

The meaning of exception in Hegel's *Philosophy of Right**

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Abstract: The terminological meaning of exception (*Ausnahme*) has not got much attention either in Hegel's *Philosophy of Right* or in his *Science of Logic* even though it has a constitutive function in these texts. To prove this, I will show, first, how Hegel uses the *Science of Logic* as a presupposition for the *Philosophy of Right*. Second, I will point out some systematical difficulties related thereto. Our focus lies on his *Philosophy of Right* but in order to ensure a better understanding of our subject-matter, I will show that the logical term 'exception' has a constitutive function within the *Logic*. Afterwards I describe briefly the structure of the *Philosophy of Right*, so I can propose an answer to the following questions: In what way is it possible to speak of an "exception" considering the different levels of this work? And in what way is the "exception" constitutive of it?

Keywords: exception - limit - finitude - being-for-itself

1. The Logic as a presupposition for the Philosophy of Right

In the preface of the "Elements of the Philosophy of Right" Hegel already stresses the systematical link between the *Philosophy of Right* and the *Science of Logic*. I will quote one of the passages where Hegel states it openly:

Since I have fully developed the nature of speculative knowledge in my *Science of Logic*, I have only occasionally added an explanatory comment on procedure and method in the present outline. Given that the subject-matter is concrete and inherently of so varied a nature, I have of course omitted to demonstrate and bring out the logical progression in each and every detail. But on the one hand, it might have been considered superfluous to do so in view of the fact that I have presupposed a familiarity with scientific method; and on the other, it will readily be noticed that the work as a whole, like the construction [Ausbildung] of its parts, is based on the logical spirit. It is also chiefly from this point of view that I would wish

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this treatise to be understood and judged. For what it deals with is science, and in science, the content is essentially inseparable from the form.¹

The *Philosophy of Right* exists only in elements, as a compendium, as e ‘elements’ or as ‘outline’² (*Grundrisse* or ‘*Grundlinien*’). This means that it is not a fully developed, coherent and systematically closed piece of work. The derivation of ideas is not fully presented on that occasion, and therefore its interpretation remains rather difficult and uncertain. In the passage I just quoted, Hegel points out that “the work as a whole, like the construction [*Ausbildung*] of its parts, is based on the logical spirit” and that “from this point of view” he would “wish this treatise to be understood and judged”. But this wish remains, as I will claim, unfulfilled, given the controversy in the research community. And even when one wants to take the logical presuppositions into serious consideration, the question remains of how this ought to be carried out. For instance, Michael Theunissen related the three parts of the *Philosophy of Right* to the three books of the *Science of Logic*, indicating that the ‘Abstract Right’ would correspond to ‘The doctrine of Being’; ‘Morality’ to ‘The doctrine of Essence’; and the ‘Ethical life’ to ‘The Doctrine of the Concept’.³ In opposition, I would like to suggest a closer look into the structural proximity between the *Philosophy of Right* and *The Doctrine of Being*. This would mean that ‘abstract right’ and ‘morality’ are, at first, two qualities that reestablish themselves in ‘civil society’ – that is, in *Quantity* –, but which, in conclusion, should – but never really can – be realized in the State as the ‘relation of measure’ (*Maßverhältnis*).

The *Doctrine of Being* operates fundamentally with the incomplete forms of totality (of unity), which, in a certain sense, coexist only exteriorly with one another, and which are resistant to being entirely mediated. These totalities cannot let go of their ‘being-for-itself’, but as forms of incomplete mediation; they do not only signify irrationality, but also bring to light a legitimate claim directly turned to social reality. The concept of exception, in my view,

¹ HEGEL, G.W.F., **Elements of the Philosophy of Right**. Cambridge: Cambridge University Press, 1991, p. 10. See also § 2, Addition, page 28: “A familiarity with the nature of scientific procedure in philosophy, as expounded in philosophical logic, is here presupposed.”

² Cf. HEGEL, **Elements of the Philosophy of Right**, p. 9.

³ “Hegel selber konstruiert das Verhältnis von bürgerlicher Gesellschaft und Staat nach dem Modell des Zusammenhangs von Reflexionslogik und Begriffslogik. Genauer gesagt: In den begriffslogischen Rahmen der Sittlichkeit, die als die absolute Grundlage einerseits das seinslogisch gedeutete abstrakte Recht und andererseits die reflexionslogisch verstandene Moralität zu ‚Momenten des Werdens‘ hat, zeichnet Hegel die Figur der bürgerlichen Gesellschaft als eine Besonderheit ein, die, wiewohl sie an sich ja eine Bestimmung des Begriffs ist, zu der im Staat verkörperten Allgemeinheit nur in einem ‚Reflexionsverhältnis‘ steht. [...]“ (THEUNISSEN, M. **Sein und Schein, Die kritische Funktion der Hegelschen Logik**. Frankfurt am Main: Suhrkamp Verlag, 1980, p. 473)

is the one which corresponds the most to this theoretical structural relation and, in light of that hypothesis, the present investigation aims at constituting a concept of exception better fit for the *Philosophy of Right*. As far as I could see, the *Hegel-Forschung* has not given much attention – or any at all – to the presence, within the *Philosophy of Right*, of the logical structure of the ‘being-for-itself’.

