

Marx's Critique of Hegel's Rechtsphilosophie

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I

Shlomo Avineri has recently argued that the main contribution of Hegel to political theory is his concept of the state.[1] Anglo-American philosophers, however, have generally found an intimation of German fascism in this theoretical innovation; yet the first serious challenge to the merit of Hegel's concept of the state can be found within the history of German philosophy itself and dates from as early as 1843. For it was in that year that the young Karl Marx wrote the manuscript now generally referred to as the Kritik des Hegelschen Staatsrechts. [2] Moreover, Marx's critique, although not actually published until 1927, is generally considered to be devastating. [3] Even so, as Avineri and the editors of the English translation of the work emphasize, Marx remained indebted to Hegel despite the trenchant criticism of this work. Avineri, in fact, goes so far as to suggest that the entire Marxist program can be interpreted as an attempt to realize the Hegelian idea of the state through revolutionary praxis rather than the mystification of speculative philosophy. Thus, according to Avineri, as a consequence of his criticism of Hegel Marx came to appreciate the role of the economic order in the development of the state structure much more fully than Hegel and also that the analysis of economic conditions was a life-long task necessary to bring about the true Aufhebung des Staates. [4] But, the tendency of most contemporary commentators, following Engels and Lenin, has been to think that subsequent to his criticism of Hegel, Marx was unalterably critical of the concept of the state and believed not in its "abolition and transcendence" but simply in its destruction and "withering away" (Absterben des Staates). [5] I am not so much concerned with simply recounting Marx's cri-

tique of the Hegelian Staatswissenschaft, as with indicating more clearly the source of the misinterpretation and its roots in Marx's own unsympathetic reading of Hegel. The point of these remarks is neither to turn Marx into an Hegelian, nor Hegel into a proto-Marxian, rather it is to clarify the Hegelian views of the state and the early, pre-1848 "Marxist teaching on the State" and to assess the insights and deficiencies of both. [6]

II

The central idea of Marx's criticism of Hegel's concept of the state is Feuerbach's 'transformative method', but, if his own explanation of the project as reported in a letter to Arnold Ruge of 5 March 1842 is to be taken seriously, its inspiration is to be found in his contempt for the constitutional monarchy as a 'self-contradictory and self-destroying hybrid' which was later to suppress the publication of his paper, the Rheinische Zeitung. [7] The Kritik was composed in the summer of 1843, after Marx had resigned as editor of the paper and while he was honeymooning in Kreuznach. As presently available, the manuscript consists of nothing more than notes on §§ 264-313 of Hegel's Rechtsphilosophie. [8] Most of the manuscript is concerned with the section of Hegel's text dealing with the Legislature in the modern German state (§§ 298-320), but in this discussion Marx also goes far beyond Hegel's sketchy remarks and provides a somewhat detailed historical and economic analysis of the traditional German legislative bodies, the Estates. An earlier section on the Crown, however, relies most heavily upon the transformative method and seems to me to be the most shallow and uneven part of the commentary. Between these is the shortest section which focuses on Hegel's similarly brief account of the Executive. The initial passages of the text also correspond to Hegel's work and challenge the validity of the argument by which Hegel attempted to demonstrate that the state is the final stage of development of 'ethical substance' transcending the family and civil society.

Clearly all that we have in Marx's manuscript is rough notes from his youthful study of Hegel's Rechtsphilosophie. The text is not, therefore, of consistent quality and there is a clear development from an initial preoccupation with the monarchy to a more detailed analysis of social and economic structures of contemporary German society in the section on the Legislature. In general, then, it appears that when Marx

finally sat down to compose his attack on the constitutional monarchy, he began by doing little more than focusing on that portion of Hegel's text headed 'The State'. Yet as he became more involved in the study, he realized that the critique demanded more than could be achieved through the simple application of Feuerbach's method of analysis. For once the Hegelian inversion of subject and predicate was clarified, it was also necessary to examine the conditions of the subject itself, not simply in the mystifying categories of the Logic, but in the concrete terminology of historical and economic studies. Hegel, of course, would have argued that these methods confused the tasks of Staatswissenschaft. Marx, however, could hardly have begun with Hegel's desire to "apprehend and portray the state as something inherently rational".[9] Briefly then, if we are to assess Marx's criticism of Hegel and the similarities and differences between their views of the state, we must first consider Marx's critique of Hegel's account of each of these 'moments' of the state, the Crown, the Executive, and the Legislature, decide whether or not he had accurately represented Hegel's views, and, even if so, whether or not his criticisms were justified. But we should also be especially sensitive to discover why it was that what seemed so 'inherently rational' to Hegel in 1821 could seem so irrational to Marx in 1843. For Hegel, in the Preface to his work, had emphasized that it was an attempt to portray the state as it actually existed and clearly distinguished his task from an attempt, whether theoretical or practical, "to construct a state as it ought to be." [10] There is, therefore, prima facie legitimacy to Marx's criticism of the work as an attempt to rationalize the existing German state. Nevertheless, there may well have been a vast difference between the working of the German states of the 1810's and that of the 1840's. [11]

If one were then to read §§257-329 of the Rechtsphilosophie independently of Marx's commentary, one would find a description of a somewhat quaint, but certainly not necessarily repressive or even reactionary political system, at least not by early 19th century standards. [12] The state is generally described as a unifying cultural force and not exclusively political in character. The state has the central role of mediating a higher freedom among the opposing forces of the family and civil society in a dynamic society. The initial definition of §257 emphasizes, for example, the existence of the state as concrete 'ethical substance' which "exists immediately in custom, mediately in indi-

vidual self-consciousness, knowledge, and activity, while self-consciousness in virtue of its sentiment towards the state finds in the state, as its essence and the end and product of its activity, its substantive freedom." More significantly, Hegel is especially careful to emphasize the distinction between the state and civil society and the close relationship of his view to that of Rousseau, whose positive contribution to modern political theory is said to be that of making the will the principle of the state. Rousseau is criticized, however, for basing his conception of the state on the capricious individual will and not in the absolutely rational will which Hegel believes to be the basis of his own account of the state.[13]

