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HEGEL ON POSSESSION AND PROPERTY

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In his *Philosophy of Right* (1820) Hegel distinguishes between possession and property. This distinction, frequent in modern political philosophy, is usually found in connection with the notions of the state of nature and the state of right. Possession refers to the exclusive use, enjoyment or disposal of a thing, unhampered by any restrictions. The conceptual space assigned for the enactment of this possessive relation with the world is the state of nature. Property emerges subsequently when the state of right appears, and one could summarily define it as the rightful possession of a thing. In Hegel's thought this distinction suffers substantial alterations. Possession loses its logical and temporal priority over property. This coincides with Hegel's tacit dismissal of the notion of the state of nature. The state of right does not appear as a result but as an ideal first, as a beginning, property attains an absolute character. It becomes the expression of the freedom of the autonomous individual, who can now appropriate external things without any kind of mediation. The right of property is conceived consequently as an absolute first and a beginning.

In this essay I will first examine Hegel's distinction between possession and property, limiting my scope to the *Philosophy of Right.*[1] Secondly, I will explore the fate of this distinction in some of Hegel's predecessors: Rousseau, Fichte and Kant. Their views provide for the understanding of Hegel's standpoint.

I

The distinction between possession and property is made explicit in paragraph #45 of the *Philospohy of Right.*[2]

> That I may have external power over something constitutes possession. The particular interest of possession is that I make something my own as a result of my natural needs, impulses and arbitrary will (*Willkür*). But that I as a free will make myself objective in possession and thereby for the first time become an actual will, constitutes the true and rightful (*rechtliche*) factor in possession, the determination of property.

Possession is thus defined as an external power over something. It is presented as a mere manifestation of power, and not as a right. It cannot constitute a right because it results from expressing our natural arbitrary will. Furthermore, this power over a thing is characterized as being external. It is our natural will that remains external to the thing. The thing then retains a certain measure of self-subsistence and independence, and it resists being totally absorbed by that will. Property, on the contrary, involves a rightful or lawful relation of the will to the thing. This new relationship implies a suspension of externality. Free will is now able to actualize itself by fully penetrating and saturating the thing. The thing is eliminated as a thing in itself. It becomes an object, or what amounts to the same; the will becomes objective in the thing itself. There appears to be no resistance to the invading rights of the will. The barriers of otherness are eliminated and free will, in becoming its own object, attains infinity. The thing which formerly confronted the will, and which now has become its property, can keep nothing for itself. As property, it cannot "reserve anything proper for itself, whereas in possession, as an external relation, there remained a residual externality" (#52). With property we find ourselves beyond mere natural or arbitrary will and within the sphere of right.

In modern political philosophy this distinction between possession and property was not presented abstractly. Its terms did not remain confronted to one another, nor did they retain their logical independence. It had rather the character of a transition from one term to the other, from possession towards property. Political philosophers were generally interested in legitimating property and they thought they could do this by bringing the process of appropriation into the open. In my view, it is clear that Hegel accepts the distinction as moderns do, but his understanding of it is such that it obscures and makes it practically impossible to conceive a transition from possession to property. In his hands, the distinction collapses, and the reason for this is quite simple. One of the terms of the distinction, possession, which should serve as the point of departure for the appropriating process, does not retain a logical space of its own in Hegel's philosophical elaboration. For Hegel, possession is

constituted by the manifestation of natural will as opposed to free will. It is not clear, however, why free will can, while arbitrary will cannot, break the thing's resistance. What is the nature of the barrier that protects the thing from being saturated by natural will, and which, at the same time, seems to dissolve completely in the presence of free will? Since it is inconceivable to think that the thing can control and regulate the resistance it presents, why is property not constituted immediately, without an intermediate possessive stage? In the absence of objective limitations, what prevents natural will from fully appropriating the thing? These difficulties indicate that possession cannot be conceived as being logically prior to property.

The continuation of Hegel's argument in this section of the *Philosophy of Right* shows that possession cannot be thought of being temporally prior to property. Appropriation is now immediate, and the possibility of a transition from possession to property is cancelled. Consider what Hegel says in paragraph #50:

> That a thing belongs to the one who happens to be the first to take possession of it, is both understandable and a superficial determination: a second person cannot take into possession what is already (*bereits*) the property of another.