The investigations on the concept of exception (*Ausnahme* or *Ausnahmestand*) I was able to review tend to refer to Carl Schmitt’s famous sovereignty concept, according to which “the sovereign is he who decides on the question of the state of exception”.⁴ One could indicate Giorgio Agamben’s work as the most prominent of them. Agamben’s focus lies, however, on the “no man’s land between public right and political facticity, between the order of law and life”,⁵ and not on the logical determination of the exception as a ‘relation of limit’ (*Grenzverhältnis*). Jean-François Kervegan, in turn, has shown that “although Hegel and Schmitt both deny normativism and emphasize the pure political point of view, their ways of thinking are fundamentally different”.⁶ However, Kervegan is not systematically concerned with the Doctrine of Being. He rather assumes that in the *Science of Logic* the concept of ‘effectivity’ (*Wirklichkeit*) offers a turning point “through which the necessity process which constitutes the whole of the Objective Logic is then turned into a self-mediation which characterizes properly the *Doctrine of the Concept*.”⁷ My point is not to rule out this understanding – although one could ask whether it was not the concept of ‘Fundament’ (*Grund*) what was responsible for such a turn. I see the structures of the Logic of Being as determinant of the *Philosophy of Right*, however, and that precisely on account of the first part of the Objective Logic, where Hegel explores in detail finite structures. Approaches such as this of Kervegan, who connects the *Philosophy of Right* to the *Doctrine of the Concept*, should, as I will argue, be seen as very problematic.⁸ In the *Philosophy of Right* one does not deal with complete mediations of the different spheres – there is no ideal State in the sense that all the imperfections of ‘civil society’ should be completely sublated within the highest level. The political, individual, self-determined constitutional State develops itself indeed to the maximum of a “*being-for-itself* which has incorporated the subsistent differences *into*

⁴ SCHMITT, C., *Politische Theologie, Vier Kapitel zur Lehre der Souveränität*. Berlin 1990, p. 11.

⁵ AGAMBEN, G., *Ausnahmestand, Homo sacer II.1*. Frankfurt am Main 2004, p. 8.

⁶ KERVEGAN, J.-F., „Politik und Vernünftigkeit, Anmerkungen zum Verhältnis zwischen Carl Schmitt und Hegel“, in: *Der Staat*, volume 27, n° 3 (1988), pp. 371-391; here p. 373

⁷ KERVEGAN, J.-F., „Politik und Vernünftigkeit“, p. 379.

⁸ This also concerns, in my view, the famous attempt from K. Vieweg (Cf. VIEWEG, K. *Das Denken der Freiheit, Hegels Grundlinien der Philosophie des Rechts*. München: Wilhelm Fink Verlag, 2012, p. 366-433).

itself and is accordingly exclusive.”⁹ However, this does not concern as such its inner determinateness as ‘internal sovereignty’, but exclusively its relation to other States.

Because Hegel does not use the term ‘right’ in its strict sense (as in what he calls Abstract Right) but speaks of it as the “*Dasein* of all the determinations of freedom”;¹⁰ and because he thematizes the realization or objectification of freedom within social structures that coexist and are present in an external way, I consider it very justifiable to question whether the main focus of the analysis should lie on the completion of any such logical mediations – more or less in the way the aforementioned authors attempted – or on the very finite nature of right.

One needs to take it seriously when Hegel says in the Encyclopedia that “the objective Spirit” stands “on the soil of finitude (*auf dem Boden der Endlichkeit*)”.¹¹ In the introductory paragraphs of the *Philosophy of Right* we find a detailed description of the finite nature of the individual will,¹² but I will not delve into that matter. If the *Philosophy of Right* lies on such a ground, “on the soil of finitude”, one ought to search first for a concept of these finite structures, that is, of these limited (objective) relations. And the very first parts of the *Doctrine of the Being*¹³ are precisely where one can find the most relevant piece of Hegelian text discussing the finite. Let us therefore turn to Hegel’s chapter on Quality (determinateness).

2. A logical concept of exception

What is an exception? What do we think of if we want to think of an exception? To except something from something means to separate something from something and, at the same time, to include something in something. The excepted part needs an own ‘being-in-itself’ (*Insichsein*) in opposition to the other part. It claims a validity for itself that did not exist or was expressed in the other before. This means that an exception is a working

⁹ HEGEL, G.W.F., *Elements of the Philosophy of Right*, § 321, p. 359, emphasis in original.

¹⁰ HEGEL, *Encyclopaedia*, § 486

¹¹ HEGEL, *Encyclopaedia*, § 483.

¹² Cf. HEGEL, *Elements of the Philosophy of Right*, § 6 / p. 39 ff.

¹³ HEGEL, *Science of Logic*, translated by G. di Giovanni, Cambridge, Cambridge University Press, 2010. 58-151.

definition of what Hegel called ‘limit’ (*Grenze*)¹⁴ in the *Doctrine of Being*. The question then arises: How does Hegel determine the ‘limit’?

The limit as a first negation separates something from something other. It is the relation between Being and Nothing in ‘Dasein’ (there-ness). On the one hand, the exclusion of the other establishes the simple identity of the existing something. The other is the negation of the something and when it negates the first negation, it turns into a simple, identical ‘being-in-itself’ due to the sublation of the first negation. As such it is just an immediate with no relation to the other, it has “no concrete determinations for its sides”¹⁵; at first it is “only as maintaining itself simply in its reference to itself”¹⁶. And if we look at the other, we see that exactly the same occurs.

Hence, given that something is the negation of its other, the other is not only excluded by the something, it is also included in the something’s being-in-itself: “The something preserves itself in its non being”¹⁷, which means that the something contains the other in itself in a certain way and implicitly points out to its ‘non-being’. The non-being (of the other) is the ‘being-for-other’. ‘Dasein’ is determinate being because it includes the ‘non-being’ in itself and thus includes a ‘negated being’ in itself. The ‘Dasein’ is not its other. Yet the ‘Dasein’ of the other maintains itself in negation, in its non-being, as a something, and is therefore also of its own right a being. Both beings coexist side by side.

In finitude both get separated and both are treated individually as affirmative ‘being-on-itself’ (*Ansichsein*), as quasi-independent and coexisting entities. At the same time, they constitute the reciprocal determination of one another – something which corresponds to Spinoza’s comprehension of ‘determination as a negation’. We are dealing here with a relative determination.

At the beginning of *Being*, that is in *Quality*, the other is, however, not a factual other. There is no quantitative determination of others at this point. That means that there are, as of yet, neither numerically diverse somethings, nor two others. Thus, the other something is rather the finite something itself and indicates its submission to change and impermanence.

¹⁴ It is important to note that the term *Grenze* contains not only the logical meaning of ‘limit’ but also the political sense of ‘border’.

¹⁵ HEGEL, *Science of Logic*, p. 89.

