

THEMES FROM “THE SPIRIT OF CHRISTIANITY AND ITS FATE”

In an early essay, “The Spirit of Christianity and Its Fate,” Hegel provides a preliminary account of issues that will continue to occupy him in later texts such as the *Phenomenology of Spirit* and the *Philosophy of Right*. In this brief text we find both a concise critique of law and an introduction of the moral and political significance of both human relations of love, which give us a sense of belonging and by which we feel immediately obligated, and the power of forgiveness, which restores relations when they have been disrupted. While his essay is critical of the idea of making law the basis of political and moral life and reasoning, Hegel’s introduction of the significance of both forgiveness and affective relations in fact requires not a simple abandonment of law but also its reconfiguration—that is, the situating of law as a single element in a more complex conception of political and moral justice and as answerable to and motivated by a fundamental human embeddedness in and orientation to ethical experience. What remains after Hegel’s critique of law in this early essay is not the privileging of forgiveness and affective relations over law but the identification of a constitutive tension between these three phenomena, all of which are essential to justice and morality. By investigating this introductory essay, we can begin to develop a sense of the dynamic relationship between what I will call the three elements of justice—ethicality, law, and forgiveness—and a sense of the significance, to the existence of law, of our immediate ethical attachments.¹

This chapter begins by identifying Hegel’s criticisms of law as he introduces them in this essay, and by exploring his account of the phenomena—relations of affect and forgiveness—in the name of which he develops these criticisms. It then investigates the way in which Hegel redescribes punishment in light of his criticism of law and concludes by

suggesting that the operation of affective relations and forgiveness show on their own terms why a specific kind of operation of law is necessary, Hegel's critique notwithstanding, and that the tension between law and the other two elements of justice in fact energizes political and morality responsibility instead of immobilizing it.

This chapter will serve as an introduction to issues that we will be working with throughout the book, but most importantly to the significance of what Hegel later calls *Sittlichkeit*—that is, “ethicality” or “ethical life.” While Hegel does not use this term in “The Spirit of Christianity and Its Fate,” his critique of law is made on the basis of the ideas that he will later unite under the term “ethical life”—namely, the ideas of a “reconciliation in love,” a “living bond,” a “spirit of love and mutual faith” (ETW 241), the affective “human relations” (ETW 212) by which individual lives are oriented and made meaningful, the “united life” (ETW 229) by which individual self-isolation and legal judgment are implicitly condemned. “Ethical life” essentially refers to the human relations that are prior to and more substantial than relations governed by law and obedience; it is Hegel's term for the fact that we are always already captured by a way of life or a sense of connection with particular people and situations and communities, which endows us with commitments even before we develop the capacity to formulate them ourselves. Not something we actively and reflectively choose, ethical life stands for a way of life that we relate to as simply “the way things are” or “the way things are done.” Ethical life names the way in which we take up our relation to the world initially, primordially, and powerfully in an unreflective way, a way that orients and colors all consequent reflection and is itself deeply resistant to reflective insight. This substantial life generates us as individuals—only on its basis do we become individuals capable of critically and reflectively defining our own lives—but the history of this generation can never be made a transparent object for reflection. We have already *been committed* to it. While in various parts of his work Hegel denotes different things with the term “ethical life” (in the *Phenomenology*, for instance, it is the name for the way of life of the world of ancient Greece, whereas in the *Philosophy of Right* it is the name for the social and institutional organization of free modern life), it can always be understood as that to which we are already committed and by which we already feel called, that reality greater than ourselves as individuals that makes it possible for us to be individuals, the “we” through which the “I” is and to which the “I” is irrevocably and to a certain extent unreflectively attached.² Our discussion of “The Spirit of Christianity and Its Fate” serves as an introduction to this important

reality, and our treatment of it will be continued in the second chapter in relation to Hegel's discussion of ethical life in the *Phenomenology*. Now let us turn to discussion of how Hegel uses the notion of "ethicality" or the "spirit of mutual love and faith" found in affective relations to identify problems with the operation of law.

