

## WHAT IS 'CIVIL SOCIETY'?

As the cold war drew to a close at the end of the last decade, intellectuals in eastern Europe—especially in Prague and Warsaw—repeatedly expressed their desire to rejoin 'civil society'. At one level, it was not difficult to discern what was meant by this expression: forty-five years of Soviet domination had cut them and their compatriots off from participation in the free exchange of information and argument with all others in the world who shared their interests. At another level, 'civil society' has been the centerpiece of philosophical thought about public life for nearly 25 centuries. It will be my contention in this paper that there is a correlation between these two levels, that our contemporary concept of civil society is not unrelated to its original sense, and, further, that our present sense of the concept can be deepened by a comprehension of it within the context of a philosophical system.

The words we translate as 'civil society' have had a long history. Their originals are to be found among the opening words of Aristotle's *Politics*. Introducing the topic of this text, the *polis* or city, he says that every *polis* is a kind of *koinonia*, or, literally, an institution whose members have something 'in common'. We later learn that what they have in common are certain habits of friendship (*philia*) acquired by participation in a common life. This leads him to coin the phrase *koinonia he politike*, or a common institution *as* political. It was this phrase that Cicero rendered in Latin as *societas civilis*, the direct counterpart of the term 'civil society' which appeared in Hobbes' English translation of his own Latin composition, *De Cive*. In Hobbes' *Leviathan*, in Locke's *Second Treatise on Civil Government*, and in general educated usage (not only in English but also in French, Italian, German, and other European languages) the term was normally used as a synonym for 'commonwealth' or 'state'. This usage, 'civil society *or* the state' remained common until the early 19th century, when Hegel, in the aftermath of the French Revolution, introduced a decisive conceptual distinction between 'civil society' (*die bürgerliche Gesellschaft*) and 'the state'. That distinction has remained a feature of educated usage since Hegel. For example, it has become second nature for us to distinguish between the 'social sciences' such as sociology and economics and the 'political sciences' such as government, politics, and, more recently, 'political science'. And clearly, it was this natural distinction which eastern Europeans invoked when they said they wanted to rejoin 'civil society'. Nevertheless, despite the revolution in usage introduced by Hegel, not all who have followed his usage have grasped the philosophical significance of what they were saying. In fact, only one major thinker of the 19th century seems to have done so. This was (oddly, in light of what was done in his name in the 20th century) Karl Marx, each of whose principal works was either titled or sub-titled 'a critique of political economy' and whose content makes plain that Marx, completely in the spirit of Hegel, took 'political economy' to be an oxymoron.<sup>1</sup> With this observation, our capsulized history of the term 'civil society' must end.

But before we turn to the philosophical arguments that can make sense of the question, "What is 'civil society'?", namely Hegel's philosophical system, let us take one last look at the place from which this phrase originated: Aristotle's *Politics*. After observing that the *polis* is a *koinonia*, Aristotle notes

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<sup>1</sup> 'Round square' is an example of an oxymoron. See the next to last note below.

that it is not the only *koinonia*—or ethical, that is, habituating, institution. He identifies another: the *oikos*, or household. And he proceeds to demolish, by a few deft strokes, the argument of his teacher, Plato, that there is no difference between a large household and a small city. For, as he makes clear, their ethical functions are different: they habituate their members differently. Although Hegel's place in the history of social and political philosophy was secured by his transformation of the traditional usage of the term 'civil society', which derived from Aristotle, Hegel remained indebted to Aristotle for the principles by which a great philosopher could distinguish among institutional spheres of ethical life. Thus a comprehension of Hegel's distinction between 'civil society' and the 'state' will be the aim of my remarks today.

Hegel's concept of civil society involves three features that are critical to an intelligent answer to the question: "What is 'civil society'?" The first is that it is global, not national. The second is that it is ethical, not moral. The third is that it is systematic, not historical. Since we still tend to locate civil society nationally, to assess it morally, and to describe it historically, it is clear that a global, ethical, and systematic concept of civil society offers the prospect of significant reorientation. I shall try to make it plausible why Hegel thinks of civil society globally, ethically, and systematically and to indicate how Hegel—himself a compulsive reader of the daily press—might help us make sense of what we read in our newspapers today.

I include Aristotle in these remarks because he discovered and described the topic of practical philosophy, which Hegel reintroduced as Ethical Life (*Sittlichkeit*), and because he made plain why his practical philosophy was not systematic. More importantly, Hegel explicitly aspired to a recovery of Aristotelian modes of thought in many areas of inquiry and, as a result, Aristotle is the only thinker on record who is truly comparable with Hegel. In his writings on physics, mathematics, and first philosophy he was, for Hegel and—arguably—for us, the founder of what we may call systematic philosophy. Aristotle generally called it 'theoretical philosophy', Hegel's favored expression is 'speculative science', but for both it is the most complete and most satisfying of all known activities. In the aristotelio-hegelian sense, a topic may be considered within systematic philosophy—that is, theory or speculation—if its subject matter involves processes that point to or approximate the process of 'being as being', a process most closely approximated and knowable by us as the activity of theorizing.