¹⁶ HEGEL, *Science of Logic*, p. 90

¹⁷ HEGEL, *Science of Logic*, p. 92

Finitude is therefore finite because its “non-being constitutes its nature, its being”¹⁸. This means:

Finite things are, but, in their reference to themselves they refer to themselves negatively – in this very self-reference they propel themselves beyond themselves, beyond their being. They are, but the truth of the being is (as in Latin) their *finis*, their end. The finite does not just alter, as the something in general does, but perishes, and its perishing is not just a mere possibility, as if it might be without perishing. Rather, the being as such of finite things is to have the germ of this transgression in their in-itselfness: the hour of their birth is the hour of their death.¹⁹

The something is finite so far as it is not only delimited, but also pushes itself, by means of its own ‘Dasein’, over its own limit and passes on to its non-being, to its end. The finite something is not destroyed by other things. It negates and destroys itself. Finite things do relate to themselves and out of this results that they must have their own being-in-itself. It also results from that, however, that they only relate to themselves negatively, that is, that in their very being-in-itself they are turned to their destruction.²⁰

We see, then, that the finitude of things designates the “qualitative negation driven to the [sc. its] extreme”,²¹ and this is the case because “in the simplicity of such determinations there is no longer an affirmative being left to them, one that would be different from their being destined to ruin”²². The qualitative simple negation gives form, within or throughout finitude, to the abstract opposition of nothing and of impermanence against being; finitude is hence the “negation fixed in itself and, as such, it stands in strong contrast to its affirmative”²³.

What matters for Hegel now is “that the finite is not just perishable, and that it perishes, but that the perishing, the nothing, is rather not the last of it; that the perishing rather perishes”²⁴ – otherwise the “perishing” would be absolute. The truth of the finitude is its own negation.

¹⁸ HEGEL, *Science of Logic*, p. 101 (slightly changed).

¹⁹ HEGEL, *Science of Logic*, p. 101, emphasis in original.

²⁰ Cf. HOULGATE, S. *Das Sein. Zweiter Abschnitt. Die Quantität. Hegel-Studien*, n. 67, 2018, p. 158 f.

²¹ HEGEL, *Science of Logic*, p. 101. It is important that the exact wording of “auf die Spitze getrieben” is identical in the *Science of Logic* and the *Philosophy of Right*. The term ‘peak’ (‘Spitze’) means a transition point, which is primarily one. Therefore, it is rather unfavorable using two different translations because it covers up the close connection between the two texts. Furthermore the German term ‘Spitze’ emphasizes a connotation to weapons like ‘spearhead’ (‘Sperrspitze’) or ‘point of a sword’ (‘Schwertspitze’), which is important because of the fierce behavior of the being-for-itself (“Being-for-itself is the polemical, negative relating to the limiting other”, HEGEL, *Science of Logic*, p. 127).

²² HEGEL, *Science of Logic*, p. 101, slightly modified.

²³ HEGEL, *Science of Logic*, p. 102, slightly modified.

²⁴ HEGEL, *Science of Logic*, p. 103

The infinite being, by contrast, relates only affirmatively to itself. It is the positive self-relation of being, its inner identity in which the finite existence cannot endure. The affirmative being is the being that does not destroy itself, which is and does not cease to be. It is “being that has reinstated itself out of restrictedness”²⁵. If the finite being were in blunt opposition to the infinite, so that one could assume that there was a relation of negation between finite and infinite, then both would reciprocally limit each other, enter within the bad infinite progress, and continue therein:

Only the bad infinite is the beyond, since it is only the negation of the finite posited as real and, as such, it is abstract first negation; thus determined only as negative, it does not have the affirmation of existence in it; held fast only as something negative, it ought not to be there, it ought to be unattainable.²⁶

In contrast, however, we are to determine negation itself as “ideality”²⁷. That means here – alternatively to Kant’s views, for example – the ideality of the infinite will not be opposed to the finite as reality. This type of ideality is not completely expressed by the negation of finitude. Within true infinity, the finite itself is the ideal. The finite is, then, “as a determination, a content, a distinct but not a subsistent existent, a moment rather.”²⁸

This is also why Hegel understands the ideality as the “quality of the infinite”²⁹. With the sublation of finitude – with the sublation of the finite as such and of negative infinity (the bad-infinite-finitude) as well –, ideality is the return within itself, the relation with itself – that is, it is being. “Since there is negation in this being, the latter is existence; but, further, since the negation is essentially negation of the negation, self-referring negation, it is the existence that carries the name of being-for-itself.”³⁰

The infinite being cannot be set apart from the existing thereness (‘Dasein’), from negation or determinateness: it is the infinity of the determined, differentiated ‘Dasein’, the infinity of the limited something. The infinite being, however, is not just a determined being (‘Dasein’), is not a simple negation – it is essentially related to itself, that is, it is the negation of its negation. Whereas ‘Dasein’ was always determined relatively to another ‘Daseiendes’, ‘being-for-itself’, in turn, has its own determinateness (*Bestimmtheit*, sc. quality) and identity in its pure relation to itself. It excludes the other ‘Daseienden’, since it is strictly focusing

²⁵ HEGEL, *Science of Logic*, p. 109.

²⁶ HEGEL, *Science of Logic*, p. 119.

²⁷ HEGEL, *Science of Logic*, p. 120.

²⁸ HEGEL, *Science of Logic*, p. 119.

²⁹ HEGEL, *Science of Logic*, p. 120.

³⁰ HEGEL, *Science of Logic*, p. 120.

inward. As such, the being-for-itself is “the absolute union of the reference to another and the reference to itself”³¹.

The structure of the being-for-itself consists, therefore, in the unity of determinateness and negation with the pure relation to itself. Hegel achieves therewith the highest peak of the logical finitude: the unity of the reality and the ideality of the finite ‘Dasein’. The being-for-itself is, then, only a singular, an individual being, and yet it is a being completely and fully determined. Within this being the simple negation is kept as a limit. That limit, however, is merely abstract, because it is no longer a difference that has being. Rather, it is something that only marks the pure self-reference and the inner differentiation of the whole being. This being-for-itself gives form to an exception, in a sense, insofar as it must exclude the reference to the other in order to reach to itself. From a logical perspective this exception is a merely ideal unity. As such it must establish itself in a type of reference to other in the relations that follow thereupon and thus realize itself. This is the theme of my third and main topic.