On the one hand, it is clear from this text that the first possessor will find no objective limitations in the thing itself, limitations which would force him/her to maintain himself/herself, for an unspecified period of time, in a stage of mere possession. When a second person appears, this person discovers that the first possessor is already a proprietor. When did this latter event take place? When did the mere possessor of a thing become its proprietor? In view of that absence of objective limitations, the time lying between the possessive apprehension of the first possessor and the claim raised by the second person may be approximated *ad infinitum*. This ultimately means that the first possessor is simultaneously the first proprietor, and that therefore appropriation is immediate. There is no room for a purely possessive stage prior to appropriation. On the other hand, Hegel does not allow that the second person, who is presenting a claim on that same thing, may acquire at any moment a possessive relation with it, while the thing is still the property of the first "possessor". The thing can only serve as the term of one relationship, the property relationship. Between non-property and property there can be no intermediate stage. Possession is not able to assert a conceptual space or time

of its own. The distinction between possession and property collapses in favour of property.

One could still interpret the text quoted above as saying that property is constituted only when a second person appears on the scene. Before this second person challenges the possession held by the first person, we are in the presence of a purely possessive relationship. It is not a question, therefore, of logical or mere temporal priority. There is an additional element constituted by the confrontation between two persons, and it is precisely this that consolidates the possession of the first person and makes it his/her property. Property must be defined as the social affirmation of possession. In possession we find a purely individualistic, monadic relationship between a person and a thing, while property presupposes social recognition. The paragraph that immediately follows paragraph #50 seems to confirm this view:

> For there to be property, as *Dasein* of personality, it is not sufficient that my internal representation and will determine that something should be mine; to secure that end possessive apprehension (*Besitzergreifung*) is required. The determinate being acquired hereby by that will, includes the cognizability (*Erkennbarkeit*) in itself by others. — That the thing which I take into possession should be without a master is a self-evident negative condition or rather related to an anticipated reference to another (#51).[3]

This text seems to say that the cognition of others is an essential requirement for the constitution of property. When another person is able to know that a thing is my property, only then can that thing rightfully become mine. Prior to that, my relation to the thing would have to be merely possessive. A closer consideration of the text indicates, however, that possessive apprehension is not prior, but actually follows, the constitution of property. Property is grounded solely on the internal will of a person and it is as *Dasein* of personality that it requires external completion, *i.e.* the actual possessive apprehension of the already appropriated thing. Possession serves merely as an indication, as an outward sign attached to property to warn other parties who may desire to invade that previously constituted right. Possession appears now to be adding a social dimension to property, which in turn becomes a purely private relation of my internal will and representation to a thing. The presence of other parties does not represent a positive condition for

property. Other persons are actually always present, but it is a purely negative presence, the presence of a non-presence. It is a condition for constituting a property relationship to a thing that no other party actually be in a similar relationship with it. In order to assure the presence of the non-presence of another party Hegel includes a condition, a positive condition this time (*i.e.* possessive apprehension) whereby my property becomes congnizable to others.

It should be noted that, at this stage, Hegel is only requiring cognition and not recognition (*Anerkennung*). Recognition implies the existence of other persons actively involved in the constitution of my property relationships. The right of property loses its immediacy insofar as my rights over a thing are mediated by the will of another person. Recognition is the basis on which stands the responsibility of others to acknowledge and respect my property. Hegel, however, has been careful to point out in paragraph #51 that it is mere cognition by others that is assured by possessive apprehension. It is also clear that this cognition arrives late, that is, when the abstract property relationship between myself and a thing is already constituted.

Hegel's conception of property is not altered when he finally introduces recognition. This he does in the paragraph that marks the transition from the sphere of property to that of contract.

> *Dasein*, as determinate being, is essentially being for another. Property, insofar as it is *Dasein* as external thing, is for other externalities and it is connected with necessity and contingency. But, as *Dasein* of the will, it is only for the will of another person. This relation of will to will is the proper and true ground in which freedom has *Dasein*. This mediation constitutes the sphere of contract, namely the fact that I hold property not merely by means of a thing and my subjective will, but by means of another person's will as well and so by means of a common will (#71).