That theory plays this role in Hegel is most dramatically indicated by his citation of Aristotle's panegyric upon theoretical activity, *Metaphysics*, Bk. XII, chapter 7, as the closing words to "Absolute Spirit," the last of nine sections in the 1827 and 1830 editions of his *Encyclopedia*,<sup>2</sup> and by a remark near the close of the preface to the 1830 edition: "If theory is, as Aristotle says, the *most blessed* and the *best* among all goods, then those who have partaken of this pleasure will know that they have satisfied the necessity of their spiritual nature."

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<sup>2</sup> The *Encyclopedia of the Philosophical Sciences* is Hegel's only statement of his philosophy as a whole. His deference to Aristotle, giving him the last word in this his most important book, is an unparalleled act of acknowledgment on the part of one great philosopher to another.

It is a well known and regrettable fact that we possess today no adequate and acknowledged interpretation of Hegel's system as a whole, of his curriculum for thought in the modern world, his 'Enzyklio-paideia of the philosophical sciences'. It is also clear that no single lecture could aspire to make good this deficit. But any attempt to explicate any dimension of his thought as theoretical and systematic cannot avoid the question of how that dimension, say civil society, exhibits itself as theoretical and systematic by reference to the whole. Thus some effort, however inadequate, must be made to characterize what theory is in Hegel. Since Hegel himself so avowedly aligned his theoretical project with that of Aristotle, and deferred to his words as the best statement of what theory is, it is odd that so few interpreters have sought to catch a glimpse of that project by considering it against the backdrop of Aristotle, Hegel's acknowledged mentor in matters theoretical. For if Hegel's literary practice in this regard is not merely rhetorical, then we may assume that he regarded Aristotle's theorizing as easier to grasp than his own. Following this clue, we may plausibly attempt to proceed from the easier to the more difficult.

One key to what theory is in Aristotle may be had from a consideration of how he understands the principles or *archai* or 'starting points' of theory. Plato had argued that these principles are two in number: matter (*hyle*) and form (*eidos*). The principles are two because they are different. Thus the one is a negation or privation of the other. But this negation is not abstract. In Hegelian vocabulary, the one principle is understood as the 'determinate negation' of the other or, as Aristotle put it, the one is the '*steresis*' of the other. But there is, according to Aristotle,<sup>3</sup> a defect in Plato's notion of the principles as two. For as contrasting principles, matter and form hide the fact that matter is not merely the determinate other of form but also the factor which undergoes change, as the subject-in-process (*hypokeimenon*) from one contrary state (the *steresis*) to its other. The platonic two-principle theory had conflated the principles of matter and *steresis*, thus making matter something inherently indeterminate.<sup>4</sup>

The power of Aristotle's notion of theory as three-principled—as *eidos*, *steresis*, and *hypokeimenon*—is that it affords the possibility of development into an articulated account of contrariety (the ways in which the two forms, *eidos* and *steresis*, are determinately opposed), as well as an account of the way a subject-in-process is susceptible of determination. The kinds of contraries focused upon by Aristotle include those of quality, quantity, and place. Together, these contraries provide the framework for articulating Aristotle's celebrated doctrine of qualitative, quantitative, and local motion. A subject-in-process from, say, the contraries cold to hot or dry to wet is said to exhibit qualitative motion; from the contraries smaller to larger: quantitative motion; and from the contraries New York to Shanghai: locomotion. In each case the material subject is said to be in motion (*kinesis*) because it is involved in the process of realizing its capacity to undergo the transition from one contrary to its other. But, as moving, it is in *this* process only insofar as it is not yet *in* the form towards which it

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<sup>3</sup> Aristotle's argument is elaborated in Bk. I of his *Physics*.

<sup>4</sup> It is worth noting at this point that Nicolai Hartmann, in what has become a standard commentary on the relationship of our two thinkers, Aristotle and Hegel, imputes to both what is in effect a Platonic concept of matter and form and consequently a two- rather than a three-principle theory. See Nicolai Hartmann, "Aristoteles und Hegel", Erfurt: Verlag Kurt Stenger, 1933., pp. 17-31.

is proceeding. Thus it is said, by moving, to actualize its capacity to be in, say, Shanghai, but once there the process is over. As the actualization of this capacity the process is clearly incomplete, and necessarily so. But when processes are so theorized, as involving three principles, the way is left open for theorizing processes that are complete.