So, as long as Hegel is read on a relatively abstract, philosophical level, it is difficult to criticize his account too harshly. For despite the distortion of his views which may have occurred later, his central idea is perhaps only that the inherent rationality of the state, by which he means its tendency to insure greater freedom and to express this tendency objectively, is exhibited in a constitution which is divided into the three 'moments', or divisions, upon which Marx focuses his major criticisms of the text; the Crown, the Executive and the Legislature. The Crown, for example, is thus given the role of symbolizing the rational subjective will such as Hegel believed to be absent from Rousseau's theory of the state based upon a social contract. Yet that Hegel did not have anything at all like the idea of an absolute, tyrannical monarch in mind in his conception of the Crown is clear from his description of a limited, constitutional monarchy of largely symbolical function in the Rechtsphilosophie. This largely symbolical role of the monarch is, in fact, clearly stated in the later addition to §280 of the text, where Hegel says that the monarch's role is only

a question of the culminating point of a formal decision. . . . He has only to say "yes" and dot the "i", because the throne should be such that the significant thing in its holder is not his particular make-up. . . . Whatever else the monarch may have in addition to this power of final decisions is part and parcel of his private character and should be of no consequence. Of course, there may be circumstances in which it is this private character alone which has prominence, but in that event the state is either not fully developed, or

else is badly constructed. In a well-organized monarchy, the objective aspect belongs to the law alone, and the monarch's part is merely to set to the law the subjective "I will".

For Hegel, then, the foundation of the state is not to be found simply in the Crown, as Marx no doubt must have realized as soon as he began to study the text in earnest; it is also based on the objective nature of universal law determined and established by the Legislature and enforced by the Executive. This power of enforcing laws, i.e., 'the power to subsume single cases under the universal', requires then the existence of a well-educated and trained bureaucracy. Hegel's confidence in the value and ability of professional civil servants might, admittedly, seem somewhat naive to us, but, in fact, his kind of confidence is not dissimilar to that found in most emerging nations even in the contemporary world and, also, certainly represented a very liberal alternative to the systems of civil service then existing in France and England.[14] Similarly, some objections might be raised against Hegel's remarks concerning the ineffectiveness of universal suffrage in his additions to §311 and his mixed and mostly negative views about the value of public opinion in §§315-19. But in both cases, his scepticism about the value of such modern ideals is reasonable and not clearly reactionary. Furthermore, his overall point of view generally shows a degree of liberal restraint against the dangers and excesses of the political revolt evident in the French Revolution. Hegel seems to have believed that a progressive, well-educated and trained bureaucracy could breathe vitality into an otherwise somewhat backward political system as was to be found in the German states without subjecting the people to a violent revolution to attain modern political ideals. But it was this very backwardness, such as was embodied in the power of the landed aristocracy in the Estates and, perhaps, favored by Hegel to a certain extent, that would become the very focus of Marx's attack twenty years later. Clearly then, what Marx objected to in Hegel's political theory was not the systematic structure of the work itself which had attempted to bring speculative rationality to an otherwise jumbled political order, but rather that Hegel's belief in the progressive power of the bureaucracy had proven to be completely unfounded.[15] As we shall see, however, despite his trenchant criticism and even mis-reading of Hegel, Marx also took much more from the

Hegelian philosophy than he might have been willing to admit in the 1840's.

What Hegel had emphasized in his political philosophy was then the actual structure of the German state in so far as it was rational, i.e., promoted the greater freedom of the German people within their own realm. What he avoided was the tendency to construct a merely rational idea of the state such as had never existed and could never be brought into existence.[16] But why? Why shouldn't Hegel have wanted to construct an ideal theory of the state by which these traditional governmental structures could be criticized and improved upon? Because such an ideal construct might have deceived men into thinking that such a state might actually be constructed on earth through a violent, revolutionary program. This answer is straightforward enough, but it seems to make Hegel a reactionary in an age of revolution, just as he was said to be by Hobhouse.[17] But the fact of the matter is that Hegel hoped that the realization of the modern state might come about in Germany without the need for violent revolution, not that he was opposed to the realization of the modern state. For, just as Kant had previously argued in his short essay What is Enlightenment?, violent revolution only seems to trade one set of chains for another and do not really gain enlightenment for the entire nation.[18] Hegel's views on this matter, however, were probably much more influenced by his favorable reading of Schiller's On the Aesthetic Education of Mankind, a work which was only the first of a series of essays by German thinkers of this period who sought to improve the political systems of the German states without recourse to the fearful experience of the French Revolution.[19] Hegel, then, writing in 1821, also wanted to emphasize the elements of rationality in the existing, traditional German state structure even amidst its evident contradictions. This, of course, would not mean that he did not favor further development of this political system, but only that such development should be gradual and within the framework of the 'ethical life' of the people; for didn't Napoleon err when he "wished to give the Spaniards a constitution a priori"? (§274*)

Marx's concern, however, was to emphasize the contradictions within the existing German political structure and to challenge the validity of Hegel's account of that system as nothing more than a content to be plugged into the formal structure of the Logic. Consequently, from the very beginning of his critique of Hegel it is impossible for Marx to find a common

ground with the Rechtsphilosophie, since he has already rejected the method of the Logic as nothing more than mystification. But that this rejection is also part of a general failure to deal sympathetically with Hegel's text is also clearly suggested by his critique of Hegel's view of the Crown, for the view of the monarchy which Marx finds in Hegel has little resemblance to Hegel's view. Nevertheless, emerging from Marx's somewhat misguided criticism of Hegel's account of the Crown is the perspective which leads to the generally more penetrating criticism of Hegel's entire theory of the state. Two main criticisms of Hegel dominate this section of the text. The first is directed against the presuppositions of his logic, which is revealed by the use of Feuerbach's transformative method: Hegel turns all real subjects into predicates by making all of reality subordinate to the development of the Concept. The second criticism is generally that Hegel does not take seriously enough the radical democratic tendencies which he criticizes in Rousseau.