3. *Exception in the Philosophy of Right*

The *Philosophy of Right* is divided into three parts: *Abstract right*, *Morality* and *Ethical life*. When it comes to exceptions, to exceptional situations or to the state of exception, the discussion in traditional legislation and in practice of the law focuses on the state of siege or on emergency decrees. For Hegel, however, the *Philosophy of Right* concerns the concept of the modern State – and, as already mentioned, ‘exception’ as a word does not play a central terminological role here. Nevertheless, the *Philosophy of the Right* has exceptions necessarily on each level – and this is something that needs to be understood according to the logical structure presented above.

3.1. *Exception in abstract law and morality*

Whereas abstract law dismisses the particular subjectivity of the human being and only considers the person’s formal and abstract juridical equality, morality, in turn, deals with the complete particularity or inner freedom of the individual subject. Both abstract law and morality, however, are forms in which ethical universality isn’t conceptually established yet.

³¹ HEGEL, *Science of Logic*, p. 132 f.

That is so, even though one could sensibly assume that it is the modern State what first gives form to the particular legal relations.

On the level of abstract law, freedom is realized in the concept of property and is contractually regulated by civil law. ‘Unintentional wrong’, ‘deception’, ‘coercion and crime’ emerge, here, as violations. Moreover, ‘collisions of rights’ or ‘clashes’³² (*Rechtskollisionen*) are possible at any moment, Hegel says: “It is in the nature of the finite and particular that it leaves room for contingencies; collisions must therefore occur, for we are here at the level of the finite.”³³ In this sense, it is important that the law is generally acknowledged:

Such a collision, in which a legal claim is made to a thing [*Sache*], and which constitutes the sphere of civil actions, involves the recognition of right as the universal and deciding factor, so that the thing may belong to the person who has a right to it. The action concerns merely the subsumption of the thing under the property of the one or the other party [...].³⁴

Prior to this, in the Introduction, Hegel had already indicated the possibility of collisions of rights. He distinguished the broad meaning of right (“the actual body of all the conditions of freedom”) from its strict meaning (as in abstract law), and stressed that the different spheres “can come into collisions only in so far as they are all in equal measure rights (*auf gleicher Linie*).”³⁵

Right in general is something holy, because it is the embodiment of the absolute conception and self-conscious freedom. But the formalism of right, and after a while of duty also, is due to distinctions arising out of the development of the conception of freedom. In contrast with the more formal, abstract and limited right, there is that sphere or stage of the spirit, in which spirit has brought to definite actuality the further elements contained in the idea. This stage is the richer and more concrete; it is truly universal and has therefore a higher right.³⁶

Furthermore, he says:

Each stage in the development of the Idea of freedom has its distinctive right, because it is the existence of freedom in one of its own determinations. When we speak of the opposition between morality or ethics and *right*, the right in question is merely the initial and formal right of abstract personality. Morality, ethics, and the interest of the state - each of these is a distinct variety of right, because each of them gives determinate shape and existence to *freedom*.³⁷

³² Cf. HEGEL, *Elements of the Philosophy of Right*, § 84 / p. 117 ff.

³³ HEGEL, *Elements of the Philosophy of Right*, § 86, Addition / p. 117f.

³⁴ HEGEL, *Elements of the Philosophy of Right*, § 85 / p. 117.

³⁵ HEGEL, *Elements of the Philosophy of Right*, § 30, Remark / p. 59.

³⁶ HEGEL, *Elements of the Philosophy of Right*, § 30, Remark / p. 59.

³⁷ HEGEL, *Elements of the Philosophy of Right*, § 30, Remark / p. 59, emphasis in original

In opposition to abstract law, morality is the sphere in which the inner freedom validates itself as particular individuality. In focus comes the welfare of the individual, and on such a basis both the right of necessity (*Notrecht*) and evil (*Böse*) end up configuring the forms of exception at hand. The right of necessity in its strict sense, however, does not correspond to a collision of rights. Rather, it validates itself as a higher determination of the concept of freedom – life or survival stands expressly above the formal property right. For the person in need, the right of necessity means in fact recognition of the justice implied in the violation of property (e.g., petty larceny of food etc.). Furthermore, without the right of necessity³⁸ there would be “an infinite injury [*Verletzung*] to existence with total loss of rights”³⁹ – that means, death.

If we look at the following stages of the collision of rights – crime in the formal law and evil in morality – it becomes manifest that a clear and factual exception here lies openly, and just in the manner it was drafted in our considerations related to the logical being-for-itself. Both crime and evil are types of the absolute self-reference displayed by the individual will that wants to be for itself against right, that is, against “the universal will that has being *on itself*”.⁴⁰ Crime negates right and admits as valid only the particular will of the criminal. But crime is also systematically necessary. By the violation of right, crime sets itself as a positive for itself, although it is disposed negatively in relation to right. Penalty as a reaction to, or a negation of the crime leads to the reestablishment of right;⁴¹ at the level of morality, it brings forth the consideration of the particularity of the individual.

Evil too indicates, on its highest level as irony, “the even greater extreme at which *subjectivity declares itself absolute*”⁴² or “the only possible culmination [...] of that subjectivity”⁴³:

Thus, it does indeed consist in knowledge of the objective side of ethics, but without that self-forgetfulness and self-renunciation which seriously immerses itself in this objectivity and makes it the basis of its action. Although it has a relation [*Beziehung*] to this objectivity, it at the same time distances itself from it and knows itself as that which wills and resolves in a particular way but may equally well will and resolve otherwise. - 'You in fact honestly accept a law as existing in and for itself [it says to others]; I do so, too, but I go further than you, for I am also beyond this law and can do this or that as I please. It is not the thing [*Sache*] which is

³⁸ HEGEL, *Elements of the Philosophy of Right*, § 127, p. 154f.

³⁹ HEGEL, *Elements of the Philosophy of Right*, § 127, p. 154.

⁴⁰ Cf. HEGEL, *Elements of the Philosophy of Right*, § 104, p. 131 – slightly altered, emphasis in original.