THE CHALLENGE TO LAW

Hegel's aim in "The Spirit of Christianity and Its Fate" is to expose and criticize the commitments shared by the two paradigms of Judaic legalism and Kantian morality. Hegel presents the life and legacy of Abraham, whose story is told in the book of Genesis, as representative of Judaic legalism. According to the book of Genesis, Abraham is called by God to leave his people and be led to the land that God promised him, where he will be blessed and become a great nation. But Hegel argues that Abraham's legacy, far from being of moral or social value, is one of obedience to a life-denying, wrathful God who demands that Abraham abandon the life and love that nourished him for the sake of the establishment of a community that is fundamentally hostile to all those who do not recognize its divine law-giver and that finds its source of unity outside of itself, outside of its social bonds. Hegel argues that Abraham "steadily persisted in cutting himself off from others" (*ETW* 186) and that the Jewish people of the Old Testament "had committed all harmony among men, all love, spirit, and life, to an alien object . . . [T]hey had put nature in the hands of an alien being. What held them together were chains, laws given by the superior power" (*ETW* 240). According to Hegel, the Old Testament tells the story of a people who posited an alien ideal over against their own reality and renounced beauty for themselves, replacing the substantial ethical ties of community with shared obedience to an alien law (*ETW* 241). The people led by Abraham operated with "an impassable gulf between the being of God and the being of men," not recognizing that "spirit alone recognizes spirit" (*ETW* 265) or that the separate being of God and man was in fact the diversification or modification of one life (*ETW* 261–62).³

Hegel's criticism of what he views as Judaic legalism and his extension of this criticism to Kant's moral philosophy present a powerful and dramatic account of the shortcomings of law and crystallize the core philosophical commitments that guide his later work. According to Hegel, in making respect for the law the motivation of moral action and in proscribing the motivating force of inclination, Kant's philosophy manifests

an opposition to life similar to that exhibited by Judaic legalism. Both the relationships that inspire and sustain moral agency and the aspect of the self that exhibits attachment to those relationships are rejected: the developmental and motivational ground of moral agency and the richness of human life not captured by law are completely eclipsed. In defining morality in terms of respect for the law and in denying inclination any moral value, Kant demands that the life and love that bring ethical agents into being as such be explicitly disregarded and that only one aspect of the human agent—the rational aspect—be the site for moral identity and agency. Hegel says that the spirit of Jesus, on the contrary, is “a spirit raised above Morality” (*ETW* 212). His critique is partly captured in the following paragraph:

[B]etween the Shaman of the Tungus, the European prelate who rules church and state, the Voguls, and the Puritans, on the one hand, and the man who listens to his own command of duty, on the other, the difference is not that the former make themselves slaves, while the latter is free, but that the former have their lord outside themselves, while the latter carries his lord in himself, yet at the same time is his own slave. For the particular—impulses, inclinations, pathological love, sensuous experience, or whatever else it is called—the universal is necessarily and always something alien and objective. (*ETW* 211)

Thus what in Kant’s terms is the expression of my essential core—the law that I identify by means of my capacity for reason—becomes, in Hegel’s view, that by which essential and valuable aspects of my being and of reality are subordinated.

The ideas that Hegel introduces here are not as fully treated in this early essay as they are in his later work, but they get a cogent and powerful expression here, and our preliminary examination of them is intended to identify the key issues that are explored in more detail throughout the book. Briefly, exclusive reliance on law does at least three things: first, in making obedience to universal law the ultimate moral value, it downplays the significance of the fact that demands upon us are always expressed in the context of particular situations, and it impedes the cultivation of responsiveness to these situations; second, it conceals the ethical significance and value of particular ethical relations and situations, or the way in which moral agents and their impulse to moral responsiveness are cultivated and produced through relationships

of love and nurture; and third, it devalues certain aspects of life and human being—for instance, those impulses, inclinations, and sensuous experiences to which Hegel refers in the above quotation. Let us look at these three issues more closely.⁴

First, law cannot include reference to the particular characteristics of any given situation, but the only thing that motivates us to act morally, that demands of us ethical attention, and in response to which we accomplish the good or not, is a particular situation with determinate characteristics. To demand abstraction from particular human needs, lives, and love is to risk the disabling of ethical concern, which must be taken up *vis-à-vis* actual, complex situations. It is the particularity and the insistent demand of human need in its specific forms to which we must be attentive in order to truly practice and cultivate ethical concern. To demand action for the sake of law is to demand unresponsiveness to need—Hegel says that Jesus illustrates this point when he heals people and picks fruit on the Sabbath.⁵

Second, and related, the universality of law in fact commands abstraction from the affective relationships that nurture ethical sensibility in human beings.⁶ Through relationships we are cultivated as moral agents capable of making ethical decisions, and we experience the love, care, and connection that motivate us to attend to human connectivity in ethically sensitive ways.⁷ To develop models of morality and justice that do not take the ethical significance of these relationships into account is to perpetuate a misguided picture of human identity and moral motivation and to disavow and perhaps even jeopardize the ethical labor such relationships perform.

