

# THE CONCEPT OF THE PERSON IN HEGEL'S PHILOSOPHY OF RIGHT: THINKING ABOUT §§ 34-41 OF HIS *ELEMENTS OF THE PHILOSOPHY OF RIGHT*\*

FRIEDRIKE SCHICK\*\*

## ABSTRACT

The concept of the person appears at the beginning of the first book of Hegel's *Elements of the Philosophy of Right* (EPR). By this position, it seems to be designed as the conceptual link between the theory of free will exposed in the introduction of the work and the subsequent institutional or juridical concepts, the concept of property and the concept of contract. The aim of this paper is to find out if personhood as addressed by Hegel can afford such a linkage. In order to answer this question, the paper seeks to carve out what it is to be a person in Hegel's sense via an analysis of EPR §§ 34-41. The analysis arrives at the conclusion that the specific feature which discerns persons from self-conscious subjects in general indicates personhood as an institutional concept right from the start. Being an institutional concept itself, personhood can not function as a legitimating reason for the contents and structures of abstract right.

**KEYWORDS:** Person. Hegel. Philosophy of right.

## 1 INTRODUCTION

Philosophy has treated and still treats the concept of the person in a twofold manner: on the one hand, personhood appears as a theoretical category, a category within the theory of subjectivity in general; on the other hand, it appears as a category of practical philosophy, a category within the theory of right<sup>1</sup>. Within

---

\* This article has been translated into English and slightly revised by the author. The original German version is: SCHICK, Friedrike. Der Begriff der Person in Hegels Rechtsphilosophie. Überlegungen zu den §§ 34-41 der "Grundlinien der Philosophie des Rechts". In: *Recht ohne Gerechtigkeit? Hegel und die Grundlagen des Rechtsstaates*. Ed. by WISCHKE, Mirko and PRZYLEBSKI, Andrzej. Würzburg: Königshausen & Neumann, 2010, p. 65-81. I would like to thank both the editors and the publisher of this work for their kind permission to use the text for the English version.

\*\* Philosophisches Seminar, Universität Tübingen, Germany.

1 Here, as throughout this paper, the word "right" is taken in a wider sense than usually. Like the German word "Recht" it is meant to cover "the entire realm of

the first context, personhood is addressed as an (or the) essential attribute of deliberately acting subjects as such and treated in close connection with the concepts of self-consciousness, rationality, and self-determination, either as being defined through them or as an implication of some or all of these. Within the second context, personhood does not denominate an *attribute* of a subject but denominates a certain *status* of subjects in intersubjective dealings, roughly spoken the status of a bearer of rights and duties. This dual use is not due to a mere equivocation.<sup>2</sup> Quite the contrary, philosophers often try to derive personhood in the second sense from personhood in the first sense.

Hegel has been especially well aware of the pit-falls lurking on the way of such a programme. One of the two main pit-falls identified by Hegel consists in constructing circular justifications of the legal status of personhood on the basis of a definition of human subjectivity which is only meant to be universal but turns out to be just an abstract representation of the citizen of modern civil society, that is, of man already under the condition of the legal status of personhood. Hegel recognizes this failure in natural state theories of the early modern age. As early as in his 1802 essay on natural law,<sup>3</sup> Hegel criticizes these natural state theories for their “empiricist method”. He calls this method empiricist not for starting a theory of social reality from the experience of real societies, but for taking one feature of the experienced society arbitrarily as the explanatory

---

law and justice, both as philosophical concepts [...] and actual institutions”, as the translator’s preface of EPR notes; HEGEL, Georg Wilhelm Friedrich. **Elements of the Philosophy of Right**. Ed. by Wood, Allen W. Transl. by Nisbet, H.B. Cambridge: Cambridge University Press 1991, p. xxxviii.

- 2 For the distinction and the connection between both branches of the concept of personality see SPAEMANN, Robert. **Personen. Über den Unterschied von etwas und jemand**, Stuttgart: Klett-Cotta 1996, p. 9-42.
- 3 “Über die wissenschaftlichen Behandlungsarten des Naturrechts, seine Stelle in der praktischen Philosophie und sein Verhältnis zu den positiven Rechtswissenschaften”. In: HEGEL, G. W. F. **Werke in zwanzig Bänden. Theorie Werkausgabe (TW)**, vol. 2. Frankfurt am Main: Suhrkamp 1970, p. 434-530. For an English version see: **Natural Law: The Scientific Ways of Treating Natural Law, Its Place in Moral Philosophy, and Its Relation to the Positive Sciences of Law**. Trans. by Knox, T. M. Philadelphia, PA: University of Pennsylvania Press 1975.

reason for the experienced society as a whole.<sup>4</sup> The opposite pit-fall identified by Hegel consists in the attempt to derive legal and moral norms from the pure and abstract self-relation in which a subject is thought to stand to itself when purified from all oppositions and limitations known from the real lives of human subjects. Being just the abstract opposite of man's reality such an ideal essence of man cannot ground norms for man's real social life. In his essay on natural law, Hegel calls this method the "purely formal" one and recognizes it as the pivotal failure of Kantian and Fichtean idealism.<sup>5</sup>

In the light of his twofold critique of both empiricist and purely formal accounts, Hegel's own account of the concept of the person at the beginning of the first book of *EPR* recommends itself for closer study. If there is a way to steer clear of those pit-falls this way is more likely to be discovered by an author who has already detected and mapped the pit-falls themselves.

