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Abstract Kant's theory of cosmopolitan right is widely viewed as the philosophical origin of modern cosmopolitan thought. Hegel's critique of Kant's theory of cosmopolitan right, by contrast, is usually viewed as regressive and nationalistic in relation to both Kant and the cosmopolitan tradition. This paper reassesses the political and philosophical character of Hegel's critique of Kant, Hegel's own relation to cosmopolitan thinking, and more fleetingly some of the implications of his critique for contemporary social criticism. It is argued that Hegel's critique was neither regressive nor nationalistic, but rather that he advanced the theory of cosmopolitan right beyond the Kantian framework of formal natural law. The main proposition is that Hegel was not only the first to recognize cosmopolitanism as a definite social form of right, relative to other forms in the modern system of right, but that his 'scientific and objective' approach to the issue makes a substantial contribution to restoring the severed connections between the realism of war between nations and the normativism of perpetual peace.

Key words cosmopolitanism · Habermas · Hegel · Kant · nationalism · peace · right · war

Introduction

The subject of this study is Kant's theory of cosmopolitan right and, more unusually, Hegel's critique of Kant's theory of cosmopolitan right. Kant's political essays, written over a 12-year period before and after the French Revolution, are now widely seen as a philosophical origin of cosmopolitan thinking in our own age.¹ Hegel's critique, by contrast,

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is usually viewed as nationalistic and regressive in relation to Kant's universalism and as standing in opposition to the cosmopolitan tradition.² In this paper I endorse the return to Kant's idea of cosmopolitan order as a normative framework in which to consider current developments, but my aim is also to re-assess Hegel's critique of Kant and his own relation to the idea of cosmopolitan right with a view to deepening our *substantive* understanding of the cosmopolitan phenomenon.³ If Kant is the modern thinker for whom cosmopolitanism is a rational imperative that redeems the will, Hegel is the thinker who, as it were, makes cosmopolitanism real and opens the space for action on the basis of a more complex understanding of social reality.

For those committed to ideas of cosmopolitan law, democracy and solidarity, criticism of Kant is characteristically limited to ironing out inconsistencies in his theory and adapting it to modern conditions. Karl-Otto Apel puts it thus: the task of political philosophy is to 'think with Kant against Kant'.⁴ Jürgen Habermas acknowledges that Kant's idea of cosmopolitan order must be 'reformulated' to comprehend the differences both in global situation and conceptual framework that now separate us from him, but only on the assumption that 'the challenge of the incomparable catastrophes of the twentieth century has . . . given new impetus to Kant's idea'.⁵ The current referral to Kant's cosmopolitanism is not the first. At the time of the Nuremberg trials there was a parallel wave of philosophical interest most forcibly expressed in the writings of Karl Jaspers. In *The Question of German Guilt* (first published in 1945) Jaspers argued that the institution of 'crimes against humanity' at Nuremberg marked the dawn of a new cosmopolitan order in which individuals, as well as states, could be held accountable to international law even when acting within the legality of their own state.⁶ Service to the state would no longer exonerate any official or scientist from their responsibilities as autonomous individuals. Subordinates would no longer be able to hide behind the excuse of 'only obeying orders'. Superordinates planning atrocities behind their desks could be held as guilty as those who participate directly in their execution. Atrocities committed against one set of people (be it Jews or Poles or Roma) would henceforth be seen as an affront not only to these particular people but to humanity as a whole. It seemed to Jaspers that the Nuremberg trials marked the transformation of cosmopolitan right from a regulative idea, as it was in Kant, to an 'actual world'.

Jaspers was premature in his expectations inasmuch as the idea of cosmopolitan right was quickly relegated to the margins of international concerns as national rivalries re-emerged and remained so for the duration of the Cold War. It preserved a peripheral presence within certain new social movements that sprang up in opposition to atrocities committed by the big powers, but it was only with the end of the Cold

War, almost half a century later, that it once again came to the centre of the global stage. Whether this is a flash of light due in turn to be extinguished by greater forces, or a true beginning of the long-awaited cosmopolitan order, is not something that can be determined by thought alone.

From another side of the politico-philosophical spectrum a destructive criticism of the idea of cosmopolitan right has been put forward by legal and political theorists who argue that cosmopolitanism is essentially a banner under which powerful nations conduct wars against their enemies and portray them as enemies of humanity itself. A strong version of this argument may be found in Carl Schmitt's counter-claim at Nuremberg that the only distinction between crimes *against* humanity and crimes *for* humanity is that the former were committed by Germans and the latter by Americans. More generally, Schmitt maintained that the *moralization* of war under a cosmopolitan flag has a close affinity to the *totalization* of war, since it turns the enemy into an 'inhuman monster' who 'must be definitively annihilated'. This attack on the idea of cosmopolitan right alleges the *hypocrisy* of those powers which usurp it to their own ends and use it to demonize their foes. Schmitt himself reaffirmed the old shibboleth that the health of the state depends on its capacity to recognize and kill its enemies and motivate its citizens to die for their country – an ideology which reached its nadir in the totalitarian denunciation of the 'cosmopolitan Jew' as unwilling to die or kill for his country. Schmitt's own opposition to the prosecution of crimes against humanity committed by the Nazis reveals, to use a phrase borrowed from Hegel, the shallowness of what I should like to call the 'hypocritical critique of hypocrisy'.⁷

I have no doubt in my mind that the return to Kant must be defended against this form of criticism. Kant's theory of a cosmopolitan order was not merely an idealistic irrelevance to the realist play of power politics, nor was it a moral trap or an exercise in self-delusion, let alone a recipe for dehumanization. It was rather a philosophical expression of a determination to resist the pressures of nationalism, overcome the external violence of the modern state, and turn the idea of universality into a concrete reality. In any event, it is mistaken to infer from the misuse of a universal concept that the concept itself is thereby suspect or guilty. Kant's theory of cosmopolitan right must be defended against this 'spiritless radicalism', as Hannah Arendt aptly called it, albeit on the understanding that Schmitt's destructive criticism is nonetheless justifiable inasmuch as it captures 'what is' from the standpoint of power politics.⁸

At what I consider to be an injudicious moment, Habermas has seemingly put Hegel's critique of Kant's cosmopolitanism in the same camp as Schmitt's.⁹ Against this elision, I want to argue that their critiques of

Kant's theory of cosmopolitan right have very little in common since Hegel addressed its limitations in order to *advance* the idea of universal justice, not to *destroy* it. I can find no passage in the *Philosophy of Right* where Hegel says that Kant was wrong to revive the idea of cosmopolitan justice. On the contrary, there is plenty of evidence to suggest that Hegel recognized that Kant's elaboration of the cosmopolitan idea was one of the great achievements of his political writings. The 'Hegel' I read in the text did not reject the idea of cosmopolitan right *as such* but only its 'fixed conception' within Kant's metaphysics of justice and philosophy of history. It is this *non-destructive* criticism – a criticism that seeks to address the levels both of power politics and of right – that I wish to pursue in the second part of this paper.