This is the kind of process Aristotle calls activity (*energeia*). His favored example is seeing, a process said to be determinate because it is what it is throughout the process, as opposed to *kinesis*, a process that is determinate by virtue of using up its capacity (*dunamis*) to be in a determinate form. Other cited examples of *energeia* include living (both vegetative and animal), touching, tasting, smelling, hearing, as well as knowing, thinking, and, paradigmatically, theorizing. What is perhaps most startling is that Aristotle includes among these complete processes the activity of being.

It will be observed that there is a hierarchical difference between the incomplete processes of *kinesis* and the complete processes of *energeia*. Many efforts have been made to uncover this difference. Most fail<sup>5</sup> because they lose sight of the three-principled nature of Aristotelian theorizing. For an *energeia* is complete because the subject-in-process is *in* the form determinate of the process in question.<sup>6</sup> Of course this entails that the contrary forms or principles be other than those characteristic of *kinesis*—quality, quantity, place.<sup>7</sup> In *De Anima* he suggests, in discussing the activities of living and sensing, that the contrary forms in an active process might be understood as first and second actuality, the difference between the innate capacity to see and the actualization of that capacity; elsewhere it is indicated that the contrasted principles involved in an active process may also pertain to acquired capacities. These are most readily exemplified by the acquired habits that are said to dispose us to act well (virtues) or badly (vices). But cases of a capacity fully actualized in a process include the capacity to speak Greek, the capacity to sing, and, perhaps most importantly, *nous* or intellect as the capacity to theorize.<sup>8</sup> Of acquired capacities, some are idiosyncratic and are acquired incidentally, some are acquired by a program of training, and some are acquired by participation in a well-formed way of life (in an *ethos* such as an *oikos* or a *polis*, or in what Hegel will call a mode of *Sittlichkeit* such as a family, civil society, or a state). Since civil society is a dimension of Objective Spirit in Hegel, we may expect that a theory of that dimension will concern itself with processes that actualize acquired capacities as well as the context or sphere of their acquisition and actualization. We shall also see that this context in the case of civil society is global.

It is the mark of Aristotelian theory to preserve the determinacy of its subject matter by distinguishing between the principles of contrastive determinacy (contraries) and the principle of

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<sup>5</sup> The principal exceptions known to me are the interpretations of Hegel and L. A. Kosman. Hegel's interpretation is his system; for Kosman, see, e.g., "Substance, Being, and *Energeia*," *Oxford Studies in Ancient Philosophy*, 1984 (121-149).

<sup>6</sup> *Metaphysics*, Bk. IX, 1050a15-17.

<sup>7</sup> In Aristotle's 'second philosophy' the contraries of quality and quantity are based upon sensible differences. Quality and quantity also designate two of the three main types of contrariety in Hegel's 'first philosophy' or 'logic'. It must be noted that these contraries in Hegel are pure modes of determinateness and are not based upon sensible differences.

<sup>8</sup> *Posterior Analytics*, B, 19.

determination (subject-in-process). Since the determinacy is *in* the process, this theory opens the prospect of ordering its subject matter systematically by distinguishing, not among forms but among processes that are themselves more or less determinate. The clearest example of this distinction is that between incomplete processes (motions) and complete processes (activities). Further articulations immediately suggest themselves.

The first is between motile entities *per se* (whose incomplete processes are studied by inorganic physics) and motile entities that exhibit complete processes such as living and sensing (whose relatively more complete processes are studied by organic physics or biology). Then, given that all entities *qua* determinate are said to exhibit the activity of being, there will be a science of being *qua* being (whose processes, in whatever degree of relative completeness, are studied with reference to (or, as Aristotle says, '*pros hen*') the activity of being. It is within this science that we may expect to find a more detailed account of the three principles constituting the determinacy of processes as processes. And in those texts that have come down to us under the title 'metaphysics' we do indeed find further elaborations on the three principles: with regard to the two principles that function as contraries (a doctrine of contrastive determinacy), with regard to the principle that functions as the subject-in-the-process-of-determination (a doctrine of determination), and finally with regard to the three principles functioning together to achieve the highest degree of determinate process (what Aristotle called '*tode ti*' in what we may call the doctrine of determinate individuality). But these elaborations are, in the *Metaphysics* as we have it, fragmentary and incomplete.<sup>9</sup>

My proposal is that the first part of Hegel's *Encyclopedia*, what he calls 'Logic', can be read as the project of completing the fragmentary discussions of principles which we have in Aristotle's *Metaphysics*. The central teaching common to both is that 'being is spoken of in many ways'. Entities exhibit a plurality of processes, some more complete than others. But the focus of theory is upon processes, each determinate by virtue of three principles. Hegel elaborates upon the two principles which function as contraries—qualitative, quantitative, and qualitatively quantitative—in the first section of his logic, 'The Doctrine of Being', which may be described as his logic of contrastive determinacy. In 'The Doctrine of Essence' Hegel shows how the principle of subject-in-process preserves its identity, evinces manifestation, and points toward actuality—the three principal aspects of what may be called his logic of determination. Finally, in 'The Doctrine of the Concept [*Begriff*]', Hegel considers the three-fold process of the activity of being *qua* being as a whole, first with reference to the original divisions (*Urteile*) of the process into the moments of universality, particularity, and