Property constitutes the *Dasein* of freedom. Freedom must therefore be characterized as being essentially for another. We have already seen that insofar as a thing becomes the property of a person, it loses its self-subsistence and independence, thus becoming essentially for another. In this case the reference is a person. Yet, Hegel perceives two other possible references. On the one hand, there is a purely natural reference, according to which a thing, as the property of a person, retains its materiality, and therefore its natural

connections of necessity and contingency with other external things. On the other hand, there is a reference that does not consider so much the *thing* that has become my property, but my *property* over that thing. This is property as "*Dasein* of the will". I can become a proprietor, *i.e.* my will can attain exclusive right to use, enjoy or dispose of a thing, when I am recognized as such by another party. Thus, I am a proprietor "for the will of another person." I hold property not as an abstract will any more, but my will is mediated by the recognition of another party. Hegel has now moved to the sphere of contract. Surely, I do not have to wait for the recognition of another person (or persons) to become the proprietor of a thing. There is a pre-contractual stage within which property is solely constituted by the relation of my subjective will to a thing. When the transition is made to contractual property, recognition becomes essential, for "contract presupposes that the parties involved recognize themselves as persons and proprietors" (#71).

The distinction between possession and property surfaces again in the sphere of contract. It is presented in exactly the same terms as it appeared in paragraph #51. Possession now constitutes a pure stipulation, a ceremonial completion for the contractual relation:

> The distinction between property and possession . . . becomes in the sphere of contract the distinction between the common will as covenant and its actualization as performance (*Leistung*) (#78).

Possession should not be taken as an intermediate station between non-property and property. Property, according to Hegel, is an immediate relation between a person and a thing. There is no place for a possessive relationship established prior to property.

II

In modern political philosophy the notion of possession is tied, in the last analysis, to that of the state of nature. In the *Philosophy of Right* Hegel, at least initially, admits such a connection by associating possession with natural will. Even though he finds a place for natural will in his political theory, he forsakes the notion of the state of nature. In modern thought this notion served as a basis on which to stand political society. It generally represented an original pre-political state of affairs characterized by the existence of equal individuals with a capacity to express their own particular desires and wills

without hindrances. The particularity of their wills was not hampered by any form of universality having regulatory power over them. This state of nature meant, in general, a sort of veritable anarchy, qualified and measured diversely according to different authors. Hegel's endeavour is aimed at making this notion perfectly dispensable. The collapse of the distinction between possession and property and the diminished status assigned to possession must be seen as a manifestation of that same endeavour.

Now I turn to a summary discussion of the fate of the distinction between possession and property in Rousseau, Fichte and Kant.[4]

The distinction between possession and property and the ascription of possession to the state of nature are visible features of Rousseau's political philosophy. In *The Social Contract* (1762), Rousseau distinguishes between possession and property, assigning the former to the state of nature, where human beings enjoy natural freedom, and the latter to civil society, the realm of civil liberty. Possession results from the "effect of force and the right of the first occupier."[5] It is a solitary relationship between a person and a thing with no manifestation of a common will. Property, on the contrary, presupposes a common will and as such it "can only be founded on a positive title."[6] Rousseau considers property as "the most sacred of all rights of citizenship."[7] Yet, for all its sanctity, it does not constitute a natural right. Human beings do not have this right in the state of nature where they can only attain mere possession of external things. Rousseau, furthermore, perceives that behind this sacred right there lies "clever usurpation."[8] This induces him to set limitations to this right. The sovereignty of the general will, which stands above it, can certainly annihilate it.[9] The right of property ceases to be an absolute right of the individual. It is now conditioned by the requirement that "no citizen shall ever be wealthy enough to buy another, and none poor enough to be forced to sell himself."[10]

Following Rousseau very closely, Fichte, in his *Grundlage des Naturrechts* (1796/7), also distinguishes between possession and property.[11] In the background one can clearly discern the notion of the state of nature. According to Fichte, within the state of nature human beings can only be considered as persons, not as individuals. A person's relation to the world in the state of nature is a purely possessive one. It is only when individuals emerge into a state of contractual right that they can attain property. Thus, property is not a natural right, and it can only be grounded on the reciprocal recognition of individuals.