Marx's reliance on Feuerbach's transformative method can actually be found in every section of the Kritik. But it is especially evident in this early section of the manuscript, whereas in the later sections of the text he is more inclined to counter Hegel's 'speculative' history with an empirical account of the actual development and contemporary structure of the German legislatures. Furthermore, the transformative method is used in the section on the Crown primarily in the service of a modern democratic point of view. For Marx says that the only reason that Hegel really needs to emphasize the individual subjectivity of the Crown is because he has ignored the real subjectivity of the particular individuals who actually comprise the state (KHS 22):

He forgets that particular individuality is a human individual, and that the activities and agencies of the state are human activities. He forgets that the nature of the particular person is not his beard, his blood, his abstract Physis, but rather his social quality, and that the activities of the state, etc., are nothing but the modes of existence and operations of the social qualities of men. Thus it is evident that individuals, in so far as they are the bearers of the state's activities and powers, are to be considered according to their social and not their private quality.

The error of Hegel's method revealed by the transformative method is that he takes the predicate 'subjectivity' characteristic of 'subjects' just as 'personality' is characteristic of 'persons', but makes of it a universal subject for which particular 'subjects' and 'persons' are only predicates. Thus Hegel believes that the particular subjectivity of the Crown can be ignored, since he is only concerned with this subjectivity as it symbolizes this abstract, universal subjectivity. This, according to Marx, is the mystification created by placing the moment of subjectivity in the Constitution in the Crown instead of deriving it from real subjects, the people. For the people might believe that their 'subjectivity' is actually represented in the state structure, but, in fact, according to Marx, it is not, nor is there any truly representative structure by which this might occur. Hegel has thus attempted to make the state appear democratic by the symbol of the Crown, but just as the transformative method of Feuerbach was first directed against religious mystification, Marx also sees an element of religious mystification in Hegel's account of the Crown (KHS 30):

Hegel proceeds from the state and makes man into the subjectified state; democracy starts with man and makes the state objectified man. Just as it is not religion that creates man but man who creates religion, so it is not the constitution that creates the people but the people which creates the constitution. In a certain respect democracy is to all other forms of the state what Christianity is to all other religions. Christianity is. . . . the essence of religion, deified man under the form of a particular religion. In the same way democracy is the essence of every political constitution, socialized man under the form of a particular constitution of the state. . . . Man does not exist because of the law but rather the law exists for the good of man. Democracy is human existence, while in the other political forms man has only legal existence. That is the fundamental difference of democracy.

Why, then, according to Marx, does mystification occur in Hegel's system? The important thing to understand is that Marx's analysis is not simply a straightforward argument in which Hegel's political philosophy

is opposed to modern democratic ideals. For if this were the case Marx would have had to take a little more seriously Hegel's objections to the political theory of Rousseau. Yet there is a sense in which Marx's analysis is closer to semiotics than comparative political theory. In other words, Marx is more concerned to decode the symbolism of the Crown in Hegel's Staatsrechts. Hegel says that it is necessary to provide a moment of subjectivity to the rational will centered in the state, without which the state can not be understood as a reflection of the individual human rational will and a living, growing organic unity. Marx, on the other hand, argues that the Crown simply serves to reconcile the individual to the alienation typical of modern political life in which the individual's social life no longer has any real political significance. But the difficulty with Marx's analysis at this stage of the argument is that it really depends upon more than would be justified by an unbiased commentary on Hegel's account of the Crown. For it does not seem to be the case that Hegel intended that the Crown should symbolize all that Marx thinks it does. The reason that Hegel believed that the Crown should not convey any sense whatsoever of individual or particular subjectivity is not because he didn't think that such subjectivity should be represented in the state. Nor is he trying to deceive the people into believing that their particular subjectivity is represented in the abstract universal subjectivity of the monarch. Hegel's point is rather just what he says it is: he does not believe that individual or particular subjectivity is appropriate to the monarch. He believes instead that the kind of subjectivity which Marx is concerned to bring into the state structure is to be found instead in the development of the Executive in so far as all subjects can enter the civil service, and the Legislature, which is intended to represent the individual's social existence through the limited universality of his class standing in society. Marx's criticism of the symbolism of the Crown is thus really dependent upon the development of the rest of the Kritik. For it is only on this basis that it can be appreciated in just what sense Hegel's account of the Crown really is mystification, since in the remainder of the commentary Marx argues that there is no real individuality represented in the other two 'moments' of the state either.

What is most interesting in Marx's analysis of the Crown is thus not his specific criticisms of Hegelian monarchy, which is in many respects nothing more than

an insightful mis-reading of the text since Hegel seems to place much less emphasis on the monarchy than Marx seems to think, but the less specific remarks in this section directed toward an analysis of the distinctly modern character of 'political life' which fosters a concern for the creation and legitimization of the state. For, according to Marx, "The abstraction of the state as such belongs only to modern times because the abstraction of private life belongs only to modern times. The abstraction of the state is a modern product" (KHS 32). Furthermore, the very need to explain how the modern state is really based upon the private individual is only a reflection of the desire to free the individual from the realm of the political sphere as it had been conceived in the medieval period. Or, as Marx claims (KHS 32): "In the Middle Ages popular life and state [i.e., political] life were identical. Man was the actual principle of the state, but he was unfree man. It was therefore the democracy of unfreedom, accomplished alienation. The abstract, reflected opposition [between popular life and state-, or political-life] belongs only to modern times." Similarly, the modern political sphere is distinguished from that of the Greek and Oriental worlds (KHS 32-33):

In immediate monarchy, democracy, aristocracy there is yet no political constitution in distinction from the actual material state or from the remaining content of popular life. The political sphere does not yet appear as the form of the material state. Either, as in Greece, the res publica was the real private concern, the real content of the citizen, and the private man was slave, that is, the political state as political was the true and sole content of the citizen's life and will; or, as in Asian despotism, the political state was nothing but the private will of a single individual, and the political state, like the material state, was slave. What distinguishes the modern state from these states in which a substantial unity between people and state obtained is not that the various moments of the constitution are formed into particular actuality, as Hegel would have it, but rather that the constitution itself has been formed into a particular actuality alongside the real life of the people, the political state has become the constitution of the rest of the state.

So what we should also look for in the remainder of the text is Marx's explanation of how this split has come about in the modern world. But this explanation will depend upon concrete economic and historical studies intended primarily to show the anachronistic character of Hegel's account of the Legislature and not the mystification inherent in the speculative philosophy. For just as Marx says that Hegel uses the symbol of the Crown to make people think that they really have a share in the modern state, he is also concerned to show that the other moments of Hegel's constitution obscure the real situation of the modern world in which extensive talk about the rationality of the state is in fact only a mask covering up its fundamental irrationality.