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<sup>9</sup> The fragmentary state of the *Metaphysics* has been observed by many, most influentially by Paul Natorp ("Thema und Disposition der aristotelischen Metaphysik," *Philosophische Monatshefte*, XXIV (1888), 37-65; 540-574) and Werner Jaeger (1910 ff.). Natorp finds it epitomized by an 'insufferable contradiction': the juxtaposition of a theory of divine being (theology) with a theory of being *qua* being ('ontology'). Jaeger takes this putative contradiction as the point of departure for his genetic reconstruction of Aristotle's philosophy as a whole. (See Werner Jaeger, *Aristotle: Fundamentals of the History of His Development*, tr. by R. Robinson, Oxford: OUP, 1934.) But, like Nicolai Hartmann's, the interpretations of Natorp and Jaeger suffer from the tacit presupposition that Aristotelian theory involves only two principles. When his principles are grasped as three, and when the focus is upon processes rather than entities, the activity of being as being can be grasped as the very same process as the activity of divine being. The one thinker who has grasped Aristotle in this way is Hegel.

singularity and their unification into an individual '*Objekt*'; second the modes of unity exhibited by individuals (mechanical, chemical, and teleological); and finally the kinds of telic activity in which the subject-in-process may be said to be *in* the form towards which the process aims: living, knowing, and the most complete mode of the activity of being, the absolute Idea.

In broad outline, the first part of Hegel's system may be seen as an attempt—the first and only on record—to complete the Aristotelian project of articulating the principles of pure active processes, of being *qua* being. *Real* entities are *actual* to the degree that the structure of their distinctive processes approximates to the structure of the pure activity of being as being. Otherwise put, real entities are theoretically comprehended by considering how their relatively incomplete processes 'embed' the structure of absolutely complete process. Some real processes will embed absolute process to a greater degree than others. For example, physical processes are more complete than mechanical ones, organic processes are more complete than physical ones, and spiritual processes are more complete than organic ones.

The most complete process exhibited by any *real* entity is, in Hegel as in Aristotle, human or spiritual theorizing. But even though the dynamic structure of this process is said to provide us the closest analogy to the activity of being, human theorizing is only absolute as spiritual, not as being as such. Hence the difference between first and second philosophy in Aristotle and the difference between '*formelle*' and '*reelle*' *Wissenschaft* in Hegel.

Aristotle's philosophy is potentially and Hegel's philosophy is actually a complete circle of theoretical education—an *Enzyklio-paideia*, an Encyclopedia—precisely because of the just mentioned difference. A fully articulated account of the structure of complete activity in terms of the three principles of theory yields a comprehension of the form of activity towards which the processes of all real entities point as to their own completion as beings. But we can only grasp this formal activity by the constant use of analogies with and among the embedded processes, including motions and activities, exhibited by real entities. On the other hand, the very dynamic structure of absolute activity, which Hegel calls the absolute Idea, indicates that it too is, as merely formal, incomplete unless it is embedded in processes involving an element that is other than and external to the formal sphere of absolute activity. Processes involving this external element are theorized in what Hegel calls '*Realphilosophie*' or the Philosophies of Nature and Spirit.

*Realphilosophie* is articulated, in turn, into stages of process in which the real subject-matter-in-process—always grasped as determinate because pointing toward the activity of being—exemplifies closer and closer approximations to complete activity. At the extreme moment of completeness among the active processes embedded in real entities, namely theorizing per se or that stage of Absolute Spirit called philosophy, the structure of the process achieves a completeness which eliminates the element of embeddedness—second philosophy becomes first philosophy; *Realphilosophie* circles back into the formal processes of determinacy per se, the activity of being as being, the subject matter of Hegel's Logic.

It must be noted that in following this theoretical procedure—which may be called ‘Hegel’s Encyclopedic Method’<sup>10</sup>—Hegel (like Aristotle and unlike Kant, Fichte, or Schelling) did not purport to *construct* the material dimension that he theorized. As Aristotle was said to have spent much time in conversation with the fishermen of Assos and Lesbos in gathering materials for his theory of marine biological life, so Hegel is known to have been endlessly curious about developments in the empirical sciences of his day. The point of his kind of theory is not to get the entities right but rather to study processes in a systematic order that can then be *exemplified* in entities as they are empirically discovered.<sup>11</sup> For there is, as Aristotle remarks in his *Historia Animalium*, “in the scale of living things...a sequence in which those at each stage always appear to have more life and motion than those at the preceding stage.”<sup>12</sup> Focusing as it does upon the scale of processes such as motion and life, the question of the *origin* of the species exemplifying these processes does not arise as theoretical topic. Hence the much bruited ‘refutation’ of Aristotelian (as well as Hegelian) biology by Darwinian evolutionary biology simply misses the point of what theory is. For the key to theory is that its topic is process. Entities as well as kinds of entities or species are ‘said in many ways’. Theoretically, each of these ways is a determinate process and the aim of theory is to grasp the principles of determinacy in terms of which processes are more or less determinate or concrete or individual.