⁴¹ Cf. HEGEL, *Elements of the Philosophy of Right*, § 99, p. 124 ff.

⁴² HEGEL, *Elements of the Philosophy of Right*, § 140, p. 170, emphasis in original.

⁴³ HEGEL, *Elements of the Philosophy of Right*, § 140, Addition, p. 181.

excellent, it is I who am excellent and master of both law and thing; I merely play with them as with my own caprice, and in this ironic consciousness in which I let the highest of things perish, I merely enjoy myself.⁴⁴

This does not concern only the entirely universal evil, but also the subjective vanity involved in wanting to know each and every content and wanting to know oneself as the absolute within this knowledge. In this sense, already in the being-for-itself of the *Doctrine of Being*, Hegel characterized evil in this manner:

Driven to the extreme of the one as being-for-itself, self-subsistence is an abstract, formal self-subsistence that destroys itself. It is the ultimate, most stubborn error, one which takes itself as the ultimate truth, whether it assumes still of evil. It is the freedom which so misconceives itself as to place its essence in this abstraction, and, in thus shutting itself up within itself, flatters itself that it attains itself in all purity.⁴⁵

Here too we are dealing with a form of exception in which the particular subject encapsulates itself in a pure ‘for itself’ against all other, and conceives itself as quasi-divine. This is still necessary, however, for this form must be completely achieved in order to make its shortcomings clearly visible. “The inadequacy of this is that everything is made to refer solely to conviction, and that there is no longer any right which has being in and for itself, a right for which this conviction would merely be the form.”⁴⁶ Hegel underlines, finally, that within irony conviction is not at all as important as arbitrariness. It must retreat to objectivity, where “ethical life is not just the subjective form and the self-determination of the will”⁴⁷:

It also has its own concept, namely freedom, as its content. The sphere of right and that of morality cannot exist independently [für sich]; they must have the ethical as their support and foundation. For right lacks the moment of subjectivity, which in turn belongs solely to morality, so that neither of the two moments has any independent actuality. Only the infinite, the Idea, is actual. Right exists only as a branch of a whole, or as a climbing plant attached to a tree which has firm roots in and for itself.⁴⁸

3.2. *The exception in Ethical life*

So far we focused on singular subjects that excluded/excepted themselves from the generally applying legal system or set of moral codes. On the level of ethical life, a different

⁴⁴ HEGEL, *Elements of the Philosophy of Right*, § 140, Addition, p. 182.

⁴⁵ HEGEL, *Science of Logic*, Remark, p. 140.

⁴⁶ HEGEL, *Elements of the Philosophy of Right*, § 140, Addition, p. 184.

⁴⁷ HEGEL, *Elements of the Philosophy of Right*, § 141, Addition, p. 186.

⁴⁸ HEGEL, *Elements of the Philosophy of Right*, § 141, Addition, p. 186.

question concerning the exception arises, because ethical life (*Sittlichkeit*) – for Hegel the family, civil society and State – has *per definitionem* the form of universality. The individual actions do not primarily concern as such the ethical institutions, even if an individual, as a family member, as a bourgeois or a citizen, can purposely go against these institutions.

On the basis of the thesis above stated, according to which the concept of exception would have a constitutive function in each level of the *Philosophy of Right*, I must now demonstrate that there are three essential forms of exception, corresponding to each of the three forms of ethical universality. Within the family, it is the independent individuum; within civil society, the poor rabble; and within the State, fanaticism.

3.2.1. Family

The Family acts in a certain sense as the natural basis for all the further social relations. In the form of love, it constitutes a first, immediate, family unity, in which the singular is present “not as an independent person [*eine Person für sich*] but as a member”.⁴⁹ We find three main structures in it: ‘marriage’, ‘the family’s resources’ and ‘the upbringing of children’.⁵⁰ “Marriage is essentially an ethical relationship”⁵¹ because it constitutes, out of two, one person only; and because it elevates this one person “above the contingency of the passions and of particular transient caprice”.⁵² In this context Hegel speaks also of “ethical love”.⁵³ Even though marriage is considered “as indissoluble *in itself*”,⁵⁴ divorce is absolutely possible: “Since marriage is based only on subjective and contingent feeling, it may be dissolved.”⁵⁵ Secondly, the ‘family’s resources’ is also an ethical structure, since it suggests that “acquisition [shall be directed] for a communal purpose”.⁵⁶ Also here we find that collisions are possible, “because the ethical disposition of the family is still immediate (see § 158) and exposed to particularization and contingency”.⁵⁷ The children’s upbringing aims at the goal “that, in them, the ethical is given the form of immediate *feeling* [*Empfindung*]”.⁵⁸ Its

⁴⁹ HEGEL, *Elements of the Philosophy of Right*, § 158, p. 199, emphasis in original.

⁵⁰ HEGEL, *Elements of the Philosophy of Right*, § 160, p. 200.

⁵¹ HEGEL, *Elements of the Philosophy of Right*, § 160, Addition, p. 201.

⁵² HEGEL, *Elements of the Philosophy of Right*, § 163, p. 202.

⁵³ HEGEL, *Elements of the Philosophy of Right*, § 172, p. 209.

⁵⁴ HEGEL, *Elements of the Philosophy of Right*, § 163, p. 202, emphasis in original.

⁵⁵ HEGEL, *Elements of the Philosophy of Right*, § 176, Addition, p. 213.

⁵⁶ HEGEL, *Elements of the Philosophy of Right*, § 170, p. 209.

⁵⁷ HEGEL, *Elements of the Philosophy of Right*, § 171, p. 209.