Third, if the law and moral judgment must operate independently of affect, inclination, and relationality, then these will also be alienated, according to Hegel, from the transformative power of the good. According to Hegel, Kantian morality and Judaic legalism construe aspects of the self as unredeemable and underestimate the power of the good in thinking it incapable of pervading them. Need and inclination are construed as irreducibly opposed to the law and as obstacles to obedience. The moral law exists in the name of the human being as end in itself, but following it requires setting aside various "offensive" elements in that human being.⁸ In this case, dutifulness essentially becomes self-hatred; as J. M. Bernstein observes, Hegel conceives of Kantian universality as a punishing superego, and the moral law as a slave morality.⁹ Because the relation between the specificity of ethical situations and the universal and abstract principles of moral reasoning is identified as a relationship of disparate elements, reality itself is degraded. Reason and law are opposed

to both the real self and the real conditions of its life that propelled it toward a cultivated and responsible respect for the moral law. If the Kantian moral law is already a product of life, it turns against itself in turning against elements of that life; the abstract ideal condemns the reality that gives rise to it.¹⁰

For Hegel, on the other hand, what is genuinely good is identification with the good on the part of the *whole* human being, whereby the universal (the good) and the individual are reconciled and their opposition overcome. Hegel argues that if human beings are inclined by love to act in the way that the law commands, if their “inclinations” lead them to do what the law also commands, then that law loses its form as law, and reality and law lose their opposition in reconciliation (ETW 214).¹¹ Kant was right, says Hegel, in saying that love cannot be commanded, but he was wrong to therefore exclude it as an inherently valuable aspect of moral life.¹² Its very “uncommandability” is its virtue, and loving for its own sake is generally better than loving for the sake of duty, since the freedom at work in such action renders it valuable above and beyond simple obedience. This could perhaps be construed as Hegel’s reading of the New Testament claim that love fulfils the law: it does so because it does what the law commands without being commanded; it freely does what under law is only followed. From this perspective the human being and reality can be genuinely valued as sites of virtue and occasions for good, not simply as what must be manipulated, coerced, and combated in the name of the good. The integration of affective and rational motivations toward good, or the “correspondence of law and inclination[,] is life and, as the relation of differentials to one another, love” (ETW 215). Let us turn now to the *disruption* of affectively charged life and relations—that is, to crime—in which context forgiveness, as the overcoming of division in the context of life, becomes relevant.

PUNISHMENT AS LAW AND PUNISHMENT AS FATE

Hegel’s description of moral agency and the life through which it is cultivated also has consequences for the way in which crime is understood—the reasons why crime is wrong, the ways in which it does damage, the consequences it has for society and the criminal, and the appropriate response to its destructive force. If the focus on law is displaced (or fulfilled) by the life, love, and relations that inspire and cultivate agency, then first, crime must similarly be construed as wrong not merely because

it breaks the law but for its transgression of the affective and ethical conditions of agency, and second, the kind of punishment that avenges the law fails to resonate with the real reasons that crime is criminal and thus fails to adequately respond to the crime. Here the concept of forgiveness becomes relevant, as a second aspect of Hegel's identification of law's inadequacy, and as a response to crime that is different from the purportedly automatic, neutral, and indifferent response of law.

Hegel says here that what makes crime criminal is the fact that it destroys the life and relations in and by which human beings are bound together. He calls the kind of punishment that accompanies crime understood in this way "punishment as fate." That is, the life that the criminal transgresses with her crime is in fact the ground for her own life, and thus her crime transgresses the ground that sustains her own agency. In this context, fate is, as H. S. Harris notes, "the actual experience of reciprocal action and reaction in the abiding equilibrium of a living whole."¹³ The criminal is generated as a self in interaction with the social resources around her and is not merely her own agent but a site of the agency and accomplishments of that society. Her crime against that society is, then, a crime inflicted upon herself, and that society's punishment is also her punishment of herself, an attempt to redress her self-destruction. She sets the fate of this kind of punishment in motion with her crime.

With the concept of forgiveness, Hegel incorporates this consideration of the social conditions of agency into a response to crime. Transgressive, criminal action tears the fabric of social life and damages the conditions of agency, both that of the criminal and that of any victims, and no legal restitution can restore the original condition; the loss can in a sense only be grieved. If we think of criminal action as tearing the fabric of social life and damaging the conditions of agency, however, then we can formulate a different response to it that specifically targets these problems—constructing a new basis for a shared life upon the remains of the old by means of forgiveness and reconciliation. Ideally, forgiveness allows a commitment to be made to renewing the terms and resources of agency, to bringing about a new order that allows for a different future, one detached from the damage the criminal unleashed. The event of forgiveness can recover the integrity of that substance from which the criminal separated herself, but in a new form. It is a dismissal of the law for the sake of the ethical life out of which law emerges, to which it responds, and to which it is subordinate. It is a witnessing to the life that extends beyond the penal system and the law; "life in its integrity is above the law which governs it in its disruption."¹⁴

Hegel says various things that are worth repeating in this context. First, against a principle of universal legislation