III

Marx's criticism of Hegel's account of the Executive may be discussed more briefly, yet it is in this sphere that the real thrust of his critique of Hegel's concept of the state clearly emerges in its most recognizable form: the state structure does not really serve the universal interests of the community, but only the interests of the middle-class, or civil society (burgherliche Gesellschaft). Hegel's own remarks about the Executive are, of course, also quite brief; Marx says that they don't even merit the name of a philosophical development as "most of the paragraphs could be found verbatim in the Prussian Landrecht" (KHS 44). Hegel, for example, says explicitly that the civil servants and higher officials serve the 'state's universal interest' and thus transcend the particular interest of civil society found in the bureaucracy of the Corporations (§§288-89). Hegel also argues that merely by being appointed to the civil service, the individual will necessarily give up his particular interests (§294*). Hegel also provides us with several other arguments which are intended to demonstrate the faithfulness of civil servants to the performance of their duties. The officials are hierarchically organized and are answerable to the Crown and stand in opposition to the power of the Corporations which might check on their possible abuses (§295). The civil servants are well-educated and trained and, because of the size of the state, problematical conflicts of personal and state responsibilities are less likely to arise (§296). The civil servants are chosen primarily from the middle-class, "the class in which the con-

sciousness of right and the developed intelligence of the mass of the people are to be found" (§297).

Marx's response to all of this is also brief and to the point. The bureaucracy is really nothing more than the further organization of civil society at a higher level than that found in the corporate bureaucracy. Hegel thinks that he has refounded the state on a higher level, but this is only a requirement of the Logic and not what has actually occurred. Simply to duplicate the same corporate structure within the state structure and calling it the state does not really raise this structure to any higher level whatsoever. So although Hegel's description of the bureaucracy might be quite accurate, his logic obscures its function. This, then, is simply the crux of Marx's view that the state is nothing more than the repressive organization of civil society for its own best interests (KHS 45): "Hegel develops no content of the bureaucracy, but merely some general indications of its formal organization; and indeed the bureaucracy is merely the formalism of a content which lies outside the bureaucracy itself." Here, also, is the basis of the later view that the state is a 'superstructure' based upon the material life of the economic sphere (KHS 45-46):

The Corporations are the materialism of the bureaucracy, and the bureaucracy is the spiritualism of the Corporations. The Corporation is the bureaucracy of civil society, and the bureaucracy is the Corporation of the State. In actuality, the bureaucracy as civil society of the state is opposed to the state of civil society, the Corporations. Where the bureaucracy is to become a new principle, where the universal interest of the state begins to become explicitly a singular and thereby a real interest, it struggles against the existence of its premisses. On the other hand once the real life of the state awakens and civil society frees itself from the Corporations out of its inherent rational impulse, the bureaucracy seeks to restore them; for as soon as the state of civil society falls so too does the civil society of the state. The spiritualism vanishes with its opposite materialism. . . . The same mind that creates the Corporation in society creates the bureaucracy in the state. Thus as soon as the corporation mind is attacked so too is the

mind of the bureaucracy; and whereas the bureaucracy earlier fought the existence of the Corporation in order to create room for its own existence, now it seeks vigorously to sustain the existence of the Corporation in order to save the Corporation mind, which is its own mind.

Thus, according to Marx, the very situation which brings the bureaucracy into existence in the modern world also makes it practically impossible to do the work which Hegel would want it to perform. Nor, as we would expect, does Marx take very seriously any of Hegel's explanations about how the bureaucracy is to work for the universal interest. But perhaps most telling of the confusion in Hegel's system is the fact that the police and the judiciary are given a place in both civil society and the state and that the monarch, as head of the executive, is also given a role in the objective structure as well as the subjective 'I will'. This, however, is only further evidence of the mystification involved in Hegel's view of the Crown (KHS 51-52): "The monarch distributes and entrusts the particular state activities as functions to the officials, i.e., he distributes the state among the bureaucrats, entrusts it like the holy Roman Church entrusts consecrations. . . . The sovereignty residing in the crown is taken here in a clearly mystical way, just as the theologian finds the personal God in nature."

Finally, then, we come to the discussion of the longest section of the manuscript, Marx's criticism of Hegel's account of the Legislature, after which it will only be necessary to note his commentary on the opening sections of Hegel's explanation of how the state emerges from the earlier stages of ethical life, the family and civil society. Hegel's discussion of the Legislature, like that of the Executive, is also relatively brief, but Marx's commentary is not. Hegel's remarks focus, in turn, upon the nature of the Estates, the deputies, and finally upon the role of public opinion and freedom of public communication in the state. Marx's criticism focuses primarily upon the first two of these and the observation that just as Hegel has deluded himself about the role of the executive in order to make it fit nicely into his system, he has also deceived himself about the role of the Estates. For, according to Hegel, the Estates are the moment of actual subjectivity, not merely the formal subjectivity as was to be found in the Crown (§301): "The Estates have the function of bringing public affairs into ex-

istence not only implicitly, but also actually, i.e., of bringing into existence the moment of subjective formal freedom, the public consciousness as an empirical universal, of which the thoughts and opinions of the Many are particulars." Furthermore, just as the traditional French Estates, prior to their suspension in 1614 and before they were reconvened prior to the Revolution and were transformed into the National, Constituent, and, finally, the Legislative Assembly, Hegel presupposes that the German Estates still represent true class distinctions within early 19th century German society. But Marx criticizes this view severely and focuses his criticism on Hegel's account of the 'agricultural class' within the Estates, which, according to the Rechtsphilosophie, was to be guaranteed its place in the legislative structure by rights of land and birth.

Marx's criticism of this section begins then with a discussion of the anachronistic role of the Estates in modern German states. He argues that their existence actually disconfirms and does not support Hegel's logic. Although the members of the Estates, while rooted in the family or civil society, should also be able to transcend their position in these sphere, by Hegel's own admission the 'agricultural class' has a privileged position precisely because it remains representative of the rarified family structure of the landed aristocracy (§§306-307):

This class is more particularly fitted for political position and significance in that its capital is independent alike of the state's capital, the uncertainty of business, the quest for profit, and any sort of fluctuations in possessions. . . . It is even fortified against its own willfulness, because those members of this class who are called to political life are not entitled, as other citizens are, either to dispose of their entire property at will, or to the assurance that it will pass to their children, whom they love equally, in similarly equal divisions. Hence their wealth becomes inalienable, entailed, and burdened by primogeniture. . . . The right of this section of the agricultural class is thus based in a way on the natural principle of the family.