> When man is posited in relation to others, his possession becomes rightful (*rechtliche*) only insofar as he is recognized by others. In this manner, he attains for the

> first time external common legitimation, common to him and the parties that recognize him. Thus possession becomes property for the first time, *i.e.* something individual.[12]

There is no space for pre-contractual property. Property cannot be conceived of as an absolute right. It is grounded on a social contract which imposes limitations on that right. This means that I can hold a certain amount of property "on condition that all citizens can make a living on their own. Civil property is cancelled when citizens cannot live on their own; it becomes their property. Obviously, this must be determined by the power of the state."[13] This is a clear expression of Jacobinism on the part of Fichte. His liberal views of earlier years have now taken a sharp turn toward radical democracy.[14] It is in these conclusions that we can perceive the revolutionary possibilities of the distinction between possession and property.

Kant, in his *Metaphysik der Sitten* (1797), was perhaps the first to perceive philosophically the Jacobin consequences implicit in the distinction between possession and property in modern political philosophy. Kant sees no point in rejecting the distinction between a state of nature and a state of right or civil state. Again, following Rousseau, he associates ownership *i.e.* property, with the state of right. "To have something external as one's own (*das Seine*) is possible only in a state of right, under a public legislative power, *i.e.* in a civil state."[15] This thesis, however, is immediately followed by one which extends property to the state of nature. Kant states: "In the state of nature there can be a real, if only provisional external ownership (*Mein und Dein*)."[16] Kant's demonstration of this latter thesis is extremely interesting because it prefigures Hegel's standpoint in the *Philosophy of Right*. If Hegel's aim in this work can be said to consist, in the last analysis, in a refutation of Rousseau's and Fichte's radical democratic posture, then Kant is surely its immediate antecedent.

> Natural right in the state of a civil constitution . . . cannot suffer attacks from statutory laws. Thus, the following legal principle maintains its validity: "Whoever follows the maxim according to which it is impossible for me to own the object of my arbitrary will (*Willkür*), does injury to me". For the civil constitution is only the state of right, through which ownership (*das Seine*) is merely secured (*gesichert*), but not, properly speaking, constituted and determined.[17]

Ownership which is secured by right, in other words, property, is not constituted and determined only when one moves towards the sphere of right. On the contrary, it is constituted and determined with priority in the state of nature. The state of right poses only a guarantee that one's property will be respected. "A guarantee", says Kant, "presupposes one's ownership."[18] Firmly anchored within the state of nature, property cannot suffer attacks from positive legislation. Moving away from Rousseau and Fichte, Kant has rehabilitated property as a natural right.

> Therefore, prior to the civil constitution, ownership must be regarded as possible. A right to compel everyone with whom we could engage in any sort of trade to enter with us in a constitution where ownership is secured, must also be regarded as possible.[19]

On this basis Kant is able to distinguish between a provisionally-rightful possession and a peremptory possession. The first one occurs in the state of nature, which therefore, by definition, presupposes the possibility of a state of right. Provisionally-rightful possession is an anticipation of and preparation for peremptory possession and it can only be conceived of under a civil constitution. Peremptory possession (which coincides with Hegel's notion of property as rightful possession), follows upon provisionally-rightful possession, perfecting it. Yet, in a certain respect, the latter presupposes the former. Kant recognizes that the transition to the state of right is prefigured in the state of nature. The state of nature is potentially a state of right. In the former I stand as a mere person defined only by my particularity, but before I become involved in any sort of civil intercourse with other persons, the possibility of such a situation precedes its actualization. This constitutes my right to compel others who are also willing to enter into a civil situation into which I will also be drawn, to recognize their own civil will, *viz.* the will to recognize me as a subject of rights. When this takes place one can be sure that a state of right has emerged within the state of nature.

