

Hegel's Philosophy of Right

First Part: Abstract Right

§ 34

The absolutely free will, at the stage when its concept is abstract, has the determinate character of immediacy. Accordingly this stage is its negative actuality, an actuality contrasted with the real world, only an abstractly self-related actuality — the inherently single will of a subject. Pursuant to the moment of the particularity of the will, it has in addition a content consisting of determinate aims and, as exclusive individuality, it has this content at the same time as an external world directly confronting it.

Addition: When I say that 'the absolutely free will at the stage when its concept is abstract has the determinate character of immediacy', what I mean is this: when the concept had fully realised itself and when the embodiment of the concept had become nothing but the unfolding of its own self, then that state of affairs would be the fully developed Idea of the will. But at the start the concept is abstract, which means that all its determinations are contained within it, but still only contained within it; they are only implicit and not yet developed to be a totality in themselves. If I say 'I am free', the ego is still this inwardness, not confronted by an opposite. In morality, on the other hand, there is opposition from the start, since I stand in the moral sphere as a *single* will while the good is the *universal* even though it is within myself. Thus at that level, the will has in itself the different factors of singularity and universality, and this gives it its specific character. But, to begin with, no such difference is present, since at the first stage, that of abstract unity, there is no advance and no mediation and so the will has the form of immediacy, of mere being. The essential point of view to be taken here then is that this original indeterminacy is itself a determinacy. The indeterminacy lies in the fact that there is as yet no difference between the will and its content; but indeterminacy, opposed to the determinate, acquires the character of being something determinate. It is abstract identity which here constitutes determinacy; the will therefore becomes a single will, a person.

§ 35

The universality of this consciously free will is abstract universality, the self-conscious but otherwise contentless and simple relation of itself to itself in its individuality, and from this point of view the subject is a person. Personality implies that as *this* person: (i) I am completely determined on every side (in my inner caprice, impulse, and desire, as well as by immediate external facts) and so finite, yet (ii) none the less I am simply and solely self-relation, and therefore in finitude I know myself as something infinite, — universal, and free.

Remark: Personality begins not with the subject's mere general consciousness of himself as an ego concretely determined in some way or other, but rather with his consciousness of himself as a completely abstract ego in which every concrete restriction and value is negated and without validity. In personality, therefore, knowledge is knowledge of oneself as an object, but an object raised by thinking to the level of simple infinity and so an object purely self-identical. Individuals and nations have no personality until they have achieved this pure thought and knowledge of themselves. Mind fully explicit differs from the phenomenal mind in this, that at the same level at which the latter is only self-consciousness — a consciousness of self but only one pursuant to the natural will and its still external oppositions — the former has itself, as the abstract and free ego, for its object and aim, and so is personality.

Addition: The abstract will, consciously self-contained, is personality. Man's chief glory is to be a person, and yet in spite of that the bare abstraction, 'person', is somewhat contemptuous in its very expression. 'Person' is essentially different from 'subject', since 'subject' is only the possibility of personality; every living thing of any sort is a subject. A person, then, is a subject aware of this subjectivity, since in personality it is of myself alone that I am aware. A person is a unit of freedom aware of its sheer independence. As *this* person, I know myself to be free in myself I can abstract from everything, since nothing confronts me save pure personality, and yet as *this* person I am something wholly determinate, e.g. I am of a certain age, a certain stature, I occupy this space, and so on through whatever other details you like. Thus personality is at once the sublime and the trivial. It implies this unity of the infinite with the purely finite, of the wholly limitless with determinate limitation. It is the sublimity of personality that is able to sustain this contradiction, a contradiction which nothing merely natural contains or could endure.

§ 36

(1) Personality essentially involves the capacity for rights and constitutes the concept and the basis (itself abstract) of the system of abstract and therefore formal right. Hence the imperative of right is: 'Be a person and respect others as persons.'

§ 37

(2) The particularity of the will is a moment in the consciousness of the will as a whole (see § 34), but it is not yet contained in abstract personality as such. Therefore, it is present at this point, but as still sundered from personality, from the character of freedom, present as desire, need, impulse, casual whim, and so forth. In formal right, therefore, there is no question of particular interests, of my advantage or my welfare, any more than there is of the particular motive behind my volition, of insight and intention.

Addition: Since, in personality, particularity is not present as freedom, everything which depends on particularity is here a matter of indifference. To have no interest except in one's formal right may be pure obstinacy, often a fitting accompaniment of a cold heart and restricted sympathies. It is uncultured people who insist most on their rights, while noble minds look on other aspects of the thing. Thus abstract right is nothing but a bare possibility and, at least in contrast with the whole range of the situation, something formal. On that account, to have a right gives one a warrant, but it is not absolutely necessary that one should insist on one's rights, because that is only one aspect of the whole situation. That is to say, possibility is being which has the significance of also not being.

§ 38

In relation to action in the concrete and to moral and ethical ties, abstract right is, in contrast with the further content which these involve, only a possibility, and to have a right is therefore to have only a permission or a warrant. The unconditional commands of abstract right are restricted, once again because of its abstractness, to the negative: 'Do not infringe personality and what personality entails.' The result is that there are only prohibitions in the sphere of right, and the positive form of any command in this sphere is based in the last resort, if we examine its ultimate content, on prohibition.

§ 39

(3) As *immediate* individuality, a person in making decisions is related to a world of nature directly confronting him, and thus the personality of the will stands over against this world as something subjective. For personality, however, as inherently infinite and universal, the restriction of being only subjective is a contradiction and a nullity. Personality is that which struggles to lift itself above this restriction and to give itself reality, or in other words to claim that external world as its own.