I In praise of Kant: the theory of cosmopolitan right

Perpetual peace is *guaranteed* by no less an authority than the great artist *Nature* herself. (Kant, 'Perpetual Peace')¹⁰

It is for very good reason that we return today to Kant's theory of cosmopolitan right. His work expresses the fact that the idea of cosmopolitanism is coeval with that of nationalism. It denatures the nationalist view of the world, challenges the common sense that treats nationalism as an insuperable fact of modern life, and offers in place of nationalism a universalistic idea of justice. More specifically, Kant attacked the 'depravity' of the 'Westphalian' international order in which 'each state sees its own majesty . . . precisely in not having to submit to any external legal constraint' and in which 'the glory of its ruler consists in his power to order thousands of people to immolate themselves for a cause which does not truly concern them, while he need not himself incur any danger whatsoever'.¹¹ He denounced the existing system of international relations as one in which either there is no notion of international right or international right is interpreted merely as a right to go to war, to use any means of warfare deemed necessary, to exploit newly discovered colonies as if they were 'lands without owners', and to treat foreigners in your own land as if they were enemies.¹² The Westphalian system appeared to Kant less like an 'order' than a Hobbesian 'state of nature' torn apart by perpetual war.

In place of this violence and lawlessness, Kant recovered the ancient idea of cosmopolitanism and gave it a modern rendition. He construed it as a *legal* order in which there are established 'lawful external relations among states' and a 'universal civic society'. By the idea of 'lawful external relations among states' he referred to international laws which treat states as legal subjects and have as their aim the creation of

peaceful relations among them. By the idea of a 'universal civic society' he referred to more strictly speaking 'cosmopolitan' laws which treat individuals as subjects and guarantee the basic human rights of every individual whether or not these rights are respected by their nation-states.¹³ At the heart of Kant's idea of cosmopolitan order is the idea of *perpetual peace*. In it standing armies would be abolished, no national debt would be incurred in connection with military costs, no state would forcibly interfere in the internal affairs of another, no acts of war would be allowed which would 'make mutual confidence impossible during a future time of peace', foreigners would be afforded a right of 'universal hospitality', and the indigenous inhabitants of newly conquered colonies would no longer be 'counted as nothing'.¹⁴

Drawing further on the Hobbesian analogy, Kant argued that states have to put an end to the 'lawless condition of pure warfare' characteristic of existing international relations, 'renounce their savage and lawless freedom, adapt themselves to public coercive laws, and thus form an international state . . . which would grow until it embraced all the peoples of the earth'.¹⁵ Kant addressed what he saw as the two main dangers confronting the establishment of this 'world state': that it become a counterfeit concealing the rule of a single great power; and that it turn itself into a 'universal despotism' ending in 'the graveyard of freedom'. But rather than identify the idea of cosmopolitan right with these negative outcomes, the institutional vista Kant advanced to forestall these dangers was to create something new: a federation of nations based on mutual co-operation and voluntary consent among a plurality of independent states.¹⁶

Kant also made the idea of cosmopolitan order relevant to actual conditions by holding that, prior to the final attainment of perpetual peace, there must be certain provisional laws of war to limit how wars start and are conducted. He argued, for example, that the traditional right of sovereigns to declare war without consulting their subjects must be abolished, since this so-called 'right' could not apply to citizens who are 'co-legislative members of the state' and who must therefore give their consent to any declaration of war.¹⁷ If war is declared, he argued that it must be conducted in accordance with principles which leave states with the possibility of still entering a 'state of right'. This meant that there would be permitted no wars of extermination or enslavement, no means of violence which would render subjects unfit to be citizens, no demands of compensation for the costs of war, no ransom of prisoners, etc. And if colonization could sometimes be justified in terms of 'bringing culture to uncivilised peoples' and purging the home-country of 'depraved characters' (doubtless, an unlikely combination), Kant argued there could be no justification for the injustices of plunder, slavery and extermination.¹⁸

In his pre-revolutionary essay 'Idea for a Universal History from a Cosmopolitan Point of View', written in 1785, Kant recognized that cosmopolitanism was a 'fantastical' idea without precedent in world history; and in his post-revolutionary essay on 'Perpetual Peace', written ten years later in 1795, he acknowledged that European states were still relating to one another more like atomized individuals in a Hobbesian state of nature than in accordance with the cosmopolitan ideas which had momentarily lit up the dawn of the French Revolution.¹⁹ It seemed that nationalism and xenophobia were the rising stars of the new order, but the greatness of Kant's obstinacy was to persist in trying to harmonize the principle on which the world revolution was turning, the sovereignty of the nation-state, with that of enlightened universalism.

Against the prevailing currents Kant maintained that the idea of a cosmopolitan order was nonetheless *right*, a duty everyone ought to fulfil whether or not it accord with their inclinations, a duty incumbent upon rulers however great the sacrifice they have to make, a right that is valid whether or not public opinion or the state recognize it. All politics, Kant declared, must 'bend the knee before right'.²⁰ He insisted that the duty to act in accordance with the idea of perpetual peace is binding even if there were not the slightest possibility of its realization, and that current experience could not be a guide to action since it would mean that those states which most prospered under current arrangements would set these up as a norm for others to follow.