Kant is careful to maintain the distinction between the state of nature and the state of right at all costs. He prevents their collapse into one another by his use of the notion "provisional", so that the state of nature must be thought of as only "provisionally" being a state of right. In order to strengthen this distinction Kant subsequently brings forth a conception of the state of right as *ideally* present in the state of nature. This becomes manifest when he explains the reason why there can be acquisition of property within the state of nature. If the state of nature is defined as a privation, *i.e.* the privation of right,

evidently no property *qua* rightful possession can arise within it. Yet, the state of nature contains the *idea* of a civil state, so that property indeed can be acquired provisionally within it.

> The state of a universal, real, unified will to legislate is the civil state. And it is only in conformity with the idea of a civil state, *i.e.* in view of it and its realization, but prior to its reality . . . that something external can be acquired originally, even if only provisionally. Peremptory acquisition takes place in the civil state exclusively.[20]

Kant has been able to trace the civil state, and therefore the right of property, back to the state of nature. This is a much firmer ground than the purely conventional one admitted by Rousseau and Fichte. Still, the fact that Kant is ready to define property as merely provisional in such a state, detracts from its sanctity and weakens it with respect to possible attacks arising from the civil state through its positive legislation. The door opened up by Rousseau and Fichte to state-imposed limitations of the right of property and expropriation, has been left now only semi-closed by Kant.[21]

Twenty-three years later, when Prussia was moving away from its reform era, and very rapidly so, especially if one considers the reactionary nature of the Carlsbad decrees (1819), Hegel strives to close this door completely, eliminating any conditions that may weaken the right of property.[22] In his system this right is now defended as an absolute right of personality (*cf.* #44). It is this assertion that produces the collapse of the distinction between possession and property that was presented in the first part of this essay. Hegel has thus definitely moved away from Rousseau and Fichte, for whom possession related to isolated persons, while property was ultimately socially conditioned. Property, as the absolute right of personality, precedes all contractual relationships. Kant initiated an approximation towards pre-contractual property. Moving towards Locke, and away from Hobbes, Kant argues that a state of nature is not opposed to a social state.[23] It is only opposed to a civil state, so that the state of nature is now defined by a mere absence of distributive justice.[24] As a social state it presupposes the existence within it of commutative justice. Still, by retaining the opposition between a state of nature and a state of right, Kant leaves undetermined the question of the degree of autonomy allowed to private property within the pre-juridical sphere. Thus, a purely natural and social state, as opposed to a juridical one, does not constitute a sufficient safeguard against possible interferences

emanating from the general will, and in particular, against the menace of socialism.

It is for these reasons that Hegel chooses to discard the notion of the state of nature,[25] or what amounts to the same, to dissolve the rigid separation that had been generally established between this notion and that of a state of right, whereby each of them was understood as thematically independent and autonomous. A similar situation is visible in Locke's political philosophy. Locke ascribes to individuals living within the state of nature an absolute and unlimited property right. Only the difficulties of enforcing such a right within the state of nature forces individuals to move towards civil society, where no new rights are created.[26] Locke's conception of the state of nature is thus internally related to that of a state of right. The fusion of these two notions is concretely represented in Hegel's thought by his notion of civil society.[27] Hegel presents it from the start as presupposing the abstract rights of persons and as dominated, consequently, by the principle of particularity. A form of universality develops within civil society integrating the particular aims and centrifugal interests of all individuals. This development culminates predictably in an administration of justice through which right becomes law (#217), so that when Hegel leaves civil society behind and ascends to his State, no new rights are created.

Hegel's version of the state of nature, *viz.* his notion of civil society, is already a state of right, insofar as it presupposes the abstract right of individuals. For Hegel, the basic right of individuals is the right of property. It is a pre-contractual right and he takes it as the absolute point of departure in his exposition. Property is rightfully grounded on the absolute will of the individual person.[28] An absolutely free will abstracts from all relations to other parties; all its possible relations to other wills simply collapse. At this stage we have only the freedom of an abstract will, that is, "the freedom of an individual (*einzelnen*) person which is related only to himself" (#40). The first externalization of such a will is not directly towards other person(s), but towards external things. Property thus becomes the "first *Dasein* of freedom" (#45), and a state of right can spring out without mediations from this notion of absolute free will. Hegel defines right simply as "*Dasein* of free will" (#29). Since Hegel is considering the unmediated, absolute freedom of the individual as the primordial determination of right, the determination of property becomes a purely subjective and non-social relation of the individual to the external world. Hegel's theory of precontractual property in his *Philosophy of Right* should therefore be considered as one of the most radical formulations of possessive individualism in modern political philosophy.

