendslage der bäuerlichen Tagelöhner oder an der Entgrenzung des Außenhandels –, aber beide sind weltzugewandt und durch Zeitungslektüre informiert genug, um darin schon die Zukunft einer vom Wildwuchs des Marktes geprägten Wirtschaft vorauszuahnen. Diese Entwicklungen im ökonomischen Unterbau des gesellschaftlichen Lebens können ihnen nicht egal sein, da sie unabhängig voneinander etwa zeit-

¹ Bei dieser Wahrnehmung einer grundsätzlich neuen Wirtschaftsordnung wurde allerdings gerne vergessen, dass der Überseehandel der europäischen Länder häufig die Form der kolonialen Landnahme und Plünderung annahm.

SCHWERPUNKT: LAW AND VIOLENCE IN HEGEL

Christoph Menke und Benno Zabel

Introduction

If we follow the methodical program of Hegel's *Outlines of the Philosophy of Right*, then the only way to understand historical realities, of whatever kind, is as actualizations of rationally articulated normative principles, and – conversely and correspondingly – the only way to grasp the rationality of normative orders and practices, of whatever kind, is to understand them in the context of the specific historical shapes in which they came to be actualized; to be actual is to be rational, and to be rational is to be actual.

From the beginning, Hegel's critics, energized by the at best ambiguous positions he took in the political struggles of his day, responded to these two features of Hegel's twofold program with a twofold criticism of their own. The first feature they stamped as unacceptably idealistic: the logic of material forces and their role in establishing and maintaining historical orders and practices bedevils any attempt to explain the actual world as deriving from rationally articulated normative principles, that is, from thought. Such a program idealizes the actual world, making it out to be a transparent expression of reason, normativity, and thought. Hence also the criticism lodged against the second feature: to seek to explain the power of rationally articulated normative principles as rooted solely in their respective historical actuality is to portray actuality as though it were always already those principles' achievement and fulfilment. But that is tantamount to an apology for the actual, denying as it does the excess of the normative, of reason, of thought, the

gap between them and actuality, reducing them to what is merely actual in their given situations.

Owing to these two features, which are just two different ways of saying the same thing, Hegel's twofold program would seem to foreclose any possibility of critique. For "critique," at least in the way critical theorists have understood the term, has a twofold meaning. It demands at once both that thought be situated *within* the actual – inasmuch as the forces of actuality are not thoughts, but material in character –, and that thought be positioned *over against* the actual – inasmuch as the character of thought is to transcend the existing order and constitute an excess in relation to it. Hegel's twofold program rejects both. By directly joining the actual and rational from both sides of the equation, Hegel would seem to foreclose any possibility of critique. As an idealist, he dissolves actuality in the rationality of normative principles and grounds, and as an apologist he credits the existing order with the rationality of its normative principles and grounds. In his early critique of Hegel's theory of the state, Marx called this idealism as positivism (see Theunissen 1978, 475 f.).

However, we need only consider the first part of Hegel's *Philosophy of Right*, his theory of "abstract right" (*das abstrakte Recht*) or law in the juridical sense, to see why this criticism – the criticism of Hegel's theory as foreclosing any possibility of critique – is fundamentally misguided. On Hegel's theory, any simple disjunction between actuality and normativity is wholly unsuited as a basis for understanding law. For law itself precisely *is* the negotiating of that relation. Law is not a normative order over against actuality; it is what creates a normative order *within* the actual or what makes actuality *into* a normative order. It is in operational terms that we must understand the law (see Thomas 2011), and the operations that constitute it are, for Hegel, processual enactments of the relation between the actual and the normative (or reason). Taking "critique" as the name for the enacting of such relations between actuality and normativity, we may say that the reason why Hegel shows no interest in a critique of law is that his whole concern is with the question of how and to what extent law *itself* is critique – for it is in the actuality of law that reason establishes itself over against what is actual, or (putting the corresponding terms the other way round) it is because the rationality of law consists in its bringing actuality to reason.

That is already the case in the first section on property, which is subdivided into chapters on the taking possession, the use, and the alienation of property (i. e. how property originates, how it is employed, and how it is transferred) – in short, the ways merely factual relations are transformed into normative facts, the material practices that make this possible, and how they bring about new normative facts and states of affairs.

The following section, on contract, extends this perspective on the processuality or operativity of law by considering the (limited) social forms that law is capable of

formalizing. The third section, on wrong, goes on to investigate the dynamic that drives, sustains, and propels the legal actualization of normativity (or the legal normativization of the actual) beyond itself. That is the problem of violence and coercion. From the standpoint of Hegel's twofold program, according to which law itself precisely *is* the negotiating of the opposition between the actual and the normative, law is inconceivable as anything except the unity of actuality and normativity.