When these principles are comprehended, a scale of more and less complete processes will take the shape of a system and, as indicated above, the shape of that system will be a circle—an encyclopedia. Such a system will of course involve development. But this development will be anything but historical. Just as genetic evolution may incidentally throw off species whose members exemplify processes of various degrees of completeness, so too human history may incidentally throw off ways of life or institutions whose members likewise exemplify processes at various stages of completeness. So while it is true that evolution and history do involve a kind of development, it is of a kind systematically external to the immanent development studied in theory.

Of course the immanently developed hierarchy of processes may, within the sphere of second philosophy or *Realphilosophie*, arrive at a stage where first- or second-nature<sup>13</sup> entities are not at hand to exemplify the process in question. Such, for example, was the case for Aristotle with regard to the topic of this paper, civil society. As we shall come to see more clearly, civil society is a theoretical topic because it considers processes on a scale of relative completeness, which, in the sphere of Objective Spirit, are what they are by virtue of institutions of habituation that may or may not be at hand. Here the institution in question is civil society. As a global ethical institution it was not at hand for Aristotle. Hence the level of activity it systematically exemplifies could not be theorized as a matter of second or *Real*-philosophy despite the fact that this level of activity was systematically required so as to complete the scale of embedded activities. I stress that that scale is developed systematically or immanently, not historically or incidentally. But without the historically developed real institution in which the activity is

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<sup>10</sup> Compare and contrast my account of “Hegel’s Phenomenological Method”, *Review of Metaphysics*, 1970.

<sup>11</sup> “Das immanente Philosophische ist hier wie überall die eigene Notwendigkeit der Begriffsbestimmung, die alsdenn als irgend eine natürliche Existenz aufzuzeigen ist.” Hegel, *Enz.*, § 276 A.

<sup>12</sup> Aristotle, *HA*, 588b7-11.

<sup>13</sup> A second-nature entity is a matter of habit.

exemplified, the theory of embedded processes or *Realphilosophie* retains a gap. Aristotle's implicit recognition of this and similar gaps is signaled by his exclusion of ethics-economics-politics from the sphere of theory and his marking it off as 'practical philosophy' even though he had discerned many elements in practical philosophy with potential theoretical significance. Hegel explicitly states in his lectures on the history of philosophy that 'practical philosophy' in the ancient world was not and could not be a part of systematic, or in his terminology, 'speculative' philosophy. The subject matter of practical philosophy, the institutions of ethical life, only became susceptible of systematic treatment under the conditions of 'modernity' (*die Neuzeit*), and the most distinctive institution of modernity is civil society.<sup>14</sup>

The foregoing considerations will serve as an indication why a theory of civil society must study processes that are systematic rather than historical. To spell out why the processes it involves are ethical rather than moral and global rather than national we must locate our topic, civil society, within the context of *Realphilosophie*. This development of second philosophy proceeds through two main phases of process: natural and human. The Philosophy of Nature considers the three sub-phases of natural process as, respectively, mechanical, physical, and organic. The first, Mechanics<sup>15</sup>, considers the factors of motile processes which, as mechanical, point toward embeddedness in an individual: a solar system; the second, Physics, considers the processes embedded in individual physical entities; and the third, Organics, considers the activities of life as embedded in an ecosphere, in plants and in animals. A prime difference in the *second* part of *Realphilosophie*, the Philosophy of Spirit, is that the kind of entity engaged in process is singular: the human spirit; and of the many ways in which this entity is spoken, the most distinctive involve processes that actualize acquired rather than natural capacities—in other words, habits. Spirit is considered in three spheres of activity: as Subjective Spirit the activities considered are embedded in individual humans susceptible of habit formation;<sup>16</sup> as Objective Spirit the activities considered involve a plurality of humans which, as individuals, acquire and actualize habits in the well-formed *institutions* of ethical life; and as Absolute Spirit the activities considered are ends-in-themselves, from the artistically beautiful to the philosophically theoretical, exhibiting ever closer approximations to the divine activity of being as being. With this culmination of the hierarchy from less to more complete processes, the encyclopedia completes its circle and returns again to its beginning.

Within this cycle civil society finds its place among the habituated and habituating institutions in the sphere of Objective Spirit. Like the other five spheres of *Realphilosophie*, the processes considered in this sphere are articulated according to the formal principles of determinate process developed in the first part of the encyclopedic system. These are (1) the two principles of contrast, developed in the

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<sup>14</sup> "Wir werden überhaupt die praktische Philosophie eigentlich nicht spekulative sehen werden, bis auf die neueren Zeiten." Hegel, Jubiläumsausgabe, Vol. 17, p. 291.