So the representatives of the 'agricultural class' are not expected to stand for election because they repre-

sent an element of society that must necessarily be given a place within the Legislature, the natural principle of the family. By contrast, the deputies of the second section of the Estates, which "comprises the fluctuating elements in civil society" (§308), must stand for election so that the electors can choose those who they feel best qualified to make decisions in the Estates--but not because any particular point of view demands representation. The section of Hegel's text on the Legislature is thus clearly the least developed part of his text, but this was probably because the legislatures were the least developed part of the state structure in Germany in 1820. Thus Marx must also attack this section of the text with the most severe historical and economic criticism, for example, by contrasting the role of the legislature in a truly modern state, the French government of 1789-92 (or until the Legislative function took on the exclusive role of the Executive), with the backwardness of the German situation which allowed the ascendancy of power in the bureaucracy in the interests of civil society precisely because the legislative structure could not have fostered any progressive developments whatsoever. For, on the one hand, the agricultural section of the Estates is rooted in a semi-feudal existence which Hegel thinks must be preserved, both within the society and in the Legislature. But the section of the Legislature rooted in civil society is not guaranteed a very secure existence at all, for no provisions are made to guarantee the deputies any career development or much security, nor do they represent anything more than the supposedly impermanent, fluctuating existence of the interests within civil society. As a consequence, even the civil servants have a more secure place within the state structure than the deputies of the second Estate, the deputies themselves are really dependent upon serving the interests of their constituency in the most narrow fashion if they are to survive in office, and the lower classes can attain representation in the state only by becoming a part of the entrenched bureaucracy. So, given these almost necessarily irreconcilable forces within the legislative bodies of the German states, they were to remain an ineffective or even reactionary force within the development of the German states for years to come. [20] Moreover, Marx also argues that Hegel seems even to be confused about whether the Legislative is really a part of the constitution, or outside of it, since it is the body which can alter the constitution, and that changes in the French constitution between 1789 and 1795 were

in fact accompanied by violent uprisings and certainly did not come about gradually as Hegel argues to be possible within his structure. Nor does the Legislature come any closer to representing the actual subjective will than the Crown the formal subjective will, for its function in this regard is also largely symbolical. So Marx concludes that the mystification in Hegel's view of the Legislature results from the attempt to make a fundamentally medieval institution, the Estates as represented in legislative bodies, do the work of reconciliation needed in the modern world where the relationships of property, finance and the political system have become greatly transformed.

One can, then, actually find all the oppositions and contradictions within the political structure of early 19th century Germany that Hegel thinks are there and need to be there according to his political theory; but these oppositions and contradictions are not thereby resolved in the higher order of the state just because they all have a place within the Constitution, according to Marx. But the reason for this is not that the state is nothing apart from such oppositions and contradictions, as Hegel might point out in his own defense, but because the Hegelian idea of the state serves no real function except to rationalize the effects of these difficulties in which state power can only be effective as the 'executive committee' of the ruling classes, i.e., the landed aristocracy and the powerful elements of civil society. The ultimate service of the state thus becomes nothing more than the legitimization of these interests in power and maintaining the alienation inherent in the modern idea of private property subject to no real political control. So it should not be surprising that the further analysis of such themes as alienation, private property, rent of land, money, and communism as the essential nature of man, come to take a central place in the "Economic and Philosophical Manuscripts" of 1844.[21]

Probably the best summary of the force of the Kritik is thus found in the brief "A Contribution to the Critique of Hegel's 'Philosophy of Right': Introduction", in which Marx capsulizes all of these criticisms in the observation that whereas in France this new idea of a state emerged as a result of an actual revolution, in Germany it all happened only in the ratiocination of speculative philosophy (KHS 137):

If it was only in Germany that the speculative philosophy of right was possible--this abstract and extravagant thought about the mod-

ern state, whose reality remains in another world (even though this is just across the Rhine)--the German thoughtversion [Gedankenbild] of the modern state, on the other hand, which abstracts only from actual man, was only possible because and in so far as the modern state itself abstracts from the actual man, or satisfied the whole man only in an imaginary way. In politics the Germans have thought what other nations have done. Germany was their theoretical conscience. The abstract and presumptive character of its thinking was in step with the putrid and stunted character of their actuality. If, then, the status quo of the German political system expresses the perfection of the ancien regime, the thorn in the flesh of the modern state, the status quo of German political thought expresses the imperfection of the modern state, the damaged condition of the flesh itself.

IV

Considering all that has already been said about Marx's criticisms of each of the three 'moments' of Hegel's view of the state as exhibited in its constitution, it should not be difficult now to comment briefly on his notes to the first sub-section of Hegel's text, §§261-274, which is concerned not with the individual 'moments' of the constitution, but the concept of the state as it is exhibited in a constitution in general. Two specific issues from these initial comments are relevant here. First, Marx challenges Hegel's account of the transition from family and civil society to the state. Secondly, Marx questions Hegel's account of the state as an organic unity.

The more concrete reasons for Marx's criticism on the first point should be clear from the previous discussion of his comments on the Legislature, which was actually comprised of one Estate rooted in the family and another rooted in civil society. For Marx could never have said that these two Estates not only stand in a productive opposition to each other within the total structure of the state, as Hegel might argue, but to use an electronic metaphor, that they are completely out of phase with each other when viewed historically. Marx's comments in the opening section of the Kritik are largely theoretical and not historical, however. They are, consequently, very similar to the

kind of criticism found in the section on the Crown. For example, similar to Marx's view that Hegel derives democracy from monarchy, which he considers illegitimate if not impossible, Marx complains in the opening section of the text that Hegel actually makes family and civil society dependent on the state rather than deriving the state from the less abstract forms. Hegel's procedure, however, simply involves the application of the categories of the Logic to the actual world. Hegel, of course, believed that this was the real accomplishment of his approach to Staatswissenschaft, whereas Marx says that it is the basis of the mystification inherent in the entire Rechtsphilosophie (KHS 10):

The transition is not derived from the specific essence of the family, etc., and the specific essence of the state, but rather from the universal relation of necessity and freedom. Exactly the same transition is effected in the Logic from the sphere of Essence to the sphere of the Concept, and in the Philosophy of Nature from Inorganic Nature of Life. It is always the same categories offered as the animating principle now of one sphere, now of another, and the only thing of importance is to discover, for the particular concrete determinations, the corresponding abstract ones.