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Notes

1. Shlomo Avineri interprets Hegel's views in the *Realphilosophie* (1805/6) as supporting a conception of property as "trans-subjective" and "non-individual". He states: "property pertains to the person as recognized by others, it can never be an intrinsic quality of the individual pior to his recognition by others. While possession relates to the individual, property relates to society; since possession becomes property through the others' recognition of it as such, property is a social attribute." From this basically correct interpretation of the young Hegel. Avineri wrongly concludes: "Thus not an individualistic but a social premise is at the root of Hegel's concept of property, and property will *never* be able to achieve an independent stature in his system ... Property *always* remains premissed on social consensus, on consciousness, not on the mere fact of possession" (my emphasis). *Hegel's Theory of the Modern State*, Cambridge: University Press, 1972, pp. 88-9.

   This essay is intended to show that it is an individualistic premise that is at the root of Hegel's concept of property in the *Philosophy of Right* and that Avineri is not justified in extending the themes and solutions of the young Hegel to his mature work. Indeed, Hegel's notion of possession and property in the *Realphilosophie II*, and for that matter in the *Philosophische Propädeutik* (1809/11), ed. Glockner, vol. III, p. 60, does differ fundamentally from that proposed in the *Philosophy of Right* (1820).

2. All numbered paragraphs correspond to the *Philosophy of Right*. In the translation of these texts I have consulted extensively the works of Sir Malcolm Knox and Juan Luis Vermal. *Cf. Hegel's Philosophy of Right*, translated with notes by T.M. Knox, Oxford: Clarendon, 1967; and G.W.F. Hegel, *Principios de la Filosofia del Derecho*, translated by J.L. Vermal, Buenos Aires: Sudamericana, 1975.

3. Knox and Vermal translate *Erkennbarkeit* using respectively the terms "recognizability" and "*reconocible*". These translations obscure the distinction between mere cognition and recognition.

4. H.B. Acton, noticing that Fichte's *Grundlage des Naturrechts* appeared before Kant's *Metaphysik der Sitten*, writes that "the conventional way of writing the history of philosophy, in which the views of each famous philosopher are presented as a continuous whole and each philosopher is discussed after his "predecessors" and before his "successors", can be seriously misleading." G.W.F., *Natural Law*, Introduction by H.B. Acton, University of Pennsylvania Press, 1975, p. 28.

5. *The Social Contract*, in *The Social Contract and Discourses*, trans. by G.D.H. Cole, London: Dent, 1975, p. 178.

6. *Ibid.*, p. 178.

7. *A Discourse on Political Economy*, in *ibid.*, p. 138.

8. *A Discourse on the Origin of Inequality*, in *ibid.*, p. 89.

9. *Cf. Emile*, in *ibid.* p. 303.

10. *The Social Contract*, in *ibid.*, p. 204.

11. Fichte approximates Rousseau to Locke. He interprets Rousseau as maintaining a natural right of property, that is, "a right of property before the social contract" — *Grundlage des Naturrechts*, in *Sämmtliche Werke*, Berlin: Verlage von Veit und Comp., vol. III, p. 204, note. Fichte is not considering Rousseau's clear distinction between possession and property in *The Social Contract*.

12. *Ibid.*, p. 130.

13. *Ibid.*, p. 213.

14. *Cf.* Manfred Buhr, *Revolution und Philosophie. Die Ursprüngliche Philosophie Johann Gottlieb Fichtes und die Französische Revolution*, Berlin: Deutscher Verlag der Wissenschaften, 1965, pp. 63-71.

15. *Die Metaphysik der Sitten*, in *Werke*, edited by E. Cassirer Berlin: B. Cassirer, 1916, vol. VII, p. 58.

16. *Ibid.*, p. 59.

17. *Ibid.*, p. 59.

18. *Ibid.*, p. 59.