Kant looked beyond immediate circumstances, which were manifestly unfavourable to the idea of cosmopolitan right, to longer-term historical tendencies. He emphasized the underlying *realism* of cosmopolitan thought in that 'the peoples of the earth have entered in varying degrees into a universal community . . . to the point where a violation of rights in one part of the world is felt everywhere'.²¹ He emphasized its *economic rationality* in that it corresponds with the economic requirements of a commercial age in which peaceful exchange is more profitable than plunder, and its *political utility* since it corresponds to the interests of states forced to arm themselves against other states and face the increasing risks and costs of war. Most of all he stressed its affinity to the growth of *republicanism* since republican rulers can no longer declare war without consulting their citizens and republican citizens have a higher level of political maturity than the subjects of old monarchical states. Kant accepted that these trends were not absolute and came up against countervailing tendencies. He acknowledged, for example, that republican citizens are often civilized only in respect of outward 'courtesies and proprieties' and that militarism can quickly decultivate their minds, but the conviction remained that while history may often look like a slaughterhouse, the 'germ of enlightenment' nonetheless survives and works toward its universal end: 'the perfect

civil union of humankind'.²² Behind the scenes, as it were, Kant 'saw' Providence and the Plan of Nature approaching cosmopolitan right through the increasing connectedness of humankind in a modern commercial world, the growing economic and political costs of war, and the potentialities of philosophical enlightenment and political republicanism.

The fusion Kant effected between his metaphysics of justice and philosophy of history provided him with the necessary resources to transcend both the *dispiriting positivism* which declares that the way things are is the way they have to be, and the *superficial empiricism* which declares that the way things appear is what they are. If we take the idea of 'right' as marking the advent of political modernity, then Kant's insight was to uncover the logic of the movement from the simple right of subjective freedom to the complexity of the cosmopolitan order. Kant did not of course invent either the idea or the name of cosmopolitanism, which he drew from the ancient Stoics and rediscovered in the interstices of modern revolutionary movements,²³ but his great accomplishment was to transform it into a philosophical principle of the modern age based on the notion that nationalism was a sign of human immaturity and enslavement to the passions and that 'genuine principles of right' necessarily point toward a 'universal law of humanity' which would transcend the nation-state. If, as Jürgen Habermas has argued, there is an inherent contradiction within the idea of the modern state between the particularism of national identity and the universalism of subjective rights, then for Kant this contradiction is ultimately resolved in favour of an immanent connection between republicanism, cosmopolitanism and the overcoming of nationalist prejudice. From this perspective nationalism appears more as an aberration than as the fate of political modernity.

II Hegel's critique of Kant's theory of cosmopolitan right

At the end of his essay 'Is the Human Race Continually Improving?', the second part of *The Contest of the Faculties* (1798), Kant states that humanity is 'by its very nature capable of constant progress and improvement without forfeiting its strength'.²⁴ In his *Critique of Pure Reason* he states that 'no one can or ought to decide what the highest degree may be at which mankind may have to stop progressing, and hence how wide a gap may still of necessity remain between the idea and its execution. For this will depend on freedom, which can transcend any limit we care to impose'.²⁵ Hegel celebrated Kant for showing, in passages such as these, that he had 'some inkling of the nature of spirit . . . to assume a higher shape than that in which its

being originally consisted'. And he dismissed critics of Kant for whom spirit remained an 'empty word' and history a 'superficial play of contingent and allegedly merely human aspirations and passions'.²⁶ Hegel followed Kant in declaring it a matter of 'infinite importance' that 'A human being counts as such because he is a human being, not because he is a Jew, Catholic, Protestant, German, Italian, etc.'. He added that this consciousness is 'inadequate only if it adopts a fixed position – for example, as *cosmopolitanism* – in opposition to the concrete life of the state'.²⁷ I see nothing in the letter or spirit of these words to suggest that Hegel thought Kant wrong to advance the idea of cosmopolitan right as such. No doubt Hegel thought that hatred of cosmopolitan right is, like hatred of right in general, one of those shibboleths whereby 'fanaticism, imbecility and hypocritical good intentions manifestly . . . reveal themselves'.²⁸ To repeat, Hegel criticized Kant only for turning *cosmopolitanism* into a 'fixed position . . . in opposition to the *concrete life* of the state'; in other words, for turning the cosmopolitan idea into an 'ism'. These words are not self-explanatory and they have sometimes been read as evidence that for Hegel only nation-states are substantial and the idea of a cosmopolitan order is always and necessarily an empty abstraction. But the other possibility I want to pursue is that Hegel's critique of *cosmopolitanism* was directed at Kant's *abstraction* of cosmopolitan right from the actuality of social and political life. What Kant forgets, as Hegel put it, is that right comes into existence 'only because it is useful in relation to needs'.²⁹

To back this reading, I shall explore three of the points at which Hegel takes issue with Kant's theory: they concern his analysis of nationalism and patriotism, his depiction of the Westphalian order of international relations, and his advocacy of a cosmopolitan order. First, the analysis of nationalism and patriotism: Hegel questions Kant's association of nationalism with immaturity and blind passion by exploring the *rational* foundations of patriotism within the modern system of right. In a much misunderstood passage Hegel writes:

Patriotism in general is . . . merely a consequence of the institutions within the state, a consequence in which rationality is *actually* present, just as rationality receives its practical application through action in conformity with the state's institutions. . . . This disposition is in general one of trust . . . or the consciousness that my substantial and particular interest is preserved and contained in the interest and end of . . . the state. . . . As a result, this *other* (the state) immediately ceases to be an other for me, and in my consciousness of this I am free.³⁰

This passage is often construed as an expression of Hegel's own patriotic commitments to the Prussian state, but it does not have to be read this way. What Hegel says here is that patriotism is 'a consequence of

the institutions within the state', that is, it is a result of the rational structure of the modern state and not an error of thought or a blind emotion. We may think of Marx's analogous contention that the fetishism of the commodity is a consequence of the commodity form and not the false consciousness of the subject. From this perspective, the issue that separates Hegel and Kant is not whether patriotism is a 'good' to be attained, with Hegel on one side and Kant on the other, but rather how patriotism is to be understood. Hegel writes that the basis of modern patriotism lies in the disposition of citizens to trust that their interests are preserved in the interest of the state and that their freedom is secured in their conformity to state institutions. He locates the source of this trust in the structure of a rational state freed from the shackles of absolutism, based on law and representation, served by a rationally ordered bureaucracy, and allowing space for the voluntary associations of political and civil society.³¹ He does not say that this trust is merited, i.e. that the interests of republican citizens are genuinely preserved in the state's interests, or that it is valid beyond certain finite limits, or that it is unencumbered by illusions of its own making. It may be true, as he puts it, that 'when we walk the streets at night in safety, we do not often enough reflect on how this is due solely to the working of state institutions'³² and that our private interests are not the ultimate end for which we are politically united, but trust in the state is an imperative imposed on citizens even in Kant's ideal state.³³