<sup>15</sup> The question whether an aristotelio-hegelian systematic philosophy can account for Newton's mechanical description of the solar system has been, since 1687, a perennial source of doubt. As a first corrective step, consider G. E. L. Owen, "Aristotelian Mechanics", in Owen, *Logic, Science and Dialectic*, Ithaca: Cornell University Press, 1986, pp. 315 ff.

<sup>16</sup> The distinctive determinacies of Spirit are second natures or habits; 'Subjective Spirit' considers the potentialities of humans (Spirit) for habit-formation. See *Enz.* §§ 409-410.

Logic of Being, (2) the principle of subject-in-process, developed in the Logic of Essence, and (3) the three principles functioning to constitute the processes of a determinate individual, developed in the Logic of the Concept. In the sphere of Objective Spirit we must therefore expect that the first two phases will exhibit necessary but, by themselves, insufficient (or aporetic) moments in the scale of activity attainable at the level of Objective Spirit. These two phases are called 'Abstract Right' (with processes governed by the two principles of contrastive determinacy) and 'Morality' (with processes governed by the principle of subject-in-process). The third phase, 'Ethical Life', will consider processes that are non-aporetic (or complete relative to Objective Spirit) with the principles of contrast ingredient in habituating institutions and the subjects-in-process determinate as institutionally habituated.

In the first phase, Abstract Right, humans in a state of plurality are considered in terms of the two principles of contrast and in abstraction from the determination of the subject-in-process, the topic of the second phase, Morality. As inherently indeterminate, these principles are, independent of any contrasting process, single human selves empty of all content. Their only potential determinacy is external and thus incidental to the selves in question. This potential determinacy is only made actual in a process involving the element of externality (*die Äusserlichkeit*). It is called the process of recognition and it is realized when each of two otherwise indeterminate selves make themselves recognizable by taking on a qualitatively determinate dimension in the element of externality. As thus recognizable they are said to *possess* the dimension in question. The process of recognition ensues when the possessed external dimension of quality is not merely recognizable (a possession) but recognized as a quality of a self (property). As thus recognized the otherwise indeterminate selves have the qualitative determinacy of persons and the process imbuing them with this contrastive determinacy is reciprocal recognition.

The theoretical topic of Abstract Right is accordingly a process involving two principles: two persons; it is a process of recognition that is reciprocal. So far, the process, like the persons it involves, is abstract, that is, relatively indeterminate. Its development toward concreteness is furthered by consideration of the two contrasted principles, that is, persons, taking possession of one another's property: the contractual process. This process accords with the principles of reciprocal recognition when the appropriated external dimensions of quality are determined by both persons to be quantitatively equal and thus exchangeable. Such determination within the process of contractual exchange is called 'the stipulation'. In the sphere of Abstract Right there is no principle to determine any specific stipulation, but development of the process of recognition requires, as a condition for exchange, that some stipulation be made. Any specific stipulation is incidental to the process of recognition and thus arbitrary. Nevertheless, it constitutes the essence of the contractual phase of the recognition process. The performance of the contract, the real exchange of property, follows as a mere sequel. As arbitrary, however, the stipulation is susceptible of violating the process of recognition. Such violation may take the form of a misunderstood stipulation (tort), a misrepresented stipulation (fraud), or a negation of the entire process of recognition (crime). The criminal, by radicalizing the arbitrary element required for the development of the process of recognition, namely stipulation, is de-personalized, that is, self-excluded from the sphere of reciprocally recognized persons. The reintegration of an erstwhile person into the process of recognition is called punishment.

The two-principled process of contrastive determinacy developed in Abstract Right is thus seen to be aporetic. It requires for its development a mode of determinacy, namely determination, that is incidental to, and hence arbitrary within, the process of recognition, which process involves three principles only by including a third principle, stipulation, that is arbitrary, that is, incidental to the two principles of contrastive determinacy that constitute personhood. In other words, determination cannot function as an inherent or non-incidental principle in Abstract Right, in the process of interaction among persons *qua* persons. Stipulation is a function required by the process of recognition but it cannot function within this process as a principle. That is why “abstract right” is aporetic.

Like other entities, selves are ‘spoken of in many ways’. A self functioning as a principle of determination is not spoken of as a legal person, but it is spoken of as a moral subject. So a criminal is, in terms of principles, a moral subject in the sphere of Abstract Right. The second phase of development in the theory of Objective Spirit is accordingly the sphere of moral subjectivity, or Morality, where the principle of determination is seen to function as a principle, that is, as a subject-in-process.