19. *Ibid.*, p. 59.

20. *Ibid.*, p. 68.

21. Villey, for instance, believes that Kant's theory of property is, in the last analysis, conducive to socialism: "On s'imagine tirer de Kant une doctrine très affirmative de la propriété privée: Kant décrivant, approuvant l'ordre de son temps, a pris soin de marquer fortement l'antériorité à l'état de l'appropriation privée, mais aussitôt il reconnaît que cette propriété de "droit privé", de "droit naturel", n'est que "provisoire". Quand le droit deviendra péremptoire, à l'état sera reconnu un droit éminent sur tous les biens des citoyens, et ce principe peut nous conduire tout aussi bien au socialisme." Michel Villey, "Kant dans l'Histoire du Droit", in *La Philosophie Politique de Kant* (*Annales de Philosophie Politique*), Paris: Presses Universitaires de France, 1962, p. 60, note 1. A different view is expressed by Saage. *Cf.* Richard Saage, *Eigentum, Staat und Gesellschaft bei Immanuel Kant*, Stuttgart: W. Kohlhammer, 1973, p. 39.

22. The antidemocratic nature of Hegel's *Philosophy of Right* has been reserved by Ilting (*Cf.* K.-H. Ilting, "The Structure of Hegel's *Philosophy of Right*," in Z.A. Pelczynski, ed., *Hegel's Political Philosophy*, Cambridge: University Press, 1971, pp. 90-110, to his conception of a self-perpetuating monarch, conceived as the apex and beginning of the whole. It should be stressed that Hegel's notion of property is also antidemocratic insofar as he will not allow it to be regulated by the principle of equality (*cf.* #49). Not much should be made of his assertion in paragraph #46 that "the determinations concerning property may have to be subordinated to higher spheres of right, a society or the state." This has nothing to do with the limited redistributive function recognized later by Hegel when dealing with the state as *Polizei*. Furthermore, these higher spheres of right can rule only when common ownership has been instituted. But common ownership *per se* cannot belong to the sphere of abstract right, which is purely individual right. It is because of this that Hegel presents common ownership as purely exceptional insofar as it is a "community that is inherently dissoluble", so that the private property of each individual's share can always be recovered.

23. Kant, *op. cit.*, p. 112-113.

24. *Ibid.*, p. 113.

25. The notion of a state of nature (*Naturzustand*) is barely mentioned in the *Philosophy of Right*. And when it is mentioned it is only a marginal use, not determined by the structure of his thought. It is interesting to note that in the *Enzyklopädie* (1817) #415 and (1830) #502,

and in the preface to his Vorlesung 1818/9 (according to the notes of Carl Gustav Homeyer), Hegel still assigns to the *Naturzustand* a clearly defined and independent conceptual place. It is also significant that in the *Vorlesung 1818/9* Hegel does not stress the autonomy of pre-contractual property (*Hr.* #37), as he does in the *Philosophy of Right*. This lends further confirmation to the unique character of the *Philosophy of Right*, as has been discerned by Ilting. G.W.F. Hegel, *Vorlesungen über Rechtsphilosophie 1818-1831*. Edition and commentary by K.-H. Ilting, Bad Canstatt: Fromann-Holzboog, 1973.

26. *Cf.* C.B. Macpherson, *The Political Theory of Possessive Individualism*, London: Oxford University Press, 1964, pp. 210 and 218.

27. Hegel's definition of civil society in paragraph #289 ("civil society is the battlefield of the individual private interest of all against all") follows Hobbes' description of the state of nature almost word for word.

28. *Cf.* Peter Landau, "Hegels Begründung des Vertragsrechts", in *Materialien zu Hegels Rechtsphilosophie*, edit. by Manfred Riedel, Frankfurt: Suhrkamp, 1973, p. 180: "Bis zur Begründung des Privateigentums gelangt Hegel allein aufgrund der Analyse des Rechts der einzelnen Person; ohne Berücksichtigung der Anerkennung durch andere Personen." *Cf.* too Richard Teichgraeber, "Hegel on Property and Poverty," *Journal of the History of Ideas*, vol. 38, Jn.-Mr. 1977, p. 54.