Hegel's insight, as I see it, is that the ostensible reconciliation Kant finds in the republican order between the 'particular' and the 'universal' – i.e. between the maximal individual liberty compatible with the liberty of others and the 'collective, universal and powerful Will that can provide the guarantees required' – conflates the actual identity of individual liberty with conformity to the state.³⁴ He argues that this is most visible at times of war when 'the state as such and its independence are at risk', since in a state of emergency citizens are required to sacrifice their own individuality to the 'individuality of the state'. The sacrifice of the individual to the state may be presented as an act of individual courage and valour, but the actual ethos of standing armies has less to do with individual courage and valour than with 'sacrifice in the service of the state' and 'integration with the universal'.³⁵ Here the individual counts merely as 'one among many', his or her individuality counts for nothing and falls before the demands of discipline.³⁶ For those individuals who are inducted into modern military machines, Hegel argues that discipline entails the 'harshness of extreme opposites':

... supreme self-sufficiency which at the same time exists in the mechanical service of an external order ... total obedience and renunciation of personal opinion and reasoning, and hence personal absence of mind, alongside the most intense and comprehensive presence of mind ... the

most hostile and hence most personal action against individuals along with a completely indifferent or even benevolent attitude toward them as individuals . . .³⁷

'*Alienation* as the existence of freedom': this is how Hegel characterizes the disposition that is demanded of *modern* republican warriors, whose patriotism does not lie in a willingness to perform 'extraordinary sacrifices and actions', although they might convince themselves and others that they possess an 'extraordinary patriotism' to conceal their actual disposition, but in the knowledge that 'the community is the substantial basis and end'.³⁸ The valour they are required to show is more 'mechanical' than in other ways of risking one's life: it is 'not so much the deed of a particular person as that of a member of a whole . . . directed not against individual persons, but against a hostile whole in general'.³⁹ In the republic at war Hegel argues, discipline consumes individuality, however it may be represented.

As to the argument that republicanism is conducive to peace because rulers cannot go to war without consulting the people and the people are more cultured and therefore less prone to violence than in traditional political orders, Hegel observes that in republican states responsibility for the command of the armed forces and for making war and peace still usually lies with the 'supreme commander'. The consent of parliament or other representative institutions may be required to go to war or to secure financing for war – and Hegel acknowledged that in England no unpopular war could be waged – but he argues that far from the consent of the people being a guarantee against rash and intemperate wars, whole nations are often more prone to enthusiasms and more subject to passion than their rulers. Hegel illustrates this point by reference to the wars of coalition waged by England against France, observing that 'the entire people has pressed for war on several occasions and has in a sense compelled the ministers to wage it . . . Only later when emotions had cooled, did people realise that the war was useless and unnecessary and that it had been entered into without calculating the cost.'⁴⁰ Modern republican states, Hegel maintains, may well have an interest in war:

Successful wars have averted internal unrest and consolidated the internal power of the state . . . Not only do peoples emerge from wars with added strength, but nations troubled by civil dissension gain internal peace as a result of wars with their external enemies. . . . In peace, the bounds of civil life are extended, all its spheres become firmly established, and in the long run people become stuck in their ways. Their particular characteristics become increasingly rigid and ossified . . . the result is death⁴¹

This passage has often been read as an expression of Hegel's own conviction that unrelieved peace is bad because it leads to social stagnation, while war is good because it stirs things up and injects health into the

body politic; or that peace fosters narrow individualism and exclusive concern with private enrichment, while war puts a higher aim before us – the good of the community as a whole.⁴² Yet what we find here is more straightforward: it concerns the interest in war and disinterest in peace which modern republics still retain.

Doubtless Hegel was influenced by the collapse of cosmopolitan ideals in revolutionary France and by the rise of a *modern* form of nationalism in which France was identified with the idea of a *universal nation*, that is, a nation whose particular interests are deemed to coincide with the interests of humanity as a whole. Doubtless he was also influenced by the conceptual links between republicanism and nationalism demonstrated and developed by Fichte, even though he rejected Fichte's own vehemently nationalistic conclusions. Hegel's key point, though, is that Kant's inability to discern the affinity of republicanism to war and nationalism is a symptom of a wider problem in understanding what right is. In Kant's thinking, it is only when we view the modern republican state in relation to other states that antagonism appears; prior to that moment representative government is identified with the constitution of freedom.⁴³ Hegel argued that this way of understanding the idea of right renders invisible the actual compulsions, conflicts and illusions present *within* republican states which are then carried over to the international level. If, for example, the conditions of *internal sovereignty* lead each state to see itself as 'godlike' – as Hegel frequently notes in the opening section on 'The State' in the *Philosophy of Right* – then it should come as no surprise if the state does not only demand the worship of its own subjects, but also enters into hostile relations with other states which possess their own claims to be 'godlike'. The source of such conflict lies in the individuality of the state itself, in its claim to be Absolute, and not merely in the legal form of its relations to other states.

There is of course much more to be said about the question of war, nationalism and patriotism, but let us turn to how Hegel responded to Kant's depiction of the Westphalian model of international relations as an essentially lawless condition 'devoid of right'. In my view, Hegel did not defend this model, as is often supposed, but sought to refute the bipolar view which contrasts the darkness of the Westphalian model to the light of cosmopolitanism by demonstrating that the former is not lawless and the latter not law-bound. While Kant treated nation-states as if they were in a Hobbesian war of all against all, a state of nature devoid of right, Hegel argued that states are more like individuals in civil society who relate to one another on the basis of right except that in the case of states there is no court to establish 'what is right in itself'. In a word, Hegel maintained against Kant that the Westphalian model is not devoid of right.⁴⁴ Relations between states take the form of

contracts or treaties and the principle on which these relations are based is that contracts and treaties must be observed. To be sure, the rights of states are not actualized in a universal will with constitutional powers over them, but they are nonetheless actualized in their own particular wills. When war breaks out, states continue to recognize one another reciprocally as states, which means that they are obliged to wage war in such a way as to preserve the possibility of peace. Mutual recognition imposes limits on the conduct of war: for example, that war is not waged on internal civic institutions, family life or private individuals. The Westphalian model might *appear* to be 'Hobbesian', i.e. a state of nature contrary to the principles of right, but this denies the legality it actually possesses.