In this essay, I will mainly concentrate on *EPR* §§ 34-41, which are the opening parts of Part One, "Abstract Right". Due to its limitation, the essay does not cover the whole of Hegel's own attempt to derive personhood as a legal status from personhood as an essential feature or as the essential constitution of self-conscious agents. In order to investigate the whole story, we would have to take into account the introduction of *EPR* in much more detail, together with its basis in Hegel's psychology or, as he calls it, "philosophy of subjective spirit". Nevertheless, §§ 34-41 promise to be especially revealing, for these paragraphs do not only introduce the term "person" but also contain a transition from what it is to be a person (in § 34 and § 35) to personhood in the imperative mode, to a practical principle couched in terms of authorization and prohibition (§ 36 et seq.). In order to comprehend the transition itself, I proceed in five steps: The first two sections of the analysis are concerned with Hegel's initial determination of personhood, i.e., as "the will [...] free in and for itself, [...] in its abstract concept" (*EPR* § 34, p. 67), complemented by a short survey of the theory

---

4 See TW 2, 445.

5 See TW 2, p. 439.

of the will developed in the introduction of EPR. The third section, mainly concerned with § 35, further substantiates the claim that to be a person in Hegel's sense of the term is more specific than the concept of self-conscious agents, the specific difference leading to an apparent inconsistency within the concept of the person. This apparent inconsistency can be resolved, if personhood is understood as a principle of right, as is argued for in section four. A closer look into this principle of right shows that personhood, thus understood, turns out to be the counterpart of the concept of property (section five). The concluding part of the paper highlights the difference between this account and Hegel's own deduction.

## 2 THE 'FREE WILL IN AND FOR ITSELF' IN ITS 'ABSTRACT CONCEPT': THE CORE OF HEGEL'S THEORY OF PERSONHOOD

Hegel opens the main part of EPR with the following determination of what it is to be a person:

The will which is free in and for itself, as it is in its *abstract* concept, is in the determinate condition of *immediacy*. Accordingly, in contrast with reality, it is its own negative actuality, whose reference to itself is purely abstract – the *inherently individual* [in sich einzelner] will of a *subject*. In accordance with the moment of *particularity* of the will, it has in addition a content consisting of determinate ends, and as *exclusive individuality* [Einzelheit], it simultaneously encounters this content as an external world immediately confronting it. (EPR § 34, p. 67)

For comprehending this theoretical account, it is obviously crucial to understand what is meant by the term “the will which is free in and for itself, in its abstract concept”. Our first task will be to settle the basic concept of the will free in and for itself.

### 2.1 'THE WILL FREE IN AND FOR ITSELF'

What Hegel means by “the will that is free in and for itself” is evident from the introduction into EPR. Hegel uses the phrase for the will which has made the concept of the will and thus freedom

itself its own material determination. The will free in and for itself is “*the free will which wills the free will*” (EPR § 27, p. 57). In order to understand this conception of self-relation, one has to take into account Hegel’s distinction between two ways in which the will can be called free.

In the first place, Hegel categorizes freedom as the substantial, the constitutive attribute of the will in general. Freedom is to the will what gravity is to the body.<sup>6</sup> Free will is not one species or special mode of the will besides other species or modes but rather a pleonasm. In this sense, freedom characterizes the special form behaviour takes on when the behaving subject is a thinking one. Thinking subjects distinguish between what they are striving for and what is the case, between what is and what ought to be the case, and, in thinking, they do so in the form of judgment. It is this moment of thinking that discerns the formation, determination and realization of a purpose from the utterance of an instinctive drive.

From this first and basic sense of freedom – freedom as equivalent with self-determination in the form of practical thinking – Hegel distinguishes a second sense. In the second sense, freedom figures as the final adequate form of self-determination as practical thinking, a form of the will not just given in each and every conscious forming and pursuing purposes. Why does Hegel think that there is such a teleological distinction between freedom in general and freedom as real freedom, between freedom as the substance of the will and freedom as its final aim? Hegel claims that there is a logical tension implied in the concept of the will, i.e., in freedom in the first sense. This assumed contradiction consists in the combination of material determination and formal indeterminacy of the will.<sup>7</sup> According to this view, the content of the will seems to run counter to a presupposed true freedom identified as a pure self-relation opposed to any content. Hegel states clearly that this alleged true freedom would not be freedom at all, no manner of self-determination, of willing or acting, for you cannot *want*

---

6 See EPR § 4, Addition, p. 35.

7 See EPR §§ 5-7, p. 37-42.

without wanting *something*. His insight into the constitutive part of concrete intentionality notwithstanding, Hegel takes this for a kind of dilemma: determinate intentionality seems to be required and to be excluded by the concept of the will at one and the same time. For Hegel the solution of the alleged dilemma can not be found along the Fichtean route, i.e., not in fixing freedom as an ideal end of human acting never to be reached in humans' real actions.<sup>8</sup> Rather, Hegel thinks that the will in general *is* already the real unity of both moments of determination and indeterminacy. Yet he distinguishes between more or less advanced ways of how this unity can be realized. A first way is embodied in the will that is free only "in itself". In a will which is free only in itself freedom is in play just in the formal way of self-consciously adapting involuntarily formed strivings. At this level, freedom remains an essential potentiality still to be actualized. More advanced ways of realizing the unity of indeterminacy and determination for Hegel are reached in the forms of choosing between several strivings according to general criteria formed through reflection.<sup>9</sup> This systematic sequence of forms of the will culminates in the thesis we began with. For Hegel, the dilemma of determination and indeterminacy is adequately solved in self-determination towards freedom. In this form, the will is free "in and for itself", having freedom not only as the general form of wanting or pursuing something but also as the leading principle of what is wanted or pursued. From a formal point of view, this conclusion seems to meet both requirements: the 'free will which wills the free will' does not lack content, while the content does not have the shape of an external determination, either.