But this explanation is again criticized for exhibiting the confusion of reversing the real subject (KHS 9): "The actual Idea reduces itself into the finiteness of the family and civil society only in order to enjoy and to bring forth its infinity through their transcendence [Aufhebung]. . . . The fact is that the state issues from the mass of men existing as members of families and civil society; but speculative philosophy expresses this fact as an achievement of the Idea."

Similarly, Hegel is said to commit the same error in his account of the constitution as an organic unity. But from our overview of the remainder of the text it is clear that Marx is preoccupied with the fact that there is hardly any unity whatsoever in the structure of the German state in the 1840's, no less a total organic unity (KHS 14):

Hegel has done nothing but resolve the constitution of the state into the universal, abstract idea of the organism; but in appearance

and in his own opinion he has developed the determinate reality out of the universal idea. He has made the subject of the idea into a product and predicate of the Idea. He does not develop his thought out of what is objective, but what is objective in accordance with a ready-made thought which has its origin in the abstract sphere of logic.

V

What conclusions can be drawn then from this examination of Marx's critique of Hegel's concept of the state in the Kritik? The basis for the Marxist critique of the modern state, which only serves to further, and not resolve, the disturbances of modern political life--except insofar as they lead to the consoling dialectics of speculative philosophy, is quite obvious. Similarly, we see Marx moving from a simple theoretical critique of Hegel's text to a more concrete analysis of historical and economic structures typical of later works like the German Ideology and, of course, Capital. This kind of analysis also suggests that the political structure does not stand in an immediate unity to an observer, as Hegel seems to have thought, but is actually layered with the remnants of various periods of political life and development, like the archaeological remains of a city buried underneath a living, active community. I have also suggested, however, that Hegel had very clear and not at all unreasonable motives for his project and was not himself merely so confused about many aspects of contemporary German life as Marx's analysis might lead one to believe. Yet all this is only to say that Hegel could have been just as sceptical about the vitality of the German political structure if he had written in the 1840's as was Marx, but that such scepticism would not have been consistent with his philosophy of history or, consequently, the speculative spirit of the Rechts-philosophie.

But just as the clear differences between Marx and Hegel should not be resolved by making Marx into a neo-Hegelian or Hegel into a proto-Marxist, neither should we ignore Marx's indebtedness to Hegel. One very clear example of this indebtedness is, of course, the fact that Marx proposes that if the bureaucracy cannot serve as the universal class, perhaps the proletariat can, a view which might owe as much to Hegelian mystification as stated at the end of the "Contribution to a Critique of Hegel's Philosophy of Right" as anything Hegel him-

self could have written (KHS 141-142).[22] But doesn't this suggest that Marx, too, wanted to return to the formal structure of Hegel's logic, even despite his criticism of this project, and simply fill it in with the correct empirical content? Similarly, Marx must also be understood as having been as concerned as Hegel had been in his youth that there actually was no modern state in Germany, except in thought, as with the fact that the modern state is a creation of alienated consciousness. For Marx is not concerned solely with the abolition of the state or a return to the 'unfree democracy' of the medieval era, but with the realization of the true state and its real transcendence (Aufhebung). This view could only have force, however, if Marx remained committed to the view that Hegel had, in fact, given us an idealized account of the development of ethical life and not the actual account his philosophical program led him to believe he had constructed. Marx's attempt must be viewed then as much as a preliminary exercise of a larger effort to re-do Hegel's project as a criticism of that project. For if there is not an 'actual' development of 'ethical life' in the world and within world-history, Marx would have to accept the point of view which Hegel was perhaps most interested in overcoming in the Rechtsphilosophie, the acceptance of the existence of an inseparable gap between ought and is. But for Marx, the apparent gap between ought and is, between true self-consciousness and the alienated consciousness characteristic of man in modern society, was not to be overcome through speculative philosophy, but by altering the economic conditions which had produced and maintained this false consciousness within the structure of the modern state as it then existed.

Marx, and many of his ideological descendants, may not have come any closer in practice than Hegel in the effort to overcome the apparent gap between ought and is. But the clear difference between their methods of realizing this goal and with it the realization of the true freedom which is the end of history can now be clearly stated. For Hegel this freedom is ultimately realizable only within the institutional structure that expresses the 'ethical life' of the people as it is embodied in its constitution, whereas for Marx such institutions can never be more than a temporary means to the realization of such freedom and may tend over a period of time to rationalize alienated consciousness and not freedom. But it must also be obvious that on a practical level, what Marx's program first demands is the realization of a true state, one which in effect

could actually reconcile the opposing interests of civil society, just as Hegel said it should. Such a view of Marx may, of course, be at the basis of Lenin's concept of the semi-, or proletarian-state, which was to take control after the violent revolution in which the old state structure was to have been smashed (zerbrochen). Perhaps so, although one may well question whether the institutional structure of the state as Lenin envisioned could ever really be successful, or if Lenin's greater emphasis on the destructive forces of revolution and his optimism about the ability of the semi-state to quickly reconcile the opposing forces of society doesn't distort and underestimate the Hegelian presuppositions still evident in Marx's early program. Wasn't it, after all, the position of the Communist Manifesto that the 'battle of democracy' was to be won through a program of parliamentary reforms rather than through the total destruction of all the institutions of the existing state? But if this is so, it might also turn out that the fundamental differences between Hegel and Marx become more a matter of emphasis due to their specific historical situations with respect to the development of the German states than one of substance. For all that Marx might have been asking for was the elimination of those institutions which could not truly represent the ethical life of the people because of the distortions maintained by economic or historical factors and the creation and maintenance of those which could. The Revolution of 1848 failed, however, and during the period that followed, culminating in the Bismarkian state--which like the German states of the 1840's did not really owe its inspiration to the Hegelian political philosophy at all, Marxists became more and more opposed to the institutional structures of all the existing European states. [23]

Marxists have then been generally more concerned with the destruction of the 'mediating' institutional structures that Hegel believed were essential for the preservation of rights in the modern state than with their further development. As a consequence, there is a tendency toward anarchism in Marxism or the view that institutional structures can either arise spontaneously from the good will of the people, e.g., the Paris Commune, or that developing liberal institutions are expendable, e.g., the Russian Parliament in 1917. Perhaps it is even due to the fact that there has been such little serious attention given to the role of such 'mediating' institutions in the modern state that

Marxists' states have often been more reactionary or even totalitarian than the states opposed by Marx.