Hegel's insight into the legality of the Westphalian order is important if we are to confront the rise of a violence that is far more 'furious', 'destructive' and 'fanatical' than was ever to be found in this model of international relations. Hegel saw the seeds of this modern form of violence germinating in the cracks of the system of right and emerging especially out of a subjectivism which abstracts certain moral principles from utilitarian considerations and raises them to supreme status.⁴⁵ In the introduction to the *Philosophy of Right* Hegel observes that where the essential element of freedom appears as the possibility of abstracting from every determination in which I find myself, freedom becomes the 'freedom of the void' and is raised to the status of an 'actual shape and passion'. In the active realm of politics and religion it can turn into a 'fury of destruction', for it is only in destroying something that this negative will has a feeling of its own existence. It may believe that it wills some positive condition, such as universal equality or a new world order, but does not will the positive actuality of this condition because the negative self-consciousness demands the annihilation of every objective determination. The famous example Hegel gives is that of the Terror in the French Revolution:

This was a time of trembling and quaking and of intolerance towards everything particular. For fanaticism wills only what is abstract, not what is articulated, so that whenever differences emerge, it finds them incompatible with its own indeterminacy and cancels them. This is why the people, during the French revolution, destroyed once more the institutions they had themselves created, because all institutions are incompatible with the abstract self-consciousness of equality.⁴⁶

Hegel argues that this modern form of fanaticism does not arise from the reflective power of thinking but from the raising of this negative freedom to 'supreme status', in which case self-determination becomes 'sheer restless activity which cannot yet arrive at something *that is*' and 'what is' is always devalued against 'what ought to be' and appears fit

only for destruction.⁴⁷ The violence which Hegel analyses in these passages is of a quite different order from the wars between sovereign states and its 'horrible originality' (to use a phrase borrowed from Hannah Arendt) can barely be envisaged in the Westphalian model. For Hegel, there was no going back to a traditional model which had proved incapable of arresting the growth of the new fanaticism, but every reason to distinguish between these forms of violence – the traditional and the new – in order to grasp the tasks facing cosmopolitan thinking in the modern age. In relation to those philosophers who posit an opposition between morality and politics in the modern world and demand that the latter conform to the former, this distinction makes sense of Hegel's contention that such confusion of morality and politics is a 'dangerous as well as superficial notion'. For it forgets that the Westphalian Peace sought to exclude the moral point of view from international politics in order to put an end to the religious wars that had ravaged Europe, and that it is under a thoroughly moral and anti-Westphalian banner that the modern phenomenon of terror detaches itself from all utilitarian and instrumental criteria.⁴⁸

Finally, let us turn to Hegel's response to Kant's advocacy of a cosmopolitan order. Hegel was clearly referring to Kant when he commented that 'perpetual peace is often demanded as an ideal to which mankind should approximate' and that a 'league of sovereigns' is proposed to settle disputes between states.⁴⁹ Hegel did not reject the demand for peace or the institutional means Kant designed to achieve this end, but he questioned Kant's formulation of the relation between means and end. He argued that a league of states is as likely to construct its own enemies as an individual state:

... the state is an individual and negation is an essential component of individuality. Thus even if a number of states join together as a family, this league in its individuality must generate opposition and create an enemy.⁵⁰

The propensity to war shown by states in isolation is sublated but not overcome when they combine into a league or federation. Further, such a league of states as is envisaged by Kant presupposes a voluntary agreement between them that is dependent on their particular wills. However, if no agreement is reached, then conflict between states may once again arise and be settled by war. Hegel noted that in international relations there is plenty of scope for a state to feel that it has suffered an injury, that this injury comes from another state, and that its own welfare and security are at stake.⁵¹

Concerning the *content* Kant gives to the idea of cosmopolitan right, namely, that of perpetual peace, Hegel argues that Kant's purported derivation of this principle from the idea of reason is spurious: formally, because it goes against the republican principle Kant upheld

that individuals should think for themselves, have the opportunity to express and exchange their opinions in public, and have some say in determining their own laws. Republican citizens *may* reach the determination that perpetual peace is the ultimate end of cosmopolitan right, but as an a priori deduction Kant by-passes any process of public deliberation. He stipulates that 'reason . . . absolutely condemns war' but this minimalist conception of cosmopolitan right makes no mention of other, potentially competing aspects of cosmopolitan right – those to do with social injustice, poverty, inequality, democracy, etc. If the condition which perpetual peace leaves intact is seen to be unjust, there may well be ground not to reject it but to 'relativize' it in relation to other equally valid cosmopolitan considerations. Otherwise, in asking with whom Kant empathizes in prioritizing perpetual peace, the suspicion Hegel aired and Walter Benjamin later echoed in his *Theses on the Philosophy of History* is that it lies after all, in spite of Kant's intentions, with the victors. Perpetual peace may become, as it were, the spoils of victory.⁵²

Conclusion

Hegel's critique of Kant does not serve to invalidate the idea of cosmopolitan right but to recognize its existence within the social world.⁵³ For Hegel, cosmopolitan right is not just an ideal in the head of philosophers; it exists as a social fact of the modern age and our knowledge of it is of something external to us. In general, Hegel argues that we should study laws of right in roughly the same way as the natural sciences study laws of nature. To be sure, laws of right unlike laws of nature are derived from human beings, are not absolute and are never valid simply because they exist. There is always the possibility of conflict between what they are and what they ought to be and our own subjective conscience may or may not come into collision with them. When we are subjected to them, it is never in the same way as we are subjected to natural necessity. Yet the task of political philosophy in this area of social life is to recognize precisely what cosmopolitan right is – as something knowable beyond our own particular feelings, hopes or convictions. If in the natural sciences 'the philosopher's stone lies hidden . . . *within nature itself*', in the science of right the philosopher's stone lies hidden within the actual social world.⁵⁴ Rather than celebrate the idea of cosmopolitan right prematurely as justice or elevate it to the status of an abstract ideal, Hegel seeks to relocate it within the '*ceaseless* turmoil of . . . passions, interests, ends, talents and virtues, violence, wrongdoing and vices' that comprises modern political life.⁵⁵