How this solution is to be thought, i.e., how freedom can indeed function not only as the form but also as the leading content

---

8 Compare EPR § 6, p. 39 et seq.

9 The whole series of forms of the will discussed in the introduction can also be understood as Hegel's critical re-reading of positions in the history of theories on will and freedom. For elaborate accounts thereof see, for instance: PIPPIN, Robert. "Hegel, Freedom, The Will. The Philosophy of Right (§§ 1-33)". In: *Klassiker Auslegen vol. 9: G. W. F. Hegel. Grundlinien der Philosophie des Rechts*. Ed. by Siep, Ludwig. Berlin: Akademie Verlag 1997, p. 31-54; KNOWLES, Dudley. *Hegel and the Philosophy of Right*. London and New York: Routledge 2002, p. 23-62.

of the will has to be developed in EPR as a whole. Two issues are clear at the outset: First, freedom cannot become the content of the will by replacing all other contents or aims of human beings. After all, freedom never ceases to be the form of wanting something, thus requiring a content which is distinguishable from the form as such. Freedom cannot replace what it is intrinsically related to. Secondly, freedom thought as content of the will obviously cannot be exhausted in acting self-consciously. To think so would mean to ignore Hegel's introduction. How this peculiar self-relation of the "free will which wills the free will" really is to be thought gets its first answer in the theory of the person, beginning with § 34, the section cited above.

## 2.2 THE WILL FREE IN AND FOR ITSELF "IN ITS ABSTRACT CONCEPT"

As § 34 states, the will free in and for itself makes its debut in a certain determination: in its "abstract concept" or in the "determination of immediacy". How are "abstraction" and "immediacy" to be understood in this context? Two aspects can be distinguished. First we can understand abstraction and immediacy as self-reflective characterizations of the initial stage of the theory, the stage in which the concept of the will free in and for itself has been introduced by argument but not yet developed in its implications. However, the text makes it quite clear that "abstract" and "immediate" are predicated not only of the stage of theorizing but also of the stage of the object of the theory. The will free in and for itself is meant as being in a state of 'abstraction' and 'immediacy' itself. What does that mean? According to § 34, abstraction and immediacy are characteristics of a certain constellation of universality, particularity, and singularity of the will free in and for itself. In this constellation, the universal moment is and is not separated from the moment of particularity.

The *universal* here occurs as just one determination besides others, while distinguishing itself as the universal, i.e., as the comprehensive core for the respective particular determinations. In the case of free will, the universal moment consists in the self-

relation of the free will as free will, whereas the particular moment is constituted by the range of intentional contents, the individual's needs, wishes or purposes. It seems as if the willing subject has found his adequate self-relation apart from his particular purposes and also apart from his relationships to his environment. This form is aptly called "immediate" as it is a simple self-relation not mediated through contents or objects; and it is called "singular in itself", because, despite its being detached from its reality, it is actual, the will of a living subject. As actual, the free will is no longer a mere potentiality, but somehow it seems to be actual not *in* the particular acting of self-consciously acting subjects, but separately, opposed to their reality as concretely wanting and acting subjects.

On the other side, the *particular* contents of the will have not vanished. They reappear as *indifferent* relative to the one universal moment counting as the essential determination of the will. This indifference holds in two respects. First, the particular contents are not themselves specifications of this universal, that is, they are not divisions and subdivisions of the one project of freedom, but defined independently from the universal. In other words, the universal 'free will' is not related to those particular contents as their common nature. Nevertheless, its universality manifests itself in relation to all particular purposive action, for otherwise it would not be the actual universal as which it is already characterized. That means, particular purposive action will have a relativized status, and this is the second sense of indifference concerning the moment of particularity. The particular contents are presumed to be invalid if not subordinated to the universal presupposed apart from them.

In this constellation, the universal is indeed neither implicated in the particular as a matter of course nor does it simply substitute the latter. Rather the universal seems to function as the supreme condition the particular has to meet in order to count at all.

The relationship between such an abstractly free will and the outer world mirrors the internal relationship between universal and particular within the will. The relation to nature appears as practically subsumed under the universal moment of the will, too. Qualified in this way, the will relates to nature in the form of private property, as will show up in § 39 et seq.

To sum up briefly, freedom as content of the will first appears in the peculiar form of an abstraction in the practical sense. As I would like to show in the following, abstraction in this sense is indeed the defining mark of the concept of the person within the context of abstract right. Personhood being identified with the moment of universality addressed in § 34, persons turn out to be self-conscious subjects under the rule of abstract right.

### 2.3 THE PERSON AND ITS IMMANENT OPPOSITION

The *universality* of this will which is free for itself is formal universality, i.e. the will's self-conscious (but otherwise contentless) and *simple* reference to itself in its individuality [*Einzelheit*]; to this extent, the subject is a *person*. It is inherent in *personality* that, as *this* person, I am completely determined in all respects (in my inner arbitrary will, drive, and desire, as well as in relation to my immediate external existence [*Dasein*]), and that I am finite, yet totally pure self-reference, and thus know myself in my finitude as *infinite, universal, and free*. (EPR § 35, p. 67 et seq.)