Law, from its beginning and through to its end, is always law *and* violence, as process or in process: it is the overcoming of violence (crime) in law by the exercise of violence (punishment) by the law, the overcoming of coercion by way of its duplication. Punishment is critique in that it determines the falsity of the act – its contradiction of formal freedom – at the same time that it vindicates the actuality of the normative order.

As a rule, Hegel confines this twofold program to his treatment of abstract formal right. For abstract right is juridical law. Even so, there is more than just this to Hegel's analytic of juridical law. At the latest, he takes up the thread again in the context of his discussion of civil society, under the title "Administration of Justice" (*Rechtspflege*). The standard interpretation is that Hegel embeds juridical law in the ethical infrastructures of ethical life, thereby transforming individual freedom, positive law (*Gesetz*), and its application. In other words, he socializes the opposition of actuality and normativity, of law *and* violence. Which is why subjective rights, the courts, the police, and corporations also come into play at this point. However, what this interpretation fails to recognize is the dialectic into which Hegel drives juridical law itself. For in contrast to modern Western conceptions of democracy, the "administration of justice" is not situated in the political state, understood as the power or authority of the state (*Staats-Gewalt*). There are various reasons for this. One of the more decisive reasons is Hegel's intention to establish the law as an agent in civil and proto-capitalist society that will be able to put a check on the centrifugal and destructive forces arising from the subjects' pursuit of self-will. In the addition to § 184, Hegel characterizes civil society as *ethical life lost in its extremes*. The consequence is that subjects here move in an ethical sphere from which they can at the same time withdraw. Law is supposed to resolve this paradoxical situation, serving as a normative support for the atomized social subjects in their manifold practices. It is precisely here, though, that the ambiguity of juridical governance makes itself most apparent. Law's socially binding powers notwithstanding, it is juridical law itself which, though intended to keep the antagonisms and extremes in bounds, also actively produces and reproduces those very pathologies of freedom. Nowhere is it clearer that law consists in a negotiation of the unity and opposition between the actual and the normative. But for that very reason, the tension between law and violence appears anew, framed this time by an ethical life grown stale: law actualizes the freedom of possessive individualists and

property patriarchs even as it subordinates them to its authority. Law subjectivates in emancipating. As long as juridical law at once both presupposes the self-realization of individuals and pursues it as its goal, it will strive in vain to achieve political self-understanding. The law remains trapped in this circuit of its own governing with no way to free itself on its own.

For Hegel, this circuit is not a mere paradox – if by paradox we mean a self-contradiction awaiting resolution – but rather the figure traced by law in its movement, not a place to stop, but a place to continue on from. The three articles gathered here address this question of law and violence from different angles.

Jean-François Kervégan explores how, in Hegel's philosophical analyses of right and law, the distinctions he makes in the *Science of Logic* between power, coercion, and violence begin to criss-cross and densify in complex ways. For although we must distinguish legal coercion from violence to be able to break the cycle of revenge, it also turns out that legal coercion, for its part, cannot achieve its end of reversing the criminal will except by exercising violence. But then we can no longer conceive legal coercion as *the other* of violence, but only as *another* violence. Christian Schmidt, by contrast, argues that to understand the unresolved dialectic of crime and punishment with which Hegel concludes the section on the theory of abstract right, we have to recognize the historical specificity of this form of right, namely as something specifically modern. For only here is the criminal in a position to claim a right of arbitrary choice against the very law that proclaims this right to arbitrary choice. If one reads Hegel's theory of crime in this perspective, it becomes clear that he is concerned with its social explanation: Crime is the expression and consequence of a false (or inadequate) social actualization of freedom. Ana María Miranda Mora's contribution aims in turn to show how the problem of legal coercion in the *Philosophy of Right* forces us to go beyond the sphere of abstract right. A practice of punishment that, by its (second) act of coercion, would be capable of breaking the criminal's violence instead of merely repeating it, is impossible unless there is a legitimate agent of legal, here: punitive action, whose authority nonetheless resists comprehension in the categories of abstract right. This other shape of legitimacy remains beyond our grasp until we arrive at Hegel's theory of legal practice, the "administration of justice." However, that means that Hegel always also ascribes a social function to punishment. It is only from this perspective that individual responsibility for the deed and the crime's meaning for society can be integrated into a theory of freedom. To answer the question of law and violence, then, it takes a political theory of law.

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