For Hegel, the idea of cosmopolitan right indicates not only the formation of new laws and institutions – be they the United Nations or the

legal prosecution of crimes against humanity – but also the establishment of new standards of judgement and categories of understanding which confront the violence of ‘what is’ in a way that accepts the messiness and risk of political action. In the face of Kant’s declaration that relations between states will *naturally* lead to a universal cosmopolitan end according to ‘Providence’ and the ‘Plan of Nature’, Hegel personifies for me the understanding that cosmopolitan right is as much a fact of life within our age as is the power of the state, but that as far as the future is concerned, nothing is pre-determined, everything depends on us, on how we think and what we do, and not on any cunning of reason or hidden hand of history achieving its universal end behind our backs. While Kant offers the consolation of philosophy for the violence of his age in the shape of a cosmopolitan redemption-to-come – a consolation that may be defensible when the worst that can happen is ‘ordinary’ war but which may lose all meaning when the fanaticism of total destruction is at issue – Hegel confronts the present burden of events without any such fetishism of the future. Following Kant, he places reason before power and blind fate as the author of judgement in world history:

... it is not just the *power* of spirit which passes judgement in world history – i.e. it is not the abstract and irrational necessity of a blind fate. On the contrary, since spirit in and for itself is *reason*, and since the being-for-itself of reason in spirit is *knowledge*, world history is the necessary development, from the *concept* of the freedom of spirit alone, of the *moments* of reason and hence of spirit’s self consciousness and freedom.⁵⁶

He refuses to be content with that ‘cold despair which confesses that, in this temporal world, things are bad or at best indifferent, but that nothing better can be expected here’.⁵⁷ But if Kant’s universalism attempts in an eschatological way to reconcile all conflicts through the establishment of new laws and institutions, Hegel looks to the *discovery and development* of reason as a politically dynamic process and warns against philosophy’s ‘pride of *Sollen*’ – against the imposition by philosophy of abstract ideals and progressive narratives of history which purport to repair what is broken but in fact carry the fractures of the present within its own sense of the ‘ought’.

For Hegel, cosmopolitan right is one form and shape of right within the system of right as a whole – a ‘*finite* spirit in world history’, as he puts it. His conceptualization of justice refuses to turn *any* form of right, be it the nation-state or cosmopolitan right, into the absolute:

The *spirit of the world* produces itself in its freedom from all limits, and it is this spirit which exercises its right – which is the highest right of all – over finite spirits in *world history* as the *world’s court of judgement*.⁵⁸

In Hegel’s philosophy the idea of cosmopolitan right is not presented as an idealized world order but as one finite form and shape of right

relative to other forms and shapes and subject to those contradictions whose source lies within the idea of right itself. When Hegel addresses the idea of right, it is on the understanding that mere concepts, taken in isolation, are 'one-sided' and 'lacking in truth' and that the '*shape which the concept assumes in its actualization . . . is different from its form of being purely as concept*'.⁵⁹ If the 'higher dialectic', as Hegel sees it, is the movement of right through its various concepts and shapes rather than an 'external activity of subjective thought',⁶⁰ and if the science of right aims to detect the 'inner pulse' that beats within the wealth of forms, appearances and shapes that constitute the field of right as a whole,⁶¹ there is no final moment of reconciliation at the end of this journey. We are presented instead with a radically incomplete drama of human struggle.

In the preface of the *Philosophy of Right* Hegel writes that if something is to be discussed *philosophically*, it will bear 'only *scientific* and *objective* treatment' and that philosophy should treat with indifference 'any criticism expressed in a form other than that of scientific discussion of the matter itself'.⁶² Here the task of philosophy is not merely to give the philosopher's own 'opinions, feelings or convictions' as if they had some privileged status in relation to the opinions of ordinary people, but to understand what right is.⁶³ Of course Hegel makes his own normative assessments of modern political life: he sees his philosophy of right as the creature of an age whose 'thinking does not stop at what is *given*, whether the latter is supported by the external positive authority of the state or of mutual agreement among human beings, or by the authority of inner feeling and the heart'.⁶⁴ But he is against a *normativism* which knows *only* how to build a world 'as it ought to be' and nothing about the 'comprehension of present and the actual'.⁶⁵

It is well known that in the *Philosophy of Right* Hegel characterizes the state in quasi-divine terms – as 'the actuality of the ethical idea' (§257), as 'self-consciousness . . . raised to its universality', as what is 'rational in and for itself' (§258), as 'an absolute and unmoved end in itself' in which form 'freedom enters into its highest right' (§258), as the 'power of reason actualizing itself' and even as 'the march of God on earth' (§258A). Sometimes we may denounce Hegel for deifying the state, sometimes we may defend him for his determination to make the state worthy of such reverence.⁶⁶ But let us suppose that what Hegel does in these passages is what he says he does: not prescribe that the state *ought* to be venerated like a God, but observe that the claim to be godlike is an immense contradiction within the concept of the modern state and that this contradiction is further aggravated by those who would destroy the existing forms of right in order to bring the state's earthly existence up to the level of its concept. In his effort to resolve the organized violence of the modern nation-state, Kant turns the idea

of cosmopolitan right into a *rational necessity* designed to evaporate the halo with which our political rulers are prone to surround themselves. For Hegel cosmopolitanism is a particular form of right that perhaps flashes brightest at moments of extreme danger.

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Notes

- 1 Kant's key essays are: 'Idea for a Universal History from a Cosmopolitan Point of View' (1785), 'Reviews of Herder's *Ideas on the Philosophy of the History of Mankind*' (1784–5); 'On the Common Saying "This may be true in theory but it does not apply in practice"' (1793), 'Toward Perpetual Peace: a Philosophical Sketch' (1795–6), 'International Right' in *The Metaphysics of Morals* (1797); 'The Contest of the Faculties' (1798). They are collected in Immanuel Kant, *Kant's Political Writings*, ed. Hans Reiss (Cambridge: Cambridge University Press, 1991).
- 2 See, for example, Theodor Adorno, *Negative Dialectics* (London: Routledge, 1990), 'Excursus on Hegel'.
- 3 See especially Georg Wilhelm Friedrich Hegel, *Elements of the Philosophy of Right*, ed. Allen Wood (Cambridge: Cambridge University Press, 1991), especially 'external sovereignty', 'international law' and 'world history'.
- 4 Karl-Otto Apel, 'Kant's *Toward Perpetual Peace* as Historical Prognosis from the Point of View of Moral Duty', in James Bohman and Matthias Lutz-Bachmann (eds) *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal* (Cambridge, MA: MIT Press, 1997), p. 87.
- 5 Jürgen Habermas, 'Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Years' Hindsight', in James Bohman and Matthias Lutz-Bachmann (eds) *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal* (Cambridge, MA: MIT Press, 1997), pp. 113–53; and in J. Habermas, *The Inclusion of the Other* (Cambridge, MA: MIT Press, 1998), pp. 165–202. Related formulations may be found in the other discussions of Kant's theory of cosmopolitanism in Bohman and Lutz-Bachmann (1997) *Perpetual Peace*.
- 6 Karl Jaspers, *The Question of German Guilt* (New York: Capricorn Books, 1961).
- 7 Carl Schmitt, *Glossarium 1947–1951* (Berlin: Dunker and Humblot, 1991) and Carl Schmitt, *The Concept of the Political* (Chicago: University of Chicago Press, 1976); both cited in Habermas, 'Kant's Idea . . .', pp. 194–201. Habermas points out that Carl Schmitt rejected the distinction between offensive and defensive wars on grounds that *jus ad bellum* (the right to war) is constitutive of state sovereignty, but that he did not take into account the fact that classic international law failed in face of the emergence of total wars. His attempt to decriminalize the Nazi extermination of Jews intimated that his conservative juridical arguments were little more than a façade. See also Robert Fine, 'Crimes against Humanity:

- Hannah Arendt and the Nuremberg Debates', *European Journal of Social Theory* 3(3) (2000): 293–311; Michael Salter, 'Neo-fascist Legal Theory on Trial: an Interpretation of Carl Schmitt's Defence at Nuremberg from the Perspective of Franz Neumann's Critical Theory of Law', *Res Publica* 5(1999): 161–94.
- 8 Hannah Arendt, *The Origins of Totalitarianism* (San Diego: Harvest, 1979), pp. 326–40. On the hypocritical critique of hypocrisy Arendt writes: 'Since the bourgeoisie claimed to be the guardian of Western traditions and confounded all moral issues by parading publicly virtues which it not only did not possess in private and business life, but actually held in contempt, it seemed revolutionary to admit cruelty, disregard of human values and general amorality, because this at least destroyed the duplicity upon which the existing society seemed to rest. What a temptation to flaunt extreme attitudes in the hypocritical twilight of double moral standards . . . the bourgeoisie applauded because it had been fooled by its own hypocrisy for so long that it had grown tired of the tension . . . the elite applauded because the unveiling of hypocrisy was such superior and wonderful fun' (pp. 334–5).
 - 9 Habermas writes that 'Schmitt comes closer to Hegel's criticism of Kant when he speaks of hypocrisy' and 'furnishes the contemptuous formula "bestiality, humanity"'; 'Kant's Idea', p. 145.
 - 10 Kant, *Political Writings*, p. 108.
 - 11 *ibid.*, p. 103. The Peace of Westphalia of 1648 brought to an end the German phase of the Thirty Years War and entrenched – arguably for the first time – the principle of sovereignty in inter-state affairs. David Held argues that this model remained intact until 1945 and that many of its assumptions are still operative in international relations today. See David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Cambridge: Polity, 1995), pp. 77–83.
 - 12 Kant, *Political Writings*, pp. 105–6.
 - 13 *ibid.*, pp. 47 and 172.
 - 14 *ibid.*, pp. 106–25.
 - 15 *ibid.*, p. 105.
 - 16 *ibid.*, p. 114. In the section on 'International Right' in the *Metaphysics of Justice* Kant summarized the Hobbesian analogy thus: that in existing external relationships with one another, states act like lawless savages in a condition 'devoid of right' – a condition of war. States are bound, however, to abandon such a condition and establish a federation of peoples in accordance with the idea of an original social contract, so that they will protect one another against external aggression while refraining from interference in one another's internal disagreements. This federation must not embody a sovereign power as in a civil constitution but only a partnership or federation of independent states which can be terminated at any time.
 - 17 Kant, *Political Writings*, p. 166.
 - 18 *ibid.*, p. 173.
 - 19 The immediate occasion for Kant's writing of 'Perpetual Peace' was an event that was hardly predisposed to the cosmopolitan idea: it was the signing of the Treaty of Basel in which Prussia agreed to hand over to France all

- territories west of the Rhine in exchange for being allowed to join Russia and Austria in the east in partitioning Poland. This was the sort of *realpolitik* treaty that Kant condemned as a mere 'suspension of hostilities' and as the opposite of true peace. Concerning the collapse of cosmopolitan ideals in the French Revolution, Julia Kristeva recounts in her book, *Strangers to Ourselves*, that in the early days of the revolution something like the germ of a cosmopolitan policy was developed by its leaders. Decrees were passed offering French citizenship to foreigners who resided in France for five years and who had means of subsistence; societies and newspapers for foreigners were encouraged; the use of force against other nations was disavowed; support was given to revolutionaries from other countries to rid themselves of despotic rulers; and certain 'benefactors of humankind' (including Tom Paine, Mary Wollstonecraft, Jeremy Bentham and William Wilberforce) were awarded honorary French citizenship. This new dawn was not, however, to last. With the launching of the revolutionary wars, xenophobia became an active political force; foreigners were held responsible for all that went wrong – military defeats, economic difficulties, political crises; foreign clubs and newspapers were disbanded; and terror was concentrated against foreigners. Even Tom Paine, 'citizen of the world', the man who signed himself *Humanus*, was impoverished, imprisoned and then expelled. Julia Kristeva, *Strangers to Ourselves* (New York: Columbia University Press, 1991), Ch. 7, 'On Foreigners and the Enlightenment'.
- 20 Kant, *Political Writings*, p. 125. Kant declared that reason 'absolutely condemns war' and made the achievement of peace an 'immediate duty'. That there should be no war was for him the 'irresistible veto' of the 'moral, practical reason within us'. *ibid.*, pp. 164 and 174.
- 21 *ibid.*, pp. 107–8.
- 22 *ibid.*, p. 114.
- 23 Martha Nussbaum, 'Kant and Stoic Cosmopolitanism', *Journal of Political Philosophy* 1 (1997): 1–25. Here Nussbaum traces the debt Kant owed to ancient Stoic cosmopolitanism. The central difference she sees between Kant and the Stoics is that for Kant the search for peace requires a persistent vigilance toward an ineliminable human aggression, while for the Stoics aggression is a consequence of unwise attachments to external things and persons.
- 24 Kant, *Political Writings*, p. 189.
- 25 *ibid.*, p. 191.
- 26 Hegel, *Philosophy of Right*, §343R.
- 27 *ibid.*, §209R.
- 28 *ibid.*, §258fn.
- 29 *ibid.*, §209A.
- 30 *ibid.*, §268.
- 31 An enlightened defence of Hegel's patriotism is put forward by Shlomo Avineri in his *Hegel's Theory of the Modern State* (Cambridge: Cambridge University Press, 1972), pp. 181 and 240.
- 32 Hegel, *Philosophy of Right*, §268A.
- 33 In the *Metaphysics of Justice* Kant argues that the unilateral will of the property owners must give way to a 'collective, universal and powerful Will