Concerning this section, which explicitly introduces the term “person”, I would like to highlight two aspects. First, what has already been indicated in § 34 is confirmed in § 35: To be a person in the here relevant sense of the term is something more specific than just to be a self-conscious agent. Secondly, personhood entails a kind of self-diremption of the subject which, later on, shall be explained in terms of a social or, more precisely, a legal constraint.

The first point is emphasized by Hegel himself. In his remark on § 35, he distinguishes the definition of personhood just given from a more general concept of practical subjectivity, which is defined through being aware of oneself in the mode of thinking in willing and acting. For Hegel, being thinkingly aware of oneself in willing and acting is a generic presupposition of being a person but not the specific definition of personhood itself. Self-conscious subjects need not be persons, whereas persons must be self-conscious subjects. The crucial point defining persons seems to lie in the *definition of the self* according to which a subject is conscious of itself.

“Personality begins only at that point where the subject has not merely a consciousness of itself in general as concrete and in some way determined, but a consciousness of itself as a completely abstract ‘I’ in which all concrete limitation and validity are negated and invalidated.” (EPR § 35, p. 68)

Taking into account the first propositions of “Abstract Right” together with this differentiation, one can not identify this peculiar self-relation with the general capacity of self-referring by the pronoun of the first person singular.<sup>10</sup> For sure, to refer to oneself via “I” or “me” does not contain any descriptive elements concerning the subject alias the object of such an act of self-reference. Thinking or saying “I” we non-descriptively make use of the “simple relation”, i.e., of the numerical identity of subject and object of such an act of referring; but while this way of referring as such expresses the referring subject as a thinking one, it does not yet determine as whom the self-referring subject takes himself. Nobody contradicts himself by opening a proposition with “I” and continuing it with a “concrete limitation and validity” in the predicate. Referring to oneself in the abstract manner is not to be confused with defining oneself as an abstract ‘I’, and only the latter is treated as qualifying subjects to persons by Hegel.

In other words, the distinction between person and subject does not coincide with the distinction between subjects who think and subjects who don’t. For sure, in every voluntary act the subject of this act is thinkingly aware of himself. As a voluntary agent I distinguish the condition I am actually in from the condition I am aiming at, and I know myself as the author of the change through which my aim gets objective realization. But all of these three

---

10 In this regard, the present analysis differs from Michael Quante’s commentary on EPR §§ 34-40, who also explicates Hegel’s concept of the person as a status concept, but interprets § 35 as an explication of the capacity of self-consciousness in the form of self-reference via the pronoun of the first person singular, and, in turn, this capacity as the reason for that status. See QUANTE, Michael. “Die Persönlichkeit des Willens’ als Prinzip des abstrakten Rechts. Eine Analyse der begriffslogischen Struktur der §§ 34-40 von Hegels Grundlinien der Philosophie des Rechts“. In: SIEP, Ludwig. *Klassiker Auslegen* vol. 9, p. 73-94, here: 83.

moments – stating and judging the status quo, anticipating the end, and author-consciousness – still require to be completed by content.

This point remains valid when the abstract self-relation is interpreted as a practical one, that is, when the subject of willing and acting itself is integrated in the description of the purpose. We may generally say that the subject of a voluntary action is interested in himself. This is due to the fact that the aim of acting is his and that his aims help to constitute what it is to be him. But, as before, this practical self-relation includes that the subject is interested in himself as a concrete subject, “determined in one way or the other”, whereas, when it comes to personhood, the subject gets into the focus of interest apart from his purposes and subjective or objective conditions.

This is the first, limiting result: “Person” in the sense which is relevant at the beginning of “Abstract right” does not denominate general features of subjects of will and action. To be a person is related to those general features – this is where the source of the tendency for identifying both lies –, but personhood turns out to be a specific relation of the will to itself, to its own content, and to its environment. What is specific for persons is the fact that to be the will of an individual subject is elevated to count as the very substance of voluntary actions.

Determined as a person the subject does not cease to be a determined subject, a subject with an individual life story, a particular social status, particular inclinations, interests, resources and techniques. But seen and treated as a person, the subject does not count as determined in those respects. Whatever he is aiming at, whatever may or may not be at his command in order to realize his aims, the aspect in which he counts is detached from all of these aspects and linked only to the structural fact that the individual thinking subject stands to himself as to the primary centre of reference in all practical thinking. This feature is set as the essential, the leading point of view concerning practical affairs in general, be they whatever they are.

Hegel accentuates the fact that this peculiarity implies a certain self-diremption of the subject into two opposing sides, and this is the second aspect concerning § 35 to be considered now. What

I am, what I am aiming at, what I think, what the conditions I live in are like – in all these respects I am “determinate” and “finite”. But I may be as dependent as possible, my life as miserable as could be, as subjectively and objectively confined – this does not hinder my being quite the opposite of all this: not only this *individual*, but as an individual the full-fledged instantiation of the *universal*; not as *finite* (that is, essentially determined by what I am not), but as *infinite*; not as *dependent*, but as *free*. This kind of universality, infinity, and freedom is one that is valid and actual whatever the status, the luck or misery, the merits or failures of the subject may be. This immediate ‘coincidentia oppositorum’ within the same subject characterizes subjects that are persons and discerns persons from subjects which are not.