In Morality the topic is process (deeds and actions) as determined by the singular principle of a subject-in-process considered in abstraction from any natural or acquired capacity. The moral subject is what it is only as a determiner, as the source of its own determinations. As processes in a sphere of Objective Spirit, these determinations also take the form of acts in the face of others. But when we consider action as moral action, i.e., in terms of the single-principle logic of determination, then its social dimension is only accountable by way of the agent’s self-determination or autonomy.

At the first stage of moral determination, ‘Purpose and Responsibility’, the self is spoken of as a sheer potentiality for form-determination and the process is at first one of pure self-legislation or autonomy—sheer determination, anything the subject happens to do, its ‘deed’. The process becomes more concrete with the subject’s further determination of the difference within its ‘deed’ between what it did inadvertently and what it determined to do on purpose (its ‘action’). By this determination, the subject-in-process is a moral subject, accepting responsibility for what, by its own determination, it has done ‘on purpose’. At the second stage of the moral process, ‘Intention and Welfare,’ the subject determines its range of purposive action in such a way that its causal determinations will have reasons: that its actions will accord with the well-being of itself and others. Moral process thus rationally determined is called intentional action and what is intended is called welfare. But still it is the subject alone, a single principle, which can determine the rational content of its own intentions, i.e., what welfare is. In the third stage of the moral process, ‘Conscience and the Good’, the subject-in-process determines the standards for distinguishing between good and bad intentions.

It is the essence of Morality that the moral subject claims to know the difference between good and evil, the ultimate principle of moral determination. But the moral process involves no determinate principle for the determination of the good that is independent of the principle of self-determination by the moral subject itself. Any determinate principle would be ‘incidental’ to the moral process. Such a subject-in-process can only present itself, to itself and others, as conscientious.

At every previous stage of the moral process the determinations of the subject were made with some reference to a putatively objective moral criterion: at first purpose, then intention. But at the third stage the process of moral self-determination requires that the subject posit good itself as objective. When *the good* is made a subjective determination, there is no longer any moral basis for the subject's claim to a distinction between subjectivity and objectivity. As an ultimate moral determination, the good is a sheer posit, and good only *as* a sheer posit. If the posit is made in terms of any *morally incidental* determinacy of the subject-in-process, say a natural inclination or an acquired disposition, what is ostensibly posited as good is *eo ipso* evil. For it does not derive from the singular principle of moral agency. But just as the recognition process, by its own development, required externally contrasted persons to be incidentally self-determining as the source of stipulation in any contract and thus capable of crime, so too the moral process is seen to require that a subject-in-process *be* a given determinate source of the good and thus potentially evil. A self as agent with a predisposition to act in determinate ways that are good is a virtuous self or an *ethical* individual: the process of Ethical Life (*Sittlichkeit*).

The distinguishing feature of Ethical Life, the third phase of Objective Spirit, is that its process is mediated by individuals that are determinate rather than "characterless moral selves"<sup>17</sup> As ethical, this determinacy is not a matter of natural inclination or an innate capacity. It consists rather of acquired capacities, well articulated patterns of habit acquired by participation in well-formed institutions of living in the condition of plurality. The process of Ethical Life is theorizable as the interactions of thus habituated individuals within a finite number of institutional contexts.

The number of such institutions required by theory is three. They are called the family, civil society, and the state. The ethical process is complete, and the participating ethical individuals are concrete, only in so far as the process involves all three institutions and the individuals are habituated by and share a habitual life within each of the institutions.

The point of this theory is not to deny the significance of Legality (Abstract Right) and Morality. Indeed, the concept of Ethical Life would make no sense in abstraction from the two previous moments of Objective Spirit, just as the logic of determinate individuality makes no sense in abstraction from the logics of contrast and determination.

What differentiates the processes considered in Ethical Life from the processes of Legality and Morality is that they are determinate not merely as contrasting persons or by self-determination but also *as* processes involving determinate individuals. Every ethical self is something irreducibly determinate in virtue of its habituation by and its habituated actions in each of the three orders. In the family member this irreducible determinacy is *love of others*, in the member of civil society it is *self-interest*, and in the citizen it is *loyalty* (to a particular institution that preserves and protects the universal principles of the whole constitutional order presented in the sphere of Objective Spirit).

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<sup>17</sup> I borrow this apt phrase from Bernard Williams, *Shame and Necessity*, Berkeley: University of California Press, 1993.

Civil society is the sphere in which each member is actuated by its own interest and, like a moral subject, *determines* for itself what this interest shall be but, as institutionally habituated, makes such determinations in terms of a character shaped in a life of interaction with other self-interested individuals. Hence each member is in the first instance a *particular*. But in civil society, the process in which particular habits are acquired and particular interests are acted upon always involves practical reference to others, and according to the principles of this process, to *all* others. That is why the extent of civil society is said to be *global*.