§ 40

Right is in the first place the immediate embodiment which freedom gives itself in an immediate way, i.e. (a) possession, which is *property* — ownership. Freedom is here the freedom of the abstract will in general or, *eo ipso*, the freedom of a single person related only to himself. (b) A person by distinguishing himself from himself relates himself to another person, and it is only as owners that these two persons really exist for each other. Their implicit identity is realised through the transference of property from one to the other in conformity with a common will and without detriment to the rights of either. This is *contract*. (c) The will which is differentiated not in the sense of (b) as being contrasted with another person, but in the sense of (a) as related to itself, is as a particular will at variance with and opposed to itself as an absolute will. This opposition is wrongdoing and *crime*.

Remark: The classification of the system of rights into *jus ad personam* and *jus ad rem* on the one hand, and *jus ad actiones* on the other, like the many other similar classifications, has as its primary aim the imposition of an external order on the mass of unorganised material confronting the classifier. The striking thing about this classification is the confusion in it due to the disorderly intermixture of rights which presuppose substantial ties, e.g. those of family and political life, and rights which only an abstract personality as such. This confusion is exemplified in the classification of rights (adopted by Kant and since favoured by others) into *jus reale*, *jus personals*, and *jus realiter personals*.

To develop the perversity and lack of speculative thought in the classification of rights into *jus ad personam* and *jus ad rem*, which lies at the root of Roman law (*jus ad actiones* concerns the administration of and is of a different order altogether), would take us too far afield, as this much at least is clear: it is personality alone which can confer a right to things and therefore *jus ad personam* in its essence is *jus ad rem*, *rem* being taken here in its general sense as

anything external to my freedom, including even my body and my life. In this sense, *jus ad rem* is the right of personality as such. But from the point of view of what is called *jus ad personam* in Roman law, a man is reckoned a person only when he is treated as possessing a certain status. Hence in Roman law, even personality itself is only a certain standing or status contrasted, with slavery. The so-called Roman law of 'personal' rights, then, is concerned with family relationships, though it excludes the right over slaves (and 'slaves' almost includes children too) as well as the status (called *capitis diminutio*) of having lost one's rights. (In Kant, by the way, family relationships are the *jura realiter personalia*.) The Roman *jus ad personam* is therefore not the right of the person as person but at most the right of a person in his particular capacity. (Later on in this book, it will be shown that the substantial basis of family relationships is rather the sacrifice of personality.) Now it must be obvious that it is perverse to treat the right of a specific person in his particular capacity before the universal right of personality as such.

Kant's *jura personalia* are the rights issuing from a contract whereby I undertake to give something or to perform something — the *jus ad rem* conferred by an *obligatio* in Roman law. To be sure, it is only a person who is required to execute the covenants of a contract, just as it is also only a person who acquires the right to their execution. But a right of this sort cannot for this reason be called a 'personal' right; rights of whatever sort belong to a person alone. Objectively considered, a right arising from a contract is never a right over a person, but only a right over something external to a person or something which he can alienate, always a right over a thing.

A: Property - B: Contract - C: Wrong

Transition from Right to Morality

§ 104

That is to say, crime, and justice in the form of revenge, display (i) the shape which the will's development takes when it has passed over into the distinction between the universal implicit will and the single will explicitly in opposition to the universal; and (ii) the fact that the universal will, returning into itself through superseding this opposition, has now itself become actual and explicit. In this way, the right, upheld in face of the explicitly independent single will, is and is recognised as actual on the score of its necessity. At the same time, however, this external formation which the will has here is *eo ipso* a step forward in the inner determination of the will by the concept. The will's immanent actualisation in accordance with its concept is the process whereby it supersedes its implicit state and the form of immediacy in which it begins and which is the shape it assumes in abstract right (see **Remark to § 21**); this means that it first puts itself in the opposition between the implicit universal will and the single explicitly independent will; and then, through the supersession of this opposition (through the negation of the negation), it determines itself in its existence as a will, so that it is a free will not only in itself but for itself also, i.e. it determines itself as self-related negativity. Its personality — and in abstract right the will is personality and no more — it now has for its object; the infinite subjectivity of freedom, a subjectivity become explicit in this way, is the principle of the moral standpoint.

Remark: Let us look back more closely over the moments through which the concept of freedom develops itself from the will's determinate character as originally abstract to its character as self-related, and so at this point to its self-determination as subjectivity. In property this determinate character is the abstract one, 'mine', and is therefore found in an external thing. In contract, 'mine' is mediated by the wills of the parties and means only something common. In wrong the will of the sphere of right has its abstract character of implicit being or immediacy posited as contingency through the act of a single will, itself a contingent will. At the moral standpoint, the abstract determinacy of the will in the sphere of right has been so far overcome that this contingency itself is, as reflected in upon itself and self-identical, the inward infinite contingency of the will, i.e. its subjectivity.

Addition: Truth entails that the concept shall be, and that this existence shall correspond with the concept. In the sphere of right, the will is existent in something external, but the next requirement is that the will should be existent in something inward, in itself. It must in its own eyes be subjectivity, and have itself as its own object. This relation to itself is the moment of affirmation, but it can attain it only by superseding its immediacy. The immediacy superseded in crime leads, then, through punishment, i.e. through the nullity of this nullity, to affirmation, i.e. to morality.