Let us now look a little bit closer to this opposition between universal and particular within the concept of the person. Hegel does not say so, but the concept of the person now seems as though it were logically impossible, dissolving itself by the contradiction that the purely formal self-relation both requires and excludes the concrete reality of the subject. Without caring about something, the subject cannot care for himself, but no concrete purpose can count as the adequate realization of the purely formal self-relation, because the latter excludes material concretion. Taken from the other side, the determined will already has the form of free subjectivity – what I want is in the form of being mine and being known to be mine by myself; but in having a determined content I am a definite subject and not an abstract particular of subjectivity as such.

This apparent contradiction could not be resolved by sorting its sides into a ‘true’ essence remaining stable in otherwise troubled waters and an ‘untrue’ appearance of the subject. Kant’s critique of the paralogisms coming along with the former metaphysics of the soul has definitely put an end to this attempt. In a similar vein Hegel’s *Science of Logic* criticises the conception of an essence that would not appear as itself in what should be its appearance. Such an essence cannot have been the essence of this appearance in the first place.<sup>11</sup>

---

11 See TW 6, 124.

How the apparent contradiction within the concept of the person is really resolved becomes clearer when we turn to the two steps of reasoning which immediately follow the explication of the concept of the person as such, namely first the identification of being a person as a *relationship of right*, and secondly the step to the concept of *property*.

## 2.4 PERSON AND RIGHT (EPR §§ 36 – 38)

With the turn to the sphere of right it becomes clear that the impression of logical impossibility has its source in an understanding of the concept of the person which takes it both too individually and too generally. If the concept of the person were meant to grasp the individual subject taken in isolation and in its general characteristics as a self-conscious subject of action, this concept would indeed be inevitably self-contradictory. According to this assumption, we were faced with an individual agent who absolutely cares for himself and, at the same time, could not care less for his own purposes. If this can be the picture of a real subject at all, it surely is the picture of a self-destructive one. This impression of impossibility disappears as soon as the concept of the person is understood as a concept of right, as I would like to show now, following Hegel's own shift to the sphere of "commandment" and "right":

Personality contains in general the capacity for right and constitutes the concept and the (itself abstract) basis of abstract and hence *formal* right. The commandment of right is therefore: *be a person and respect others as persons*. (EPR § 36, p. 69)

What is new in this section? The abstract self-relation introduced as the defining core of personhood can no longer be addressed as some particular intention which the subject pursues over and above all of his other intentions. Personhood here does not function as a *purpose of the individual* but as the *social validity condition* of the individual's pursuing purposes at all. It is still true that the subject can not just want or pursue without wanting or pursuing something; but now we can see that to be a person does

not require the contrary. This is due to the fact that the concept of right entails the differentiation between what is right according to right – according to what is allowed or commanded or forbidden – on the one side and what is aimed at by the agent himself on the other. The puzzling question was how the subject could pursue his own will in the abstract manner of a pure self-relation. Resetting the stage within the field of right helps to disentangle the levels of the individual will and a general command addressed to it. From this perspective, the problematic abstraction can indeed be indifferent to the concrete reality of the will precisely in being an external practical determination of the subject as a subject under the commandment of right.

This practical determination has two interconnected aspects, the aspect of *authorization* and the aspect of *obligation*.

First, the practical definition of subjects as persons defines any individual subject of a will as a possible cause of producing sustainable acts, that is, acts that are socially valid, acts that hold their ground against the will of anybody else. In this respect a system of right which has the principle of personhood as its core principle differs from systems of right which assign the status of personhood conditionally. The universal concept of the person does not discriminate between the free and the unfree, between masters and slaves. As practical subjects all subjects are set as equal, namely equal as free, each bestowed with the license to act for himself. This unconditional form makes the individual subject as such a person and the right a formal or abstract right.

Secondly, this authorization has as its reverse an equally fundamental aspect of obligation. In § 36 this shows up in the imperative form of the “commandment of right”. As Hegel writes, the principle dictates not only the recognition of *others* as persons, but also to *be* a person. This has to be explained, for one might object that there is no need, and perhaps no sense, to obligate someone to treat himself as the determining subject, the centre of his own practical perspective. For sure, personhood, understood as a principle of right, does not demand any particular service from the subject. It does not bind his will to a master or to an alleged good cause. Nevertheless, it is binding. The moment of binding is

already implied in the authorization itself. Being practically defined as a possible cause of realizing itself in socially valid acts, the will is also practically defined as not being the real cause of the validity of those real acts. There are conditions between what I want and the objective validity of what I do, conditions set by law. In this sense the will of the person, this purely self-related will, turns out to be a conditioned will.