This is the respect in which civil society is different from the other two institutions of ethical habituation in the modern world. As moderns, we are all members of a family and for each of us Ethical Life begins at home. It is here where we are primarily nurtured and educated to ethical maturity, where we acquire the most basic habits of interaction with others. But to fulfill this function the institution of the family must be like a particular person for which other families as families are *alien* ethical institutions. Since the principal function of the family is to habituate its own members, its Ethical Life cannot properly extend beyond the solidarity of love that binds it together. Equally, other institutions cannot invade its sphere without violence; that is the right to privacy. But when the ethical work of the family is complete, the members it has habituated are prepared for participation in another sphere of Ethical Life. This is civil society.

Civil society is also an ethical sphere because its distinctive function is to habituate its members by means of a structured interaction with others. But here, unlike the family and the state, there are no ethically alien others. I am a member of civil society as an individual with basic needs (for food, clothing, shelter, and the like) and also with an interest in refining my needs by developing habits pertaining not merely to life but to 'a good life'. We call this a taste for luxury. To this end I will develop skills (which are also habits) that will make me maximally useful to others. But these others are not ethically alien others because each is a human being participating in the Ethical Life of civil society with the same kind of interests as I bring to my interaction with them. That is why civil society is the sphere of human rights.<sup>18</sup>

Our interaction in civil society is ethical because we are constantly forming habits in the course of our mutually interested dealings with one another. One of these habits is a respect, even a friendliness,<sup>19</sup> toward all others who, like me, are pursuing their own interests and shaping their habits. I therefore find that I am involved in a structure of reciprocal recognition formally analogous to, but not the same as, the reciprocal recognition of persons described in Abstract Right. Personhood is indeed a necessary, but it is not a sufficient, condition for participation in the life of civil society. For persons, as persons, have no habits. They are not ethical individuals. In civil society, on the other hand, I find that it is in my interest that the abstractly legal principles of person, property, and contract be given

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<sup>18</sup> It has been asserted that 'human rights' are a 'western' or even an 'American' phenomenon. The systematic place of civil society in Hegel's encyclopedia shows that this is untrue. See Hegel, *The Philosophy of Right*, §§ 190A and 209A.

<sup>19</sup> Compare Aristotle's notion of a 'friendship of utility', *Nicomachean Ethics*, Bks. 8 and 9.

institutional embodiment. Hence, in addition to a 'system of needs', civil society also embraces an 'administration of justice' which makes concrete, and indeed, habitual, the principles of Abstract Right.

It is critically important to notice that the administration of justice among the interested members of civil society is a function of civil society, and not of a state. While it is true that most courts of law, for example, are *de facto* organized and sustained by local and national political governments, in a systematic philosophy we must look to the process or function and not to the place of an institutional organ. And it is the process or function of the administration of justice to mediate and facilitate the interested interactions among members of civil society *as such*, that is, as human beings, and societal humans are differentiated neither by locality nor national citizenship. In fact the state, according to Hegel's system, is an ethical institution in the modern world only to the extent that it is a constitutional state and one of the principal factors in its constitutionality is that it oversee the administration of civil justice within its precincts. But the justice administered is determined by the interests of members of civil society, not by the interests of any particular state (such as the USA or China).

It will be evident that all existing states at the end of the twentieth century still tend, in various degrees, to violate the global ethical sphere of civil society. They still tend to introject their interests as they administer civil justice within their territories. But the more human beings engage in the free pursuit of their interests, the more they will shape their habits and civil institutions to facilitate a transparent pursuit of those interests. Since this process is in accord with the whole systematic circle of processes, it is virtually irreversible. We may therefore expect that civil justice will continue to become less political.

This depoliticization has been most marked in precisely those countries that have sought to become world economic powers by freeing their citizens to participate in the global economy and thus fix themselves more firmly in civil society. Paradoxically, perhaps, but exactly as a student of Hegel would expect, a state that quests after world power in this way is a state that is inexorably moving in the direction of eliminating its economic power as a state while facilitating the enrichment of those members of civil society who incidentally dwell within its precincts.

Let me close with an apology for having said nothing about the positive ethical function of the state, once it has disabused itself of the illusion of being a civil society.<sup>20</sup> Of one thing we can be certain: that function will pertain to the habituation and education of its citizens. But this ethical habituation will not pertain to the instrumental interests characteristic of civil society; as a glance at the last section of Hegel's *Encyclopedia* would suggest, a state liberated from its confusion with civil society will facilitate its citizens' involvement in activities that are ends-in-themselves: Art, Religion, and a

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<sup>20</sup> The concept of a (particular) civil society is a 'round square'.

Philosophy that includes the whole circle of liberal education, an encyclopedia of learning for the love of learning, one part of which is the study of civil society.<sup>21</sup>

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<sup>21</sup> This paper was first written for presentation at Fudan University, Shanghai, May 1996 and Beida University, Beijing, June 1996; and revised for presentation at Xiamen University, January 1997.