This tendency to neglect the study of the positive role of institutional structures in the modern state need not be a consequence of taking seriously Marx's Kritik des Hegelschen Staatsrechts, however. In opposing the specific, underdeveloped state structures in Germany of the 1840's Marx need not have also rejected out of hand the positive contributions of Hegel to the theory of the modern state, but only have questioned whether or not the actual German states were still predominately rational, i.e., whether or not they could really fulfill the role and function ascribed to them by Hegel in the Rechtsphilosophie and the Lectures on the Philosophy of History. If Marx had understood Hegel better and not so glibly accepted the identification of the Hegelian view of the state in the 1810's with that of the German states in the 1840's advanced by right-wing Hegelians, his criticism of Hegel's text might have been much more limited and centered mainly on the historical and economic reasons why Hegel had overestimated the possibility of the German states to develop rationally after the 1820's. Marx might even have gained a view of the Hegelian philosophy richer than that in which the proletariat simply replaces the bureaucracy as the 'universal class' which can bring about the human emancipation of mankind without any concern whatsoever for the preservation or development of the social institutions that might protect the rights of all citizens in the process. Because, however, Marx confused the actual states of Germany in the 1840's with the genuinely reform minded states that Hegel had described in the 1820's in his original lectures, and because he was not content to limit his criticism to the specific historical and economic factors that would inhibit the development of the states that Hegel had described, his critique went far beyond what was really justified and perhaps also helped set the stage for the 'positivist' vision of the state that has characterized so much of modern communism as well as fascism rather than the 'dialectical' vision of Hegel's Staatswissenschaft. [24]

NOTES

¹Shlomo Avineri, The Social and Political Thought of Karl Marx (Cambridge: 1967), p. 17.

²Karl Marx, Critique of Hegel's "Philosophy of Right", trans. Jolin and O'Malley (Cambridge: 1970); hereafter cited in the text as KHS followed by page number. The most well-known works in English severely critical of Hegel's political philosophy are L. T. Hobhouse's The Metaphysical Theory of the State (London: 1918), Bertrand Russell's Unpopular Essays (London: 1950), and Karl Popper's The Open Society and Its Enemies, vol. 2 (Princeton: 1971). A number of publications in English sympathetic to Hegel's political philosophy have also appeared in recent years including articles by T. M. Knox, "Hegel and Prussianism," Philosophy (January: 1940), pp. 51-63 and Walter Kaufmann, "The Hegel Myth and Its Method," Philosophical Review (October: 1951), pp. 459-80, books by Avineri, Hegel's Theory of the Modern State (Cambridge: 1972), Kaufmann, Hegel: A Reinterpretation (Notre Dame, 1978), George Armstrong Kelly, Idealism, Politics and History (Cambridge: 1969) and Hegel's Retreat from Eleusis (Princeton: 1978), Georg Lukacs, The Young Hegel (Cambridge, MA: 1976), Herbert Marcuse, Reason and Revolution (Oxford: 1941), George Dennis O'Brien, Hegel on Reason and History (Chicago: 1975), and Charles Taylor, Hegel (Cambridge: 1975); Duncan Forbes has also written an introduction favorable to Hegel's political philosophy and his philosophy of history for the recent H. B. Nisbet translation of the "Introduction" to Hegel's Lectures on the Philosophy of World History (Cambridge: 1975).

³For details on the history of the manuscript and the various published editions, see the "Appendix to Introduction," KHS lxiii-lxv.

⁴Marx, pp. 17ff.

⁵V. I. Lenin, State and Revolution (Peking: 1976).

⁶This phrase, of course, is the first part of the subtitle to Lenin's State and Revolution.

⁷KHS, "Editor's Introduction," p. x.

⁸As a result, Marx's notes do not consequently correspond to Hegel's entire discussion of the state in the Rechtsphilosophie, which extends from §257 to the end of the text, §360. In addition, it is not really appropriate to isolate the discussion of this section of the text, the third sub-division of the Third Part of the entire work, sub-titled "Ethical Life" (Sittlichkeit), from the discussion of the complete text. Marx does not, therefore, even comment on all the sections of this sub-division, but only those which appeared to him to be of the most value for a critique of the monarchy. The incompleteness of the manuscript need not make us think that Marx wasn't familiar with the entire text of the Rechtsphilosophie, of course, but it does suggest that he approached the text with biases that may have hampered his appreciation of the work and hindered his understanding of Hegel's argument.

⁹All references to Hegel's text are from the standard translation by T. M. Knox, Hegel's Philosophy of Right (Oxford, 1975), hereafter cited by paragraph number (Zusatze passages are indicated by an asterisk (*)); Knox, p. 11 (Preface).

¹⁰Ibid.

¹¹The classic study of the crises and development of the German states during and after the French Revolution is probably Friedrich Meinecke's The Age of German Liberation, 1795-1815, trans. Paret and Fischer (Berkeley and Los Angeles, 1977): see also, Avineri Hegel, esp. Chps. 3 and 5, the articles by Knox and Kaufmann, Kelly, Retreat, Chps. 4, 5, and 6, and Marcuse, esp. pp. 360ff.

¹²As Kaufmann says to those who have condemned Hegel as a precursor of Pan-Germanism and Nazi atrocities because of his favorable remarks about the Prussian state in his own lifetime (Reinterpretation, pp. 259-60):

It has often been suggested that it was ridiculous of Hegel to present Prussia as the culmination of the development of freedom, but to this one may offer two brief replies. First, the point depends wholly on comparing different societies in the 1820's, as there is

no suggestion whatsoever in Hegel's lectures that history will not go on; on the contrary. And at that time it would have been less ridiculous to single out Prussia than, say, the United States in which there was a large slave population.