Seen from the perspective of abstract right, the status of the *particularity* of the will, that is, the status of definite purposes of the individual subject, becomes clearer, too. Its proper characteristic has been the ambiguity of being both indispensable and indifferent. This feature seemed hardly intelligible as long as we regarded it from the perspective of the individual subject alone. How could the individual subject be indifferent to his very own purposes? Within the framework of formal right this indifference becomes intelligible. As we saw, formal right consists in a legal setting which does not prescribe positively defined purposes or actions, no contents for the will, but rather general conditions for the mode of aiming at the realization of purposes. Relative to formal right, the determination of the will – what I want and how I came to want just this or that – is set (i) as something that has not developed from the principle of right itself, but is presupposed by the principle, and (ii) as something that does not count according to what it is, but according to whether the subject meets the prescriptions laid down for realizing purposes in general. The *criterion* decisive for the *validity* of particular interests, of particular utility and well-being, does not belong to the sphere of particular interest, utility and well-being itself, hence the contents of this sphere appear as indifferent presuppositions for the criterion itself. As Hegel puts it:

The *particularity* of the will is indeed a moment within the entire consciousness of the will (see § 34), but it is not yet contained in the abstract personality as such. Thus, although it is present – as desire, need, drives, contingent preference, etc. – it is still different from personality, from the determination of freedom. – In formal right, therefore, it is not a question of particular interests, of my advantage or welfare, and just as little of the particular ground by which my will is determined, i.e. of my insight and intention. (EPR § 37, p. 69)

So far, personhood understood as the first category of abstract right defines a formal authorization and confinement of the individual will. In doing so, it defines formal outlines of *legal relationships between individual wills*. This intersubjective dimension of personhood shall be considered now. If each individual will within a society counts as being self-related in the abstract way so far described, this abstract self-relation also counts as the highest principle to be obeyed in intersubjective affairs. To acknowledge the other as a person is set as the highest restrictive condition in dealing with one another. What has to be unconditionally respected concerning the other individual is separated from the particularity of his will. I may or may not aim at promoting his interests; my subjective motives as well as his interests belong to the sphere of contents which count as contingent relative to the principle of formal right. What is set as necessary instead of contingent is the command to respect the other as a person, i.e., to accommodate his abstract self-relation in our dealings as well as he is bound to accommodate mine.

This command of mutual recognition as persons has two implications. First it implicates a *permanent mutual dependency* between the individuals. Being a way of codifying mutual engagements the principle of mutual recognition presupposes that the members of society stand in need for engaging others for their own affairs. The universal, infinite and free person thus is by no means self-sufficient in respect to other persons. Secondly this interdependence is set in the *form of an exclusive self-reference of the individual*. The individual has the license to act for his own sake. Thus the subject as person appears both as formally independent and as materially dependent from others. The individuals run their social connection as mutually independent agents. The other comes into my view not only as someone I depend upon but also as someone whose practice is independent from mine and thus will only contingently be in accordance with my needs. In this way, the other comes into my view as a latent threat or as an actual constraint of my freedom. Hence to get my personal freedom of action secured against him appears as a necessary condition of my tracking purposes. Within

the framework of personhood as the first principle of abstract right, intersubjectivity is defined not as the positive identity of a common purpose and its collaborative organization but as a connection of individual users of individual scopes of freedom which exclude one another while overlapping one another in terms of needs or particular interests.

The question has been how the abstraction of pure self-relation which is constitutive for being a person can be immediately *actual* while remaining the *abstraction* it is. At the present stage of the argument this question is partially, but not fully answered. Up to this point, the analysis of the concept of the person has yielded the conclusion that subjects as persons are connected with one another as both mutually dependent and formally independent from one another, their interactions being thus determined as a kind of ‘border traffic’ between scopes of individual freedom. We need to know more about those borders and about those interactions in order to understand personhood as the social principle it already has turned out to be. What we already know about these borders and interactions is the fact that they are governed by the command of mutual recognition as persons. Now this command is essentially a command in the *negative sense*, a prohibition. (This primarily negative character of the principle is marked by Hegel in EPR § 38.) You must not offend against the personhood of the other subject in dealing with him. Thus it is prohibited to handle conflicting interests by violence, i.e., in a way which directly negates the other as subject of a will. In some sense, however, the principle cannot be exhausted in a purely defensive or limiting manner, because it is meant to define the *universality* relative to all particular goal settings and relative to all particular relationships between persons. In view of this universality requirement, the principle of personhood can not only set an outer limit to intersubjective dealings which would follow their own rules independently from the principle itself.

Along this line of reasoning, it shows up that freedom as abstract self-relation would still be underdetermined if understood solely as a reciprocal limitation of individual scopes of free action, as if freedom itself had no impact upon what goes on *within* the limits of those individual scopes. In other words, freedom in the

context of personhood does not only constitute a quantitative but also a qualitative determination of willing and acting.<sup>12</sup>

But how can the principle of personhood be understood as such a positive determination? Obviously this can not be explained by recurring to the level of the particularity of the will. Particular needs and interests of the subjects now defined as persons are positive determinations, but are now set as only conditionally valid and moreover as tainted with antagonism, as non-united. Nevertheless the principle of personhood has to assert itself in the way of material interactions, interactions guided by particular interests of the agents involved; it is not exhausted in being a rule for refraining from certain actions, but is a rule for how to interact. The solution to this puzzle must be that the perspective of particular interests gets subordinated under the perspective of abstract self-relation in respect to one and the same matter. This matter can not be found in the subjective sphere of willing, not in the inner life of felt needs, wishes, motives or aims, because the principle of personhood is not concerned with them. So there is only one thing left: the counterpart of the subjective sphere, the objective world, i.e., the world of objects to which the needs, wishes and motivated aims are directed. Those objects are capable of standing in the double relation to the will we are looking for. An object can function as an object of desire for one subject and at the same time function as the outer sphere of the abstract freedom of another. It is in this way that the “external world immediately confronting it” (EPR § 34) comes into play within the sphere of abstract right. It comes into play as *property*.