Jesus sets the higher genius of reconcilability (a modification of love) which not only does not act counter to this law but makes it wholly superfluous; it has in itself a so much richer, more living, fullness that so poor a thing as a law is nothing for it at all. In reconcilability the law loses its form . . . but what reconcilability thereby loses in respect of the universality which grips all particulars together in the concept is only a seeming loss and a genuine infinite gain on account of the wealth of living relations with the individuals . . . with whom it comes in connection. (*ETW* 215)

Reconciliation is not a refutation or rejection of law; it simply does the same thing that law does, but in a way that more powerfully contributes to the singular richness of human life. The “spirit of Jesus” is “a spirit raised above morality” that strips the laws “of their legal form” (*ETW* 212). Hegel also writes that under penal law “the law is a power to which life is subject,” whereas “in the case of punishment as fate, however, the law is later than life and is outranked by it . . . life can heal its wounds again” (*ETW* 230). And further: “The punishment inflicted by law is merely *just*. The common character, the connection of crime and punishment, is only equality, not life . . . Before the law the criminal is nothing but a criminal. Yet the law is a fragment of human nature, and so is the criminal; if the law were a whole, then the criminal *would* be only a criminal” (*ETW* 238–39). On its own, law does not express the full extent of human life and interaction, and, if it were assumed to do so, that life and interaction would lose their fullness and significance. Forgiveness points explicitly to the mismatch between law and life, and the subordination of law to life. It cannot itself become *general*, however, or *prescriptible*, in the way that the law is; to truly be forgiveness and the recognition of life by life, it cannot be programmed or prescribed. Hegel’s discussion of forgiveness, then, should not be understood as a recommendation that forgiveness become the principle by which the legal system is oriented. Prescription, systematicity, and regularity are the terrain not of forgiveness but of law. As we shall go on to see in subsequent chapters, the stability and prescriptibility that law provides are important and valuable in their own right, even given Hegel’s characterization of the impoverished nature of law in relation to life.

CONCLUSION

Hegel's critique of law in this early writing is a bit one-sided; he later develops equally emphatically the other side of the issue—that is, the nature, necessity, and positive significance of legal order. Hegel does not advocate exclusive moral and political reliance on the ethical relations that cultivate us as ethical subjects or on the order of forgiveness that exceeds law and witnesses to these ordinary ethical relations. Instead, he seeks to highlight the necessary responsiveness and tension between affective relations and forgiveness, on the one hand, and law and moral reasoning, on the other.¹⁵

To summarize what we have seen so far, Hegel's view is that exclusive reliance on law cannot do justice to the ethical sensibilities fostered and practiced in relations of ethical life, nor to the power of forgiveness, which can restore the ground upon which to cultivate those sensibilities and relations. The formal relations of law disregard, and must disregard, the significance of the particular affective relations by which we are brought into existence as beings capable of being moved to act in accordance with law. Further, the fact that law must be stable and fixed can prevent the appearance of new relations and new ways of being human individually and together.

While "The Spirit of Christianity and Its Fate" shows the insufficiency of formal relations of law for organizing and understanding social interaction, and identifies the significance of immediate relations of affect and of the singularity testified to by the practice of forgiveness, Hegel's treatment of these elements in the *Phenomenology* further defines and elaborates them, and we shall turn to that text now. In his treatment in the *Phenomenology* of ancient Greek ethical life, Hegel explores the reality of ethicality and also exposes its specific shortcomings, which show on their own terms the corresponding need for law. In his discussion of the Roman "condition of right" or "legal status" (*der Rechtszustand*), Hegel shows the significance and irreducibility of law and the formal relations it enables, but he also identifies the limits to law, limits similar to those discussed in "The Spirit of Christianity and Its Fate." In his discussion of conscience, Hegel explores the significance of forgiveness and its relation to ethicality and law. We will systematically work through Hegel's treatment of each of these elements—ethicality, law, and the forgiveness of conscience—with the help of an additional discussion, in chapter 4, of his account of law in the *Encyclopaedia*. By means of this route, we will come to find that each of them—ethicality,

law, and the forgiveness of conscience—is a significant element of a dynamic, intricate, and multifaceted *system of justice* that is just insofar as it is responsive to the variegated complexity of human life. Hegel's analysis of each element brings us to the limit of each, a limit at which the others are shown to be necessary complements. Ethical life, which could be understood as Hegel's explanation of how justice relies on the affective relations that motivate and nurture ethical concern, brings into relief the need for posited law. The condition of right brings into relief the need for meaningful ethical relations and an account of the social aspects of individual agency. Conscience and its forgiveness bring into relief the need for posited law and witness to the ethical relations that are irreducible to law. Let us move, then, to Hegel's *Phenomenology*.