⁵⁸ HEGEL, *Elements of the Philosophy of Right*, § 175, p. 212, emphasis in original.

principium consists, therefore, in that “the members of the family become self-sufficient and rightful persons”.⁵⁹ And when this happens, so we have its completion – that is, the “ethical dissolution of the family”.⁶⁰

The ethical dissolution of the family consists in the fact that the children are brought up to become free personalities and, when they have *come of age*, are recognized as legal [*rechtliche*] persons and as capable both of holding free property of their own and of founding their own families (...). In this family they now have their substantial determination, and in relation to it, their original family recedes in importance as merely their original basis and point of departure, while the abstract category [*das Abstraktum*] of the kinship group has even fewer rights.⁶¹

The free personality, in relation to the family, poses an exception. The family ceases therewith to be the utmost determinant for the individuum, and “a relation [...] arises whereby the particular is to be my primary determining principle”.⁶² The place of the familial unity is thus taken by the particular – and this particular is a being-for-itself, which broke its connections with universality and now sees to its own and particular sustenance independently from the family. Nevertheless, this being-for-itself is thereby led to the error of believing it could provide for the satisfaction and sustenance of its own particular needs in such independence and autonomy. “Particularity in itself [*für sich*] (...) destroys itself and its substantial concept in the act of enjoyment”⁶³ because, as being-for-itself, it admits validity only to itself. “In the very act of developing itself independently [*für sich*] to totality, the principle of particularity passes over into *universality*”.⁶⁴

3.2.2. *Civil Society*

Alongside the independent person’s particularity, it is universality what gives form to civil society’s second principle. This principle stems from the “unity of the family as the ethical Idea”,⁶⁵ but it first must “be released” by the concept “to [attain] self-sufficient reality”⁶⁶. “The point of departure of universality here is the self-sufficiency of the particular,

⁵⁹ HEGEL, *Elements of the Philosophy of Right*, § 180, p. 215.

⁶⁰ HEGEL, *Elements of the Philosophy of Right*, § 177, p. 214.

⁶¹ Id., *ibid.*, emphasis in original.

⁶² HEGEL, *Elements of the Philosophy of Right*, § 181, Addition, p. 219.

⁶³ HEGEL, *Elements of the Philosophy of Right*, § 185, p. 222.

⁶⁴ HEGEL, *Elements of the Philosophy of Right*, § 186, p. 223, emphasis in original.

⁶⁵ HEGEL, *Elements of the Philosophy of Right*, § 181, p. 219.

⁶⁶ Id., *ibid.*

so that ethical life appears to be lost at this level (...)”.⁶⁷ Since particularity and universality here are maintained as two principles reciprocally exterior, diverse and not truly related to one another, civil society is the “stage of *difference [Differenz]*”.⁶⁸ As “a unity of different persons”, civil society gives form to a solely quantitatively accumulated “community”⁶⁹, which Hegel also calls “*external state, the state of necessity and of the understanding*”.⁷⁰ We are dealing, thus, with a form of ethical universality that is deficient, because in the end, it remains a particularity turned into a totality, and therefore something still encapsulated by arbitrariness and contingency: “In these opposites and their complexity, civil society affords a spectacle of extravagance and misery as well as of the physical and ethical corruption common to both.”⁷¹

Here too we come upon three moments: ‘the system of needs’, ‘the administration of justice’ and, lastly, ‘police and the corporation’. These shall be taken into consideration in the following.

In the ‘system of needs’, “mediation of need and the satisfaction of the *individual [des Einzelnen]*” ought to be achieved “through his work and through the work and satisfaction of the needs of *all the others*”.⁷² Since we are dealing here with the securing of subsistence, particularity becomes a problem, because particularity, “in conjunction with other contingent and arbitrary circumstances, necessarily result[s] in *inequalities in the resources and skills of individuals*”.⁷³ Corresponding to the “natural physical and mental [*geistigen*] aptitudes, which are already unequal in themselves [*für sich*]”,⁷⁴ different estates arise. “The individual attains actuality [*Wirklichkeit*] only by entering into *existence [Dasein]* in general, and hence into *determinate particularity*; he must accordingly limit himself *exclusively* to one of the *particular* spheres of need.”⁷⁵ So, according to Hegel, each human being must belong to an estate, otherwise this human being would be conceived of as “merely a private person”

⁶⁷ HEGEL, *Elements of the Philosophy of Right*, § 181, Addition, p. 219.

⁶⁸ HEGEL, *Elements of the Philosophy of Right*, § 181, p. 219, emphasis in original.

⁶⁹ HEGEL, *Elements of the Philosophy of Right*, § 182, Addition, p. 220.

⁷⁰ HEGEL, *Elements of the Philosophy of Right*, § 183, p. 221, emphasis in original.

⁷¹ HEGEL, *Elements of the Philosophy of Right*, § 185, p. 222.

⁷² HEGEL, *Elements of the Philosophy of Right*, § 188, p. 226, emphasis in original.

⁷³ HEGEL, *Elements of the Philosophy of Right*, § 200, p. 233, emphasis in original.

⁷⁴ Id., *ibid.*

⁷⁵ HEGEL, *Elements of the Philosophy of Right*, § 207, p. 238, emphasis in original.

without “actual [*wirklicher*] universality”.⁷⁶ At this point the exception comes to light in form of the ‘poor rabble’.⁷⁷

But before analyzing this figure of exception, it should be mentioned that within the ‘administration of justice’ collisions may arise too. Since the function of the administration of justice lies in the protection of property (resources), we will take into consideration here above all the concepts of law and of court of law:

Collisions arise in the application of the law, where the understanding of the judge has its place; this is entirely necessary, for the implementation of the law would otherwise be a completely mechanical process. But to go so far as to eliminate such collisions altogether by relying heavily on the discretion of the judge is a far worse solution, because collisions are also inherent in thought, in the thinking consciousness and its dialectic, whereas the mere decision of a judge would be arbitrary.⁷⁸

And collisions also arise in the chapters concerning the police and the corporation, mostly between the “diverse interests of producers and consumers”.⁷⁹ “And even if, *on the whole*, their correct relationship re-establishes itself automatically, its adjustment also needs to be consciously regulated by an agency which stands above both sides.”⁸⁰ It is the function of Hegel’s ‘police and corporation’ to care for the particular interests as common interests. Because civil society – so to speak – translates familial into social relations, the “son of civil society”⁸¹ has also the right to demand subsistence and care. Just as civil society tears the individual out of the bonds of the family, it turns its members reciprocally strange to one another and recognizes them as independent. And as a result, “it is not just starvation which is at stake here; the wider viewpoint is the need to prevent a rabble from emerging”.⁸² Still, poverty and the rabble arise, and this is the case not only due to individual, self-blaming incapacity.