---

12 According to Hegel the positive content of freedom as a category of right can not be defined solely in terms of reciprocal limitation of freedom. In this sense he criticizes Kant's version of the principle of right: “In the Kantian definition [*Bestimmung*] of right [...], which is also more widely accepted, the essential element [*Moment*] is ‘the *limitation* of my freedom or arbitrary will in such a way that it may coexist with the arbitrary will of everyone else in accordance with a universal law’. On the one hand, this definition contains only a *negative* determination – that of limitation; and on the other hand, the positive [element] – the universal law or so-called ‘law of reason’, the consonance of the arbitrary will of one individual with that of the other – amounts simply to the familiar [principle of] formal identity and the law of contradiction.” (EPR § 29 remark, p. 58)

## 2.5 PERSON AND PROPERTY (§§ 39-41)

What did not apply to the intentional content of a will applies to property, as its primary definition is to be ‘something of my own’. Although the intentional content of my will is always something of my own, too, *what* I want and *that* I want it remain two sides of wanting something. In property, in contrast, to be mine means to be under my exclusive command, and this sort of being something of my own does not come as an accidental mode, but as “the” determination of a thing, insofar as it is property.

As property the object is related to the subject who is its owner not in being the objective correlate to his subjective particular will – not as something he needs for using it himself –, and the subject as a property owner does not relate to the object as a particular will in need of just this kind of object, but as the authority which determines what is to be done with this object, whatever this might be.

Thus the relation of ownership defines a relation between subjects. Relative to other subjects, the owner is set as the instance that has the exclusive right to affirm or to forbid the use of the object by any other subject. Property constitutes definite legal limits and conditions for scopes of action, scopes for the realization of concrete freedom. This kind of limitation and conditioning indeed affirms and realizes abstract freedom – the freedom of the person – as the universal normative condition for every exertion of concrete freedom.

In this way, the concept of property provides the missing part of the answer to the question of how the particular will can be thought of as subordinated under abstract freedom, which characterized the form of personhood of otherwise concrete subjects. Where property is presupposed, to take possession of something, i.e., to make it accessible and ready for use, is set under the social condition of possession in the sense of ownership. To need an object that belongs to someone else entails the need to overcome the exclusion in accordance with the declared free will of the owner. To overcome the exclusion must reaffirm the owner as such. In its most

elementary form this reaffirmation consists in the condition that the owner has to agree to the non-owner's access to the object. A more elaborate form thereof is constituted by *contractual exchange*. To give up property rights concerning a certain object here means to be re-established as proprietor; the subject gives away something in order to achieve an equal property in another concrete form – another object, useful for other purposes, but equal in terms of property.<sup>13</sup> While subjective purposes as motives for taking part in an exchange may still be directed towards the particular use of things, property remains the constant form in changing material content and remains to be the absolute condition for every concrete use of things. Thus property presents itself as the objective complement of personhood in functioning as an end in itself opposed to particular ends, which in turn find their limiting condition in the real limits of property.

As the concept of property correlates to the concept of person, the institution of property has its specific character not in terms of the general relationship between man and nature, but in specific relationships between man and man.

Property, in view of its existence as an external thing [*Sache*], exists for other external things and within the context of their necessity and contingency. But as the existence of the *will*, its existence for another can only be *for the will* of another person. This relation [*Beziehung*] of will to will is the true distinctive ground in which freedom has its *existence*. (EPR § 71, p. 102)

---

13 See the first determination of the concept of the contract in EPR: "That [kind of] property of which the *aspect* of existence [*Dasein*] or *externality* is no longer merely a thing [*Sache*] but contains the moment of a will (and hence the will of another person) comes into being through *contract*. This is the process in which the following contradiction is represented and mediated: I *am* and *remain* an owner of property, having being for myself and excluding the will of another, only in so far as, in identifying my will with that of another, I *cease* to be an owner of property." (EPR § 72, p. 104)

### 3 THE PERSON – MOMENT OF OR REASON FOR ABSTRACT RIGHT?

Looking back to the explication of the concept of person just developed, we can remark a difference between Hegel's thought and the considerations here presented. The course here presented arrives at the same topics, but it leaves the programme of grounding forms of right in personhood as a category anterior to right. If the foregoing analysis is on the right track, to be a person in the Hegelian sense does not function as a reason for a norm of right, neither as legitimating nor as explaining. The explanation runs quite the opposite direction. Trying to make sense of a self-relation of the will wherein abstract freedom plays the leading part led to decode it as a category of right. It was not before understanding personhood as an elementary legal status, with its correlate in the status of property for things related to a will thus defined, that the concept of the person itself became intelligible. Without this identification of kind, the concept of the person either fell short of the specific constellation of universal, particular and singular moments of the will exposed as the constitutive character of personhood by Hegel or fell prey to a contradiction. On the one hand, to be a person in the Hegelian sense can not be just the same as thinking and acting in self-conscious ways – to identify these two concepts leaves the concept of a person under-determined. On the other hand, the concept becomes self-contradictory if we ascribe the practical abstraction from particular purposes immediately to the individuals who entertain those purposes. Both extremes are avoided when personhood is understood as a category of right, of legal status, right from the start. The consequence is that personhood in the here relevant sense can not function as the instance in which this very status is founded.