Secondly, Hegel does not present Prussia as the culmination of the historical process, and his construction of world history does not depend on any such implicit assumption. That Germany was, during Hegel's lifetime, in the forefront of Western civilization seems undeniable; but Hegel does not say that Germany represents the pinnacle of the historical process. He merely believes, and wants to show, that for all its many ups and downs there has been a slow and painful development to the point where it is widely admitted, certainly in the Protestant North of Europe, that all men as such are free. And he understands world history as the gradual development of this recognition.

¹³For a concise discussion of Hegel's relationship to, and criticism of, Rousseau, see Bernard Bosanquet's classic study, The Philosophical Theory of the State (London: 1899) and on Rousseau's influence on German political philosophy in general, Kelly, Idealism, Politics and History. It should be noted, however, that Hobhouse found in Bosanquet's interpretation of Hegel's critique of Rousseau the basis for the view of the state defended by many prominent German intellectuals in the 19th century that the state serves a 'higher' purpose that cannot be understood simply as that of the totality of individual wills of which it consists. Consequently, according to Hobhouse, such a view goes far in setting the stage for totalitarian regimes which do not feel that they must take into account at all the individual wills of their subjects. I do not think that Hobhouse's criticism on this point should be taken too lightly, especially not as it is directed against Bosanquet. However, one might note that the same criticism could also be directed against Rousseau's view of the General Will, since he emphasized that "there is often considerable difference between the will of all and the general will" (Social Contract, Book II, III). Hegel's emphasis on the notion of an 'Absolute Will' as opposed to Rousseau's 'General Will' can then be understood explicitly as an attempt to overcome the clear difficulties in actually

determining what the General Will of Sovereign People is without recourse to the factions and dictatorship which eventually became the hallmark of the French government during the Revolution; his alternative is to look for the rational expression of 'ethical life' in the constitution of the people, a view which also owes much to Rousseau's notion of a 'People' which gives 'form to its will' through the formulation of a system of Law (Cf. Book II, VI).

¹⁴Cf. Avineri, Hegel, pp. 155-61; also cf. Meinecke, Chp. 5, esp. pp. 69ff. I think that it is also worth noting that the bureaucracies of the individual federal states of the United States are sometimes more liberal and progressive than the state legislatures, which tend to be far more conservative than Congress.

¹⁵See Meinecke, Chps. 5 and 6. One should also remember that it was not until the 1830's, and not in the 10's or 20's, that the reactionary forces really reestablished themselves in Europe, largely in response to the renewed revolutionary activity of the late 20's and early 30's; see the discussions by Kelly and Marcuse cited in note 11 above.

¹⁶Hegel's approach obviously differs entirely from that of Plato in the Republic.

¹⁷Hobhouse even went so far as to say that the 'school' of Hegel had "from first to last provided by far the most serious opposition to the democratic and humanitarian conceptions emanating from eighteenth-century France, sixteenth century Holland, and seventeenth century England" (p. 23). As anyone who has read the final pages of the Lectures on the Philosophy of History should easily recognize, however, Hegel himself believed that his own political philosophy was the culmination of the liberal political movements of the 'modern age' throughout northern Europe since the Reformation. Hobhouse had the disadvantage of taking up the study of Hegel when it was in vogue in England and had long passed out of favor in Germany, although many Bismarkian intellectuals were still writing about Hegel in a manner which makes it very easy to understand how Hobhouse came to the view of Hegel that he did. Cf. Friedrich Meinecke, Machiavellism: The Doctrine of Raison d'Etat and Its Place in Modern History, trans. Scott (New Haven: 1962).

¹⁸Lewis White Beck, ed. Kant on History (Indianapolis: 1963), pp. 3-10.

¹⁹Schiller's influence on Hegel has been discussed at length and emphasized greatly by Lukacs, Kelly, Taylor, and perhaps even overemphasized, by Kaufmann. The other well-known work from this period on the same themes is Wilhelm von Humbolt's Ideas on an Attempt to Determine the Limits of the State's Authority which first appeared in the same journal as Schiller's text and, so greatly influenced John Stuart Mill in the composition of On Liberty. Cf. Meinecke, Liberation, Chp. 3.

²⁰The reactionary influence of the Junkers in late 19th century German political development is, of course, well-known.

²¹Early Writings, trans. T. B. Bottomore (London: 1963).

²²The specific well-known passage that I have in mind, reads as follows (KHS 141-42):

Where, then, is the positive possibility of German emancipation?

Our answer: in the formulation of a class with radical chains, a class in civil society that is not of civil society, a class that is the dissolution of all classes, a sphere of society having a universal character because of its universal suffering and claiming no particular right because no particular wrong but unqualified wrong is perpetuated on it; a sphere that can claim no traditional title but only a human title; a sphere that does not stand partially opposed to the consequences, but totally opposed to the premises of the German political system; a sphere, finally, that cannot emancipate itself without emancipating itself from all the other spheres of society, thereby emancipating them; a sphere, in short, that is the complete loss of humanity and can only redeem itself through the total redemption of humanity. The dissolution of society existing as a particular class is the proletariat."

²³One must remember that Marx, during the 1840's, could perhaps be best described as a radical democrat

and that in the Kritik the demand for universal suffrage and 'direct democracy' is at the center of his projected political program to provide for true individual representation in the state, a point clearly stated in the following passage (KHS 121):

In unrestricted suffrage, both active and passive, civil society has actually raised itself for the first time to an abstraction of itself, to political existence as its true universal and essential existence. But the full achievement of this abstraction is at once also the transcendence (Aufhebung) of the abstraction. In actually establishing its political existence as its true existence civil society has simultaneously established its civil existence, in distinction from its political existence, as inessential. And with the one separated, the other, its opposite, falls. Within the abstract political state the reform of voting advances the dissolution (Auflosung) of this political state, but also the dissolution of civil society.

Or, to state the matter a little more concisely, "In true democracy the political state disappears" for "In democracy the abstract state has ceased to be the governing moment" (KHS 31).

²See esp., Marcuse, Reason and Revolution.