that can provide the guarantees required' (§8), and that 'the first decision the individual is obliged to make, if he does not wish to renounce all concepts of right, will be to adopt the principle that one must abandon the state of nature in which everyone follows his own desires, and unite with everyone else . . . in order to submit to external, public and lawful coercion', (§44). On the principle that 'a person is subject to no laws other than those that he (either alone or . . . jointly with others) gives to himself', Kant argues that the legislature expresses the 'general united will' and can do 'absolutely no injustice to anyone'. He writes that it is the duty of citizens to 'endure even the most intolerable abuse of supreme authority' (p. 86) since the 'well-being of the state' refers only to that condition in which 'the constitution conforms most closely to the principles of justice' and must *not* be confused with 'the welfare or happiness of the citizens of the state'. For Kant it is imperative that everyone obey the law 'without regard to his inclinations' (p. 15) on the understanding that the duty to obey the law can take no account of the pleasure or displeasure with which it is combined. Our freedom, as he puts it, does not lie in our capacity to choose for or against the law, but only in our 'internal legislation of reason' (p. 28). The nub of Hegel's critique of Kant's theory of right is that it is not critical enough. Trust in the state haunts Kant's discussion of public law as much as trust in property haunts his discussion of private law. Kant, 'The Metaphysical Elements of Justice', part 1 of *The Metaphysics of Morals* (Indianapolis: Bobbs-Merrill, 1965).

34 Kant, 'Metaphysical Elements of Justice', §8.

35 Hegel, *Philosophy of Right*, §327A.

36 Hegel adds by way of illustration of the power of discipline: 'In India, five hundred men defeated twenty thousand who were not cowards, but who simply lacked the disposition to act in close association with others'. *ibid.*, §327A.

37 *ibid.*, §328.

38 *ibid.*, §268R.

39 *ibid.*, §328R.

40 *ibid.*, §329A.

41 *ibid.*, §324R and A.

42 For such a reading see W. H. Walsh, *Hegelian Ethics* (Bristol: Thoemmes, 1998), pp. 50–1.

43 In his *Lectures on the Philosophy of History* Hegel writes: 'it was a great advance when political life became the property of everyone through the advent of representative government . . . [but] to associate the so-called representative constitution with the idea of a free constitution is the *hardened prejudice* of our age.' Georg Wilhelm Friedrich Hegel, *Lectures in the Philosophy of World History*, 'Introduction: Reason in History', trans. H. B. Nisbet (Cambridge: Cambridge University Press, 1975), p. 121.

44 It appears in the Westphalian model that every state is a sovereign and independent entity in relation to other states, that the legitimacy of the state is a purely internal matter, that the principle on which states relate is that no state should interfere in the internal affairs of another. But if it is true that the state cannot be a subject of right without relations to other states, any

- more than an individual can be a person without a relation to other persons, then its legitimacy must at least be *supplemented* by recognition on the part of other states. This recognition in turn requires a guarantee that the state will likewise recognise those other states that recognize it; i.e. that it will respect their independence and sovereignty. Accordingly, no state can in fact be indifferent to the internal affairs of another (*Philosophy of Right*, §331R).
- 45 Self-determination becomes 'sheer restless activity which cannot yet arrive at something *that is*' (*Philosophy of Right*, §108A)
- 46 Hegel, *Philosophy of Right*, §5R and A.
- 47 *ibid.*, §108A.
- 48 Hannah Arendt captures this very well in her analysis of concentration camps and death camps. She writes: 'It is not only the non-utilitarian character of the camps themselves – the senselessness of "punishing" completely innocent people, the failure to keep them in a condition so that profitable work might be extorted from them, the superfluousness of frightening a completely subdued population – which gives them their distinctive and disturbing qualities, but their anti-utilitarian function, the fact that not even the supreme emergencies of military activities were allowed to interfere with these "demographic policies". It was as though the Nazis were convinced that it was of greater importance to run extermination factories than to win the war.' Arendt, *Essays in Understanding 1930–1954*, p. 233.
- 49 Hegel, *Philosophy of Right*, §324A.
- 50 *ibid.*, §324A.
- 51 Hegel had in mind the historical example of the Holy Alliance between Russia, Austria and Prussia which set itself up as a sort of court with jurisdiction over others but soon fell apart as rival interests reasserted themselves between these countries (*ibid.*, §259A). A more recent example might be the alliance of Allies after the war – France, USSR, UK and USA; they set up a court at Nuremberg with jurisdiction over the crimes committed by Nazis but the alliance then quickly fell apart.
- 52 Benjamin writes that 'if one asks with whom the adherents of historicism actually empathise . . . the answer is inevitable: with the victor . . . Whoever has emerged victorious participates to this day in the triumphal procession in which the present rulers step over those who are lying prostrate.' Walter Benjamin, 'Theses on the Philosophy of History', in *Illuminations*, ed. Hannah Arendt (New York: Schocken, 1968), Thesis VII.
- 53 It would be naïve and dangerous in my view to think that if only we had the right institutions – an international criminal court, a reformed Security Council, an international police, etc. – somehow the cosmopolitan idea could be actualized in its purity.
- 54 Hegel, *Philosophy of Right*, p. 12.
- 55 *ibid.*, §340.
- 56 *ibid.*, §342.
- 57 *ibid.*, p. 22.
- 58 *ibid.*, §340.
- 59 *ibid.*, §1.
- 60 *ibid.*, §31.

61 *ibid.*, p. 21.

62 *ibid.*, p. 23.

63 *ibid.*, p. 15.

64 *ibid.*, p. 11.

65 *ibid.*, p. 20.

66 We should no more assume that these are statements of Hegel's own opinions than we should assume that the words of a character in a novel are statements of the author's own opinion.