In this respect, the arguments presented in this article differ from Hegel's position. One passage in which the difference shows up very clearly concerns the transition from person to property. Hegel writes:

The person must give himself an external *sphere of freedom* in order to have being as Idea. The person is the infinite will, the will

which has being in and for itself, in this first and as yet wholly abstract determination. Consequently, this sphere distinct from the will, which may constitute the sphere of its freedom, is likewise determined as *immediately different* and *separable* from it. (EPR § 41, p. 73)

The significant turn occurs in the first sentence. When we apply Hegel's definition of 'idea' as the unity of concept and reality, we obtain the following statement: Without his external sphere, the person is but the concept which gains its reality by giving the right sort of reality to itself. Conceptualized in this way, the connection between person and property seems to be a teleological one. The person can not be real without being proprietor not because personhood and property are two sides of the same coin but because reality must help to realize the concept.

Assigning person to concept and property to reality does not seem convincing, even when considered according to Hegel's own arguments. Although it is true that the terminus 'person' is attached to subjects and the terminus 'property' is attached to objects, and although it is also true that the will of a subject entails its realization, this linkage does not cover Hegel's assignment. To count as property is not just an objective character of objects, but marks exclusive access rights of a subject concerning the object; and on the other side personhood already includes that it is a relationship between subjects which is mediated by exclusive access rights of subjects to objects.

Hegel thus transposes a conceptual connection into a teleological relation. In doing so, he vests the course of the theory in the form of grounding. Property seems to be shown as being necessary for something else which in turn has shown to earn existence in the first place. But this runs counter to the fact that persons in the sense of the preceding sections are not presupposed to property. To define persons in this sense is but an alternative way to define proprietors.

What does follow from this difference between Hegel's explicit form of proceeding and what I tried to show as the real course of proceeding? Does that mean that any attempt to ground personhood as a legal status on personhood understood

as something anterior to right must fail? Certainly one cannot conclude from the fact that Hegel's teleological reasoning is in fact defective that every such an attempt must fail. But the study of the beginning of 'Abstract Right' also shows that the range of possibilities decreases. The simple solution of grounding right on general features of the subjects designed to become the bearers of rights and duties is ruled out as long as the right to be grounded has the form of subordination, of practical subsuming – a form essential to abstract right. A constitution of freedom for which the practical subsuming of the concrete practical subjectivity is the right, the adequate form could only be grounded in an abstraction from practical subjectivity which would repeat the practical subsuming in the form of a vicious circle in reasoning, thus blundering once more into the pit-fall of trying to legitimate the whole by one of its parts.

This, however, need not be the only way in which subjectivity can be explored in respect of normative consequences, i.e., of right in the widest sense of right-and-wrong. A hint in this direction can be seen in Hegel's characterization of the person as "the will which is free in and for itself, as it is in its *abstract* concept" (EPR § 34, p. 67). Where this essay has been concentrated on explicating the abstraction of this immediate form here indicated, there is also a distinction between the concept of the will free in and for itself and its first appearance within abstract right. Hegel's own position clearly is that to be a person in the sense of abstract right is an indispensable form of being free in and for oneself; but his position also entails that this is just one and, what is more, an abstract way of being free in and for oneself. The specifying attribute of "abstract" indicates a deficit which could turn out to be not only a deficit in thinking about social reality but also a deficit in the social reality corresponding to this thought itself.

## REFERENCES:

HEGEL, Georg Wilhelm Friedrich., „Über die wissenschaftlichen Behandlungsarten des Naturrechts, seine Stelle in der praktischen Philosophie und sein Verhältnis zu den positiven Rechtswissenschaften“

In: HEGEL, G. W. F. **Werke in zwanzig Bänden. Theorie Werkausgabe** (TW), vol. 2. Frankfurt am Main: Suhrkamp 1970, p. 434-530. In English: **Natural Law: The Scientific Ways of Treating Natural Law, Its Place in Moral Philosophy, and Its Relation to the Positive Sciences of Law**. Transl. by Knox, T. M. Philadelphia, PA: University of Pennsylvania Press 1975.

HEGEL, Georg Wilhelm Friedrich. **Elements of the Philosophy of Right**. Ed. by Wood, Allen W. Transl. by Nisbet, H.B. Cambridge: Cambridge University Press 1991.

KNOWLES, Dudley. **Hegel and the Philosophy of Right**. London and New York: Routledge 2002.

SPAEMANN, Robert. **Personen. Über den Unterschied von etwas und jemand**, Stuttgart: Klett-Cotta 1996.

PIPPIN, Robert. "Hegel, Freedom, The Will. The Philosophy of Right (§§ 1-33)". In: **Klassiker Auslegen vol. 9: G. W. F. Hegel. Grundlinien der Philosophie des Rechts**. Ed. by Siep, Ludwig. Berlin: Akademie Verlag 1997, p. 31-54.

QUANTE, Michael. "Die Persönlichkeit des Willens' als Prinzip des abstrakten Rechts. Eine Analyse der begriffslogischen Struktur der §§ 34-40 von Hegels Grundlinien der Philosophie des Rechts". In: SIEP, Ludwig. **Klassiker Auslegen vol. 9**, p. 73-94.

WISCHKE, Mirko and PRZYLEBSKI, Andrzej (eds.): **Recht ohne Gerechtigkeit? Hegel und die Grundlagen des Rechtsstaates**. Würzburg: Königshausen & Neumann, 2010.