On the one hand, as the association [*Zusammenhang*] of human beings through their needs is universalized, and with it the ways in which means of satisfying these needs are devised and made available, the *accumulation of wealth* increases; for the greatest profit is derived from this twofold universality. But on the other hand, the *specialization* [*Vereinzelung*] and *limitation* of particular work also increase, as do

⁷⁶ HEGEL, *Elements of the Philosophy of Right*, § 207, Addition, p. 239.

⁷⁷ Fundamental for the contemporary debate concerning Hegel’s concept of the rabble is: RUDA, F. *Hegels Pöbel, Eine Untersuchung der ‚Grundlinien der Philosophie des Rechts‘*. Konstanz: Konstanz University Press, 2011, p. 38 ff.

⁷⁸ HEGEL, *Elements of the Philosophy of Right*, § 211, Addition, p. 243.

⁷⁹ HEGEL, *Elements of the Philosophy of Right*, § 236 p. 261.

⁸⁰ Id., *ibid.*, emphasis in original.

⁸¹ HEGEL, *Elements of the Philosophy of Right*, § 238 p. 263.

⁸² HEGEL, *Elements of the Philosophy of Right*, § 240 Addition, p. 264.

likewise the *dependence and want* of the class which is tied to such work; this in turn leads to an inability to feel and enjoy the wider freedoms, and particularly the spiritual advantages, of civil society.⁸³

This shows that, despite an *excess of wealth*, civil society is *not wealthy enough* – i.e. its own distinct resources are not sufficient – to prevent an excess of poverty and the formation of a rabble.⁸⁴

Identifying the concept of rabble is essential for the question of exception. What gives form to the rabble is not the fact that a “large mass of people sinks below the level of a certain standard of living”.⁸⁵ “Poverty in itself does not reduce people to a rabble (...)”.⁸⁶ Rather, the rabble is formed when “that feeling of right, integrity [*Rechtlichkeit*], and honour which comes from supporting oneself by one's own activity and work is lost”.⁸⁷ It consists solely in the “immediate deficiency as the disposition of laziness, viciousness, and the other vices to which their predicament and sense of wrong give rise.”⁸⁸

Such an indication of the rabble as “the disposition associated with poverty, by inward rebellion against the rich, against society, the government etc.”⁸⁹ brings to light, one more time, the structure of a being-for-itself, which polemizes with its other, with its limit. Evil and injustice end up thereby expressively returning on stage. From a social perspective, however, that evil and that injustice, they do not signify a mere moral deficit of an individual affirming itself as universal. Rather, they give voice to a righteous claim pertaining the legal rights of a ‘mass’ existing *per se*. Politically, this is of the utmost relevance, for we are dealing with the very same group which, while commencing to advocate for its rights, gave birth to the French Revolution. “The important question of how poverty can be remedied is one which agitates and torments modern societies especially”⁹⁰ precisely because it was civil society itself what first engendered this question.

3.2.3. *The political State*

⁸³ HEGEL, *Elements of the Philosophy of Right*, § 243, p. 266, emphasis in original.

⁸⁴ HEGEL, *Elements of the Philosophy of Right*, § 245, p. 267, emphasis in original.

⁸⁵ HEGEL, *Elements of the Philosophy of Right*, § 244, p. 266.

⁸⁶ HEGEL, *Elements of the Philosophy of Right*, § 244, Addition, p. 266.

⁸⁷ HEGEL, *Elements of the Philosophy of Right*, § 244, p. 266.

⁸⁸ HEGEL, *Elements of the Philosophy of Right*, § 241, p. 265. (slightly modified)

⁸⁹ HEGEL, *Elements of the Philosophy of Right*, § 244, Addition, p. 266.

⁹⁰ HEGEL, *Elements of the Philosophy of Right*, § 244, Addition, p. 267.

The modern, constitutional State which results from the French Revolution is “*rational* in and for itself”,⁹¹ but

the state is not a work of art; it exists in the world, and hence in the sphere of arbitrariness, contingency, and error, and bad behaviour may disfigure it in many respects. But the ugliest man, the criminal, the invalid, or the cripple is still a living human being; the affirmative aspect – life – survives [besteht] in spite of such deficiencies, and it is with this affirmative aspect that we are here concerned.⁹²

The rational is only effective (*wirklich*) to the extent that “the interest of the whole realizes itself through the particular ends” – that is, to the extent that it is itself divided (dirimirt) “into the distinctions within the concept”,⁹³ and still repeatedly gives birth to itself in this dissolution of the universality. This means the State effectuates itself only to the point at which it is able to give “its determinations a stable existence [*Dasein*]”.⁹⁴ In the State, the differences are reciprocally “far apart”.⁹⁵ In what comes to the reestablishment of the universal within the particular, we are dealing at first with supporting the particular as such.

If this totality sought to take over all the relations [*Beziehungen*] of the state, it would become fanaticism; it would wish to find the whole in every particular, and could accomplish this only by destroying the particular, for fanaticism is simply the refusal to admit particular differences.⁹⁶

I cannot take into closer consideration the much-discussed question of the relation between State and Religion. Instead, my point here will be to consider fanaticism as an exception, to the extent that this has systemic relevance. Fanaticism structurally consists in willing only an abstract inarticulate universal, which, as a being-for-itself, excludes all the differences and lingers on this pure abstraction. Fanaticism, therefore, characterizes itself by a type of indeterminacy which Hegel, already in § 5, dismisses as absent of any content. Because the will is only effective when it indeed wills something, it is restricted and dissolved in determinate contents.⁹⁷ Fanaticism “of both political and religious life” is, correspondingly, at first a will without any content – a will which, in the end, consists in the factual “destruction, [in] demolishing the whole existing social order, eliminating all individuals

⁹¹ HEGEL, *Elements of the Philosophy of Right*, § 258, p. 275, emphasis in original.

⁹² HEGEL, *Elements of the Philosophy of Right*, § 258, Addition, p. 279.

⁹³ HEGEL, *Elements of the Philosophy of Right*, § 270, Addition, p. 302.

⁹⁴ HEGEL, *Elements of the Philosophy of Right*, § 270, Addition, p. 303.

⁹⁵ HEGEL, *Elements of the Philosophy of Right*, § 270, Addition, p. 303.

⁹⁶ HEGEL, *Elements of the Philosophy of Right*, § 270, Addition, p. 304.

⁹⁷ HEGEL, *Elements of the Philosophy of Right*, § 5, p. 37.

regarded as suspect by a given order, and annihilating any organization which attempts to rise up anew”.⁹⁸ Such fanaticism comes to scene in exemplary fashion as the terror under the Jacobins,⁹⁹ as “the Reign of Terror in the French Revolution, during which all differences of talents and authority were supposed to be cancelled out [aufgehoben].”¹⁰⁰

Frank Ruda, along with others, emphasized the “destructive character” related to pure freedom in the French Revolution: “For Hegel, the will of the French Revolution is a pure freedom’s will, which, in order to sustain this purity, must put aside all impurities – objective or subjective.”¹⁰¹ It remains unnoticed, however, that Hegel’s pure freedom is not to be so much understood in opposition to ‘impure’ freedom, for it better expresses an abstraction, that is, the extinction of all particularity.¹⁰² If the State’s function consists of securing public freedom, this implicates the type of ethical universality reestablished by the police and the corporation. However, the ethical universality is in this case no abstract universal, for it necessarily differentiates itself in the particular fields (e.g. as the division of powers). The State, as a superior organization, extends itself in an ideal fashion over these particular fields, but does so in such a manner as to contain and to allow the conservation of these very essential differences as real rationality in itself.

In its relation to fanaticism, exception not only presents, therefore, so to speak a political disposition (*Gesinnung*), but it is also essentially characterized as the “fury of destruction”¹⁰³ by the actual violent act. “This is why the people, during the French Revolution, destroyed the institutions they had themselves created, because all institutions are incompatible with the abstract self-consciousness of equality”.¹⁰⁴ Fanaticism remains no mere “inward disposition and viewpoint”,¹⁰⁵ but rather directs itself to effectivity (*Wirklichkeit*) and in it seeks to make itself real.

Since, however, decisions still have to be made in relation to actual existence [Dasein] and action, the same thing happens as in the case of that subjectivity of the will in general which knows itself to be absolute (see § 1 40), namely that the decisions are made on the basis of subjective representations [Vorstellung], i.e. of *opinion* and the *caprice of the abstract will*.¹⁰⁶

⁹⁸ HEGEL, *Elements of the Philosophy of Right*, § 5, Remark, p. 38.

⁹⁹ Cf. WILDT, A. „Hegels Kritik des Jakobinismus“, in: Oskar Negt (Hg.): *Aktualität und Folgen der Philosophie Hegels*. Frankfurt am Main 1971, 269-296.

¹⁰⁰ HEGEL, *Elements of the Philosophy of Right*, § 5, Addition., p. 39.

¹⁰¹ RUDA, F. *Hegels Pöbel*, p. 214.

¹⁰² HEGEL, *Elements of the Philosophy of Right*, § 5, Addition, p. 38.

¹⁰³ HEGEL, *Elements of the Philosophy of Right*, § 5, Remark, p. 38.

¹⁰⁴ HEGEL, *Elements of the Philosophy of Right*, § 5, Addition, p. 39.

¹⁰⁵ HEGEL, *Elements of the Philosophy of Right*, § 270, Addition, p. 293.

¹⁰⁶ Id., *Ibid.*, emphasis in original.

Fanatical thinking thus grasps all state institutions and legal regulations as a restriction of its feeling of freedom. Even though prerevolutionary social relations, by also insisting on universal freedom and equality, express a righteous moment of freedom, in a modern State this expression leads necessarily to the political constitution. Since, according to Hegel, the universal aspiration to freedom can only resolve itself in particularization, this universal aspiration must give to itself a political constitution, which guarantees public freedom according to the “principle of the divisions of powers”.¹⁰⁷

4. Final remarks

I have shown that the concept of exception has both a logical and a political significance for Hegel. On the one hand, the logical significance consists in the structure of the concept of the being-for-itself, a concept which appears at the beginning of the *Science of Logic* as the finite *Dasein*'s first complete self-reference, and also as an exclusion of the other. The political significance of the concept, on the other hand, consists in a detailed appreciation of the contradictory structures of effectivity. Just as the being-for-itself, in its polemical behavior against its limiting other, poses itself in an abstraction of its other, the exception in the *Philosophy of Right* signifies an exclusion of the real mediating contexts. The form of the being-for-itself is complete so far as it produces precisely a pure self-reference. As complete self-reference, an ideal has thus produced itself – an ideal which will should come into reality. As such, being-for-itself brings forward a rightful claim and can also be valid as the immanent criterion of the critique; but, however complete, we are dealing with an abstraction of the other, which remains deficient as such. It can only subsist in itself if it does not remain pure for itself and if it can affirm itself by the opposition with the other during the forthcoming relations. This means: insofar it remains for itself, the exception generates only the concept of an unitary, but ideal object, with which all further developments will have to deal. The rational development can only be established if the pure being-for-itself is sublated. In the logical sphere, the pure qualitative being-for-itself passes onto quantity in order to finally gain validity. In the sphere of the *Philosophy of Right*, in contrast, the structure of being-for-itself offers a way for comprehending the structure of entire passages. On the one

¹⁰⁷ Cf. HEGEL, *Philosophy of Right*, § 272, Addition, p. 306.

hand, each level (abstract right, morality, family, civil society and the political state) is brought to a complete and total unity for itself; on the other, in each unity it also comes to light, however, a deficit, for they remain enclosed within themselves. That means, on the first place, that with this ideal unity a criterion (*Maßstab*) was produced, which should be brought into reality. Secondly, this also shows Hegel's differentiated conception of freedom, which, notwithstanding contingency and arbitrariness in social reality, allows that the struggles in history be not dismissed simply as false conceptions, as actions pertaining to the understating or as sheer irrationality, but rather that such claims be apprehended and integrated within the political State.

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